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UNGA 78 United States Statement
Report of the ILC on the Work of its 74th Session: Cluster 3
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Thank you, Chair. The United States is pleased to address both topics in this cluster, subsidiary means for determining rules of international law and succession of States in respect of State responsibility.

Subsidiary Means

Turning first to subsidiary means for the determination of rules of international law, we'd like to reiterate our support for this important project and thank Special Rapporteur Charles Jalloh for this extensively researched and thorough first report. The United States was pleased to provide information to the Commission earlier this year on the topic.

At the outset, we agree that it will be important to study the function of subsidiary means early in the Commission's examination of this topic, and we look forward to the Special Rapporteur's second report.

With respect to the possibility of clarifying or adding additional subsidiary means, beyond those which are identified in Article 38, paragraph 1(d) of the Statute of the International Court of Justice, we appreciate the Commission's caution and look forward to seeing how this issue develops. In this respect, we note that many of the other proposed sources of subsidiary means described in the report are expert bodies that are typically themselves comprised of publicists. We also urge caution with respect to the use of resolutions or decisions of international organizations as subsidiary means given the high number of such resolutions, most of which are non-binding, and which are often adopted with minimal debate and through consensus procedures. For these and other reasons, we also wonder whether the proposed criteria for assessing the weight of subsidiary means are adequately developed with respect to these or other potential additional subsidiary means.

We also support those Members who identified the cogency and quality of the reasoning as an important factor in assessing the weight of subsidiary means. For example, when assigning weight to the decisions of courts and tribunals as addressed in draft conclusion 4, it is important to consider whether the decision is well-reasoned. A decision that provides evidence of any

conclusions concerning the existence and content of a rule of international law, including references to the extensive state practice and *opinio juris* upon which it relies, should be accorded more weight than one that is simply declaratory. In addition, while the commentary does not suggest any hierarchy among the criteria for assessing the weight of subsidiary means, the reception by States should be of prime importance, together with the quality of the reasoning.

We look forward to future work on this important topic.

Succession of States in respect of State Responsibility

Turning to the second topic for this cluster, that of succession of States in respect of State responsibility, we take note of the establishment of a Working Group on the topic and congratulate Mr. Reinisch on his appointment as Chair.

The United States welcomes the incremental approach of the Commission to this topic. In particular, we agree with the decision to continue consideration of the issue but not proceed with the appointment of a new Special Rapporteur while the Working Group takes more time to reflect on the best way forward. We look forward to further engaging on this topic when it is ripe to do so.

Thank you.