



**Statement by the Republic of Türkiye at the Sixth Committee  
International Law Commission Report  
(Cluster III)**

Mr/Madam Chair,

I would like to thank the Special Rapporteur Mr. Charles Chernor Jalloh for his comprehensive first report on the “**subsidiary means for the determination of rules of international law**”

I would also extend our thanks to the Secretariat for the preparation of the memorandum in response to the request by the Commission.

The memorandum covers a review of the Commission’s work since 1949 with a view to identifying the aspects most relevant to the use of judicial decisions and the teachings of the most highly qualified publicists of the various nations.

As such, the memorandum includes useful elements in the previous work of the International Law Commission that could be particularly relevant to the topic.

As pointed out in the first report of the Special Rapporteur, my delegation has expressed its support for the inclusion of the topic in the work programme from the very beginning.

The importance of the topic for both States and practitioners of international law as well as its close connection with various topics that were discussed or are being discussed by the Commission compels the work moving forward, rather rapidly.

We thus commend that the work, which has recently commenced, produced such extensive materials at this early stage of the process.

The ILC has already undertaken studies regarding various aspects of Article 38 of the Statute of the International Court of Justice, including the ongoing work on the general principles of law that the delegations had the opportunity to discuss more in depth during last week's meetings.

Hence, the present topic "subsidiary means for the determination of rules of international law" is not the first occasion on which the Commission has conceptually addressed such materials, namely, judicial decisions and the teachings of the most highly qualified publicists of the various nations.

Although each topic may have its own nuances, the outcome, in our view, should reflect a consistent approach towards common concepts. We therefore welcome that "there was a consensus among the members [of the ILC] on the need, where possible, for consistency with the prior work of the Commission on other topics relating to the sources of international law".

In this context, the memorandum by the Secretariat provides useful information and overview of the previous studies, which could help us move towards a more unified approach.

Mr/Madam Chair,

Turning to the draft conclusions and commentaries, we share the view that unilateral acts should not be addressed within the scope of the current work.

We wish to recall that Article 38, paragraph 1 (d) of the Statute of the International Court of Justice does not refer to international organizations and thus my delegation favours cautious approach regarding the resolutions and decisions of international organizations.

The importance of the need for more diverse sources and references in more languages and from various regions of the world and legal traditions to be used in

the consideration of the topic has been highlighted in the report of the ILC. This is indeed an essential aspect of the current work and requires further reflection.

As to the draft conclusion 3, we believe that the criteria for the assessment of subsidiary means for the determination of rules of law could be strengthened. The subjectivity of the suggested criteria is one of the reasons of the need for further reflection on the matter.

However, in addition to that, the connection of the issue with the fragmentation of international law might also require revisiting the draft conclusion 3, depending on the scope and progress of the upcoming work on the subject matter.

As a preliminary remark, we wish to highlight the following.

As regards subparagraph (b) of draft conclusion 3, which mentions “quality of the reasoning”, we would like to draw attention to the vagueness of the concept which might add more subjectivity to the criteria. In the commentary for the said subparagraph, the Commission itself recognized that “the criterion is subjective”. On the other hand, the commentary also states that “[the criterion] is not necessarily applicable to all subsidiary means” without providing any substantial guiding elements for the applicability. The commentary cited “the quality of the reasoning of a judicial decision” as an example. Aside from the ambiguity of the term “the quality of the reasoning”, its close connection to the fragmentation issue might require further reflection of this criterion.

In so far as the subjectively concerned, the foregoing observation is also valid for “the expertise of those involved” and “reception by States and other entities”, mentioned respectively in subparagraphs (c) and (e) of the same draft conclusion.

The external component for the “reception” was described as “the reaction after the decision is made”. Here we observe two difficulties: First, the external component compels States to give reaction to the decisions. In our view, the absence of a comment or expression of position on any particular decision cannot be construed as endorsement of the content thereof. Moreover, depending on the

scope of the decision and/or the relevance or importance attached to it, the finalization of the reaction process might be prolonged in some instances.

According to the commentary, reaction is made “after the decision”. However whether the word “after” points out an immediate or distant behaviour on the part of States “and other entities” remains vague.

Lastly, we are of the view that clarification of the meaning and exact scope of the term “other entities” in subparagraph (e) would be useful.

Moving to subparagraph (d), although “the level of agreement among those involved” described in that subparagraph could be established, rather easily, in judicial decisions, in light of the dissenting and concurring opinions, determination of the level of agreement “among the scholars” may be subject to variety of potential interpretations.

Finally, the commentary for subparagraph (f) refers to the significance of the mandate conferred on the body that took the decision being assessed. The concept of “mandate” should, in our view, be determined on the basis of the founding instruments of the bodies, rather the interpretation provided by the bodies, through their own judgments, decisions or comments. to their functions under the mandate.

Mr/Madam Chair,

Before concluding, I wish to briefly touch upon the topic “**Succession of States in respect of State responsibility**”.

At the outset, I wish refer to and reiterate our positions in our previous statements on the topic.

My delegation has on previous occasions voiced its concerns and doubts on different elements of the topic, including the question whether it was possible to differentiate between its political and legal aspects, which are largely intertwined.

Check against delivery

The scarcity of available State practice and prevalence of significant differences over the existing ones were among the points raised for the suitability of the subject as draft guidelines.

Türkiye's previously expressed concerns remain relevant today.

In that regard, we are pleased to see that the discussions within the Working Group established during the current session highlighted the shortcomings of the earlier work carried out on the topic.

We also noted the difference of views on the way forward as well as on the approaches to be adopted how to best proceed.

Finally, we expect that the concerns and comments raised by Türkiye and other states during the previous stages of the work will be taken into consideration by the Commission during its future deliberations.

Thank you.