

INTERNATIONAL LAW ASSOCIATION

ATHENS CONFERENCE (2024)

ALTERNATIVE DISPUTE RESOLUTION IN INTERNATIONAL LAW

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PRELIMINARY REPORT

I. Introduction to the Preliminary Report

1. The International Law Association (ILA) Committee on Alternative Dispute Resolution (ADR) in International Law (hereinafter: the Committee) was established and had its mandate confirmed by the ILA Executive Council on 7 May 2022, although not all nominations were confirmed by the ILA Executive Council, and thus the Committee properly composed, until November 2023. The Committee also experienced a change of three Co-Rapporteurs in 2023. Committee activity started in January 2023 and substantial progress has been made to date. Given the delay in composing the Committee, approval will be sought in due course for the Committee's mandate to be extended so that the Interim Report can be submitted in 2026, followed by the Final Report in 2028.
2. The Committee will hold an open session and a meeting of Committee members at the Athens Conference of the ILA in June 2024.
3. This Preliminary Report describes the Committee's work so far. The objective is to provide an update to all stakeholders and to facilitate discussions at the Athens Conference.
4. Section II sets out the Committee's activities, including a summary of its background and mandate, its meetings and written contributions of members in 2023, and planned activities in the first half of 2024 before the Committee's meeting in Athens.
5. Section III is a draft Interim Report outline proposed by the Co-Rapporteurs. This draft outline will evolve before the Athens Conference based on input from Committee members, to be sought over the first half of 2024. The draft is included in this Preliminary Report to show the direction of work. An updated draft may be shared at the Athens Conference.

II. Overview of the Committee and its Activities

The Committee, its officers and membership

6. The Committee aims to raise awareness of ADR's potential contribution to international law. To do this, the Committee will work 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 Committee will:
 - create a general taxonomy of ADR mechanisms in international law;
 - explore and define the concept of "Appropriate Dispute Resolution";
 - formulate best practices for ADR procedures; and
 - formulate principles and practices relevant for ADR in particular fields in international law.

The Committee will focus on 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 Charter of the United Nations. The mandate of the Committee is set out in paragraph 15 below.

7. In 2022, the Executive Council appointed Ms. Davinia Aziz (Singapore Branch) and Professor Gabrielle Marceau (Swiss Branch) as Co-Chairs of the Committee. As of December 2023, the Co-Rapporteurs are Ms. Otilia Anna Maunganidze (South Africa Branch), Dr. Facundo Pérez-Aznar (Argentina Branch), and Ms. Amy Porges (American Branch). Dr. Ohiocheoya Omiunu (British Branch) served as Co-Rapporteur from April to December 2023.

8. The Committee has recruited a diverse membership through a July 2022 online presentation for ILA Branches and members and a Call for Members circulated in October 2022. As of November 2023, the Committee had a confirmed membership of 39, including its officers, from ILA Branches in Africa, Europe, Asia, Latin America and the Caribbean, North America, and Oceania. The Committee includes accredited mediators, current and former diplomats and government officials, practitioners of private diplomacy and inter-State 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 and the ICCA Panel of Experts to Develop a Paris Agreement Conciliation Annex.

Background considerations: Why an ILA Committee on ADR?

9. Alternative Dispute Resolution (ADR) in international law is a process through which conflicts between parties are resolved by mechanisms other than litigation. It applies in both private and public international law matters. In instances where disputes arise between states, Article 33(1) of the UN Charter obliges them to seek solutions by peaceful means.¹ Article 33(1) recognizes many valid and useful paths to peaceful resolution of international disputes beyond adjudication or adversarial processes. These paths include ‘negotiation, enquiry, mediation, conciliation, ...resort to regional agencies or arrangements’ and indeed ‘other peaceful means of [the parties’] own choice.’

10. For some types of disputes, these paths coexist with, complement, and can strengthen adjudication: for instance, the complex disputes in the *Pulp Mills*² and *Land Reclamation* cases.³ Settlement by negotiation may proceed in parallel with recourse to adversarial means.

¹ Article 33(1) reads in full: ‘The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.’

² *Case Concerning Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 1; Pablo Sandonato de León, ‘Chapter 6. Diplomatic and Judicial Means of Dispute Settlement and How They Got Along In The Pulp Mills Case’ in Laurence Boisson de Chazournes, Marcelo Kohen & Jorge E Viñuales, eds., *Diplomatic and Judicial Means of Dispute Settlement* (Brill, 2013) 71. *Pulp Mills* is the subject of a case study by Committee member Rebecca Walker.

³ This 1982 UN Convention on the Law of the Sea dispute concerned the alleged environmental effects of Singapore’s land reclamation activities near its sea border with Malaysia. In response to a request for provisional measures by Malaysia, the International Tribunal for the Law of the Sea made an innovative order for the parties to establish a group of independent experts to determine any such effects and propose remedial measures: see *Land Reclamation in and around the Straits of Johor (Malaysia v. Singapore)*, *Provisional Measures, Order of 8 October 2003*, *ITLOS Reports 2003*, p. 10. The experts’ report formed the scientific basis for a bilateral settlement agreement, which was then recorded as an Award on Agreed Terms by an arbitral tribunal constituted for *Land Reclamation by Singapore in and around the Straits of Johor (Malaysia v. Singapore)* (PCA Case No. 2004-05). See also Tommy Koh & Jolene Lin, ‘The Land Reclamation Case:

Transitional justice processes grounded in mediation and reconciliation can also facilitate state responses to atrocity crimes and large-scale human rights violations, thus clearing pathways to international peace and security.

11. Reflecting ADR's usefulness across diverse areas of international law, many international organizations – even those that historically supported arbitration and other adversarial processes - now provide institutional support for ADR processes. The Permanent Court of Arbitration (PCA) administered the *Timor Sea Conciliation*, the first compulsory conciliation under the 1982 UN Convention on the Law of the Sea (UNCLOS).⁴ The World Bank's International Centre for the Settlement of Investment Disputes (ICSID), another major provider of arbitration services, now also offers mediation services, in addition to conciliation, for international investment disputes. The World Trade Organisation (WTO) has provided 'Good Offices' and other informal settlement facilitation to its Members on request.⁵

12. Yet the diversified, complex, and fragmented understanding of ADR within international law has left significant questions unresolved. These include:

- Are there ADR mechanisms, or practices in operation, that make ADR more likely to succeed in peacefully resolving a dispute?
- Are there particular ADR mechanisms that are linked to particular types of disputes?
- How can ADR be tailored to the nature of a dispute, and to the international law concerned?
- Are there circumstances in which ADR is more appropriate than formal adjudication or adversarial processes, and will better serve the parties as they resolve their dispute?
- Are there general principles or procedural standards that can be derived from best practices ADR and established principles of the international law of dispute settlement?

13. ADR is a means to an end, not an end in itself. It exists to help disputing parties find better solutions than those provided by conventional adjudication. The balance of characteristics to be pursued will depend on the nature of the dispute and its legal and factual context, as it is not possible to apply a single recipe to all fields of international law. For parties to a commercial dispute, efficiency and cost may be paramount. Participants in a transitional justice process may prefer to emphasise transparency, due process, and rule of law values. In an inter-state dispute, states may opt for confidential and flexible modalities to promote the overall health of a multifaceted bilateral relationship.

14. The Committee seeks a better understanding of how to define "success" in peaceful settlement of international disputes through non-adversarial mechanisms; factors in the conduct

Thoughts and Reflections' (2006) *Singapore Yearbook of International Law* 9. *Land Reclamation* is the subject of a case study by Committee members Alvin Yap and Rebecca Walker.

⁴ See *Timor Sea Conciliation (Timor-Leste v. Australia)* (PCA Case No. 2016-10), <https://pca-cpa.org/en/cases/132/>; Duy Phan Hao, Tara Davenport & Robert Beckman, *The Timor-Leste/Australia Conciliation: A Victory for UNCLOS and Peaceful Settlement of Disputes* (Singapore: World Scientific, 2019). *Timor Sea Conciliation* is the subject of a case study by Committee member Martin Doe.

⁵ See *Report by the Director-General on the Use of His Good Offices*, EC – Regime for the Importation of Bananas: WT/DS361/2 and WT/DS364/2, 22 December 2009; Eckart Guth, "The End of the Bananas Saga", *Journal of World Trade* 46, no. 1 (2012).

and background of ADR processes that lead to success; and a common understanding regarding which ADR mechanisms are most suited for which types of disputes. The Committee's Interim and Final reports should provide a holistic perspective on ADR in public international law, encourage appropriate use of ADR processes in international disputes, and assist governments and stakeholders in achieving better and more effective outcomes.

Mandate

15. The Mandate for the Committee, as approved by the Executive Committee is posted on the ILA webpage for the Committee.⁶ To summarize: the Committee's work is based on a systematic examination of case-studies of international disputes that have been resolved through ADR, and ADR mechanisms that are relevant but have not yet been utilized. 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.

16. The Committee's work does not include arbitration or other adversarial or adjudicative processes as such, except where arbitration is part of the background for a dispute resolved by ADR (e.g. the *Land Reclamation* example). The Committee's remit does not include disputes between private parties, although it may refer where relevant to ADR procedures in national legal systems.

Work Programme

17. The Mandate calls for the Committee's work programme for its Interim Report to proceed in three phases, on the basis of an empirical analysis of cases. Based on its activities in 2023, the Committee anticipates the following **work programme**.

Phase I: Taxonomy

Establishment of a taxonomy of ADR mechanisms to identify key characteristics, criteria and factors regarding their application: this taxonomy will provide the rubric for Committee analyses of particular ADR disputes and a systematic framework for comparing cases.

Phase II: Case studies

The Committee will analyse disputes in which the parties attempted settlement through paths other than adversarial, adjudicative mechanisms. Committee members will study and analyse ADR cases based on the taxonomy, seeking to identify commonalities, best practices, and lessons to be learned from success or failure.

The selection of which ADR cases to analyse will endeavour to strike a balance among the following considerations:

⁶ Text of Mandate: <https://www.ila-hq.org/en/documents/2023-approved-mandate>

- Coverage of a diversity of broad fields of international law, such as the law of the sea (*Timor Sea Conciliation (Timor-Leste v. Australia)*) dispute settled under UNCLOS), territorial claims, or international trade or investment law disputes.
- Attention to less-well-known or less-public ADR instances in international law, while keeping in mind lessons drawn in the literature on well-known disputes such as the *Abyei Arbitration*.
- Geographic representation of ADR in disputes in major regions of the globe.
- Attention to best practices, actions by facilitators, and procedural elements, while keeping regard to significant substantive issues.
- Analysis of success and analysis of failure (including failure preliminary to success).

Case studies during this phase will also draw on interviews with practitioners involved in the disputes. The case studies will identify the procedural rules and practices that proved most effective in peacefully resolving the dispute. The case studies will also assess what worked well in the ADR process and what did not.

As part of these case studies, committee members are examining actual cases or disputes in which ADR has been employed successfully, cases in which ADR attempts failed, ADR procedures that have been used or adapted,⁷ and ADR procedures that have been drafted but not yet used, only rarely used or underexplored.⁸ We acknowledge that publicly known ADR use is only the tip of the iceberg; governments use and improvise non-adversarial means to settle their disputes every day, and any discussions that are constructive generally take place out of the limelight. The committee's analysis will take these facts into account.

Phase III: ADR pathways

Based on the taxonomy and case studies, the Committee will then examine (i) how to define effective or appropriate ADR; (ii) how to judge the success of an ADR process; (iii) factors relevant to evaluating ADR cases or whether ADR processes were effective or not; and (iv) whether or not, and how, these factors differ depending on the nature of the dispute or the field of international law concerned.

The Committee's Interim Report will present the taxonomy and the cases analysed by the Committee, and it will evaluate these cases based on the identified factors. The Interim Report will present the Committee's conclusions regarding (i) ADR practices that have been more successful, effective or appropriate than others; (ii) which ADR processes are suitable for which types of disputes; and (iii) dispute-related factors that

⁷ For instance, the PCA Conciliation Rules utilized, in adapted form, in the *Timor Sea Conciliation* (see note 4 above).

⁸ For instance, multi-stakeholder mediation efforts in the Middle East; ADR procedures proposed for investment disputes by UNCITRAL, and for climate-related disputes as a potential annex to the Paris Convention; dispute prevention procedures in Brazil's Agreements on Cooperation and Facilitation of Investments; intervention by the Common Market Group under the MERCOSUR Olivos Protocol; the individual claims mechanism under the Olivos Protocol; and various other ADR mechanisms in regional trade agreements.

particularly call for ADR rather than adjudication or adversarial dispute resolution processes.

Final Report: The Committee will build on members' analyses and case studies, and its preliminary and Interim Reports, to formulate guidelines, including criteria, principles and best practices, that would assist States in selecting best-adapted means, tools and practices to peacefully resolve their disputes.

Committee activities January-October 2023

18. Meetings of the Committee in 2023 were virtual due to resource constraints and to facilitate the widest possible participation by Committee membership. The Committee commenced activities in December 2022, when the officers circulated a draft ADR taxonomy to members for a committee-wide month-long consultation. They also distributed a draft work programme and bibliography on ADR. A welcome survey of members collected input on each member's desired contributions to case studies.

19. The co-chairs and rapporteurs then revised the draft taxonomy, which was intended as "a checklist of criteria to aid consistency in analysing, classifying, and comparing ADR mechanisms and specific case studies". The case studies suggested by members were grouped in clusters supervised by one or more officers; Committee members were requested to submit their case studies by 31 May structured in accordance with the taxonomy.

20. The first all-Committee meeting took place virtually on Wednesday, 7 June 2023, convened by Co-Chair Gabrielle Marceau (Swiss Branch). The Committee heard presentations of case studies:

- Otilia Maunganidze (South Africa Branch) presented on the settlement by Kenya and Somalia of their dispute concerning the Kenya-Somalia maritime border.
- Guillermo García Sanchez (American Branch) presented on treaty-based ADR activities of the Mexico-US International Boundary and Water Commission in settling disputes concerning transboundary groundwater resources.
- Yulia Chernykh (Norway Branch) presented on the Stockholm Chamber of Commerce (SCC) Rules for Express Dispute Assessment, under which a party may request the appointment of a neutral assessor to evaluate issues of fact or law in a dispute.
- Vahid Rezadoost (Netherlands Branch) presented on the evolution of the 1980-1981 ADR process that led to the Algiers Accords of 1981.
- Anthony Gafoor (Caribbean Branch) presented on the inability of ADR efforts to settle boundary disputes between Guyana and Venezuela.
- Amy Porges (American Branch) presented on the failure of a 1998 effort by Brazil and Canada to settle via ADR a bilateral dispute concerning subsidies to aircraft.
- Facundo Pérez-Aznar (Argentina Branch) presented on the ADR mechanisms for trade and investment disputes in NAFTA, USMCA and Mercosur.

In addition to the presentations on the case studies, Martin Doe (Canadian Branch) and Tamada Dai (Japanese Branch) briefed the group on the activities of the ICCA Panel of Experts to Develop a Paris Agreement Conciliation Annex.

21. The second Committee meeting took place virtually on Friday, 18 August 2023, convened by Co-Rapporteur Amy Porges (American Branch). The Committee heard additional presentations of case studies:

- Rosemarie Cadogan (British Branch) presented on the ADR activities of the Commonwealth Secretariat Maritime Boundaries and Ocean Governance Negotiation Programme, which facilitates peaceful resolution of unsettled maritime boundary and jurisdictional claims among small island developing member States in the Caribbean, Pacific, African and Asian regions, and assists member states in extended continental shelf (ECS) submissions to the Commission on the Limits of the Continental Shelf.
- Martin Doe presented on the Timor Sea Conciliation, the first UNCLOS conciliation, in which activities by the Conciliation Commission facilitated the peaceful settlement of maritime boundary and resource issues between Timor Leste and Australia.
- Martin Doe then presented on review panel proceedings held under the aegis of the South Pacific Regional Fisheries Management Organisation; these proceedings provide a 45-day sui generis, participatory, iterative process that has been effective in recruiting compliance by its participants.
- Alex Chung (Canadian Branch), for himself and Yu Ying (Swiss Branch), presented their joint study on efforts to promote private dispute resolution mechanisms that will work for business-to-consumer disputes concerning online transactions.
- Mavluda Sattorova (British Branch) presented on the draft legislative guide on investment dispute prevention and mitigation, currently under consideration in UNCITRAL's Working Group III (WGIII) on Investor-State Dispute Settlement Reform.

Co-Chair Davinia Aziz then introduced the 16 October virtual Committee meeting. Serena Forlati also introduced the ILA Italy Branch's 16 November 2023 hybrid meeting on Alternative Dispute Resolution in International and EU Law, to take place in Ferrara and online.

22. The Committee's third meeting took place on Monday, 16 October 2023, in virtual format, in partnership with the International Dispute Resolution Programme at the Centre for International Law (CIL) of the National University of Singapore. Committee Co-Chair Davinia Aziz and member Alvin Yap (Australia Branch) organised and convened the meeting at NUS under the Chatham House Rule. The co-convenors' report of the meeting is available on the Committee webpage on the ILA website.⁹ Salient points:

- After introductory remarks, the opening plenary session was a fireside chat with Professor Tommy Koh, Emeritus Professor of Law at the National University of Singapore, Ambassador-at-Large at the Singapore Ministry of Foreign Affairs, and Chairperson of the CIL International Advisory Panel. Professor Koh took a series of questions from participants, including questions about his role including two Committee case studies, namely *Land Reclamation* and *Russian Troop Withdrawals*

⁹ 16 October 2023 meeting report: https://www.ila-hq.org/en_GB/documents/report-of-singapore-intersessional-meeting-16-october-2023

from the Baltic States. The discussion showed that luck and timing were important to resolving international disputes. An effective neutral need not always be a subject-matter or area expert; key instead was good preparation, a fair mind, energy to overcome obstacles, relationships, and the parties' willingness to find settlement.

- In Session A, facilitated by Committee member Wu Ye-Min (Singapore Branch), participants exchanged views on questions circulated in advance, to gather further feedback on the Committee's ADR taxonomy. Participants provided useful and concrete inputs on issues not captured in the taxonomy per se, such as the political and institutional context of disputes. A poll of participants led to a consensus on the top three taxonomy criteria. Participants also singled out questions around process design as key to the Committee's work.
- In Session B, facilitated by Davinia Aziz and Alvin Yap, participants separated into four breakout groups, exchanged views and reached consensus on questions regarding the impact of party and neutral resourcing in ADR practice: are resources committed by parties and neutrals toward the ADR process (e.g. lawyers, experts, political will, funds) relevant to the outcome? They agreed that the Committee should consider dealing with the role of resources in its future work on ADR.
- Committee Co-Rapporteur (2023) Ohiocheoya Omiunu outlined the Committee's work in the next nine months. Those involved thanked the organisers of the Singapore meeting for their effort and for the thoughtful structuring of the discussion, which contributed so much to the usefulness of the ideas generated by participants.

On 16 November 2023, Committee Co-Rapporteur Facundo Pérez-Aznar introduced the Committee's work at the 5th ILA Italy Biennial Conference on Alternative Dispute Resolution in International and EU Law. His intervention set out the Committee's mandate, its case studies, taxonomy and work in 2023, and planned activities for next year.

Committee work and activities from November 2023 to June 2024

23. A list of pending and complete **case studies** as of December 2023 is attached as Annex A. Work proceeds on completion and revision of the case studies, a selection of which should appear in finished form in the Committee's Interim Report. The case study working groups in the Committee are clustered into three groups:

- international trade disputes,
- international investment disputes, and
- other public international law disputes.

24. **Taxonomy:** The case studies are structured in terms of the revised draft taxonomy circulated in early 2023. Use of this taxonomy is designed to ensure that case study authors set out and discuss a consistent set of data points and issues concerning the use of ADR in these cases. Among the points of inquiry in the taxonomy, the last three questions have provided the input with the greatest potential for future synthesis of contrasts and commonalities in the case studies:

Noteworthy process design features:

- e.g. reasons for establishing the mechanism, any special provisions in the procedural rules and reasons why, any characteristics that go beyond the usual rules for the ADR mechanism(s) (mediation, conciliation, etc.). How did the design of the ADR process affect the success (or not) of ADR here?

Additional comments:

- Any additional comments on issues not covered by the table. Comments on next steps for research on this case.

Assessment:

- Views on how this ADR mechanism works overall and in the context of the dispute you examined, e.g. advantages and drawbacks of this ADR mechanism, what disputes it is suitable for, traps for the unwary, what worked well (or not), features that help this mechanism settle disputes (or not), was it effective or appropriate, comparison with other relevant ADR mechanisms and/or with adjudication, strategic/ geopolitical/ economic/ historical factors, party/ individual dynamics, etc.

25. The Committee will review the taxonomy during 2023-24 to incorporate the valuable feedback received at the 16 October Singapore Committee meeting. The Committee officers are also following up on case studies, as well as planning and preparing for meetings in 2024 and otherwise taking into account the valuable feedback received at the Singapore Committee meeting.

26. In April 2024, the Committee will hold a virtual meeting to hear from experts and have a structured discussion between members on ***process design in ADR***, including the recent ICCA Draft Conciliation Annex to the Paris Convention (on climate-related disputes), the ICSID Mediation Rules, and if possible, UNCITRAL's draft guidelines on prevention and mitigation of investment disputes. This meeting will also include case presentations by members.

27. The Committee will also hold a virtual meeting in the week of 13 May 2024 for further case presentations by members.

28. ***Committee activities at the Athens Conference:*** At the Athens Conference of the ILA, the Committee will hold an open session for all ILA members and a meeting of Committee members.

29. ***Scope of work:*** Taking into account the Committee's Mandate, activities and case studies during 2023, the Committee's further work will focus on non-adversarial, non-adjudicatory processes for resolving disputes under international law where a State or government is one of the parties to the dispute. Disputes between private parties under private international law are the subject of other ILA work and are beyond the Committee's mandate.

- The scope of the Committee's work potentially *includes* settlement of any dispute under public international law: for instance, territorial claims or maritime boundaries, disputes

under international trade or investment treaties, or transitional justice cases where those have a bearing on the maintenance of international peace and security within the meaning of Article 33(1) of the UN Charter.

- Adversarial arbitration or adjudication processes as such (e.g. adjudication by permanent international tribunals, investor-state arbitration) are outside the scope of the Committee's mandate, except to the extent that these adversarial processes are relevant to ADR processes under consideration. In relation to investor-state disputes, for instance, the Committee's work does not focus on the arbitration process as such, or the investment law rules as such; instead, we focus on the ADR processes leading to final settlement and related economic and/or political outcomes.
- The Committee will pay particular attention to the use of ADR in disputes involving climate change as a factor. The Committee welcomes the work of the International Council for Commercial Arbitration (ICCA) Panel of Experts to Develop a Paris Agreement Conciliation Annex.¹⁰
- At this time, the Committee does not intend to focus on ombudsperson or internal complaints procedures.

III. Draft Outline, Committee Interim Report (2026)

The outline below is a tentative draft based on the first ten months of the Committee's work. It is based on the taxonomy and the comments by members made in writing and during the Committee's online events. It may evolve before the Athens Conference based on input from Committee members to be sought during the first half of 2024. An updated draft may be shared at the Athens Conference.

The interim report would discuss the following topics, based on the case studies contributed by the Committee members as well as academic literature on ADR in public international law disputes.

The Committee invites input on this draft outline at its open session at the Athens Conference.

I. Executive Summary

II. Introduction

- Background and structure
- Scope of the Committee's activities and analysis
- Definition of ADR for this analysis: non-adjudicatory, non-adversarial settlement of disputes under public international law, in which at least one party is a state or government

¹⁰ The Committee's case studies of the complex technical disputes in *Pulp Mills*, *Land Reclamation*, *Timor Sea Conciliation* and *SPRFMO* are possible pathfinders.

- Terminology and methodology
- III. Reasons for choosing ADR for resolving a dispute under public international law**
- Expected costs; expected benefits
 - Timing, including duration of the immediate process and time of expected final resolution of the dispute
 - Confidentiality
 - Ripeness of a dispute for settlement by ADR vs. adversarial/adjudicatory means
 - Other, including geopolitical, economic and diplomatic background, availability or not of other dispute settlement mechanisms.
 - Conclusion: when (and in what types of disputes) are the parties to a dispute likely to seek an ADR process to resolve the dispute, vs. adversarial/adjudicatory means
- IV. Interaction between ADR proceedings and prior, parallel or subsequent proceedings**
- Prior proceedings
 - Parallel proceedings
 - Subsequent proceedings
- V. Neutrals / Third party facilitators (TPF): qualifications and role**
- ADR processes involving a neutral/TPF: conciliation, mediation, fact-finding, other facilitative activities
 - Personal and professional qualifications for a TPF
 - Appointment, resignation, disqualification and/or replacement
- VI. The confidentiality /transparency dilemma**
- Confidentiality vs. transparency regarding existence of proceedings
 - Regarding information or documents provided by the parties during the proceedings
 - Regarding an ADR decision, or regarding the ultimate outcome of the dispute
 - Transparency obligations
- VII. Costs**
- Costs of the proceedings: survey of information available, including cost for neutral/TPF and/or neutral experts, if any; cost of institutional or ad-hoc support, if any; parties' cost for lawyers, representatives or experts
 - Outside funding for ADR processes (from sources other than the parties)
 - Resource issues (including financial resources), particularly for developing countries or medium/small business stakeholders
- VIII. Duration / time limits**
- Ripeness of a dispute for settlement by ADR vs. adversarial/adjudicatory means
 - Time required to prepare for an ADR process (hiring experts, collecting information, etc.)

- Would time limits on stages in ADR proceedings be useful or not? How would such time limits affect parties that differ in resource level? How would such time limits affect the overall effectiveness of ADR in settling disputes under public international law?

IX. Emerging state practice in ADR

- Nature of practice: custom, courtesy, rules, etc.
- Identify general and specific practices
- Practices that complement written proceedings
- Practices that could replace written proceedings

X. Proceedings and actors

- Role and duties of actors:
 - Parties to the proceeding
 - TPF (mandate, powers, role, duties)
 - Institutional (administrative, registry) support for the proceeding or the TPF
- Examples of TPF activities in successful ADR processes
- Relationship between involvement of lawyers/professional advocates, and cost, duration and success of ADR proceedings; same for involvement of hired experts
- ADR proceedings; written, oral, formal, informal, plenary (involving all parties) vs. meetings between a TPF and one or more of the parties

XI. Noteworthy process design features

- Reasons for establishing an ADR mechanism
- Best practices in designing ADR mechanisms; dos and don'ts
- Process design features that can positively or negatively affect (i) the output of the immediate process and/or (ii) the ultimate outcome of the dispute

XII. Outcome

- Type and nature of the exit from the ADR process: unilateral decision by TPF, negotiated agreement between the parties, decision by one or more of the parties to invoke an adjudication mechanism, decision by the parties to seek formal interpretation or revision of a formal TPF decision, decision by the parties to choose an outcome different from that proposed by a TPF
- Where possible: comparison between the immediate output of the ADR process, and the ultimate outcome of the dispute
- What is "success" in settling a dispute under public international law, and what are the criteria for determining that a dispute has been successfully settled or resolved?
- Do these criteria differ depending on the nature of the dispute or field of public international law concerned – and if so, how?

XII. Conclusions

- How should we define "appropriate" ADR?
- What factors related to a dispute particularly call for the use of ADR rather than adversarial/adjudicatory means?

- When does ADR provide a cost-effective means to achieve successful resolution of a dispute?
- Which particular ADR processes (if any) are most appropriate or suited for particular types of disputes?
- What examples of best practices in ADR emerge from the Committee's case studies and from academic literature?
- What lessons do the Committee's case studies and academic literature provide for the design of an effective ADR process?

ANNEX: CASE STUDIES

#	Theme	Case Studies:  = submitted	Working Group	Committee Officer(s)
1	Trade	- A Global Consumer Dispute Resolution System (Chung, Yu)  - India: Tata Ultra Mega-01/Mundra and Anjar (<i>Jam v. IFC</i>) (Garrido Alves)  - Brazil – Canada Aircraft Dispute Mediation (Porges)  - ADR mechanisms (trade) in MERCOSUR and other Latin American FTAs (Perez Aznar)  - ADR mechanisms (trade) in NAFTA and USMCA (Perez Aznar) 	Yu Ying Alex Chung Amy Porges Facundo Perez Aznar Danilo B. Garrido Alves	Ohiocheoya Omiunu (2023)
2	Investment (including <i>Process Study</i> : Investor-State Options)	- ADR and Mexico's Energy Measures (Perez Aznar) - Pakistan at ICSID (Piracha) - ADR mechanisms in Brazil's ACFIs (Perez Aznar) - ADR mechanisms (investment) in NAFTA and USMCA (Perez Aznar)  - Settlement in investment disputes (Nitschke) - ICSID Rules (Moudine -Salini and Consortium Affairs; Piracha - Pakistan at ICSID)  - PCA Rules (Chernykh) - International Chamber of Commerce Rules (Chernykh)  - Belt and Road ADR (Cortesi, Moudine, Tiong) 	Yuliya Chernykh Giulio Alvaro Cortesi Lamyaa Moudine Frauke Nitschke Nudrat Piracha Facundo Perez Aznar Mavluda Sattorova Tiong Teck Wee	Facundo Perez Aznar & Amy Porges (jointly)

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		- UNCITRAL WGIII Draft legislative guide on investment dispute prevention and mitigation (Sattorova)  - SCC Express Rules (Chernykh) 		
3	Public International Law (including Oceans & Environment/Complex Scientific Disputes; Territory/ADR in Concert with Adjudication & Intercessions; <i>Process Study</i> : Inter-State Conciliation & Fact-Finding)	- Pulp Mills on the River Uruguay (2) (Walker)  - Transboundary Groundwater (US/Mexico) (García Sanchez w/Cadogan)  - The SPRFMO Review Panels (40) (Doe w/Harris)  - Land Reclamation in and around the Straits of Johor (Yap w/Walker)  - Timor Sea (Doe w/Yap & Garcia Sanchez)  - Israel-Lebanon (Harris, Florou) - Commonwealth Secretariat Maritime Boundary Negotiation Programme (PSIDS and Caribbean) (Cadogan)  - Eritrea-Ethiopia Boundary Commission Imad Khan - Iran and the United States (<i>Algiers Accords, with attention to perspectives beyond existing US literature</i>) (Rezadoost)  - Venezuela-Guyana (UNSG) (Gafoor) - Rainbow Warrior (UNSG) (Harris) - Belize-Guatemala (Reichler/Ramphal for OAS) (Ortega) - GCC Crisis (Kuwait; U.S.) (Nakajima) 	Martin Doe Alvin Yap Rosemarie Cadogan Guillermo Garcia-Sanchez Rebecca Walker Callista Harris Tolulope Aderemi Imad Khan Wu Ye-Min Nakajima Kei Vahid Rezadoost Lesther Ortega Otilia Maunganidze Davinia Aziz Tamada Dai Serena Forlati Dini Sejko Anne-Marie Thévenot-Werner Anthony Gafoor Yulia Chernykh	Otilia Maunganidze Ohiocheoya Omiunu (2023) Amy Porges (jointly)

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		• Black Sea Grain (<i>UNSG</i>) (Wu)  • Kenya-Somalia (<i>IGAD</i>) (Maunganidze)  • Russian troop withdrawal from the Baltics (<i>Koh for UNSG</i>) (Aziz)  • The Post-World War II Conciliations (Maunganidze) • Gabon-Equatorial Guinea (Pillay) • OSCE Conciliation (29) (Thévenot-Werner) • Inter-state conciliation in UN human rights bodies: Inter-state communications in the UN Committee on the Elimination of Racial Discrimination (Qatar v. Saudi Arabia, Qatar v. UAE, Palestine v. Israel) (Forlati)  • Cameroon-Nigeria Mixed Commission/Greentree Agreement (Omiunu) • ICCA task force draft of Paris Convention Annex on ADR for climate related disputes (Tondini, Pillay)	Jan-Yves Rémy Aikaterini Florou Kevashinee Pillay Chiara Tondini Ohio Omiunu	
	Other potential case study topics (Public International Law)	Inter-State Conciliation before UN Human Rights Treaty Bodies (10); France-Siam Conciliation Commission (16); Falklands/Malvinas (<i>Haig for U.S.</i>); OSCE Conciliation (29); 1899 and 1907 Hague Conventions (PCA) (32); ICSID Fact-Finding Rules 2022 (31); The League of Nations inquiries; UN system fact-finding and inquiries; High Council procedure under the Treaty of Amity and Cooperation in Southeast Asia; Conciliation rules under the ASEAN Charter Protocol on Dispute Settlement		