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Permanent Mission
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Sixth Committee

Agenda item 79: Report of the International Law Commission on the work of its seventy-fifth session

Cluster II – Chapters IV (Settlement of disputes to which international organizations are parties) and V (Subsidiary means for the determination of rules of international law)

Statement by

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New York, 25 October 2024

Chairperson,

Let me start with chapter IV, dealing with the topic "**Settlement of disputes to which international organizations are parties**". At the outset, the Austrian delegation wants to congratulate Special Rapporteur August Reinisch on his second report which displays a wealth of practice concerning this topic.

As a host country to numerous international organizations, Austria is particularly interested in the work of the Commission on this topic which is of high practical relevance. Concerning the draft guidelines elaborated at the Commission's 2024 session, Austria wishes to provide the following comments.

In regard to draft guideline 4, we concur with the underlying rationale of the recommendation to settle disputes to which international organizations are parties by those means that may be most appropriate according to the circumstances and the nature of the dispute. However, Austria wonders whether the reference to "good faith and the spirit of cooperation" taken from the Manila declaration is useful in the present context. The Manila declaration applies between States and could, in the present context, be misinterpreted as emphasising too much the free choice of means of dispute settlement. Rather, we would prefer that the choice of the means of dispute settlement be guided by the nature of the dispute, in order to determine whether, for instance, negotiation or adjudication would be more appropriate to be resorted to in a dispute between an international organization and a State. Additionally, the draft guideline should also refer to possible hierarchies established by applicable treaties as mentioned in paragraph 6 of the commentary.

Concerning draft guideline 5, we specifically welcome the reference to arbitration and judicial settlement. Practice shows that most of the disputes involving international organizations are settled through negotiations. In Austria's experience, the availability and practical accessibility of adjudicatory forms of dispute settlement is often very helpful because they are conducive to informally settling disputes.

Austria specifically welcomes draft guideline 6. As a proponent of the rule of law initiative in the UN Security Council as well as coordinator of the Group of Friends of the rule of law, Austria considers that upholding core requirements of the rule of law in the context of dispute settlement is of crucial importance. This was stressed by the Group of Friends on several occasions, in the framework of the Security Council as well as in the 6th Committee of the General Assembly. In this context we note that there was a discussion in the Commission about including an express reference to the term "rule of law" in draft guideline 6. Let me emphasise that Austria would prefer to have such an explicit reference directly in the text and not only in the commentary. Having the rule of law requirements of independence and impartiality as well as due process reflected in the text of draft guideline 6 is important, but in our view not enough.

Chairperson,

Allow me to turn to the topic of "**Subsidiary means for the determination of rules of international law**" and to congratulate Special Rapporteur Charles Jalloh on his substantive second report. In regard to the draft conclusions adopted by the Commission at the present session, Austria wishes to make the following comments.

Austria is not convinced of consequences drawn in draft conclusion 4 from the distinction between decisions of international courts and tribunals and decisions of national courts. We consider that the term "judicial decisions" in Article 38 paragraph 1(d) of the Statute of the International Court of Justice refers to decisions of both international and national courts. Any different weight given to specific decisions should result from the criteria referred to in draft conclusion 3 – although we have already voiced concern about the specific ranking of these criteria last year. We do not concur, however, with giving decisions of national courts *a priori* a lower rank by not

recognising them as subsidiary means in their own right, but rather stating that such decisions “may be used, in certain circumstances, as a subsidiary means” only.

We equally want to voice our reservations about the proposed formulation of draft conclusion 5. We do not doubt that teachings are also “a subsidiary means for the determination of the existence and content of rules of international law”. We question, however, whether the reference to “coinciding views of persons with competence” from various regions as well as the additional explanatory statement that “gender and linguistic diversity” should be taken into account when assessing the representativeness of teachings, systematically fits into this conclusion. These important criteria should be mentioned in draft conclusion 3, dealing with the question of what weight should be given to subsidiary means for the determination of rules of international law.

While agreeing with the underlying reasoning of draft conclusion 7, addressing the absence of legally binding precedent in international law as a rule, Austria notes that this consideration – the lack of *stare decisis* – is not directly reflected in the text of draft conclusion 7. It starts rather with the opposite that despite the lack of binding precedent, decisions “may be followed” in certain circumstances. In Austria’s view, however, such freedom to follow earlier decisions should not be generally assumed where they addressed “the same or similar issues” but primarily depend on the persuasiveness of the arguments found therein. We believe it would be more accurate and clearer to have two separate paragraphs: firstly, holding that there is no general rule of binding precedent, and secondly setting the criteria under which earlier decisions may be followed.

Finally, regarding draft conclusion 8, Austria wonders whether the additional three criteria for assessing the weight of individual decisions are necessary. It seems that the extent to which a decision is part of a body of concurring decisions overlaps with draft conclusion 3(d) (“the level of agreement among those involved“) and the specific

competence under draft conclusion 8 overlaps with draft conclusion 3(f) (“the mandate conferred on the body“). Given that the main criterion should be the quality of the reasoning, which is already contained in draft conclusion 3(b), it is questionable whether the specific additional criteria are indeed needed.