

INTERNATIONAL LAW ASSOCIATION

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COMMITTEE ON ALTERNATIVE DISPUTE RESOLUTION IN INTERNATIONAL LAW

INTERIM REPORT

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INTERIM REPORT

2026

I. Introduction to the Interim Report

1. The International Law Association (ILA) Committee on Alternative Dispute Resolution (ADR) in International Law was established and had its mandate confirmed by the ILA Executive Council on 7 May 2022, although not all Committee members' nominations were confirmed by the ILA Executive Council until November 2023. Committee activity started in January 2023 and continued in 2024-26. The Committee also experienced changes in its leadership in 2023-2024. The Executive Committee then approved an extension of the Committee's mandate until 2028.

2. In this brief Interim Report, we aim to provide an overview of the design and interim conclusions of our work, in order to inform ILA members and other interested parties in advance of the open Committee session to be held at the Vienna Conference of the ILA in August 2026. We solicit feedback and input on the ideas in this report. We would also welcome views on the potential outcome of the Committee's work and its utility in aiding peaceful resolution of disputes.

II. Executive Summary

3. Section II of the Report reviews the Committee's activities, including a summary of its background and mandate, the meetings, written contributions of members in 2024-26, and the plans for the first half of 2026.

4. The Report is based on a combination of case studies, expert engagement, and theoretical frameworks.¹

5. Section III outlines the Committee's composition, meetings, and activities through 2026, including thematic discussions and expert presentations that informed this analysis.

6. Section IV outlines the Committee's current thinking on the topics to be addressed in our Final Report to be presented at the 2028 Conference of the ILA. It sets out key concepts relating to non-adjudicative, non-adversarial dispute resolution mechanisms, analyses their legal framework and the emerging role of institutional recognition and procedural frameworks.

7. It rejects adjudication as the sole benchmark for dispute resolution and instead treats non-adjudicative methods as distinct tools within the broader architecture of peaceful settlement of disputes. With this regard, the Report emphasizes process integrity, context-appropriate design and functional fit as central to appropriate dispute resolution.

8. Key reflections include the diversity and adaptability of ADR mechanisms across legal regimes and the importance of consent and good faith engagement.

9. The Report also sets out draft core principles of non-adjudicative dispute settlement—consent, mandate clarity, good faith, process integrity, human dimension, non-prejudice, confidentiality, and voluntary compliance—as shared foundations across mechanisms.

¹ Details on the scope and application of these case studies, expert inputs, and theoretical frameworks are provided at paragraphs 15 et seq.

10. Finally, it outlines issues for further consideration in the next phase of the Committee's work, with a view to building on the foundations of this preliminary report to develop authoritative definitions, explore field-specific applications, and foster greater terminological coherence in international ADR practice, aiming to provide a durable reference point for future practice and research.

III. Overview of the Committee and its Activities

A. The Committee, its officers and membership

11. The Committee was created to raise awareness of ADR's potential contribution to international law by responding to the need for more efficient, outcomes-focused dispute resolution. The Committee's mandate calls for it to delineate and define types of ADR procedures, and call attention to disputes where the use of particular ADR procedures could be more efficient and effective than adversarial or adjudicatory processes. The mandate called for the Committee to explore and define the concept of "appropriate dispute resolution"; to formulate best practices for ADR procedures; and to explore principles and practices relevant for ADR in particular fields in international law.

12. The Committee's Mandate, and its Preliminary Report on its work in 2022-23, are posted on the ILA webpage for the Committee.² To summarize: the Committee's work is based on a systematic examination of case-studies of international disputes that have been resolved through ADR, understood as non-adversarial, non-adjudicatory processes for resolving disputes under international law where a State or government is one of the parties to the dispute. These processes may include negotiation, enquiry, mediation, conciliation, resort to regional agencies or arrangements and other peaceful means of the parties' own choice, as recognized by Article 33(a) of the UN Charter. The Committee will determine common characteristics of ADR in disputes under international law, examine how the nature of a dispute may influence the choice of most appropriate ADR mechanism(s) for its settlement, and produce recommendations and guidelines for ADR mechanisms. The Committee will proceed inductively and, at the same time, will work systematically to draw overall conclusions. The work will primarily consist in codifying existing rules, without excluding progressive development.

13. The Committee's remit includes resolution of disputes under international law in which at least one party is a State or government, including transitional justice cases where those have a bearing on the maintenance of international peace and security within the meaning of the UN Charter. The Committee's remit does not include disputes between private parties, arbitration or other adversarial or adjudicative processes as such, except where arbitration is part of the background for a dispute resolved by ADR.

14. In 2024, Professor Serena Forlati (Italy) and Ms. Amy Porges (United States) became the new Co-Chairs of the Committee. As of March 2026, the Co-Rapporteurs are Professor Yuliya Chernykh (Norway) and Ms. Chiara Tondini (Italy). Ms. Ottilia Anna Maunganidze (South Africa), Dr. Facundo Pérez-Aznar (Argentina) and Amy Porges also served as Co-Rapporteurs during 2024-2025. As of March 2026, the Committee had a confirmed membership of 40, including its officers, from ILA Branches in Africa, Europe, Asia, Latin America and the Caribbean, North America, and Oceania. The Committee includes academic experts in dispute resolution, accredited mediators, current and former diplomats and government officials, practitioners of private diplomacy and inter-State

² Committee webpage: <https://www.ila-hq.org/en/committees/alternative-dispute-resolution-in-international-law>

litigation, institutional lawyers, and ADR researchers. The Committee is pleased to share common membership with UNCITRAL Working Group III on investor-State dispute settlement (ISDS) reform.

B. Committee work and activities from 2024 through early 2026

15. During 2024-25, the Committee held a series of meetings, both online and in person, after reorganization of its leadership. Having built a diverse group of case studies in 2022-23 based on a taxonomy of ADR in international law,³ the Committee sought to hear from knowledgeable speakers to help us organize the facts gathered in the case studies, and to better equip us to draw systematic conclusions in our Interim and Final Reports.

16. On 27 June 2024 during the ILA Athens Conference, the Committee met in hybrid session for an open discussion on our mandate, and on plans for work in 2024-25. Professor Guillermo Garcia Sanchez presented a paper on the application of dispute systems design as a framework for analysing the case studies done by Committee members in 2022-23.⁴ We met again on 16 July for a further discussion of these topics.

17. The Committee met again on 21 November 2024 to hear from Professor Carrie Menkel-Meadow and Professor Janet Martinez, leading scholars on dispute systems design theory and ADR practitioners. The Committee had a lively discussion with them on the uses of theory in structuring its work.

18. On April 7, 2025, the Committee convened an in-person and hybrid conference on Shaping Appropriate ADR in International Law, in collaboration with the University of Florence (Italy) and the ILA Italian Branch. A conference committee issued an open call for papers, and the conference was hosted by the University of Florence. In-person and remote speakers presented papers on ADR in maritime resource disputes, investor-state disputes, boundary disputes, Latin American disputes, climate disputes and Belt and Road disputes. The speakers included Prof. Paula Almeida and Dr. Lucas Vollers (Fundação Getulio Vargas Rio), Dr. Giulio Alvaro Cortesi (University of Vienna), Dr. Giovanni Chiapponi (University of Florence), Justice Anthony Gafoor, Dr. Facundo Pérez-Aznar (University of Buenos Aires), and Prof. Yoshinobu Takei (Keio University). The Committee then met in hybrid session for a discussion on work toward its interim report. The discussion addressed a set of questions that members received in advance and were asked to consider, and two documents prepared by the co-rapporteurs, dealing with disputes in the areas of international trade and investment law respectively.

19. Following up on the Florence conference, Professors Chernykh and Forlati are editing a diverse collection of conference papers and other contributions which is meant to appear as a Special Issue of the Journal of International Dispute Settlement, entitled *Beyond the Bench: Non-Adjudicative Paths in Public International Law*. The papers explore ADR in a range of fields: trade, human rights law, WTO law, investor-state and cultural heritage disputes, maritime disputes and others; they provided useful material for drafting this interim report.

³ Dr. Facundo Pérez-Aznar, “Taxonomy of Alternative Dispute Resolution Mechanisms in International Law”, available on the Committee’s webpage.

⁴ Prof. Guillermo Garcia Sanchez, “A Review of Dispute Resolution Design Frameworks”, available on the Committee’s webpage.

20. The Committee then held an open meeting on 28 May, 2025, on Resolving International Trade Disputes through ADR: Ambitions, Possibilities, Practicalities. We heard from Marco Tulio Molina (Molina & Associates, former convenor of the WTO informal process on dispute settlement reform), Maria Alcover (Advisory Centre for WTO Law), and trade practitioners Hunter Nottage, Smrithi Bhaskar and Katherine Connolly. They discussed past use of ADR to resolve trade disputes, and current proposals to promote ADR in the WTO as blockage in the WTO's dispute settlement system continues.
21. The Committee then met three times in the remainder of 2025. On 7 October, Kyongwha Chung and Mariel Dimsey – experts from a working group of the Inter-Pacific Bar Association – presented the IPBA's Mediation Decision Trees, developed as a tool to help States and investors understand whether and when mediation would be worthwhile in a live or potential investment dispute. Prof. Loukas Mistelis shared his views as discussant.
22. On 28 October, Judith Knieper, Secretary to UNCITRAL WG III and Frauke Nitschke, leader of ICSID's investor-state mediation activities, had a fascinating conversation on rulemaking on investment dispute mediation and factors leading to successful mediation. Jake Lowther of the Stockholm Chamber of Commerce also provided remarks on the SCC's efforts to promote mediation.
23. On 10 December 2025, Professor Andrej Lang spoke on the role of ombudspersons and international complaints mechanisms in resolving settling international law disputes, focusing on the UN Security Council's ombuds/ complaints mechanism for disputes regarding UNSC targeted sanctions.
24. This interim report builds on an initial draft prepared by Prof. Yuliya Chernykh who proposed the eight principles, and it was developed by the Co-Rapporteurs, Prof. Chernykh and Ms. Chiara Tondini, in liaison with the Co-Chairs. The officers gratefully acknowledge the contributions made by the authors of papers presented at the Committee's April 2025 Florence conference and the speakers who presented their work at Committee meetings of the Committee, as well as the Committee members who commented on this report in draft form. On 27 January 2026, the Committee met and discussed the draft of this interim report. Committee members were also invited to provide comments in writing, and comments received were considered in finalizing the interim report.
25. In early 2026, the Committee may hold further sessions or online conferences to fill in gaps as it finalizes its interim report and prepares for the next phase of its work.

IV. Interim Conclusions of the Committee

26. This interim Report consolidates the conceptual foundations of *non-adjudicative dispute* settlement in public international law, understood as procedures that do not involve the authoritative determination of rights and obligations by international courts or tribunals, and that are distinct from arbitration and other adjudicatory mechanisms. Often referred to as *alternative dispute resolution*, these procedures form part of the broader architecture of the peaceful settlement of disputes.
27. This Report acknowledges the conceptual complexity surrounding the use of ADR by States, analyses the factors contributing to this complexity, and provisionally elaborates a set of working draft principles to navigate it. The Report also identifies issues the Committee will seek to address in

its future work, aiming to provide insights to be included in the final Report that support relevant stakeholders in improving the use, processes, and outcomes of ADR mechanisms.

A. Methodology and Materials Analysed

28. This Report is anchored in the international law of peaceful settlement of disputes, academic scholarship on international law and ADR, and institutional practice of ADR. It also draws on the Committee’s collective experience and the case studies contributed by its members, as listed in the Committee’s 2024 preliminary report to the ILA. The analysis has been integrated with insights gained through discussions between the Committee and expert speakers invited to identify common patterns and principles within the spectrum of ADR.

B. Scope

1. Diversity of tools

29. Non-adjudicative dispute settlement in public international law comprises a diverse range of tools and institutional settings, differing in formality, procedure, the involvement (if any) and role of neutral third-parties, their functional orientation (including preventing, clarifying, streamlining, mitigating, or resolving disputes), and their relationship to binding adjudication (whether used before, alongside, in parallel with, after, or instead of adjudicatory proceedings). These mechanisms operate across multiple fields of public international law and address disagreements in inter-State and mixed or asymmetric relationships.

30. A non-exhaustive typology of non-adjudicative mechanisms in public international law includes negotiation, good offices, mediation, conciliation, ombudsman procedures, fact-finding or inquiry bodies, expert panels, and committees/commissions. In addition, the UN Charter framework contemplates dispute-settlement functions exercised through deliberative and facilitative processes within the United Nations system.⁵ Furthermore, a range of treaty regimes and regional arrangements provide for specific non-adjudicative tools or structured combinations thereof, reflecting field- or region-specific needs, such as consultation and non-compliance procedures in environmental law,⁶ friendly settlement mechanisms in human rights systems,⁷ consultation and mediation frameworks in

⁵ See, for instance, Art.10 of the UN Charter giving a broad mandate to the UN General Assembly to discuss “any questions or any matters” within the scope of the Charter and “make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters.” See also Stefanie Schmahl, “Article 10” in Bruno Simma et al. (eds), *The Charter of the United Nations: A Commentary* (4th ed., Oxford University Press) paras.8, 9, 24. See also, articles 2 (4) and 33 of the UN Charter.

⁶ Malgosia Fitzmaurice, “Environmental Compliance Control” para. 22, 47 (last updated February 2021) in Anne Peters (ed.), *The Max Planck Encyclopedia of Public International Law* (OUP 2008–) <www.mpepil.com> para.8 (accessed 31 December 2025).

7 Antal Berkes, “Friendly Settlement: Human Rights Bodies” (last updated July 2020) in Hélène Ruiz Fabri (ed.), *The Max Planck Encyclopedia of International Procedural Law* (OUP 2019–2023) paras.1–4 <www.opil.oup.com/home/mpil> (accessed 31 December 2025). See also for a critical perspective on settlement during adjudication: Veronika Fikfak, “Against Settlement before the European Court of Human Rights” (2022) 20 (3) *International Journal of Constitutional Law*, 942, <https://doi.org/10.1093/icon/moac087>.

international investment and free trade agreements,⁸ and consultation-based or commission-based arrangements in specialised regimes such as space law⁹ or polar governance.¹⁰

2. *Terminological caution: the meaning and limits of ‘alternative’ dispute resolution and other labels*

31. The term *alternative dispute resolution* (ADR) is used in this Report as a pragmatic and descriptive label, while acknowledging its conceptual limitations. International law has long been premised on the obligation to settle disputes by peaceful means, as reflected in Articles 2(3)¹¹ and 33 of the UN Charter;¹² negotiation, mediation, conciliation, good offices, and inquiry are therefore not exceptional or subsidiary, but integral to the original architecture of the international legal order.

32. The characterisation of these mechanisms as ‘alternative’ reflects a more recent paradigm shaped by the proliferation of international courts and tribunals and the growing centrality of adjudicatory dispute settlement. The terminology itself largely mirrors domestic usage of ‘ADR’, though its fit is imperfect in public international law, where arbitration is typically understood as part of the adjudicatory infrastructure rather than as an ‘alternative’ to it. Against this backdrop, adjudication has come to dominate institutional practice and scholarly attention, recasting non-adjudicative mechanisms as alternatives rather than foundational tools. This Report accordingly rejects adjudication as the implicit benchmark and adopts a broader framing of non-adjudicative dispute settlement. This means that the Report does not treat adjudication as the default or yardstick against which other mechanisms are evaluated, but instead analyses non-adjudicative processes on their own terms, functions, and appropriate uses within the architecture of peaceful settlement.

33. At the same time, terminological caution extends beyond the label ‘alternative’ to the internal categorisation of non-adjudicative mechanisms. Because these processes vary significantly across legal regimes, identical labels may conceal important functional differences; classification should therefore rest on functional core, such as procedural structure, the role (if any) of a neutral third party, and legal effects, rather than terminology alone. Conciliation illustrates this point: some so-called “conciliation commissions” (for example under the 1947 Peace Treaty with Italy) operated in practice as binding, law-applying bodies, while mechanisms such as good offices and mediation are often conflated despite distinct functions.¹³ Even the common distinction between mediation and conciliation is not uniform in practice: across institutional settings these processes may be adapted,

⁸ Giorgio Sacerdoti, “International Trade Disputes” (last updated November 2019) in Hélène Ruiz Fabri (ed.), *The Max Planck Encyclopedia of International Procedural Law* (OUP 2019–2023) para.15 <www.opil.oupilaw.com/home/mpil> (accessed 31 December 2025).

⁹ Mahulena Hofmann and PJ Blount, “Space Law Disputes” (last updated October 2019) in Hélène Ruiz Fabri (ed.), *The Max Planck Encyclopedia of International Procedural Law* (OUP 2019–2023) paras.10-14 <www.opil.oupilaw.com/home/mpil> (accessed 31 December 2025).

¹⁰ Donald R Rothwell, “Dispute Settlement under the Antarctic Treaty System” (last updated June 2018) in Hélène Ruiz Fabri (ed), *The Max Planck Encyclopedia of International Procedural Law* (OUP 2019–2023), paras. 6, 25 <www.opil.oupilaw.com/home/mpil> (accessed 31 December 2025).

¹¹ Christian Tams, “Article 2(4)” in Bruno Simma et al. (eds), *The Charter of the United Nations: A Commentary* (4th ed., Oxford University Press) 289-366.

¹² Christian Tomuschat, “Article 33” in Bruno Simma et al. (eds), *The Charter of the United Nations: A Commentary* (4th ed., Oxford University Press) 1402-1426.

¹³ Pierre d'Argent, "Conciliation Commissions Established pursuant to Art 83 Peace Treaty with Italy (1947)" (last updated March 2025), A Peters (ed.), *The Max Planck Encyclopedia of Public International Law* (OUP 2008–) para.8 in <www.mpepil.com> (accessed 31 December 2025).

used interchangeably, or combined in hybrid forms, underscoring that labels can be descriptive rather than determinative.¹⁴

3. *Legal framework and applicable law*

34. Customary international law obliges States to settle disputes peacefully. It also reflects the principle that States are free to choose the means of settlement. Relatedly, general principles point toward managing tensions so as to prevent conflicts and disputes from escalating. Non-adjudicative mechanisms may be further facilitated by treaty design, but they do not depend on treaty regulation to exist or to be used.¹⁵

35. Some instruments merely mention such mechanisms, such as consultation, negotiation, or mediation clauses in bilateral investment treaties and free trade agreements, while others address particular outcomes or modalities more directly, as illustrated by the Singapore Convention on mediated settlement agreements. In some contexts, treaty provisions or institutional rules provide relatively detailed procedural frameworks, and the recent proliferation of dedicated mediation (and, in some regimes, conciliation) rules reflects this trend. Relatedly, recent years have seen growing institutional recognition of non-adjudicative mechanisms, including the incorporation of mediation into the mandates of institutions traditionally associated with arbitration or adjudication, such as the Permanent Court of Arbitration (fact-finding and inquiry, conciliation and mediation) and ICSID (mediation), as well as the establishment of the International Organization for Mediation (IOMed) at the intergovernmental level. In many other areas, however, non-adjudicative processes remain only lightly regulated and are instead shaped by established practices and expectations within particular fields or institutions.

36. An emerging topic for further consideration by the Committee is the role of procedural frameworks in the implementation and use of ADR mechanisms. The Officers of the Committee take the preliminary view that a clearly articulated procedural framework can enhance the legitimacy and usability of such processes, reassuring parties and encouraging recourse to such mechanisms, provided that they remain non-prescriptive and that flexibility and party self-determination are preserved. Well-balanced procedural guidance may have the potential to encourage engagement by participants, especially States and international actors concerned with transparency, fairness, or liability risks for public officers, without undermining the consensual nature of ADR. It may serve to promote trust without constraining creative problem-solving. However, the extent to which procedural rules and the related degree of formalization may assist or constrain ADR efforts remains a matter for careful assessment.

37. As regards the applicable law, although these mechanisms operate within the overarching context of public international law, they do not necessarily resolve disagreements through the authoritative application of public international law as governing law. Depending on the nature of the disagreement and the process employed, mutually agreed outcomes may draw on facts, contractual arrangements, technical standards, scientific expertise, policy considerations, and the parties' underlying interests and priorities. Their defining feature therefore lies not in the source of applicable

¹⁴ By way of example, UNCITRAL has started to address both terms interchangeably under a single label of “mediation”, while the ICSID system addresses conciliation and mediation as distinct concepts.

¹⁵ Paula Wojcikiewicz Almeida and Lucas Vollers, “The Choice of ADR Methods in Latin America: Illustrations of Historical Practice and the Post-War Normative Architecture” (forthcoming: *Journal of International Dispute Settlement*).

law, but in the consensual and non-adjudicative character of the process and the *nature* of the outcome it produces.

4. *Spectrum between disagreements and crystallised disputes*

38. Non-adjudicative mechanisms address a broad register of situations, ranging from tensions and emerging disagreements to fully articulated disputes in the sense of public international law.¹⁶ Such situations may involve contested or uncertain facts (for example scientific or technical assessments), divergent legal interpretations, competing policy objectives, underlying political or strategic interests, or more diffuse relational or structural breakdowns between actors. They nonetheless belong to public international law where they arise in an international legal setting between subjects of international law. This is primarily inter-State, but it also includes asymmetric configurations recognised within public international law, such as individual-State and investor-State relationships in human rights and investment regimes. In such contexts, these mechanisms address the interpretation, application, implementation, or consequences of legal obligations under international law, even where the immediate focus can be on facts, interests, or policy choices rather than authoritative legal determination.

39. In contrast to adjudication, which presupposes a crystallised dispute and a defined set of legal claims, non-adjudicative mechanisms frequently, although not necessarily, operate prior to crystallisation, engaging with disagreement before positions harden and legal consequences become entrenched. Across a range of regimes, these mechanisms are therefore embedded not merely as optional alternatives, but as governance tools designed to prevent escalation, clarify facts, manage implementation, accommodate political or policy sensitivities, and enable cooperative adjustment over time, with the role of adjudication often shaped by, rather than dominating, these prior or parallel processes.

5. *Diplomacy, politics, and dispute management*

40. Non-adjudicative dispute settlement mechanisms often act in parallel or are intermingled with diplomatic practice, also reflecting the reality that many international disagreements are simultaneously legal and political.¹⁷ Non-adjudicative means of dispute settlement therefore operate at the intersection of law and politics and are particularly suited to disputes embedded within broader strategic, policy, or relational contexts. Unlike adjudication, which tends to isolate legal questions for authoritative determination, non-adjudicative processes, including negotiation, mediation, conciliation, fact-finding inquiries, and compliance mechanisms, allow legal issues to be raised alongside broader considerations, such as political, economic, financial, environmental ones, with the objective of capturing all aspects that are important for the parties' decision making.

41. This dimension does not detract from the relevance of legal issues. Rather, it helps explain the continued centrality of non-adjudicative mechanisms as instruments for preventing, managing, stabilising, and progressively addressing disputes where definitive legal resolution alone may be insufficient, premature, unsustainable or impracticable.

¹⁶ *Mavrommatis Palestine Concessions (Greece v. United Kingdom)*, Judgment No. 2, 1924, P.C.I.J., Series A, No. 2, p. 11.

¹⁷ Shirley V. Scott and Roberta C. Andrade, "Political Disputes: Inter-State Dispute Settlement" (last updated January 2022) in Hélène Ruiz Fabri (ed), *The Max Planck Encyclopedia of International Procedural Law* (OUP 2019–2023), para 1 <www.opil.oupilaw.com/home/mpil> (accessed 31 December 2025).

6. Suitability and limits

42. No category of disputes is inherently unsuitable for non-adjudicative settlement. In the absence of universal compulsory jurisdiction in international law, non-adjudicative tools may, in practice, offer particularly viable means of addressing even highly sensitive disputes. Still, disputes concerning territorial sovereignty, maritime delimitation, vital national security interests, or peremptory norms may be suitable only under particular conditions. Such conditions can typically include clearly circumscribed consent, non-prejudice safeguards, narrowly defined mandates, and an understanding that the process may yield provisional, partial, or non-binding outcomes without foreclosing recourse to adjudication. By contrast, when authoritative clarification of international law is a central objective and a binding adjudicatory mechanism is or can be made available, parties may be inclined to prioritise it. These limitations do not negate the potential role of non-adjudicative mechanisms to resolve sensitive inter-State disputes, as illustrated, for example, by the Timor Sea conciliation,¹⁸ but underscore that suitability is context-dependent and ultimately grounded in consent. Assessments of suitability may also evolve over time, as legal, political, social and institutional conditions change.

C. Appropriate dispute resolution as the organising concept

43. Building on the preceding analysis, this Report adopts *appropriate dispute resolution* as its organising and culminating concept, drawing on the work of Carrie Menkel-Meadow and related scholarship on process pluralism. Appropriate dispute resolution is a *relational* concept: appropriateness does not inhere in any particular mechanism, but emerges from the fit between the nature of the disagreement, the purposes pursued, the parties and institutional setting, and the functional capacities and limits of the process selected.

44. Central to this approach is the recognition of process integrity.¹⁹ ADR scholarship, including the work of Carrie Menkel-Meadow, uses this term to capture the idea that each mechanism has its own internal logic.

45. In this Report, process integrity is understood as encompassing the core procedural and ethical commitments that condition legitimate use. For negotiations, this lies in voluntary engagement, reciprocity, and good-faith exchange; for fact-finding and inquiry, in independence, methodological rigor, and credibility; for mediation, in facilitative neutrality and party control; for conciliation, in impartial assessment combined with the ability to propose non-binding solutions; for expert commissions (technical or legal), in expertise, transparency of reasoning, and fidelity to mandate; and for ombudsman mechanisms, in accessible, mandate-based review focused on problem-solving, fairness, and institutional accountability.

46. Appropriate dispute resolution therefore entails not only selecting and sequencing mechanisms to match the core of the disagreement but also respecting the internal logic and ethical

¹⁸ Treaty between the Democratic Republic of Timor-Leste and Australia Establishing their Maritime Boundaries in the Timor Sea signed on 6 March 2018; Alfredo Crosato, “Conciliation between Timor-Leste and Australia” (last updated March 2019) in H Ruiz Fabri (ed), *The Max Planck Encyclopedia of International Procedural Law* (OUP 2019–2023) <www.opil.oup.com/home/mpil> (accessed 31 December 2025).

¹⁹ Carrie J Menkel-Meadow, “Alternative Dispute Resolution” (last updated August 2018) para. 6 in H Ruiz Fabri (ed), *The Max Planck Encyclopedia of International Procedural Law* (OUP 2019–2023) <www.opil.oup.com/home/mpil> (accessed 31 December 2025).

commitments of each process, reinforcing complementarity rather than hierarchy between adjudicative and non-adjudicative modes.

D. Draft principles for non-adjudicative dispute settlement

47. Building on the analysis above, the following draft principles²⁰ articulate common foundations of non-adjudicative dispute settlement in public international law. They are presented as a working draft and remain subject to further refinement by the Committee in future work, including with respect to the terminology employed and the assessment of each principle's connection to the ideas of appropriateness and process integrity. They are formulated at a general level and are intended to reflect recurrent characteristics observable across different fields of practice, while allowing for variation as to their application, relevance and expression.

1. Principle of consent

48. Non-adjudicative dispute settlement, like adjudicative methods, is grounded in consent. However, the nature and operation of consent can differ in important respects. While party autonomy exists in adjudicatory processes, there is typically less room for tailored consent than in non-adjudicative mechanism. Consent in non-adjudicative mechanisms may relate not only to participation in a process, but also to its scope, sequencing, possible outcomes, and consequences. In particular, consent in non-adjudicative mechanisms often, though not exclusively, takes the form of consent to attempt a process rather than consent to be bound by a predetermined outcome. Parties may consent to explore options, exchange information, or receive recommendations, while retaining the ability to disengage if the process no longer serves its purpose.

49. Unlike adjudication, consent in non-adjudicative dispute settlement is typically non-linear and revisable. It may be expressed incrementally, adjusted over time, or withdrawn, subject to any agreed procedural constraints. Treaties may facilitate and legitimise such mechanisms, but treaty recognition does not, by itself and without more, entail automatic use, binding effect, or exclusion of adjudication. The growing inclusion of non-adjudicative mechanisms in treaties and institutional mandates signals increasing legitimacy and visibility, while preserving flexibility and party autonomy.

2. Principle of mandate clarity and authority to engage

50. The authority and mandate of those participating in non-adjudicative dispute settlement should be clearly defined. This includes identifying who is empowered to negotiate, mediate, conciliate, make or receive proposals, commit to process steps, and—where relevant—endorse, approve, or implement outcomes. Clear mandates support legitimacy, prevent misunderstandings and tactical obstruction, and enable effective sequencing between non-adjudicative processes and any subsequent adjudicative proceedings.

²⁰ While these draft principles may incidentally reflect general principles of public international law in the sense of Article 38(1)(c) of the Statute of the International Court of Justice, the term “principle” is used in a different sense, as explained elsewhere in this report. The task of this Committee is not to establish principles of international law, but to clarify and advance understanding of ADR in public international law.

3. Principle of good faith engagement

51. The effectiveness of non-adjudicative dispute settlement depends on genuine engagement in *good faith* rather than formal participation alone. This includes a willingness to engage constructively, to exchange information honestly, and to consider options consistent with the purpose of the process. Good faith does not require agreement or compromise, but it does require that the mechanism not be instrumentalised merely for delay, tactical advantage, or appearance.

4. Principle of process integrity and functional fit

52. Non-adjudicative mechanisms are not overlapping. Each has an internal logic, or process integrity, that conditions its legitimate and effective use. Negotiation, mediation, conciliation, fact-finding, expert determination, and ombudsman review each embody distinct procedural expectations, dynamics, roles of neutral/third parties if any, and normative orientations.

53. Appropriate use therefore requires functional fit and purpose orientation: mechanisms should be selected and designed in light of clearly articulated objectives and the core characteristics of the disagreement. Hybrid or sequential combinations of mechanisms may enhance the effectiveness of the process, provided that the integrity of each process is respected both individually and in combination. A prerequisite for this is that the parties clearly understand and consent to the structure of the process itself, with particular attention to any transitions between mechanisms, and are aware of the potential legal implications, including the different impact of parties' authority, immunity and the enforcement frameworks that may apply.

54. Building on this reflection, a further aspect meriting consideration is the role of procedural integrity when ADR mechanisms are envisaged as conditions precedent to adjudicatory processes, such as arbitration. In such cases, the absence of detailed regulation such as deadlines, initiation and termination procedures, or formal requirements for evidencing completion can generate uncertainty, which may lead to satellite disputes over admissibility or compliance, thereby undermining efficiency. This may warrant further analysis in the Committee's work, particularly in assessing whether such ambiguities influence how parties engage with ADR, whether they deter meaningful participation, undermine perceived legitimacy of the ADR mechanism itself, and, if so, in formulating related recommendations.

5. Principle of human dimension

55. Non-adjudicative dispute settlement is often less institutionally embedded and places particular weight on the human dimension of dispute resolution. Outcomes frequently depend less on institutional form than on the credibility, expertise, and relational skills of those involved, including negotiators, facilitators, mediators, experts, or commissioners. Trust, communication, and professional judgment are central to enabling constructive engagement. This remains true even when a third-party neutral is a state or international institution.

6. Principle of non-prejudice and position preservation

56. Unless otherwise agreed, participation or use of information in non-adjudicative dispute settlement should not prejudice the legal positions, rights, or jurisdictional arguments of the parties in subsequent non-adjudicative or adjudicative proceedings. Non-prejudice safeguards are essential to enable candid engagement and to preserve the voluntary character of the process.

7. *Principle of default confidentiality and controlled disclosure*

57. As a general rule, non-adjudicative dispute settlement operates on the basis of confidentiality of the process in order to facilitate candour, trust, and constructive engagement. By contrast, full or partial transparency regarding the outcome, or its implementation, may be essential to ensure legitimacy, accountability, and public confidence, particularly where public interests are implicated. The precise balance between process confidentiality and outcome transparency is context-dependent and may be adjusted by agreement of the parties or by applicable legal frameworks.

8. *Principle of voluntary compliance*

58. Unless otherwise agreed, outcomes of non-adjudicative dispute settlement derive their authority primarily from acceptance and perceived legitimacy rather than enforcement. Compliance is therefore typically consensual and voluntary, and may be partial, provisional, or incremental. This does not diminish the value of such outcomes, but reflects their function as instruments of cooperation, adjustment, and dispute management rather than authoritative determination.

E. Outlook

59. In the next phase of its work, the Committee plans to *further elaborate the draft principles* identified in this interim Report, assess factors drawing the parties to opt for or pursue non-adjudicative mechanisms, and undertake a more granular analysis of field-specific practices. In this connection, the Committee's work will seek to develop an *authoritative set of definitions* for the principal non-adjudicative tools of dispute settlement in public international law, with a view to promoting greater terminological coherence and providing a durable reference point for future practice and research. The Committee will also explore additional topics, notably use of ADR within international organizations and in the context of international administrative law; institutional design for ADR; regional characteristics of ADR; and the evolving interactions between non-adjudicative mechanisms and adjudication.