INTERNATIONAL LAW COMMISSION

Seventy-fifth session

Geneva, 29 April – 31 May and 1 July – 2 August 2024

Check against delivery

Settlement of disputes to which international organizations are parties

Statement of the Chair of the Drafting Committee
Ms Phoebe Okowa

31 May 2024

Mr. Chair,

This morning, it is my pleasure to introduce the first report of the Drafting Committee for the seventy-fifth session of the International Law Commission, which concerns the topic "Settlement of disputes to which international organizations are parties". The report, which is to be found in document A/CN.4/L.998 and Add.1, which were issued on 16 and 27 May 2024 and contain the texts and titles of the draft guidelines provisionally adopted by the Drafting Committee at the present session. It also contains the titles of Part One and Part Two.

Before commencing, allow me to pay tribute to the Special Rapporteur, Mr. August Reinisch, whose mastery of the subject, guidance and cooperation greatly facilitated the work of the Drafting Committee. I also would like to thank the other members of the Committee for their active participation and significant contributions to the successful outcome. Furthermore, I wish to thank the Secretariat for its invaluable assistance. As always, and on behalf of the Drafting Committee, I am pleased to extend my appreciation to the interpreters and conference officers.

Mr. Chair,

The Drafting Committee devoted five meetings to this topic, from 6 to 9 May and on 27 May, for the consideration of the draft guidelines as originally proposed by the Special

Copyright © United Nations
2024

Rapporteur in his second report,[1] together with a number of reformulations that were proposed by the Special Rapporteur to the Drafting Committee in order to respond to suggestions made, or concerns raised, during the debate in Plenary and in the Drafting Committee. At the present session, the Drafting Committee provisionally adopted a total of four draft guidelines on this topic. At the outset, allow me to clarify that the Drafting Committee adopted the text of the draft guidelines in English only.

I shall introduce in turn the four draft guidelines provisionally adopted by the Committee. Let me turn first to draft guideline 3.

Part Two - Disputes between international organizations as well as disputes between international organizations and States

Draft guideline 3 – Scope of the present Part

Mr. Chair,

Draft guideline 3 was adopted by the Drafting Committee with changes to the provision originally proposed by the Special Rapporteur in his second report. The title of the draft guideline was also adopted with changes.

For clarity purposes, allow me first to explain that, in order to better structure the text, the Drafting Committee decided to arrange the draft guidelines under different "Parts". Therefore, draft guidelines 3, 4, 5 and 6, are now under "Part Two", which is entitled "Disputes between international organizations as well as disputes between international organizations and States", as adopted by the Drafting Committee. As a consequence of this decision, a "Part One" entitled "Introduction" was also adopted by the Committee. Draft guidelines 1 and 2, provisionally adopted by the Commission at its seventy-fourth session, would thus go under such "Part One", should the Commission adopt this change.

Mr. Chair,

The main questions confronting the Drafting Committee regarding draft guideline 3, as originally proposed by the Special Rapporteur in his second report, were (a) the use of the term "international disputes", (b) whether it was appropriate for the draft guideline to contain two elements, that is, reference to the parties to the dispute and to the applicable law, and (c) the use of the term "other subjects of international law". It may be recalled that those questions were

[1] A/CN.4/766.

alluded to by members in the plenary debate. An extensive and thorough debate also took place in the Committee regarding those questions. Firstly, allow me to clarify that the Drafting Committee felt it was appropriate for the draft guideline not to contain text that resembled a definition, but rather that it should set out the scope of Part Two.

Draft guideline 3, as adopted by the Drafting Committee, reads: "[t]his Part addresses disputes between international organizations as well as disputes between international organizations and States." The title of draft guideline 3 is "Scope of the present Part". The Committee considered that a change to the title was necessary to better align it with the text of the provision itself.

Mr. Chair,

I will start by addressing the deletion of the phrase "arising under international law" and of the term "international disputes" as originally proposed by the Special Rapporteur. At the outset, allow me say that the 2016 syllabus of the topic, contained in an annex to the report of the Commission at its sixty-eighth session, was mentioned by several members. I will hereinafter refer to it as the "syllabus".

Several members were of the view that reference to "arising under international law", as originally proposed in the second report, or to "governed by international law", as contained in the syllabus, was useful and necessary. According to those members, retaining reference to international law was essential in the light of, *inter alia*: (a) the approach taken in the syllabus, in particular in paragraph 3 thereof, which employed the phrase "arise from a relationship governed by international law"; (b) the Manila Declaration on the Peaceful Settlement of International Disputes;[2] (c) the commentaries to draft guidelines 1 and 2, provisionally adopted by the Commission at the seventy-fourth session; and (d) the views and concerns expressed by States during the debate held on the report of the Commission at the Sixth Committee of the General Assembly during its seventy-eighth session.[3] In addition, it was emphasized that the Commission itself, in its commentaries to article 10 of the articles on the responsibility of international organizations, had acknowledged the sensitivity surrounding the question of whether the internal rules of international organizations constituted international law. The importance of a dispute having a basis or grounds in international law was highlighted and the view was expressed that the provision should cover disputes arising due to a breach of an obligation under international

[2] General Assembly resolution 37/10.
[3] See Topical summary of the discussion held in the Sixth Committee of the General Assembly during its seventy-eighth session, prepared by the Secretariat (A/CN.4/763), para. 25.

law, such as a treaty. Members stressed that taking a decision to omit reference to international law in draft guideline 3 would have an impact on the future work on the topic, as well as practical implications. It was pointed out that the Commission would inevitably at some point have to deal with the question of the applicable law during its work on the topic. According to these members, omitting the reference to international law would cause uncertainty in the Commission's work and the benefits of this omission would not outweigh its costs.

Other members acknowledged that grouping the different types of disputes to which international organizations are parties would be helpful for the work of the Commission, but considered that such grouping would only be clear and unambiguous if it focused solely on the parties to the dispute. According to these members, grouping disputes by reference to the parties and the applicable law, or the parties and the law under which the dispute arose, would give rise to confusion because it was not always clear whether a dispute arose under international law or was of a private law character. Further, disputes to which international organizations are parties at times involved, were triggered by, or were governed by, both international law and national law. Members offered examples to illustrate these cases, such as certain disputes concerning headquarters agreements.

These members felt that a clear-cut definition of "international disputes" with two elements, characterized on the basis of the parties to the dispute and the applicable law, did not provide clarity. The phrase "arising under international law" was considered to be important, but lacking clarity and causing conceptual problems. Members emphasised that it was important to avoid debates regarding the terminology employed (for example, "international disputes", "non-international disputes"), which could have an undesirable effect on the understanding of the substance of the dispute itself. As such, a definition of "international disputes" was considered to be unnecessary. It was also considered that precision and clarity in the text would be better achieved if the focus rested solely on the parties to the dispute. In that connection, it was stressed that the purpose of draft guideline 3 was to outline the scope of the other draft guidelines that would be placed under Part Two. In other words, all disputes to which international organizations are parties that did not fall within the scope of Part Two would be addressed in subsequent Parts of the draft guidelines.

Ultimately, the Drafting Committee settled on omitting the phrase "arising under international law", on the understanding that the commentaries would explain the law applicable to the disputes that fall under draft guideline 3. It was understood that the commentaries would also explain disputes related to the rules of the international organization, as well as the specificity of the text of draft guideline 3 being for the purposes of the draft guidelines on the

topic. Some members reserved their position on the deletion of the phrase "arising under international law" and on the lack of reference to "international law" in the text.

Mr. Chair,

I shall now turn to the term "other subjects of international law", which was contained in the original proposal by the Special Rapporteur, but which was deleted by the Drafting Committee.

Members expressed differing views on whether the term should be retained and acknowledged that there was no consensus among them on who the subjects of international law were. Some members considered that the term was limited to entities with international legal personality, while others considered that it included individuals. The view was also expressed that the term could include entities who were members of international organizations but who were neither States nor international organizations. It was recalled that the Commission had used the term "other subjects of international law" in its previous work, but with a very narrow group of actors in mind.

Several members were of the view that "other subjects of international law" should be retained because deleting it would narrow the scope of the provision. In addition, it was felt that the term was relevant for the purposes of the draft guideline because it would make it more complete. It was noted that if the term was deleted, the commentary would need to explain the Commission's plans regarding disputes of a private law character and the future work on the topic as a whole.

Several other members were of the view that the term should be deleted. Some members deemed the term to be too broad or general, making the scope of the provision too wide. The view was expressed that if the term was retained, the phrase "arising under international law" ought also to be retained so as to link the two. Others considered that because there was no consensus on the scope of the term "other subjects of international law", retaining it would create confusion and make the draft guideline ambiguous. It was pointed out that the term referred to exceptional situations of disputes with international organizations and, thus, it would be better addressed in the commentary.

The Drafting Committee decided to delete the term "other subjects of international law", as originally proposed by the Special Rapporteur, considering that disputes between international organizations and "other subjects of international law" under draft guideline 3 would be more appropriately dealt with in the commentary. It was understood that the commentary would

address in detail who the subjects of international law that could be parties to such disputes were, as well as the issue of disputes between international organizations and members of the organization who were neither international organizations nor States. It was also understood that draft guideline 3, as adopted by the Drafting Committee, was without prejudice to disputes of a private character being addressed in other draft guidelines.

Mr. Chair,

Before concluding my remarks on draft guideline 3, I should mention that, after adoption of the text of the draft guideline, some members took the floor to explain their position. They explained that, while they had joined the consensus for adoption, they remained unpersuaded by the benefits of the shift from including both the applicable law and the parties to the dispute in the text to the sole focus on the parties to the dispute.

I should also highlight that a number of members expressed concerns regarding the overall approach to the topic. According to these members, it remained unclear what the aim of draft guideline 3 was, as it lacked purpose and specificity. These members doubted that guidelines consisting of broad generic statements would achieve the purpose of providing practical guidance and considered that a more specific and detailed approach would be more beneficial. The syllabus for the topic was referred to by several members in this regard.

Draft guideline 4 – Resort to means of dispute settlement

Mr. Chair,

Let me now address draft guideline 4.

The discussion of the text of draft guideline 4 developed around two fundamental issues. First, the Committee considered whether provisions of a descriptive nature were appropriate and desirable in the Commission's outputs, and, consequently, whether the content of draft guideline 4 should take a more prescriptive approach. Second, the Committee addressed the issue of the content of the recommendation to be contained in the draft guideline, if it were changed to contain normative text. In this connection, some members expressed concerns regarding the substance of the text originally proposed by the Special Rapporteur.

Given these considerations, the Drafting Committee found it appropriate to reformulate draft guideline 4 as originally proposed by the Special Rapporteur in his second report. The title of the draft guideline was also adopted with changes.

Mr. Chair,

The text of draft guideline 4 adopted by the Drafting Committee reads as follows:

> "Disputes between international organizations or between international organizations and States should be settled in good faith and in a spirit of cooperation by the means of dispute settlement referred to in draft guideline 2, subparagraph *c*, that may be appropriate to the circumstances and the nature of the dispute."

Before going into the substance of the discussion, allow me to clarify that the Drafting Committee decided to omit the word "international" before the word "disputes", as originally proposed by the Special Rapporteur in his second report. That decision was a consequence of the discussion held in relation to, and the text adopted of, draft guideline 3. The change to "[d]isputes between international organizations or between international organizations and States" is also a consequence of the decision taken in draft guideline 3 to focus on the parties to the dispute.

Several members reiterated their position expressed during the plenary debate that draft provisions elaborated by the Commission should be prescriptive in nature, or at least recommendatory, and referred to the notion of the normative value added by the Commission's output. In their view, the text proposed by the Special Rapporteur merely described a factual situation and could thus erode the relevance of the draft guideline. They considered that descriptions were more appropriate for the commentary to the draft provision rather than the text of the provision itself.

While addressing the reformulation of the draft guideline, the Committee engaged in an in-depth discussion of the nature, existence and content of an obligation upon international organizations related to the peaceful settlement of disputes, as well as the role of the Commission in the definition and delineation of that obligation.

Members of the Drafting Committee generally agreed that the obligation to peacefully settle disputes was an obligation of means, not an obligation of result. For that reason, the Committee exercised caution when drafting the text to avoid appearing to suggest an obligation of result. It was also generally agreed that the wish of the Drafting Committee was to adopt a text with normative character. In that connection, some members favoured replacing the term "are settled", as originally proposed by the Special Rapporteur, which was considered to be descriptive, with one signalling the prescriptive nature of the provision, such as "shall be settled"

or "should be settled". According to these members, consistency with Article 33 of the Charter of the United Nations and with the Manila Declaration on the Peaceful Settlement of International Disputes was needed. It would also be in line both with the obligation upon States to peacefully settle their disputes as well as the role of the Commission to progressively develop international law. Others, while agreeing that text with normative content was more appropriate, voiced concerns about the use of obligatory terms, such as "shall be settled". They recalled that Article 33 of the Charter and the Manila Declaration were related to the maintenance of international peace and security and, consequently, that it was not apparent that the existence of a parallel general obligation upon international organizations was established under international law.

For this reason, the Drafting Committee felt it important to avoid appearing to create an international obligation that did not currently exist under international law. Some members emphasised that the purpose of the draft guidelines, as stated in the commentary to draft guideline 1, was to restate the existing practice of international organizations and to develop recommendations for the most appropriate way of handling the settlement of disputes to which international organizations were parties.[4] The Drafting Committee considered other terms to replace the originally proposed phrase "are settled", such as "may be settled", which was deemed by some members to convey normativity without the connotation of a general obligation, but also to introduce the idea of capacity in practice to settle disputes and freedom of choice. Other members, on the other hand, considered the phrase "may be settled" too soft to reflect normativity. The phrase "are to be settled" was also discussed, drawing from guideline 12 of the guidelines on protection of the atmosphere. The compromise that the Committee arrived at was to use the term "should be settled". The Committee decided that such term conveyed a stronger recommendation with normative content without creating a legal obligation. It was understood that the commentary would explain in detail the meaning of the phrase "should be settled" for the purpose of draft guideline 4.

Mr. Chair,

Allow me to address now the addition of two important elements to this draft guideline. The phrases "in good faith and in a spirit of cooperation" and "that may be appropriate to the circumstances and the nature of the dispute" were added by the Drafting Committee, inspired by paragraph 5 of the Manila Declaration. The syllabus was recalled by several members, in

[4] See commentary (8) to draft guideline 1. *Official Records of the General Assembly, Seventy-eighth Session, Supplement No. 10* (A/78/10), para. 49.

particular its paragraph 4, which expressly refers to the Manila Declaration and its potential usefulness to the work of the Commission on the topic. It should be mentioned that the addition of these two phrases was important to achieve consensus for the adoption of draft guideline 4.

The Committee agreed that the phrase “in good faith and in a spirit of cooperation” provided the draft guideline with content and direction, and enriched the recommendation contained therein. With regard to the phrase “that may be appropriate to the circumstances and the nature of the dispute”, the Drafting Committee decided that it provided the recommendation in the draft guideline with enough flexibility not only to accommodate the vast typology of disputes to which international organizations may be parties, but also to adequately reflect that, in some situations, international organizations may not always be free to choose all of the various means of dispute settlement. The Drafting Committee considered that the phrase encapsulated the idea that some disputes were clearly more likely to be resolved by a particular means, for example negotiation, or even that means of dispute settlement may be used in combination, appropriately conveying the notion of the open-ended nature of the provision.

Mr. Chair,

Let me turn now to the decision of the Drafting Committee to delete the second and the third sentences of the draft guideline as originally proposed by the Special Rapporteur in his second report. Some of the reasons supporting the Committee’s decision to delete those sentences will be further elaborated when I address draft guideline 5.

The second sentence of the original proposal, that is “[i]n practice, negotiation and other means of dispute settlement, falling short of binding third-party adjudication are widely used” was deleted mainly because of concerns raised by several members regarding the phrase “falling short of”. In the view of these members, the phrase indicated or implied a certain hierarchy among the means of dispute settlement contained in draft guideline 2, subparagraph *c*. It was considered that such hierarchy did not find support in international law and was not consistent with the current practice of international organizations and States, as gathered by the information contained in the Memorandum prepared by the Secretariat that the Commission had before it at the present session.[5] The entire sentence was deleted by the Drafting Committee.

The third sentence, which read, in the original proposal, “[a]rbitration and judicial settlement are often not provided for and are therefore resorted to less frequently”, was deleted for two reasons. Some members were not convinced that “arbitration and judicial settlement are

[5] See A/CN.4/764.

often not provided for", and offered several examples of third-party adjudication mechanisms resorted to by international organizations. There was also a concern that, with the sentence, the draft guideline excessively concentrated on arbitration and judicial settlement. Additionally, it was expressed that the term "therefore" alluded to causality and consequence between availability and use, when it was not certain that wider availability would translate into increased use of third-party adjudication by international organizations. The prevailing view in the Drafting Committee was that lack of use of third-party adjudication seemed to be a policy choice by international organizations and States.

The commentary will make it clear that draft guideline 4, as adopted by the Drafting Committee, contains two elements: a) the use of appropriate means of dispute settlement, as defined in draft guideline 2, subparagraph *c*, taking into account the choice of means, and b) to do so in good faith and in a spirit of cooperation. In that regard, it was stated that draft guideline 4 could constitute a basic principle in the settlement of disputes between international organizations or between international organizations and States.

The title of the draft guideline adopted by the Drafting Committee is "[r]esort to means of dispute settlement". It was considered that this title more appropriately reflected the content of the draft guideline.

Draft guideline 5 – Accessibility of means of dispute settlement

Mr. Chair,

Let me now introduce draft guideline 5, which was adopted by the Drafting Committee with changes to the provision originally proposed by the Special Rapporteur in his second report.

Draft guideline 5, as adopted by the Drafting Committee, reads as follows:

> "The means of dispute settlement, including arbitration and judicial settlement, as appropriate, should be made more widely accessible for the settlement of disputes between international organizations or between international organizations and States."

One of the fundamental issues that permeated the debate was a perceived hierarchization of the means of dispute settlement contained in draft guideline 2, subparagraph *c*, in the original proposal by the Special Rapporteur. Possible imbalances between the parties and the principle of freedom of choice of means of dispute settlement were mentioned by some members to justify reformulating the text originally proposed.

Mr. Chair,

Let me first address the replacement of the phrase “should be made available and more widely used” with the phrase “should be made more widely accessible”. The Drafting Committee sought to introduce a change with the word “accessible”. It was considered that the original proposed phrase ran contrary to both the law, under Article 33 of the Charter of the United Nations, and to the practice of international organizations and States. Recommending a wider use of arbitration and judicial settlement ran counter to the current practice, as reflected in the replies to the Special Rapporteur’s questionnaire, which should be avoided, according to some members of the Drafting Committee. Other members added that the recommendation in the provision as drafted by the Special Rapporteur could not be justified on the basis of a perceived benefit of third-party adjudication over alternative means of dispute settlement in situations of imbalance between the parties and, in certain third-party adjudication contexts, this imbalance could be even further exacerbated.

While some members of the Committee did not oppose the express recommendation of making arbitration and judicial settlement more widely available, others opposed specifically mentioning it in the text. It was emphasized that judicial settlement was in fact available to international organizations in many circumstances, and that voluntary arbitration by agreement was always available to international organizations. The Special Rapporteur’s original proposal therefore risked being understood as a recommendation that international organizations should accept wider access to “compulsory arbitration”.

It was agreed that the real challenge regarding third-party adjudication was inaccessibility rather than unavailability. Thus, some members indicated that the two terms were not synonymous, “inaccessibility” having a closer connection to, for example, costs, capacity and other practical issues. It was considered preferable to focus the provision on “accessibility”, on the understanding that the commentary would explain the differences between availability and accessibility.

Mr. Chair,

I shall now turn to the discussion regarding express mention of arbitration and judicial settlement in the draft guideline. As was the case during the discussion on draft guideline 4, members of the Committee were not convinced that a concentration on arbitration and judicial settlement was warranted. In their view, the original proposal by the Special Rapporteur was not

balanced and the current practice of international organizations and States, as per the Memorandum by the Secretariat and the second report of the Special Rapporteur, did not seem to support such a concentration. The importance of alternative means of dispute settlement was emphasised. A number of members considered that there was a gap in the logical flow of the draft guidelines, because draft guideline 4 referred to means of dispute settlement in draft guideline 2, subparagraph *c*, only to then focus on arbitration and judicial settlement in draft guideline 5, at the expense of alternative means. An express reference to other means mentioned in draft guideline 2, subparagraph *c*, was therefore considered desirable.

In light of this, the Drafting Committee decided to broaden the scope of the draft guideline by adding text encompassing the means of dispute settlement envisaged in draft guideline 2, subparagraph *c*. In order to reach consensus, an express reference to third-party adjudication was retained, with an adjustment, such that it reads "including arbitration and judicial settlement" immediately after the general reference to the means of dispute settlement. I should mention that this was a compromise solution found by the Committee, on the understanding that the commentary will address the concerns raised by some members related to alternative means. Some members remained unpersuaded that judicial settlement and arbitration should be highlighted in the text.

The Committee decided to add the expression "as appropriate" after the reference to arbitration and judicial settlement. The purpose of this addition was twofold. First, it helped alleviate the concerns of those members regarding a specific mention of certain means of dispute settlement. Second, it helped to circumvent any potential challenges arising from draft guideline 3, as adopted by the Drafting Committee, and the fact that the provision now focuses solely on the parties. In that connection, it was understood that the commentary will address the question of the law applicable to disputes to which international organizations are parties and, in particular, that the draft guideline does not prejudge the discussion in the Commission related to the applicable law.

Finally, the Committee decided to replace the term "international disputes" with "disputes between international organizations or between international organizations and States" for consistency with draft guidelines 3 and 4.

With respect to the title of the draft guideline, the Committee decided to change the original proposal by the Special Rapporteur to better reflect the content of the draft guideline. It now reads "[a]ccessibility of means of dispute settlement".

Draft guideline 6 – Requirements for arbitration and judicial settlement

Mr. Chair,

Let me now address draft guideline 6, which was adopted by the Drafting Committee with changes to the provision originally proposed by the Special Rapporteur in his second report.

Draft guideline 6, as adopted by the Drafting Committee, reads as follows:

> "Arbitration and judicial settlement shall conform to the requirements of independence and impartiality of adjudicators and due process."

The text adopted was based on a revised proposal of the Special Rapporteur that aimed to streamline its drafting and align it with the other provisions adopted this year.

Differing views were expressed by members of the Drafting Committee regarding the importance of the rule of law as applied to the procedures for arbitration and judicial settlement of disputes within the scope of Part Two, as had originally been proposed by the Special Rapporteur. An extensive discussion was held on this, and on the question whether the requirements of the rule of law should be reflected in the present draft guidelines.

A proposal made by the Special Rapporteur expressly referred to the rule of law, comprising the independence and impartiality of the adjudicators and due process. Some members expressed their preference to refer expressly to the rule of law in the text of the guideline and elaborate on the specific procedural guarantees in the commentary. The Committee ultimately decided not to retain a formulation referring to the rule of law, but rather to emphasize the judicial guarantees of independence, impartiality and due process. The Special Rapporteur confirmed that he would refer in the commentaries to these as the core elements of the observance of the rule of law in a dispute settlement context. The view was expressed that the reservations to the use of the term rule of law were not due to the vagueness of the concept or the guarantees contained in such concept, but as a preference to indicate more technical terms aimed at the addressees of the guidelines, who would generally be arbitrators and judges, and those setting up or using such dispute settlement mechanisms. An alternative considered was to include a reference to "the good administration of justice", which was considered to be a technical formulation and has been used by the International Court of Justice in its decisions, for example in the two appeals from decisions of the ICAO Council decided in 2020. Such wording was not without its difficulties, and it was noted that one reading of its French equivalent, "*la bonne administration de justice*", applied narrowly to how proceedings were conducted and not, for example, to the comportment of adjudicators. The Committee also considered including the term

"integrity" in addition to "independence" and "impartiality", but determined that the latter two were sufficient to addressed the point.

Mr. Chair,

Another significant matter addressed by the Drafting Committee was the decision to use the word "shall". The Committee chose to phrase the provision in mandatory terms even though it was intended to be a guideline because it was clear that the need to respect the relevant procedural requirements was an obligation. Indeed, some members of the Committee considered that the need to respect procedural requirements was obvious and that there was no need for a provision expressly referring to the observance of such requirements. It was also noted that the use of mandatory phrasing would avoid giving the impression that there were circumstances where the independence and impartiality of adjudicators and due process were not required in arbitration or judicial settlement.

With respect to drafting, the Committee opted for a streamlined approach over proposals to refer to means of settlement "made available", "available" or "accessible" and to specify that the provision concerned disputes between international organizations or between international organizations and States. It considered that the context of the provision, given its location in part two and read in light of draft guideline 3, made its scope of application clear. In addition, draft guideline 6 was considered to flow from draft guideline 5. While draft guideline 5 concerned the accessibility of arbitration and judicial settlement, draft guideline 6 referred to the requirements of the process before such mechanisms.

Mr. Chair,

The Committee discussed whether the scope of the provision was appropriate and whether other means of dispute settlement should be covered. It was generally agreed that the provision did not seek to create a hierarchy between the various means of dispute settlement, but rather served to highlight requirements that applied to arbitration and judicial settlement in particular. To emphasise the connection between draft guidelines 5 and 6, the Committee considered a proposal to include this provision as a second paragraph of draft guideline 5. It decided to maintain draft guideline 6 as a standalone provision in view of the importance of its content and the rule of law in general.

Nevertheless, the Committee considered that the application of the requirements in the provision should apply, as appropriate, to other means of dispute settlement. For example, it

agreed that negotiation could not be subject to a requirement for the independence or impartiality of its participants. However, the provision is not intended to imply that the requirements of impartiality and independence do not apply to other means of third-party dispute settlement such as in mediation or conciliation. It was agreed that clarification as to the application of such requirements to other means of dispute settlement would be provided in the commentary. Consistent with the considerations I have discussed earlier, the Committee did not take up a proposal to separate the provision into a first paragraph addressing the relevance of rule of law requirements to dispute settlement in general and second addressing the requirements of the independence and impartiality of adjudicators and of due process specifically to arbitration and judicial settlement.

Mr. Chair,

The title of draft guideline 6 is "[r]equirements for arbitration and judicial settlement". The Committee opted for the present formulation in view of its simplicity and to avoid repeating the text of the provision.

* * *

Mr. Chair,

This concludes my introduction of the first report of the Drafting Committee for the seventy-fifth session. It is my sincere hope that the Commission will be in a position to adopt draft guidelines 3, 4, 5 and 6 on the settlement of disputes to which international organizations are parties, as presented.

Thank you, Mr. Chair.