



SIXTH COMMITTEE

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CHECK AGAINST DELIVERY

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Statement by

Adv. Shannon Kisch

Department of International Law, Israeli Ministry of Foreign Affairs

Report of the International Law Commission

on the work of its seventy-ninth session

Cluster II

79 Agenda Item

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Thank you, Mr. Chair,

Israel appreciates the opportunity to address the topic “Subsidiary means for the determination of rules of international law.” At the outset, we wish to extend our gratitude to the International Law Commission and to the Special Rapporteur, Mr. Charles Jalloh, for their diligent efforts in this crucial area of international law.

Mr. Chair,

Israel wishes to emphasize the critical distinction between sources of international law, such as treaties and customary international law, and subsidiary means for determining rules of international law, including judicial decisions and scholarly writings. This distinction, reflected in Draft Conclusion 6, is paramount as it directly impacts the hierarchy of norms in international law. While sources of international law create legal obligations, subsidiary means serve as interpretative tools to help identify and clarify existing rules.

Acknowledging this distinction is crucial to preserving the coherence of international legal systems and to safeguarding the principle that legal obligations for States stem primarily from sources to which they have consented, rather than from auxiliary interpretative tools. This approach respects foundational principles of international law, while still allowing for its development through careful consideration of subsidiary means. This understanding is fundamental to the proper application and development of international law.

Mr. Chair,

Turning to Draft Conclusion 4, which addresses decisions of courts and tribunals, Israel welcomes the clarifications provided by the Commission. We strongly support the position, detailed in paragraph (2) of Draft Conclusion 4, which emphasizes that when assessing national court decisions, one must consider the court's position in the domestic judicial hierarchy. For instance, a ruling from a country's supreme court on international law may often carry greater weight than a decision from a lower court.

Alongside this important clarification, the Commission should consider incorporating this position into Draft Conclusion 4 itself, since it is an integral element of the conclusion. Accordingly, we recommend that in paragraph (2) of Draft Conclusion 4, following the phrase "in certain cases", the text should be amended to include: "depending on the hierarchy of the court and the finality of the decision under domestic law as applicable".

It is also important to note that Draft Conclusion 4 should be interpreted in conjunction with Draft Conclusions 3 and 8. First and foremost, when evaluating court decisions as subsidiary means, we must apply the criteria specified in Draft Conclusion 3. These include the quality of legal reasoning, the professional expertise of the judges, and the level of consensus among the decision-makers.

Second, regarding Draft Conclusion 8(a), which addresses relations between courts and bodies with specific mandates, such as human rights treaty bodies, Israel notes that their interpretations must be subject to the same rigorous assessment criteria. As the International Court of Justice has stated, these interpretations should not be accepted uncritically.

Mr. President,

In reference to Draft Conclusion 5, Israel recognizes the significance of incorporating 'linguistic' and 'gender' in relation to diversity of the teachings being consulted as subsidiary means. We would like to emphasize that these forms of diversity should be analyzed within the context of the various legal systems globally, to ensure the appropriate examination of teachings being consulted as subsidiary means. Therefore, we propose that the text be amended to also include the term "geographically", which usually accompanies references to gender diversity in UN texts.

Moreover, given the substantial volume of teachings produced annually in the field of international law, along with the variations in professionalism reflected in these teachings, we propose that the text be amended to include the phrase "reflecting the large majority of available authoritative sources", following "regions of the world".

We thank the Commission once more for its work on this important topic, and we look forward to engaging further with the Commission in the future.

Thank you, Mr. Chair.