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Report of the International Law Commission on the work of its seventy-fifth session

Cluster II:
Settlement of disputes to which international organizations are parties
Subsidiary means for determination of rules of international law

Statement by

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Madam / Mr. Chair,

The delegation of the Czech Republic would like to express its appreciation to the Special Rapporteur, Mr. August Reinisch, for his second report on the topic **"Settlement of disputes to which international organizations are parties"** and the Commission for the work on the topic. We also welcome the memorandum by the Secretariat providing information on the practice of States and international organizations in this area.

This year, the Commission provisionally adopted draft guidelines 3 to 6 concerning disputes between international organizations and States, as well as disputes between international organizations. We welcome the more prescriptive form of the draft guidelines, which is the result of the discussions in the Commission. In our view, the Commission's output should not be a merely descriptive or even academic analysis, but rather a text that would be of practical benefit to States and international organizations in the settlement of disputes.

It appears to us that the draft guidelines, in their current shape, still retain rather formal character and are formulated in general terms. We suggest that the Commission consider the character and wording of these and future draft guidelines with respect to the envisaged outcome of the work of the Commission, which is supposed to assist and guide states and international organizations in the settlements of their disputes. . Therefore, our delegation would prefer more specific, concrete and practice-oriented formulation of the adopted guidelines and recommendations. We would also support the intention to develop a set of best practices or model clauses that could be used in treaties or other instruments dealing with the settlement of disputes to which international organizations are parties.

Turning to the text of provisionally adopted draft guidelines, the proposed definition of international disputes between international organizations or between organizations and States in guideline 3 seems to be rather general and not entirely clear, since it covers, in principle, both disputes under international and national law, as is well explained in the commentary. The Commission should therefore consider making an explicit distinction between these two types of disputes, which are subject to different legal regimes.

As regards draft guidelines 5 and 6, the Czech Republic notes the problem of limited access to certain means of dispute settlement, including arbitration and judicial settlement. As we already mentioned, to support wider accessibility, the Commission could develop and offer to States and international organizations certain practical models of dispute settlement, based on existing practice of States and international organizations, that meet the necessary requirements of rule of law, namely due process, independence and impartiality.

Madam / Mr. Chair,

Now, I would like to turn to the topic of **"Subsidiary means for the determination of rules of international law"**. The Czech Republic welcomes the second report of the Special Rapporteur, Mr. Charles C. Jalloh, and appreciates the work of the Commission on the draft conclusions

We are of the opinion that in the work on the current topic, it is not necessary to produce extensive theoretical studies on this subject. The Czech Republic welcomes the Special Rapporteur's general approach to focus on the practical aspects of the use of subsidiary means in order to provide guidance to practitioners and to clarify relevance and, as the case may be, increase the impact of these instruments for the determination of rules of international law. We would also support the final outcome in the form of draft conclusions.

We note with interest the adoption of draft conclusions 4 to 8 with commentaries and would like to comment on some of those conclusions.

The draft conclusion 4 paragraph 1 opens a theoretical question of interrelation among international courts and tribunals and the role of the International Court of Justice. With the growing number of international courts, tribunals and other bodies applying international law in disputes and other concrete cases, the international judicial system is increasingly prone to fragmentation. Although there is no hierarchy among international courts and tribunals, we agree with the Commission's view that the International Court of Justice, as a principal judicial organ of the United Nations, plays a prominent role in the settlement of legal disputes between States and in providing advisory opinions on legal questions, and we agree with the draft conclusion 4 paragraph 1, namely that the decisions of the ICJ, in particular, are subsidiary means for the determination of rules of international law. In this regard, we note that the text of this draft conclusion corresponds to the text of other draft provisions concerning relevance of international judicial decisions and contained in the Commission's draft conclusions on the Identification of customary international law; Identification and legal consequences of peremptory norms of international law; and General principles of law.

On the other hand, we would like to express certain doubts concerning the draft conclusion 5 on the role of the teachings of the most highly qualified publicists as a subsidiary means for the determination of rules of international law. We note that the text of the draft conclusion and commentary thereto differs in certain aspects from the text of draft conclusions and commentaries dealing with the role of those teachings, which the Commission adopted previously under the three topics mentioned above.

First, as noted in the Commission's commentary, previously adopted conclusions only provided that the teachings "may" serve as a subsidiary means for the determination of rules of international law, since "there is need for caution" when drawing upon teachings, because their value for determining the rules of international law varies. Second, the

Commission, in its previous commentaries to analogous draft conclusions, emphasised that “in the final analysis, it is the quality of the particular writing that matters rather than the reputation of the author”, and that “regard has to be had, so far as possible, to writings representative of various legal systems and regions of the world in various languages”. Therefore, we suggest that the commentary to the draft conclusion more adequately reflects the essential importance of the quality and objectivity of the teachings as a relevant subsidiary means for determination of rules of international law and the extent to which such teachings seek to state existing law.

As regards the assessment of the representativeness of the teachings, relevant factors are provided for in Article 38 paragraph 1 (d) of the Statute of the International Court of Justice, and should not be excessively extended. Also for practical reasons, we suggest that the assessment of how representative teachings are, should in principle be limited to the criterion of principal legal systems and regions of the world. These, by their nature, include also linguistic and various other types of diversity. Therefore, we suggest that the second sentence of draft guideline 5 be redrafted or deleted and the issues of representativeness of teachings adequately dealt with in the commentary.

Thank you, Madam / Mr .Chair.