



**UN General Assembly – Agenda item 79
Report of the International Law Commission on the work of its seventy-third and
seventy-fourth sessions**

**Statement by the Federal Republic of Germany
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As regards the third cluster of ILC topics, Germany would like to focus its comments on the topic of “Subsidiary means for the determination of rules of international law”.

First of all, we would like to thank the Special Rapporteur Charles Jalloh for his rich and thoughtful first report on the topic. The commission has chosen to focus once more on the all-important norm of Art 38 of the ICJ Statute. Germany welcomes the ILC’s work on the sources of international law. We believe that in a world of ever-growing inter-connectedness and an increasing amount of norms of international law it is indeed of utmost importance to achieve the highest possible consensus as to the fundamental norms of international law such as Art 38 of the ICJ Statute. Nonetheless, Germany wishes to stress that a cautious approach seems advisable when discussing issues related to such fundamental aspects of our international legal system as the rules on determining the sources of international law.

Allow me to turn to some more specific aspects of the draft conclusions provisionally adopted by the Commission during its last session.

Firstly, looking at draft conclusion 2, it is not yet entirely clear to Germany what the exact definition of a “court” or a “tribunal” would be in the view of the Commission. We also wonder where exactly the difference between “judicial decisions” in Art 38 of the Statute and “decisions of a court or tribunal” in draft conclusion 2 would lie. In Germany’s

opinion, the Commission should seek to retain the exact wording of the ICJ Statute wherever possible in order to avoid misunderstandings in what the applicable law might be and require. If indeed a deviation from the text of the Statute is required, the reasons for such deviation should be laid out properly in the commentaries.

Secondly, Germany is in general open to the idea that the ICJ Statute does not contain an exhaustive list of subsidiary means for the determination of rules of international law and that more subsidiary means exist than decisions by courts and teachings. However, Germany wishes to stress that the work of the ILC in this regard must be firmly based on the practice of States. Germany is therefore looking forward to future reports of the Special Rapporteur and will pay particular attention to this aspect.

Thirdly, Germany believes the introduction of draft conclusion 3 to be very apt. Often, a myriad of subsidiary means for the determination of a rule of international law will be available. It is therefore important to offer criteria on how to weigh different means against one another. Germany believes that the commentary could even be expanded on draft conclusion 3 in order to provide better illustrations on the different criteria. Also, in the commentaries it could be explained how the different criteria relate to the various means for the determination of rules of international law. Certain criteria might be more useful when weighing court decisions, others might be more fitting for teachings. In particular, Germany believes that the quality of the legal reasoning offered by a Court or a certain academic should be given special weight. Regarding the exact position of draft conclusion 3, Germany would like to point out that it might be more appropriate to place it after the definitions of the various forms of subsidiary means. It seems more logical to first define what the means for the determination of rules of international law are and only then to elaborate on the criteria for weighing the different means.

Germany once more wishes to thank the special rapporteur and the Commission for its work on this important issue of international law.

Thank you.