



79th session of the United Nations General Assembly Sixth Committee: Agenda item 79, Report of the ILC on the work of its 75th Session (Cluster 2)

24–29 October 2024

Statement by Australian

Permanent Mission of Australia to the United Nations

Thank you Chair

I have the honour to deliver this statement today on behalf of Australia.

[Settlement of disputes to which International Organisations are parties]

Australia would like to make some remarks on the topic of settlement of disputes to which international organizations are parties.

Australia thanks the Special Rapporteur, Mr. August Reinisch, and the Commission for the progress made on this important topic. In particular, we welcome the Special Rapporteur's second report and its focus on the settlement of international disputes, including a valuable analysis of existing practice as well as relevant policy issues.

As the work of international organisations becomes increasingly complex, the Commission's consideration of this topic is particularly timely.

Australia strongly supports the international rules-based order and is committed to the effective operation of international organisations. This necessarily involves ensuring that there are effective mechanisms in place to facilitate the management and resolution of disputes if and when they arise, both between international organisations as well as between international organisations and States.

We welcome the development of the Commission's draft guidelines and commentaries, as a source of clarification of relevant standards and best practices for States and international organisations to rely upon in this regard.



Australia notes the vital importance of adjudicatory dispute settlement processes conforming to rule of law requirements. As set out in proposed Guideline 6, this includes measures to ensure the independence and impartiality of adjudicators and to facilitate due process. The administration of justice relies on international organisations and States adhering to these core requirements and we are pleased to see this included in the draft guidelines.

We welcome the Special Rapporteur's additional research into current practices of settlement of disputes to which international organisations are parties, which provides a solid foundation for further discussions and consideration of this topic.

Australia looks forward to continuing to engage, and reiterates our view that it would be useful and instructive for the Commission to clarify which elements of the guidelines – if any – represent a codification of existing international law, and which represent the progressive development of international law.

Australia compliments the Special Rapporteur on the progress made on this topic and welcomes the Commission's ongoing consideration.

[Subsidiary means for determination of the rules of international law]

Turning to the question of subsidiary means for determination of the rules of international law, Australia would like to thank the Special Rapporteur for his second report, and recognise the significant progress on this topic since it was added to the Commission's programme in 2021.

Chair, as a strong supporter of the rule of law, Australia is particularly interested in this topic. Australia recognises the important role of decisions of international courts and tribunals – including in their advisory jurisdiction – to clarification of the content of international law rules. On climate change – which remains the single greatest threat to the livelihoods, security and wellbeing of the peoples of the Pacific - Australia concurs with the finding of the Special Rapporteur in his first report – both the International Court of Justice (ICJ) and the International Tribunal for the Law of the Sea (ITLOS) have an important contribution to make in clarifying the international law obligations of all States' to respond to the climate emergency. We applaud the leadership of Small Island States, including Pacific Island States, in seeking advisory opinions on this issue, which Australia has been proud to participate in.



Within that context, we welcome opportunity to provide Australia's comments and observations on the draft conclusions and associated commentary provisionally adopted by the Commission during its 75th session.

Last year Australia welcomed the Commission's commentary in relation to draft conclusion 4 (on decisions of courts and tribunals) and the Commission's explanation of the relationship between that draft conclusion and draft conclusion 3 (on the weight to be given to subsidiary means for determination of rules). This year we commend particularly the foresight evidenced by the Commission in the framing and commentary regarding draft conclusion 8, and especially draft conclusion 8(c) on the need consideration of whether reasoning of decisions of courts and tribunals remains relevant in light of subsequent developments.

We applaud the Commission for its continued commitment to ensuring the inclusivity of international law, and urge all States to use their best efforts in pursuit of this objective. Specifically, we implore States to seek, and rely on, a broader and more representative range of court decisions in considering the rules of international law. This will enhance the legitimacy of international law as a whole. We similarly encourage critical consideration of the persuasive value of decisions, and of the reasoning on which they are based.

I take this opportunity to echo a recent comment by Australia's Foreign Minister, noting that Australia (and indeed, all States) will be better off in a world that operates by rules that all countries have a say in shaping, and on which all States and all people can rely.

As work on this important issue continues, Australia invites the Commission to outline its views on the relationship between subsidiary means for the determination of rules of law, and the supplementary means of interpretation of treaties referenced in Article 32 of the Vienna Convention on the Law of Treaties.

Once again, we reiterate the value of the Commission's work to date and look forward to further discussions at this year's session.