INTERNATIONAL LAW ASSOCIATION COMMITTEE ON ALTERNATIVE DISPUTE RESOLUTION IN INTERNATIONAL LAW

Report of Singapore virtual intersessional meeting submitted by the meeting co-convenors*

Introduction

1. The International Law Association Committee on Alternative Dispute Resolution[1] in International Law ("the Committee") held an intersessional virtual plenary meeting on 16 October 2023 from 1500 to 1800 hrs SGT.[2] The meeting was hosted in partnership with the International Dispute Resolution Programme at the Centre for International Law ("CIL"), National University of Singapore ("NUS").[3] The meeting was held under the Chatham House Rule.[4] The Committee's approved mandate is at **ANNEX A**. The annotated programme of the meeting is at **ANNEX B**. The meeting participant list is at **ANNEX C**. The meeting also had before it the Committee members' early-stage case studies listed at **ANNEX D**.

2. The objective of the meeting was to provide an opportunity for participants to interact with a key figure from two of the Committee's case studies, and subsequently to interact with each other to reflect on the Committee's case studies and methodology to date. Connecting the Committee with realities on the ground across legal traditions and geographical regions, the meeting included a diverse range of guest experts: from CIL, Southeast Asian government agencies, private diplomacy organisations, peace mediation training, and private law practice. The key discussion points are recorded in this meeting report. This report has been prepared

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* The meeting co-convenors were Committee members Davinia Aziz (Committee Co-Chair/ILA Singapore) and Alvin Yap (ILA Australia). The meeting reporters were Jeriel Teo (LLB '23, National University of Singapore Faculty of Law) and Yang Huiwen (JD '23, National University of Singapore Faculty of Law). Meeting facilitation was provided by Davinia Aziz, Committee member Wu Ye-Min (ILA Singapore) and Alvin Yap. Hosting and logistical support were provided by CIL Associate Director for Events and Programmes Gerry Ng.

1 In accordance with its approved mandate, the Committee defines "alternative dispute resolution" to encompass all forms of non-adversarial dispute resolution. The Committee's approved mandate thus *excludes* adjudication and arbitration.

2 Members unable to participate live in the meeting were offered the option of asynchronous participation by online survey. There were no responses to the online survey when the survey closed at 23:59 SGT on 16 October 2023.

3 CIL, "International Dispute Resolution", https://cil.nus.edu.sg/research/international-dispute-resolution/ (last accessed: 17 October 2023)

4 The Chatham House Rule reads: "When a meeting, or part thereof, is held under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed": see Chatham House, "Chatham House Rule", https://www.chathamhouse.org/about-us/chatham-house-rule (last accessed: 17 October 2023).

under the responsibility of the meeting co-convenors and is intended as a resource for the Committee as it considers the path to the Interim Report due in 2026.

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Word of welcome

3. Words of welcome were delivered by CIL Director and ILA Singapore Director of Studies Dr Nilüfer Oral and Committee Co-Chair Davinia Aziz (ILA Singapore).

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Opening plenary

4. The opening plenary 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 range of questions from participants, including questions about his roles in two Committee case studies, namely Land Reclamation and Russian Troop Withdrawals from the Baltic States.

5. The fireside chat showed that the twin elements of luck and timing were important to resolving international disputes. It was not always necessary for an effective neutral to be a subject-matter or area expert. Key instead was good preparation and a fair mind, as well as the parties' willingness to find settlement. In addition, friendships mattered: they were important to help facilitate the dispute resolution process.

6. The Committee was advised to focus on conciliation, good offices, and fact-finding.

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Session A (Plenary facilitation)
Alternative dispute resolution taxonomy in theory and practice

7. Session A was facilitated by Committee member Wu Ye-Min (ILA Singapore).

8. In Session A, the meeting exchanged views on two questions (marked A1 and A2) circulated to meeting participants in advance. The purpose of the facilitation was to gather feedback on the alternative dispute resolution ("ADR") taxonomy that had guided Committee members' work on their case studies.[5] Participants in Session A complimented Committee Co-Rapporteurs Amy Porges and Facundo Pérez Aznar for their excellent work on the taxonomy. Any suggestions were to be seen in that context.

9. As a general point, building on the opening plenary, one participant suggested that the Committee could consider focusing on fact-finding and commissions of inquiry.

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[5] The taxonomy discussed by the meeting was developed by Committee Co-Rapporteurs Facundo Pérez Aznar and Amy Porges incorporating views gathered from Committee members who responded to a survey administered over December 2022 and January 2023. The taxonomy that the meeting discussed is available at https://perma.cc/73LR-URH4 (last accessed: 17 October 2023).

Question A1. In working through your own case studies or commenting on others, what was your experience of the taxonomy in terms of allowing you to express the practice of ADR in the real world? Specifically, what analytically significant aspect about how ADR is practiced in the real world might the taxonomy miss?

Timelines, speed, efficiency, and cost

10. One participant noted that the taxonomy could benefit from additional information on the overall timelines and cost of proceedings. ADR practitioners would appreciate such information as it would allow them to compare the relative efficiency of ADR to arbitration and adjudication. The Land Reclamation case study showed that the potential expense of an arbitration might have influenced the parties' choice to commit to the ADR-brokered settlement. One striking example of a fast-track yet complex procedure was the SPRFMO case study. Notably, the SPRFMO procedure had been used successfully three times and could be an example for the resolution of disputes involving multiple States or stakeholders.

11. It would also be useful to know if the ADR process had been funded externally, such as by the relevant UN or Permanent Court of Arbitration ("PCA") trust funds. This was supported by another participant.

Material duration

12. One participant suggested that the taxonomy could consider ripeness for resolution and the time when the dispute could be said to have crystallised. In practice, many States took preparatory action, such as the appointment of experts, before an international dispute was formally recognised as such. Another participant echoed this view.

13. The participant added that the question of when a dispute was "resolved" was another significant point to consider. This participant stated that in their case study, the conclusion of a settlement agreement was taken as the end point of a dispute. There could, however, be situations where the dispute may continue even after a settlement agreement.

14. One participant highlighted that, from the investment dispute perspective, it would be useful to add information on any early warning or dispute mitigation, and if so, how these played out in the subsequent dispute.

Political context

15. Several participants raised the importance of political context in ADR. The decision to engage ADR and continue with the process was a political choice. Therefore, political context had significant implications for various aspects of ADR, such as the choice of process, the decision to continue with proceedings, and the outcome of the proceedings.

16. A participant highlighted that in inter-State disputes, the ongoing bilateral relationship was an important part of the dispute resolution process that may not be reflected in the taxonomy. Parties have an intricate web of relationships and other bilateral agreements *inter se* with potential implications for how the parties chose to resolve a particular dispute.

17. Using the Timor Sea Conciliation competence phase as an example, one participant suggested modifying taxonomy criterion number 6 ("Parties' reasons for choosing the mechanism") with additional sub-sections, to explore the political context of the decision in

greater detail. Another participant suggested that the "Additional Comments" section could be used to explain the political context in greater detail.

Institutional context; character of administrative support; parallel proceedings

18. One participant observed that the Land Reclamation, Timor Sea Conciliation and Commonwealth Maritime Boundaries Programme case studies showed how institutional context was relevant. It could be useful to find a place in the taxonomy to include this information, to specify whether the case study had taken place as a compulsory conciliation (as in the Timor Sea Conciliation), by voluntary assisted negotiation (as in the Commonwealth Maritime Boundaries Programme), or within the framework of a mandatory provisional measures order and a looming UNCLOS Annex VII arbitration (Land Reclamation). Another participant supported the latter point as regards the institutional context of the Land Reclamation case study, which had also involved more than one ADR mechanism.

Relational dimension; human dynamics; confidence-building, backchannels, and access

19. Building on the opening plenary, one participant recalled the importance of "serendipity and friendships", side-line pull-asides, and informal contacts in ADR. Supporting this, another participant noted that the Committee could explicitly foreground the relational aspects of ADR, to ensure that the taxonomy was more clearly in conversation with the dispute process design and international relations literature. Possible ways to put the taxonomy in conversation with the dispute process design literature included drawing from the CEDR five-phase process framework for mediation (preparation, opening, exploration, bargaining, concluding) and the "Harvard Seven Elements Framework" for negotiation.[6]

20. Another participant pointed out that international disputes often had a personal dimension, involving a loss of trust between the participants. Third party facilitators therefore had a role in helping to resolve personal difficulties between parties.[7]

21. Another participant highlighted that in the Southeast Asian and South Asian contexts, third parties could sometimes be perceived as interfering with domestic political processes. In these contexts, good offices could be one acceptable approach. In other circumstances, however, Southeast Asian States had consciously opted for adjudication at the International Court of Justice (as opposed to ADR) to cabin off a dispute, so as not to affect their overall bilateral relationship.[8]

Inter-relationships between taxonomy criteria and different case studies

22. One participant noted that several taxonomy criteria could be inter-related. The example given was that of the Land Reclamation case study, where several factors were at play. These

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[6] For the CEDR framework, see Eileen Carroll and Karl Mackie, "The Mediator's Tale: The CEDR Story of Better Conflicts" (2021) at 92*ff*. The "Harvard Seven Elements" are excerpted at Harvard Program on Negotiation, https://www.pon.harvard.edu/daily/negotiation-skills-daily/what-is-negotiation/ (last accessed: 18 October 2023). The seven elements are: interests, legitimacy, relationships, alternatives and BATNA (best alternative to a negotiated agreement), options, commitments, and communication.

[7] In this regard, the Timor Sea Conciliation case study provides a useful and rare documented instance of how neutrals can use confidence-building measures to create conducive conditions for the ADR process.

[8] See also paragraph 16 on the salience of the parties' ongoing bilateral relationship.

factors included the political context and multiple dispute resolution mechanisms. The same participant wondered if the taxonomy structure could accommodate such inter-relationship.

23. Another participant drew an interesting comparison between the Land Reclamation and Pulp Mills case studies. Both case studies had involved scientific expert bodies. But in each case, such bodies had been deployed in different ways and toward different outcomes.

Caution against taxonomy overload

24. Two participants cautioned against responding to the valuable points raised in the A1 discussion by overloading the taxonomy. One of those participants suggested that the points highlighted so far could instead be incorporated when the Committee used some of the case studies that had been mentioned as examples in its Reports. The other participant indicated that the Committee Co-Rapporteurs had plans for academic publications where the points highlighted so far could be developed.

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Question A2. List the top three criteria from the taxonomy that the Committee should retain and develop in its next phase of work (*i.e.* the Interim Report phase). Please use the taxonomy criterion number and short description (e.g. "12. Confidentiality regarding the existence of proceedings")

25. The meeting was facilitated through Question A2 by a lightning straw poll conducted on Zoom chat. The facilitator summed up the consensus on the top three taxonomy criteria as follows:

- 6. Parties' reasons for choosing the mechanism
- 9. Interaction with prior or subsequent mechanisms
- 39. Noteworthy process design features

It was noted that participants saw the questions around process design as key to the Committee's work. Other taxonomy criteria mentioned by participants were:

- 10. Interaction with parallel proceedings
- 21. Mandate, powers, role and duties of third-party facilitator
- 26. Confidentiality during and after the proceedings[9]
- 27. Transparency or information disclosure duties
- 34. Type and nature of the result
- 36. Subsequent mechanisms in case of failure
- 37. Follow-up procedures

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[9] On confidentiality and transparency, one participant noted that the Timor Sea Conciliation case study was particularly interesting in this regard since the Commission itself had provided its own reflections on the elements contributing to the success of the process at each stage.

Session B (Small group breakout discussions)
The impact of party and neutral resourcing in ADR practice

26. Session B was facilitated by Davinia Aziz and Committee member Alvin Yap (ILA Australia). In this session, participants were divided into four breakout groups to exchange views and find intra-group consensus on two questions (marked B1 and B2) circulated to meeting participants in advance. The meeting co-convenors had formulated B1 and B2 based on their review of Committee members' case studies. The questions concerned the impact of party and neutral resourcing in ADR practice.

27. In breakout format, participants recorded their groups' responses to B1 and B2 on a shared document. They could also see what other groups had recorded on that document. Following the group discussion, Session B returned to plenary format where each group's representative presented their group's responses to B1 and B2 using the shared document as a visual aid.

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Question B1. Are resources committed by parties and neutral(s) toward the ADR process relevant to the outcome of that process?

28. One group found resources relevant to the success of ADR processes. The group emphasised a *direct correlation between engaging lawyers and experts and achieving a favourable outcome*. The group stressed the need for a balanced allocation of resources in ADR processes and highlighted the need to minimise costs for vulnerable communities.

29. Another group focused on the definition of "resources". The group agreed that *resources included financial means, political will, and the involvement of key individuals*. Without the personal investment of such key individuals, progress towards resolution of the dispute could be hindered.

30. A third group agreed that *resources were vital to a desired outcome in ADR processes*. The group recognised the financial burden on the involved parties. The group also discussed the need to consider strategic allocation of resources, citing the Land Reclamation case study where resources were dedicated to securing scientific expertise. They observed that *resources were valuable but were not the sole determinant of success in ADR processes*. Factors such as luck, as well as the human and political dimensions, also played a significant role. Third-party funding and political dynamics could also affect the outcome. The group highlighted potential political sensitivities regarding the source of financial assistance, particularly when some States funded other States, possibly creating power imbalances.

31. The fourth group discussed the impact of financial and non-financial resources on the outcome of dispute resolution. It examined the role of neutral parties, which may include commissions or other parties with no direct interest in the dispute.[10] The group agreed that *the level of available resources could significantly influence outcome, either positively or negatively*. They highlighted how a lack of resources could result in insufficient fact-finding or expertise,

[10] Relatedly, though on the point of *strong administrative support* rather than the neutral(s) as such, one participant noted that several case studies by Committee members involved cases administered by the Permanent Court of Arbitration (PCA), which despite its nomenclature was the international arbitral institution with the most extensive contemporary experience in a variety of methods of dispute resolution involving States.

potentially leading to a skewed outcome. Additionally, they pointed out that *asymmetry in resources*, such as where one party had a much larger delegation, could have an intimidating effect, and thus *affect the outcome*. Participants in this group also underscored the *importance of neutrality in the allocation of resources*. Foreshadowing its consensus response to Question B2, this group considered that *resources played a crucial role in dispute resolution and should be further examined by the Committee*.

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Question B2. Should the Committee develop the impact of party and neutral resourcing in ADR practice as a line of inquiry in its next phase of work?

32. One group noted the significance of resources in ADR practice but highlighted the complexity of measuring the impact of resources on outcomes. The *correlation between resources and outcomes may not be straightforward, as there were various factors at play*. Financial and non-financial resources played a crucial role in shaping ADR processes and their outcomes. A major challenge was *the lack of transparency and disclosure, making it difficult to ascertain whether one party had more resources than the other*. Further, the participants emphasised that ADR processes should not turn into a battle of resources where the outcome is determined by the party with more resources, which would go against the principles of fairness and equity. The group emphasised that ADR processes should be designed to not disproportionately burden any party, regardless of their resources. This group also noted that the parties' motivations to engage in ADR should be considered. Understanding why parties choose ADR processes could shed light on the role of resources. In this connection, the group highlighted the need to compare ADR (i.e., non-adversarial processes) and litigation (i.e., adversarial processes). *Non-adversarial processes were commonly perceived as more cost effective than adversarial processes, but that perception might not be universally accurate.* For example, the bananas dispute at the World Trade Organization ("WTO") had spanned 30 years with multiple legal rulings in adversarial settings.[11] In this sense, ADR could be both protracted and expensive.

33. Another group focused on the cost of ADR compared to adversarial processes such as litigation. They agreed that ADR was generally more affordable and that a State genuinely committed to resolving a dispute would allocate the necessary resources. For this group, however, the challenge lay in finding the right neutral for the ADR process. The group expressed that securing a neutral of Professor Koh's calibre was not easy. The group also discussed the potential benefits of establishing a UN mediation squad.[12] In addition, the group considered that *ADR processes were suitable when the applicable law was clear*.[13] For instance, a seasoned lawyer would find mediating a contract law dispute to be a relatively straightforward task. It would not however be as suitable to mediate a dispute over AI where the parties disagreed on the law regarding AI. The group noted that in the WTO bananas dispute, the EU had opted to settle only after exhaustive litigation had determined the law.

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[11] World Trade Organization, Press Release: "Lamy hails accord ending long running banana dispute" (15 December 2009), https://www.wto.org/english/news_e/pres09_e/pr591_e.htm (last accessed: 26 October 2023).

[12] In this regard, it is worth noting that the UN has a standby team of senior mediation advisers. See United Nations Peacemaker, Standby Team of Senior Mediation Advisers, https://peacemaker.un.org/mediation-support/stand-by-team (last accessed: 26 October 2023).

[13] See however paragraph 30 regarding *strategic allocation of resources*, where ADR affords flexibility to allocate resources toward expert determinations or early neutral evaluations.

34. The third group agreed that in its next phase of work, *the Committee should develop a line of inquiry to understand the role of resources relative to outcomes in ADR practice*.

35. Participants in the fourth group echoed the importance of considering resources in the next phase of the Committee's work. They expressed that *it was impossible to see how the Committee could avoid considering the impact of resources in its next phase of work*, particularly in the light of studies done in the WTO context showing the relevance of resources to outcomes.[14] They considered it crucial to deal with the negative impact of a lack of resources, particularly on developing States, and to ensure fairness and efficiency in the allocation and utilisation of resources.

36. Summing up, a co-facilitator thanked all groups for their active participation. The useful points raised would be considered by the Committee as a whole in due course. The Committee would then decide whether and how to take up the question of resources in the Committee's Interim Report.

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Committee's next steps

37. Committee Co-Rapporteur Ohiocheoya Omiunu (ILA British Branch) set out the Committee's next steps. The Committee had to submit a Preliminary Report to the ILA Headquarters Director of Studies by 12 January 2024. The Co-Rapporteurs would circulate a draft Preliminary Report to all Committee members for their input by early December 2023. The Committee was due to meet in both open and closed formats at the ILA Conference in Athens (24 to 28 June 2024). All Committee members were encouraged to attend the Athens Conference in person.[15]

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Farewell and close

38. At the end of the meeting, closing remarks were delivered by Committee Co-Chair Gabrielle Marceau as well as CIL Governing Board Member and Chair of the CIL Advisory Committee on International Dispute Resolution Loretta Malintoppi (ILA Singapore).

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[14] The group cited Gregory C Shaffer and Ricardo Meléndez-Ortiz (eds) *Dispute Settlement at the WTO: The Developing Country Experience* (Cambridge University Press, 2010).

[15] The refreshed Work Programme was published on 25 October 2023.

MANDATE FOR THE ESTABLISHMENT OF AN ILA COMMITTEE ON ALTERNATIVE DISPUTE RESOLUTION IN INTERNATIONAL LAW

Co-Chairs: Gabrielle Marceau, Davinia Aziz

Co-Rapporteurs: Amy Porges, Facundo Perez-Aznar, Ottilia Maunganidze, Ohiocheoya Omiunu

Summary of Work Programme

Alternative dispute resolution (ADR) mechanisms, traditionally on the side-lines of international law, have unrecognized potential as a means to respond to the need for more efficient, outcomes-focused dispute resolution. To raise awareness of ADR's potential contribution to international law, an ILA Committee on ADR is proposed.

2 This Committee will work to establish common definitions of ADR procedures, and to call attention to disputes where the use of ADR could be more efficient and effective than adjudication. This work will touch upon four themes in particular: (1) creating a general taxonomy of ADR mechanisms in international law; (2) exploring 'Appropriate Dispute Resolution', *i.e.,* identifying those ADR mechanisms that are most suited for certain types of disputes; (3) formulating best practices for each ADR procedure; (4) determining specific principles to be taken into account for fields in international law.

3 The Interim Report, to be presented at the 2024 ILA Conference, will present the Committee's research on types of ADR and on tailoring ADR mechanisms to the nature of various disputes. The report will include case studies on disputes that have been resolved through ADR mechanisms. The Final Report, to be presented at the 2026 ILA Conference, will formulate best practices and guidelines based on the research in the Interim Report.

Statement of the Problem

4 States bear the international legal obligation to seek solutions to their disputes by peaceful means. This obligation is enshrined in Article 33(1) of the UN Charter,[1] which recognizes many valid and useful paths to peaceful resolution of international disputes beyond adjudication. These include 'negotiation, enquiry, mediation, conciliation, arbitration, …resort to regional agencies or arrangements' and indeed 'other peaceful means of [the parties'] own choice.' For certain types of disputes, these multiple paths coexist with, complement, and can strengthen adjudication. Examples of complex scientific disputes where this is so, include the

[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.'

Pulp Mills[2] and *Land Reclamation* cases.[3] Transitional justice processes grounded in mediation and reconciliation can facilitate state responses to atrocity crimes and large-scale violations of human rights, thus clearing pathways to international peace and security. Reflecting ADR's utility across diverse areas of international law, institutional support is now available for such processes from different international organisations, including those which have traditionally supported arbitration and adjudication. For example, 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 (LOSC).[4] The World Bank's International Centre for the Settlement of Investment Disputes (ICSID), another major provider of arbitration services, now also offers mediation and conciliation services for international investment disputes. The World Trade Organisation (WTO) has provided 'Good Offices' to its Members on request.[5]

5 As the increasing turn to ADR creates diversified, complex, and fragmented understandings of ADR within international law, unresolved questions remain. These include:

- Is it possible to identify ADR mechanisms that are more effective than others?
- Which ADR mechanisms are most useful, or most often used, for particular types of disputes?
- How can ADR be tailored to the nature of the dispute, and according to particular fields of international law?
- Are there circumstances in which ADR is more appropriate than formal adjudication and will better serve the parties as they resolve their dispute?

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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.

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: Thoughts and Reflections' (2006) *Singapore Yearbook of International Law* 9.

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).

5 *WTO Report by the Director-General on the Use of His Good Offices, EC – Regime for the Importation of Bananas), WT/DS361/2 (Columbia), WT/DS364/2 (Panama), adopted 22 December 2009.*

- Are there general principles or procedural standards that can be derived from best-practices ADR and from established principles of the international law of dispute settlement?

6 Moreover, 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. 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. It is not possible to apply a single recipe to all fields of international law. Yet, there is no common understanding as to which ADR mechanisms are most suited for which types of disputes. This knowledge gap precludes greater awareness of ADR mechanisms—including ADR failures and successes—which in turn likely limits their usage. It is therefore important to examine this issue from a holistic perspective since these concerns apply equally across the board of various fields in public international law.

7 The proponents of this Committee hope that an ILA Report on ADR will provide this holistic perspective, further encourage the use of ADR processes in international disputes, and lead to better and more effective outcomes for all actors involved, including governments.

Mandate

8 To this end, the ADR Committee will formulate definitions and criteria for the different types of ADR processes used in international disputes. The Committee will start with a case-study analysis of international disputes that have been resolved through ADR to determine common characteristics of ADR and how the nature of a dispute may influence the choice of most appropriate ADR mechanism(s) for its settlement. Based on this analysis, the Committee will produce recommendations and guidelines for the different categories of ADR mechanisms.

9 The work of the Committee will therefore be guided by the following four themes:

(a) **General Framework:** The Committee will first establish a taxonomy of ADR mechanisms by identifying the key characteristics and features of each ADR mechanism. The Committee on ADR would therefore benefit from the diversity of the ILA Membership as it determines which principles are truly shared for the definition, criteria, advantages, and disadvantages of ADR mechanisms.

(b) **'Appropriate Dispute Resolution':** The concept of 'Appropriate Dispute Resolution' has recently gained traction in the literature. In this light, it is important to identify which ADR mechanisms most suited for which type(s) of disputes. It is equally important to tailor ADR procedures to the nature of the conflict for effective dispute resolution. For this purpose, the ADR Committee will explore questions such as: What is the definition for 'effective' 'appropriate' dispute resolution? Are there concrete variables that can be outlined such as party satisfaction, efficiency, procedural safeguards, access to justice, and applied transversally to evaluate whether certain procedures are suitable for a dispute, or rather do these vary as well? Can these variables be

applied transversally across various subject-matters within international law, or do they vary? The ADR Committee will also identify appropriate dispute resolution practices for a variety of international law disciplines.

(c) **Best Practices/Guidelines:** The ADR Committee will attempt to formulate an overarching set of ADR general principles that could provide guidance to practitioners across the globe on the most effective resolution practices. The Committee expects these best practices to apply across various international law disciplines. This approach could further facilitate an integrated perspective of public international law. Nevertheless, the Committee will also examine whether specific rules could be developed for specific ADRs, such as in environment, investment, or trade disputes where experts are often involved in the settlement of dispute.

(d) **Specific Principles:** One of the core aims of the ADR Committee is to facilitate 'Appropriate Dispute Resolution' (resolution practices that are tailored to disputes). Accordingly, the Committee will seek to identify specific principles for ADR mechanisms as practiced in specific fields of international law, such as investment or human rights.

10 The Committee will focus on international law disputes, including investor-state disputes and 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. The Committee will not focus on arbitration, as such, except where arbitration forms part of the overall picture necessary to understand how ADR processes worked to resolve a particular dispute (as in the *Land Reclamation* example). Disputes between private parties under private international law, as such, are beyond the scope of this Committee's mandate and are the subject of ongoing work by the ILA Committee on International Commercial Arbitration. However, this study will refer to these Commercial Arbitration principles, disputes covered by private international or transnational law, and ADR procedures in national legal systems when relevant, especially when assessing the most effective ADR procedures in resolving disputes. The mandate of the proposed ADR Committee is therefore a broad one since it seeks to examine all non-adjudicatory mechanisms that are and can be used in practice.

Proposed Programme of Work

11 The ILA Committee on ADR will be introduced to the Membership at the 80th ILA Biennial Conference held in Lisbon, Portugal, 19-24 June 2022. Its work programme will then be divided into two parts resulting in two ILA reports.

Interim Report

12 The Interim Report, which will be presented at the 2024 ILA Conference, will form the bulk of the research. It will draw upon concrete cases in which ADR mechanisms were used and analyse existing procedural rules and guidelines governing ADR mechanisms. For example, it will examine the use of conciliation in practice for disputes arising under the law of the sea as in the *Jan Mayen* conciliation or *Timor Sea Conciliation*, or the 1992 Stockholm Convention on Conciliation and Arbitration within the OSCE for 'any dispute' in those subject matters that the OSCE performs. This research will take place in three phases.

Phase I: Taxonomy

The Committee will establish a taxonomy of various ADR mechanisms to identify their key characteristics and criteria. Classic ADR mechanisms discussed in the existing literature, such as negotiation, mediation, conciliation, arbitration, fact-finding, and hybrid dispute resolution processes (see Menkel-Meadow, Alternative Dispute Resolution in *Max Planck Encyclopaedias of International Law*), may serve as a starting point. However, Committee members must also consider whether additional mechanisms have arisen in light of developments in international legal architecture, such as a growing diversity in actors, other than states, participating in international law-making processes. By offering a taxonomy of ADR mechanisms and their strengths and weaknesses, the ADR Committee seeks to provide a foundation for a shared understanding on an internationally agreed framework among ILA practitioners and academics.

Phase II: Case studies

The Committee will analyse disputes in which the parties attempted non-judicial settlement. Throughout this phase, the Committee will compile cases for each category of ADR mechanism based on the taxonomy established in the previous phase. While cases that have already received some attention in the literature will be valuable for the Committee's work, the Committee will also make a special effort to uncover less public examples. Cases will be organised according to broad fields of international law, such as the *Timor Sea Conciliation (Timor-Leste v. Australia)* dispute settled under UNCLOS, or the *EC – Bananas II* dispute settled through Good Offices under WTO law, while allowing for the practical reality that some cases will cross-cut different areas of international law. Case studies 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.

Phase III: ADR pathways

With the first- and second-phase research as a basis, the ADR Committee will move to the third and final phase of the Interim Report. During that phase, Committee members will identify, for specific categories of disputes, whether adjudication or a specific ADR mechanism is effective or appropriate. To address this question, the Committee members need to first reach agreement on a definition of 'effective' or 'appropriate' ADR and identify indicative factors that are relevant to evaluating ADR cases and practices and whether they were effective or not. Such factors may vary according to the nature of the dispute and the fields of international law in which the dispute arises. The Interim Report will evaluate the cases in light of the identified factors to observe whether some practices worked better than others. The report will then draw conclusions as to which ADR processes are suitable for which types of disputes, depending on their nature and outcomes. To sum up, the Interim Report will provide a taxonomy of ADR mechanisms with a substantial number of cases and point to dispute-related factors that particularly call for ADR.

Final Report

13 The Final Report, to be presented at the 2026 ILA Conference, will build upon the research of the Interim Report. In the Final Report, the Committee will shift from research to concrete guidance for practitioners and governments in their choice of procedure in resolving international disputes. The guidance will be formulated in two parts.

Part I: Best practices for ADR mechanisms

The Final Report will formulate **guidelines** containing general principles and best practices for ADR mechanisms in international law. Concretely, the report will dedicate a chapter for each ADR mechanism identified in the Interim Report, setting out the procedure's definition and criteria, its advantages and disadvantages, and the situations when its use is recommended. Based on the Interim Report analysis, the Final Report will suggest best practices for each category of ADR identified, including identifying recommended procedures to follow.

Part II: ADR principles for particular types of disputes

Each chapter will also provide **principles** for using that ADR procedure in differing fields of international law. For example, the chapter on mediation could discuss ICSID's best practices for mediation in investor-state disputes. The Final Report will draw on the research done for the Interim Report, including the case studies and interviews with practitioners.

The guidelines and principles will be set out in an Annex to the Final Report in a format suitable for adoption as a **resolution** of the ILA. The Final Report and the resolution should then be of practical value for all stakeholders, providing a consensus on which ADR mechanisms are available, which ones are recommended for particular situations, and the best ways forward.

Linkages with Other Committees and Study Groups

14 ADR occurs in various areas of public international law and therefore touches upon the work undertaken in other Committees and Study Groups. For example, ADR overlaps with the consultations and dispute resolution mechanisms that assist actors in managing cultural issues, as dealt with by the Committee on Participation in Global Cultural Heritage Governance. In addition, this Committee relates to the Committee on Rule of Law and International Investment Law, in which the design of arbitration practices under the Investor-State Dispute Settlement system are examined. The work of this ADR Committee further complements that of various ILA Study Groups such as the former group examining the practice and procedures of international tribunals.

15 Where relevant, this ILA Committee on ADR in international law may draw upon the ongoing work of the Committee on International Commercial Arbitration. While that Committee deals with arbitration between private entities under private international law, the Committee on ADR would deal with arbitration involving public entities to the extent laid out at paragraph 10 above.

INTERNATIONAL LAW ASSOCIATION COMMITTEE ON ALTERNATIVE DISPUTE RESOLUTION IN INTERNATIONAL LAW

SINGAPORE VIRTUAL MEETING
MONDAY 16 OCTOBER 2023, 15:00 – 18:00 SGT (CONVERT)

ANNOTATED PROGRAMME

Introduction

The meeting on Monday 16 October 2023 is designed to be as interactive as possible, to allow the Committee to benefit from the expertise of all present. This document is an annotated programme containing pre-reading and discussion questions. Its purpose is to allow all meeting participants to prepare in advance. Recognising that everyone's time is limited, the "must-read" list has been kept as short as possible and is starred (*****).

Given the character of this meeting and its place in the early days of the Committee's work programme, we ask you to refrain from distributing or citing Committee documents without the written permission of the Committee Co-Chairs and the Committee member concerned.

We also remind you that this meeting is held under the Chatham House Rule, which reads: "When a meeting, or part thereof, is held under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed." In the same spirit, we ask you to refrain from making your own recordings or images of this meeting.

Thank you in advance for your commitment and for choosing to attend this meeting. We look forward to your active participation on Monday 16 October 2023.

Davinia Aziz (ILA Singapore Branch) and Alvin Yap (ILA Australian Branch)
Meeting convenors

in partnership with the
International Dispute Resolution Programme at the NUS Centre for International Law

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General pre-reading

- ***** Approved mandate of the International Law Association Committee on Alternative Dispute Resolution in International Law. *This mandate was approved by the International Law Association Executive Council in 2022. Under International Law Association rules, the mandate specifies the Committee's plan of work, provisional schedule, and is "designed to produce a concrete outcome in a practical form". In the case of this Committee, that "concrete outcome" is set out at paragraph 13 of the approved mandate.*

  The Committee will submit a Preliminary Report to International Law Association Headquarters by 12 January 2024. The Committee will then start work on its Interim

Report in terms of paragraph 12 of the approved mandate. Committee Co-Rapporteur Ohiocheoya Omiunu will outline concrete next steps at 17:40.

- ***** Taxonomy of alternative dispute resolution mechanisms. *This document was drafted by the Committee Co-Rapporteurs after a Committee-wide consultation between December 2022 and January 2023. As the document headnote states, this taxonomy was intended as "a checklist of criteria to aid consistency in analysing, classifying, and comparing alternative dispute resolution (ADR) mechanisms and specific ADR case studies".*
- * Case studies. *This is a collection of early-stage case studies of non-adversarial dispute resolution completed by Committee members on the lines of the taxonomy mentioned above.* [All case study links are disabled in this Annex B copy.]

Time (SGT)	Activity
14:45	Log into Zoom.
15:00	**WORD OF WELCOME (5 MIN)** Dr Nilüfer Oral (ILA Singapore Branch – *Director of Studies*) Director, NUS Centre for International Law (CIL) Davinia Aziz (ILA Singapore Branch) Co-Chair, ILA Committee on Alternative Dispute Resolution in International Law
15:05	***OPENING PLENARY* (45 MIN)** **FIRESIDE CHAT WITH PROFESSOR TOMMY KOH** Emeritus Professor of Law, National University of Singapore Ambassador-at-Large, Ministry of Foreign Affairs, Singapore Chairperson, CIL International Advisory Panel **Moderator:** Davinia Aziz (ILA Singapore Branch) Co-Chair, ILA Committee on Alternative Dispute Resolution in International Law **Preparation** The opening plenary is for you to interact with and learn from Professor Koh. You are each invited to prepare one or two questions for Professor Koh, in view of his experience and the Committee's mandate. Please allow the Moderator to guide the process. **Pre-reading** • ***** Biodata of Professor Tommy Koh, https://cil.nus.edu.sg/wp-content/uploads/2023/05/Tommy-Bio-data-updated-as-@-14-Dec-22.pdf • James K. Sebenius and Laurence A. Green. "Tommy Koh: Background and Major Accomplishments of the 'Great Negotiator, 2014'." Harvard Business School Working Paper, No. 14-049, December 2013. (Revised February 2014.) (7 pages)

Time (SGT)	Activity
	• ***** Case study: Alvin Yap and Rebecca Walker, *Land reclamation* • ***** Case study: Davinia Aziz, *Russian troop withdrawals from Estonia, Latvia and Lithuania*
15:50	**BREAK (10 MIN)**
16:00	***SESSION A: PLENARY FACILITATION*‡ (50 MIN)** **ADR TAXONOMY IN THEORY AND PRACTICE** **Facilitation Questions** **[A1]** In working through your own case studies or commenting on others, what was your experience of the taxonomy in terms of allowing you to express the practice of ADR in the real world? Specifically, what analytically significant aspects about how ADR is practised in the real world might the taxonomy miss? [*Non-Committee members could base their A1 interventions on professional experience*.] **[A2]** List the top three criteria from the taxonomy that the Committee should retain and develop in its next phase of work (*i.e.*, the Interim Report phase). Please use the taxonomy criterion number and short description (e.g. "12. Confidentiality regarding existence of proceedings"). **Facilitator:** Wu Ye-Min (ILA Singapore Branch) Member, ILA Committee on Alternative Dispute Resolution in International Law **Reporter:** Jeriel Teo '24 (Invited Observer) Faculty of Law, National University of Singapore **Preparation** The plenary facilitation is for you to provide feedback on the taxonomy that has guided Committee members' case studies thus far. Your feedback will inform the Committee's transition into the Interim Report phase. The Facilitator will request your interventions on each of the facilitation questions. Please allow the Facilitator to guide the process. **Pre-reading** • ***** Taxonomy of alternative dispute resolution mechanisms. *This document was drafted by the Committee Co-Rapporteurs after a Committee-wide consultation from December 2022 to January 2023. As the document headnote states, this taxonomy was intended as "a checklist of criteria to aid consistency in analysing, classifying, and comparing alternative dispute resolution (ADR) mechanisms and specific ADR case studies".* • ***** Conciliation Resources, "Learning from the Indonesia-Aceh peace process: policy brief" (September 2008), https://www.c-r.org/resource/learning-indonesia-aceh-peace-process-policy-brief. *This short document is offered as an example from Southeast Asia of the type of analysis that is of interest to the Committee, highlighting how*

Time (SGT)	Activity
	relationships as well as process and content decisions impacted the path to settlement and subsequent implementation. • Sarah Nouwen, "Peacemaking" (September 7, 2023). University of Cambridge Faculty of Law Research Paper No. 23/2023, forthcoming in Eyal Benvenisti and Dino Kritsiotis (eds), Cambridge History of International Law, Vol. XII, Available at SSRN: https://ssrn.com/abstract=4565091 or http://dx.doi.org/10.2139/ssrn.4565091 (24 pages) • NUS Centre for International Law, Project on *Alternative Dispute Resolution for Disputes Involving States*, especially "Background paper", comparative table at pp. 4-6.
16:50	***SESSION B: SMALL GROUP BREAKOUT DISCUSSIONS*‡ (25 + 15 MIN)** **THE IMPACT OF PARTY AND NEUTRAL RESOURCING IN ADR PRACTICE** **Small Group Breakout Discussion Questions** **[B1]** Are resources committed by parties and neutral(s) toward the ADR process relevant to the outcome of that process? **[B2]** Should the Committee develop the impact of party and neutral resourcing in ADR practice as a line of inquiry in its next phase of work (*i.e.*, the Interim Report phase)? **Co-Facilitator:** Davinia Aziz (ILA Singapore Branch) Co-Chair, ILA Committee on Alternative Dispute Resolution in International Law **Co-Facilitator:** Alvin Yap (ILA Australian Branch) Member, ILA Committee on Alternative Dispute Resolution in International Law **Reporter:** Yang Huiwen JD '24 (Invited Observer) Faculty of Law, National University of Singapore **Preparation** The small group breakout discussion questions are intended to elicit feedback on a possible line of inquiry for the Committee's Interim Report. This possible line of inquiry arose from an initial review of Committee members' case studies. The breakout format of this meeting segment provides an opportunity for Committee members to interact with each other as well as with invited experts. Please allow the Co-Facilitators to guide the process. **Pre-reading** • ***** Taxonomy of alternative dispute resolution mechanisms, 24. Administrative or registry support for the TPF and 25. Party

Time (SGT)	Activity
	representatives. *These taxonomy criteria invite your consideration of the human resources and expertise involved in each case study.* • * Shaun Kang, Seraphina Chiew and Christine Sim, "Report of conference: Centre for International Law Working Conference on Conciliation" (17 – 18 January 2017), https://cil.nus.edu.sg/wp-content/uploads/2017/10/Conciliation-Conference-Report-Final-1.pdf especially at p. 4 ("Professor Reed opined that part of the success of the Timor-Leste/Australia conciliation might have to do with the commitment of resources by the PCA (two senior counsel were put full-time on the case)") • UNCITRAL Secretariat, "Compilation of best practices on investment dispute prevention and mitigation" (March 2023), https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/wg_iii_compilation_on_dispute_prevention_and_summary.pdf
17:40	**NEXT STEPS‡ (10 MIN)** Dr Ohiocheoya Omiunu (ILA British Branch) Co-Rapporteur, ILA Committee on Alternative Dispute Resolution in International Law
17:50	**FAREWELL AND CLOSE (10 MIN)** Professor Gabrielle Marceau (ILA Canadian Branch) Co-Chair, ILA Committee on Alternative Dispute Resolution in International Law Loretta Malintoppi (ILA Singapore Branch) Board Member, CIL Governing Board
18:00	**MEETING ENDS**

‡ *denotes programme elements that will be live-transcribed and recorded for limited and timebound purposes as described on the CIL event page.*

ANNEX C

List of Participants

1. Aikaterini Florou (Hellenic)*
2. Alvin Yap (Australian)* (*meeting co-convenor; co-facilitator*)
3. Amy Porges (American): *Co-Rapporteur**
4. Celine Lange
5. Chiara Tondini
6. Daniel Nicholas Putra Pakpahan
7. Danilo Garrido Alves (British – *alternate*)*
8. Davinia Aziz (Singaporean): *Co-Chair** (*meeting co-convenor; moderator; co-facilitator*)
9. Facundo Pérez Aznar (Argentinian): *Co-Rapporteur**
10. Fatima Malik (Pakistani)[±]
11. Gabrielle Marceau (Swiss): *Co-Chair**
12. Han Hsien Fei
13. John Nagulendran
14. Loretta Malintoppi
15. Martin Doe (Canadian/Nominee of the Chair)*
16. Ndanga Kamau
17. Nicolas Tang
18. Ohiocheoya Omiunu (British): *Co-Rapporteur**
19. Rebecca Walker (British – *alternate*)*
20. Rosemarie Cadogan (British)*
21. Sarala Subramaniam
22. Serena Forlati (Italian)*
23. Serhii Kravtsov
24. Tan Siew Huay
25. Suzanne Damman
26. Zeng Tihao
27. Zhang Yawen
28. Wu Ye-Min (Singaporean)* (*facilitator*)
29. Ying Yu (Swiss)*

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* denotes Members or Alternate Members of the ILA Committee on Alternative Dispute Resolution in International Law

[±] denotes Member-designate of the ILA Committee on Alternative Dispute Resolution in International Law

ANNEX D

List of Committee case studies submitted via Dropbox (as at 16 October 2023)

1. Algiers Mediation (Iran and the United States) – Vahid Rezadoost
2. GCC Crisis – Nakajima Kei
3. Black Sea Grain Initiative – Wu Ye-Min
4. Global Consumer Dispute Resolution System – Alex Chung and Yu Ying
5. Kenya-Somalia Maritime Border Dispute – Ottilia Anna Maunganidze
6. Russian Troop Withdrawals from the Baltic States – Davinia Aziz
7. Tata Ultra Mega – Danilo Alves
8. Transboundary Groundwater (Mexico and the United States) – Guillermo Garcia
9. Belt and Road Initiative – Lamia Moudine and Tiong Teck Wee
10. Arbitration under ICSID Rules and State-State Negotiations – Nudrat Piracha
11. SCC Express Rules – Yuliya Chernykh
12. ICC Mediation Rules – Yuliya Chernykh
13. Timor Sea Conciliation – Martin Doe
14. SPRFMO – Martin Doe
15. Commonwealth Maritime Boundaries Programme – Rosemarie Cadogan
16. Brazil-Canada Aircraft Dispute – Amy Porges
17. Land Reclamation at the Strait of Johor – Alvin Yap and Rebecca Walker
18. MERCOSUR Investment – Facundo Pérez Aznar
19. MERCOSUR Trade – Facundo Pérez Aznar
20. NAFTA USMCA Investment – Facundo Pérez Aznar
21. NAFTA USMCA Trade – Facundo Pérez Aznar
22. Pulp Mills on the River Uruguay – Rebecca Walker
