



PERMANENT MISSION OF ROMANIA
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(74th Session, A/78/10)**

Cluster III

Chapter VII – Subsidiary means for the determination of rules of international law

Chapter IX – Succession of States in respect of State responsibility

**Statement delivered by Ms. Alina Orosan
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New York, 1 November 2023

Mr. President,

Chapter VII: Subsidiary means for the determination of rules of international law

1. Romania would like to thank Special Rapporteur, Mr. Charles Chernor Jalloh, for his first report and for his hard work and dedication on the subject. We also commend the work of the Commission in preparing the structure and content of the chapter on this issue.
2. We are satisfied with the general direction of the discussion, aimed at clarifying various aspects of the subsidiary means for the determination of rules of international law. We also salute the fact that the analysis is not limited to decision of courts and tribunals and to teachings, but also looks into other possible means which could assist in determining the rules of international law.
3. In what regards the first conclusion, Romania would like to commend the Commission for establishing the role of Article 38, paragraph (1) of the Statute of the International Court of Justice as a central denominator of the analysis, according to paragraph (4) of the Commentary to the 1st Conclusion.
4. Moreover, we welcome the clear expression, *ab initio*, in paragraph (6) of the Commentary to the first conclusion, of the nature of subsidiary means, which are not sources of law *per se*, but „are used to assist or to aid in determining whether or not rules of international law exist, and if so, the content of such rules referred to in Article 38, paragraph (1), letter (d) of the Statute of the International Court of Justice.”
5. It is also important to clarify that the study focuses on means that assist in *determining* a rule of international law (the existence and content of it) and not in *interpreting* a rule of international law (the existence of which has been determined and also its content). From this perspective more the analysis in para. 11 still needs further refinement and pondering.
6. Regarding the second conclusion, by which the Commission sets out the categories of subsidiary means, as mentioned, Romania salutes the determination that there is not an exhaustive list of such means and encourages the ILC in further addressing the works of expert bodies, resolutions and decisions of international organizations in order to clarify their role as subsidiary means for the determination of rules of international law.
7. At the same time, the particular relevance of the decisions of the International Court of Justice, on questions of general international law, should be emphasized, without creating a hierarchy in the sense of diminishing the relevance of the decisions of other international Courts.

8. However, a hierarchy between the decisions of international and national Courts could be useful, given the intrinsic differences of the international, respectively national law systems. Romania notes that these observations were outlined in the proposed form of the fourth draft conclusion which overlapped and furtherly developed the second draft conclusion.
9. Romania would also like to commend the inclusion of advisory opinions and orders resulting from non-contentious procedures in the *lato sensu* judicial decisions of international courts and tribunals. While these do not bear executorial character, they still bear the authoritative character of the body that issued them.
10. In what regards the third conclusion, which sets out the criteria for assessing the weight of subsidiary means for the determination of rules of international law, we agree, according to paragraph (2) of the Commentary of the third conclusion, „*that reference should be made to various factors when assessing the weight of subsidiary means as part of the determination of rules of international law.*” Thus, the pertinence of a subsidiary mean for the determination of rules of international law should be established against a mix assessment of all or some of those factors. At the same time, Romania welcomes the use of the term „should” in the chapeau of the third conclusion, as recourse to these criteria should not be mandatory, but desirable, as mentioned in paragraph (4) of the Commentary of the third conclusion.
11. In fine, Romania wishes reiterate its appreciation for the work done so far by the Commission on this topic and looks further to its future products on the topic.

Chapter IX: Succession of States in respect of State responsibility

1. In what concerns the topic *Succession of States in respect of State responsibility*, Romania recalls its critical position in what concerns its inclusion in the active programme of the ILC and, thus, favours the conclusion of the discussions on the basis of a final report.

I thank you!