Canada

**United Nations General Assembly**

**Sixth Committee, 79th Session**

# Report of the International Law Commission – Cluster 2

Statement delivered by

Canada

October 25, 2024

Thank you for the opportunity to speak today regarding this year's Report of the International Law Commission. Canada continues to welcome the ongoing contributions toward the maintenance and strengthening of the international rules-based order made by the Commission.

The topics covered in Cluster II both pertain, in different ways, to the all-important goal of the peaceful resolution of disputes.

The first of these two topics, the "Settlement of disputes to which international organizations are parties," pertains to this goal directly. While Canada does not have specific points to register on the topic at this time, we did want to emphasize a particular element highlighted in the summary of the session.

It was noted that the analysis of the practice of international organizations revealed that *all* forms of dispute settlement were used, but that there was a prevalence of the use of "negotiation, consultation or other amicable dispute settlement means," which stemmed not only from the fact that many dispute settlement provisions required these methods as a first step, but also because it was the "preference of international organizations and States to discreetly and diplomatically settle disputes in an informal manner."

Indeed, Canada recognizes the inherent value of attempting to negotiate the resolution of international disputes before moving to an arbitration or adjudication phase, regardless of whether the dispute is with or as between international organisations or States.

In terms of the second of the two topics covered in Cluster II, “Subsidiary means for the determination of rules of international law,” we would like to make a few comments.

Firstly, we would like to underscore, as the Special Rapporteur has also explained, that subsidiary means for the determination of rules of international law are subordinate to the sources of international law found in subparagraphs (*a*) through (*c*) of Article 38, paragraph 1, of the Statute of the International Court of Justice (ICJ).

The first three subparagraphs of Article 38 set out the sources of international law the ICJ may apply in resolving the disputes submitting to it, namely international conventions recognized by the States involved in the dispute; international custom, as evidence of a general practice accepted as law; and the general principles of law recognized by civilized nations.

Subparagraph (d) of the same article refers to an additional tool available to the Court for resolving disputes submitted to it, that is, “judicial decisions and the teachings of the most qualified publicists of the various nations,” subject to Article 59 of the Statute, which provides that a decision of the ICJ is binding on the parties to the dispute. This use of judicial decisions and teachings is specifically designated as a “subsidiary” means of determination of rules of law.

This distinction is appropriate, as it States that make international law, and judicial decisions and teachings should only serve to inform the determination of rules of law when clarity cannot be found from the rules themselves. Canada agrees that is appropriate to focus on the role of judicial decisions in this respect.

The use of subsidiary means can be of particular assistance when States themselves cannot agree as to the interpretation of the rules of international law to which they have agreed to be bound, and have come to the Court in pursuit of the peaceful resolution of their disputes.

As Article 59 of the ICJ statute states with respect to the decisions of that Court, these have no binding force save as between the parties of the case. However, Canada also agrees with the conclusion of the Special Rapporteur that while there is no *stare*

*decisis* in international law, decisions of the Court still carry weight as "expressions of rules of international law," and that there is value in terms of legal certainty in using previous decisions to inform the resolution of future disputes, provided there is no reason to depart from previous legal reasoning. In this regard, Canada also supports the express reference to the ICJ, as the principal judicial organ of the United Nations, with general subject matter jurisdiction over all questions of international law.

Canada would not see value, however – as was suggested by some members of the Commission – in having conclusions provide guidance to "users of judicial decisions," such as policymakers, legal advisers, agents and advocates," as to how to use subsidiary means for the determination of rules of international law.

As a final note, Canada would advise caution in the expansion of the scope of "judicial decisions" to a broader meaning of "decisions" that "would include final judgments, advisory opinions, awards and any other orders issued in incidental or interlocutory proceedings, including provisional measures." Not all of these "decisions" carry the same weight. In particular, a final judgment has taken into account the entirety of the submissions by the parties; potential interveners with a direct legal interest in the case and/or in the interpretation of the relevant convention; and the Court's own

reasoning at various stages. The parties have participated as fully as possible, in light of the binding nature of the decision upon those parties.

This should be compared with the Court's issuance of an advisory opinion, where States may or may not have chosen to participate, given the non-binding nature of such decisions, and where the space allotted for States to express their positions may necessarily be limited.

I will conclude by underscoring Canada's sincere appreciation for the Commission's valuable contributions on this and other similarly important topics of international law.