Statement by Mr. Mario Oyarzábal*

on the Third Report on the Settlement of Disputes to which International Organizations are Parties by August Reinisch, Special Rapporteur (A/CN.4/782, 30 January 2025; A/CN.4/782/Add.1, June 2025)

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Thank you, Chair, and good morning to all.

At the outset, and echoing my remarks from the last few years, I wish to commend and express my appreciation to Special Rapporteur (SR) Reinisch for his remarkable and comprehensive work on the topic. Once again, the Report before us is meticulously researched and clearly presented, incorporating the relevant normative, practical, and scholarly developments in the field. Building on this strong foundation, I would like to offer a number of substantive observations and suggestions for the consideration of the SR and the Commission.

My statement today will be structured as follows. First, I will offer some general observations on the Third Report of the SR and briefly recall the process that we are now bringing to a close, highlighting the central issue that in my view we have addressed during our work, and the contribution the Commission can make in that regard. Second, I will comment on the draft guidelines as proposed by the SR. Third, I will respectfully suggest an alternative structure that, in my humble view, would better capture and address the legal tension at the heart of our work on this topic: immunities of international organizations and access to justice for private parties. Finally, I will offer some concluding remarks.

As we all recall, the Commission's work on this issue began with a syllabus proposed by Sir Michael Wood, which was later developed into an actual topic at the start of our mandate, during the 74th Session, under SR Reinisch. What was initially conceived as a more limited syllabus — focused primarily on international disputes — has since evolved considerably, an evolution that was both necessary and well-founded.

Already in our first discussions, and as has been consistently reiterated in this room, there was broad agreement within the Commission that the scope of our work needed to extend beyond disputes between States and international organizations, as well as between international organizations themselves, to also cover disputes involving private parties. This view has been supported by States and international organizations alike, on the basis that disputes between

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States and IOs, or among IOs, are relatively rare, whereas disputes between international organizations and private parties are far more common.

More importantly, disputes involving private parties typically bring into tension two well-established norms of international law: on the one hand, the immunity of international organizations, essential for their functioning; and on the other, the right of access to justice for private parties who may have claims against those organizations. States at the Sixth Committee have openly invited the Commission to address this issue.[1]

In my view, the main contribution of the Commission on this topic lies precisely in addressing this tension, while stressing from the outset that our work must aim to give effect to both sides of this equation.

The Third Report of the SR, and the draft guidelines it proposes, are intended to engage directly with this issue. However, the time has come to deliver on this objective, and in their current form, I submit that the proposed guidelines do not yet achieve that.

Having referred to the importance of the topic under discussion today, I would like to turn to some specific comments on the suggested guidelines.

With regard to **draft guideline 7**, I agree with the SR's approach of maintaining the focus on the parties to the controversy as the relevant criterion for distinguishing between the disputes addressed in Parts 2 and 3 of the Commission's Report. This approach is consistent with the Commission's adoption of draft guideline 3 during its 75th Session,[2] which was welcomed by several delegations in the Sixth Committee,[3] and it represents a necessary step toward covering the full scope of disputes encompassed by the topic, following the deletion of the word "international" from its title in 2023.[4]

That said, I think it is important not to lose sight of why a classification of disputes is needed in the first place. As I have noted on a previous occasion, classification within the guidelines should not be an end in itself, but a means to adopt guidelines that address the specific characteristics of each type of dispute. And yet, some of the provisions following draft guideline 7 are virtually identical to their counterparts in Part 2. This might be defensible if no relevant differences existed between disputes covered in each Part; but in that case, I would struggle to see the purpose of dividing the guidelines at all.

[1] Topical summary of the discussion held in the Sixth Committee of the General Assembly during its eightieth session, UN Doc A/CN.4/788 (11 February 2026), para. 79.
[2] Report of the International Law Commission on the work of its seventy-fifth session (2024), UN Doc A/79/10, para. 63, Guideline 3.
[3] Topical summary of the discussion held in the Sixth Committee of the General Assembly during its seventy-ninth session, UN Doc A/CN.4/778 (3 February 2025), para. 9.
[4] Report of the International Law Commission on the work of its seventy-fourth session (2023), UN Doc A/78/10, para. 46.

In my view, the classification based on the parties to the dispute is valuable precisely because it distinguishes disputes that present characteristics unique to them. Disputes between international organizations and private parties raise access to justice challenges that are specific to that relationship, and only guidelines that directly address those challenges can justify the classification adopted in this Report. In what follows, I will try to illustrate why the suggested guidelines fall short in that regard, before turning, in the third part of my statement, to some concrete proposals for improvement.

Let me turn to **draft guideline 8**, which addresses the means of settling disputes between international organizations and private parties. Its wording — identical to that of draft guideline 4 — is grounded in the principle of "free choice" of means, which was broadly supported by delegations at the Sixth Committee when reviewing Part 2 of the Report.[5] I do not question that support, but it was expressed in the context of a very different set of disputes. "Free choice" of means is only truly meaningful where both parties to the dispute stand on equal footing. When a degree of power asymmetry exists, what formally appears as "free choice" can in practice operate to the advantage of the stronger party, while effectively foreclosing the weaker party's access to justice. And that, I would argue, is precisely the situation we face in the disputes covered in Part 3.

Let me briefly illustrate this point. In the adjudicative arena, the general rule is that private parties do not have access to judicial settlement, as IOs enjoy jurisdictional immunity before domestic courts.[6] Since most disputes between IOs and private parties arise under domestic law, jurisdictional immunity bars private parties from accessing the courts best placed to apply the relevant legal framework—and it does so asymmetrically, since immunity does not prevent IOs from appearing before those same courts as claimants.[7] As for arbitration, while widely used for resolving international disputes,[8] it remains costly and complex, making it a realistic option only for high-profile disputes. It is difficult to conceive arbitration as a suitable means

[5] Third Report on the settlement of disputes to which international organizations are parties by August Reinisch, Special Rapporteur, para. 5 [hereinafter, "SR's Third Report"]. Examples in the SR's Third Report include: A/C.6/79/SR.25, *Denmark* (on behalf of the Nordic countries: Denmark, Finland, Iceland, Norway and Sweden), para. 90 ("[The Nordic Countries] noted with appreciation that the draft guideline did not give priority to any specific means of dispute settlement"); A/C.6/79/SR.26, *Romania*, para. 16 ("Romania particularly welcomed the fact that draft guideline 4 […] reflected […] that there was no hierarchy among the peaceful means of dispute settlement contained in the Charter of the United Nations"); A/C.6/79/SR.26, *Philippines*, para. 106 ("In that draft guideline, the Commission recommended the settlement of disputes between international organizations or between international organizations and States by any means of peaceful dispute settlement referred to in draft guideline 2, subparagraph (c), which in turn encompassed the means of dispute settlement contained in Article 33 of the Charter of the United Nations, as reaffirmed by the Manila Declaration on the Peaceful Settlement of International Disputes, it being made clear that the recommendation did not prioritize any specific means of dispute settlement."); A/C.6/79/SR.27, **Greece**, para. 156 ("Greece welcomed the fact that the Commission had chosen a formulation that was not purely descriptive and cautioned against any implication that a hierarchy existed among the various means of dispute settlement").

[6] SR's Third Report, para. 113.

[7] *Ibid*., para. 110.

[8] Memorandum of the Secretariat on the Settlement of Disputes to which International Organizations are Parties, responses to question 2 from the Permanent Court of Arbitration, the United Nations Conference on Trade and Development, the United Nations Development Programme, the United Nations Office for Project Services, the United Nations Office of Legal Affairs, the World Food Programme, the World Health Organization, and the World Trade Organization [hereinafter, "Memorandum of the Secretariat"].

for settling most labor or minor commercial disputes, and several IOs have themselves expressed reservations in this regard.[9]

The power asymmetry, though less pronounced, also extends to amicable means of dispute settlement. Unlike disputes between IOs and States — where mediators and conciliators are unrelated third parties — in disputes with private parties, mediation and conciliation typically take place within institutions created by the international organization itself.[10] The same concern arises with internal claims commissions and review boards: not only are these organs established by one of the parties — the stronger party — to the dispute, but their members are in some cases appointed by that same party.[11]

In summary, the distinction between Part 2 and 3 loses much of its purpose if the guidelines on means of dispute settlement remain identical. As explained, private parties face both legal and financial barriers that limit their access to adjudicative means, while amicable means are often administered by institutions connected to the IO that is a party to the dispute. These are not peripheral concerns. They go to the heart of what makes the disputes in Part 3 distinct, and they call for guidelines that reflect that distinction. I will return to this point with some concrete drafting proposals later.

Turning to **draft guideline 9** on the immunity from jurisdiction of international organizations, I would raise two main issues. Currently, the guideline seems to include two limitations to the well-established legally binding immunity of IOs.

First and foremost, the guideline states that "[t]he jurisdictional immunity of international organizations … *should* be respected". The use of the term "should" instead of "shall" in this context is problematic as it weakens the normativity of IOs' jurisdictional immunity as provided for in constituent instruments and host agreements, something which is undisputed and extensively documented by the SR in his Report.[12] This issue was also raised by several members, including myself in last year's debate,[13] so I will limit myself to requesting that the word used be "shall".

[9] Memorandum of the Secretariat, responses to question 6 from the Common Fund for Commodities, the Food and Agriculture Organization of the United Nations, the Permanent Court of Arbitration, the United Nations Conference on Trade and Development, the United Nations Office for Project Services, the United Nations Office of Legal Affairs, and the World Health Organization.
[10] SR's Third Report, paras. 33-36.
[11] *Ibid.*, para. 65.
[12] *Ibid.*, para. 121. "[M]ost of the constituent instruments provide for "functional" [privileges and] immunities which, in regard to the immunity from the jurisdiction of national courts, are often made more precise in multilateral privileges and immunities treaties and bilateral agreements as "immunity from every form of legal process." *This is largely understood as providing for absolute jurisdictional immunity* as well as immunity from enforcement measures. "Immunity from every form of legal process" thus deprives national courts of the power to hear and ultimately settle disputes between private parties and international organizations. Only the instruments governing development banks generally do not provide for jurisdictional immunity. Rather, they stipulate where national court proceedings can be instituted" (emphasis added).
[13] Report of the International Law Commission on the work of its Seventy-sixth Session (2025), UN Doc. A/80/10, para. 370.

A second issue that I consider requires further clarification is the inclusion of the construct "serving the purpose of ensuring their independent functioning". Limiting the immunity of IOs to ensuring their independent functioning is an objective that I could, in principle, adhere to. However, as I previously suggested, the quest should be how to guarantee the right of access to justice of private parties without affecting the immunities of international organizations. Not to define or re-define the law of immunities of IOs. As the SR himself acknowledges, we should resolve that tension by reading this draft guideline together with the following guidelines,[14] or, as I will propose in the third part of my statement, through a reformulation of the content of the current draft guideline.

Turning to **draft guideline 10** on access to justice, and in light of the considerations just outlined, I am of the view that this guideline lacks a normative statement that is essential if the Commission is to provide guidance on how to navigate the tension between the IOs' jurisdictional immunities and the individuals' right of access to justice. In particular, there is a central point that the guideline in its current formulation neither reflects nor affirms: under international law, the right of access to justice of private parties shall be respected. I consider that this should be explicitly stated in the text of the guideline. I will return, in the third part of my statement, to some concrete proposals on how the guideline might be restructured in order to achieve this.

Before that, and with respect to the current drafting, let me recall, in more general terms, the difficulty of formulating a single, overarching guideline that purports to address all disputes involving private parties. For example, as regards arbitration, it could be argued that an explicit reference to this means of dispute settlement makes sense for commercial disputes between an international organization and a private corporation. However, such a reference seems ill-suited for situations involving human rights violations affecting local communities, or for certain categories of labor disputes. In the latter context, a generic reference to "arbitration, judicial settlement or other reasonable alternative means of dispute settlement" is inadequate if it fails to account for administrative tribunals, which in practice have become a central mechanism for resolving disputes involving the staff of international organizations.

Furthermore, concerning the explicit mention of arbitration, I recall that several delegations in the Sixth Committee questioned the appropriateness of singling out arbitration and judicial

[14] As the SR expresses in his Third Report:

> 217. It is submitted that the far-reaching jurisdictional and enforcement immunity enjoyed by international organizations serves a legitimate purpose and that eroding such immunity would not be a healthy development. *Thus, it is suggested that their jurisdictional immunity should be respected as a matter of principle*.
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> 218. Nevertheless, *a proper balance* between the interest of organizations in securing their independent functioning through jurisdictional immunity and the interest of private parties in access to effective remedies *must be struck*. Therefore, *the suggested guideline endorsing respect of jurisdictional immunity of international organizations must be read in conjunction with the following guidelines* calling for access to justice and the availability of dispute settlement mechanisms conforming to rule of law and human rights requirements (emphasis added).

settlement in draft guideline 5,[15] precisely because it could be understood as suggesting a preference for those means over others. That critique, in my view, carries even greater weight in relation to the present draft guideline, which concerns disputes with private parties. In this regard, I would reiterate the concern already expressed with respect to the Second Report about the advisability of emphasizing arbitration, particularly given its costs. This concern is even more pressing here, since many of the "private parties" covered by this draft guideline may be in a weaker financial position than States to bear the costs of arbitration. This is especially true for workers, for local communities affected by development projects, or for individuals affected by peacekeeping operations. Finally, it should also not be overlooked that a number of States and international organizations themselves have expressed serious reservations about the suitability of arbitration.[16]

Turning now to **draft guideline 11**, I broadly agree with the formulation proposed by the SR. My only — yet important — comment concerns an omission in the current draft. The guideline lists the independence and impartiality of adjudicators and due process, but omits accessibility. In essence, accessibility requires that access to justice be not merely formal but effective in practice, taking into account the situation of individuals who may be de facto prevented from asserting their rights because of economic, linguistic, cultural, geographic or other structural barriers. This is a concept that has progressively consolidated as a recognized component of the right of access to justice in international human rights law in the jurisprudence of the Human Rights Committee under Article 14 of the ICCPR; in the case law of the European Court of Human Rights under Article 6(1) on the right to a fair trial of the European Convention on Human Rights; and in the case law of the Inter-American Court of Human Rights, grounded primarily in Article 8 on judicial guarantees and Article 25 on judicial protection of the American Convention.[17] I submit that accessibility should be expressly included in the

[15] SR's Third Report, para. 6. Examples in the SR's Third Report include: A/C.6/79/SR.25, *Denmark* (on behalf of the Nordic countries: Denmark, Finland, Iceland, Norway and Sweden), para. 91 ("highlighting arbitration and judicial settlement risked giving the impression that those means were preferable to others, which was not necessarily the case."); A/C.6/79/SR.26, *China*, para. 49 ("[…] singling out particular means of dispute settlement could be seen as encouraging organizations to choose them."); A/C.6/79/SR.27, *Argentina*, para. 148 ("However, it questioned the appropriateness of specifically mentioning judicial settlement and arbitration in draft guideline 5 […], given that, as no other means of dispute settlement were singled out, the text could be misinterpreted as recommending the promotion of those means specifically, at the expense of others."); A/C.6/79/SR.27, *Bulgaria*, para. 168 ("Bulgaria recommended that caution be exercised in singling out arbitration and judicial settlement at the expense of other means of settlement, such as negotiation and mediation, and was in favor of further reflection on those draft guidelines."); A/C.6/79/SR.27, *Colombia*, para. 100 ("Again, her delegation could not see how that draft guideline was substantiated, and it did not necessarily concur with the Special Rapporteur's stated intention to focus on arbitration and judicial settlement over and above other available means. If the purpose was not to focus on those means, it was unclear why a list of terms used was set out in draft guideline 2, only to be set aside in draft guideline 5.").

[16] This point was raised by Austria in the Secretariat's Memorandum, which stated that "[A]rbitration between private parties and international organizations hardly ever occurs due to the high costs involved" (Memorandum of the Secretariat, p. 21). Some IOs seem to have the same view. The UNCTAD argued that "arbitration is very costly and time consuming" and UNOPS that they take actions to "avoid the costs and other challenges associated with arbitration…" (Memorandum of the Secretariat, p. 79).

[17] In its General Comment No. 32 (2007) on Article 14 on the Right to equality before courts and tribunals and to a fair trial, the Human Rights Committee stated that "[A]ccess to administration of justice must *effectively* be guaranteed in all such cases to ensure that no individual is deprived, in procedural terms, of his/her right to claim justice" (at para. 9, emphasis added). In Äärelä and Näkkäläjärvi v. Finland, the Committee had concluded that

guideline, since this would reflect its status as a recognized component of the right of access to justice, applicable across all categories of dispute covered by the guideline.

Currently, the fact that the draft guideline treats all categories of disputes uniformly risks obscuring the heightened relevance of accessibility in disputes where the human rights of individuals or local communities are at stake. In such cases — for example, disputes arising from the conduct of peacekeeping operations, or from development projects affecting indigenous or local communities — the practical ability of affected parties to access dispute settlement mechanisms becomes an essential component of their right of access to justice. I also believe that these issues could and should be explicitly addressed in the commentary.

Finally, I will respectfully propose some alternative formulations and additions that I consider essential so that this set of draft guidelines delivers on clarifying how to better address the tension between IOs' immunities and private parties' human right of access to justice.

Draft guideline 7 correctly delimits the scope of Part 3 by maintaining the *ratione personae* criterion provisionally adopted in draft guideline 3. My only suggestion in this regard concerns not the guideline itself, but its commentary. Rather than focusing on why this method of categorization is the least problematic — as the SR's Third Report does in detail — the commentary should emphasize the substantive differences between the disputes covered in Parts 2 and 3 that actually justify their treatment in separate sections: namely, the power asymmetry between the parties and the particular challenges to access to justice that private parties face in this context.

> "A rigid duty under law to award costs to a winning party may have a deterrent effect on the ability of persons who allege their rights under the Covenant have been violated to pursue a remedy before the courts. In the particular case, the Committee notes that the authors were private individuals bringing a case alleging breaches of their rights under article 27 of the Covenant. In the circumstances, the Committee considers that the imposition by the Court of Appeal of substantial costs award, without the discretion to consider its implications for the particular authors, or its effect on access to court of other similarly situated claimants, constitutes a violation of the authors' rights under article 14, paragraph 1, in conjunction with article 2 of the Covenant". (Communication No. 779/1997, 24 October 2001 CCPR/C/73/D/779/1997).

The European Court of Human Rights (ECtHR) has a well-developed jurisprudence on accessibility as an autonomous requirement of the right of access to a court under Article 6(1) of the European Convention. In Waite and Kennedy v. Germany (1999), concerning the immunity of the European Space Agency before German courts, the Court held that a material factor to consider in assessing whether the grant of immunity to an international organization is compatible with Article 6 is the availability of "reasonable alternative means to protect effectively their rights under the Convention" (at para. 68). The IACtHR has also developed a particularly rich body of jurisprudence on this matter. In Velásquez Rodríguez v. Honduras (Merits, 29 July 1988, paras. 63–68, in particular 66), the Court held that remedies must be "adequate" and "effective". In Cantos v. Argentina (Merits, Reparations, and Costs, Judgment, 28 November 2002, paras. 54–56), the Court clarified that excessive court fees constitute a de facto barrier to access to justice incompatible with Articles 8(1) and 25 of the ACHR. Finally, in Saramaka People v. Suriname, (28 November 2007, paras. 177–179), and Kichwa Indigenous People of Sarayaku v. Ecuador, (27 June 2012, paras. 261–265), the Court held that remedies must be culturally adequate and take into consideration the economic, social and cultural particularities of affected communities if they are to be effective in practice. In Kichwa, the Court referred to "effective protection that allows for the distinct characteristics of indigenous peoples, their economic and social situation, as well as their special vulnerability, customary law, values, traditions and customs" (at para 264).

Following the categorization of the disputes and considering the difficulties faced by private parties in selecting the means for settling their disputes with IOs, I do not see the value of a guideline — such as draft guideline 8 — based on the principle of "free choice" of means, replicating the wording already incorporated in Part 2.

My suggestion, on the contrary, would be to move directly to the core issues in disputes under Part 3: jurisdictional immunity and access to justice. To that end, I would propose a pair of guidelines that leave no doubt as to the obligations to respect the jurisdictional immunity of IOs on the one hand, and to guarantee the private parties' right of access to justice on the other. In that vein, draft guideline 8 could read:

> *"8. Jurisdictional immunity of international organizations.*
> *The jurisdictional immunity of international organizations shall be respected".*

In turn, draft guideline 9 could read:

> *"9. Access to justice.*
> *The right of access to justice of private parties shall be respected, including by providing dispute settlement means appropriate to the nature of the dispute"*

I believe that this wording brings much-needed clarity to the tension underlying disputes of this kind. On the one hand, the use of "shall" instead of "should" in draft guideline 8 leaves no doubt as to the legal obligation to respect the jurisdictional immunity of international organizations. On the other hand, the following guideline 9 establishes the corresponding legally binding obligation to respect the human right of access to justice of private parties. And I would like to emphasize the word obligation. While in cases where courts have to deal with instruments providing absolute immunity without ensuring private parties' access to justice, discussion may persist as to whether exceptions to jurisdictional immunity exist, or whether the availability of alternative means is a condition for the enjoyment of those immunities, this pair of guidelines reflects the current stage of development of international law: one in which no doubt exists as to the existence of IOs' immunities, nor as to the corresponding obligation to guarantee private parties' access to justice.

I would keep references to specific means of dispute settlement for the commentary, which would allow us to better capture the nuances and specificities of different disputes that I have mentioned before.

In addition to this, I would like to respectfully propose two additional guidelines that in my view would further help in operationalizing draft guidelines 8 and 9 as proposed above.
They would read as follows:

> *"Where existing host State agreements or other relevant instruments grant jurisdictional immunity to an international organization without requiring appropriate alternative means for the settlement of disputes with private parties, the international*

organization should ensure that such means are made available in order to guarantee the access to justice of those private parties."

and

"Future host State agreements and other relevant instruments should make the jurisdictional immunity of international organizations conditional upon the availability of appropriate means of dispute settlement guaranteeing private parties' access to justice."

These provisions pursue two main objectives. The first one seeks to address situations in which existing instruments grant absolute immunity to international organizations without ensuring the access to justice of private parties. The second one aims to prevent future instruments from reproducing this pattern, thereby safeguarding both the effective application of the immunities of international organizations and the access to justice of private parties. The legislation of Austria and Switzerland constitutes good examples of this approach, as reflected in the Secretariat's Memorandum.[18]

The use of "should" rather than "shall" in both guidelines reflects a deliberate drafting choice. While international law may not currently impose upon international organizations a general obligation to provide for dispute settlement mechanisms in the absence of a specific treaty requirement to that effect, these guidelines should give normative expression to a direction in which international law is developing, and to encourage international organizations and States to act accordingly — both as a means of guaranteeing access to justice for private parties, and as a means of preserving the immunity of international organizations from being set aside by domestic courts in the absence of such mechanisms. In this sense, the two guidelines serve a dual protective purpose: they protect private parties by promoting access to effective remedies, and they protect international organizations by reducing the risk that domestic courts will decline to give effect to their immunity on the ground that no alternative avenue of redress exists.

Turning finally to draft guideline 11 — which would require renumbering if the two additional guidelines proposed above are accepted — I suggest the following redraft:

"11. Dispute settlement and procedural rule of law as well as human rights requirements
The means of adjudicatory dispute settlement made available shall conform to procedural rule of law as well as human rights requirements, including the independence and impartiality of adjudicators, due process and accessibility."

Mr. Chair,

Allow me, before closing, to express once again my sincere gratitude to Mr. Reinisch for his excellent work on this Third Report. I look forward to hearing from colleagues on these and other important issues raised by the Report.

[18] Memorandum of the Secretariat, pp. 13-14, 21, 24, 27, 37-38.

Thank you, Chair.