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**Sixth Committee**

**“International Law Commission: Cluster II”**

**Statement by *René Lefeber***

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**NEW YORK, 24-29 October 2024**

## **Chapters IV (Settlement of disputes to which international organizations are parties)**

1. Chair, please allow me to start with the topic ‘Settlement of disputes to which international organizations are parties’. This topic is a priority for the Kingdom of the Netherlands, in particular insofar as it concerns disputes of a private law character to which an international organisation is a party. My Government would therefore sincerely like to thank the Special Rapporteur and the International Law Commission for the work on this topic thus far.
2. In many cases, for good reasons, the immunity of international organizations prevents individuals who have suffered harm from conduct of an international organization from bringing a claim before a court. This may present a gap in the legal protection of persons and entities, and a limitation of their right of access to a court. Therefore, the Kingdom of the Netherlands would like to reemphasize its commitment to strengthen the mechanisms, in particular the internal mechanisms of an international organization, for resolving disputes of a private law character to which an international organisation is a party.
3. At the beginning of this year, my Government has requested the Dutch Advisory Committee on Public International Law to provide advice on the topic of settlement of disputes to which international organisations are parties in this early stage of the ILC process. As we said in our speech on the topics included in Cluster I, we always request the Advisory Committee to advise on products of the Commission on its first reading.

4. The first time we have asked for advice on the work of the Commission in the early years of its consideration of a topic prior to its first reading, was for the present topic. We have done so as to enable the Commission to benefit from the views of the Advisory Committee before it completes its work on first reading. For the present topic, the Dutch Advisory Committee was asked specifically to consider disputes of a private law character in accordance with the priority given by my Government to this part of the work of the Commission. It is especially in such disputes that the legal protection of victims of damage caused by international organisations is not properly guaranteed.
  
5. The Advisory Committee stressed the importance of the issue of disputes of a private law character to which international organizations are parties. The mandate of international organisations has systematically expanded. This has further shaped international cooperation on a multitude of domains, with positive consequences for international security, stability and prosperity. At the same time, it has also increased the likelihood of individuals and other private legal entities suffering harm as a result of an international organisation's conduct, such as non-compliance with a contract or the commission of an unlawful act.  
  
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6. The Advisory Committee did not comment on the draft guidelines provisionally adopted by the ILC, but focused on the systems for settlement of disputes of a private law character of the United Nations and the European Union, followed by a critical assessment of these systems and recommendations for institutional development.

7. My Government will take the Advisory Committee's report into consideration when preparing its comments and observations on the topic at hand. In addition, my Government will share the report of the Advisory Committee with the ILC, together with the Government's response. The report is available online on the website of the Advisory Committee and the Government's response will become available on that website before the end of the year.

#### **Chapter V (Subsidiary means for the determination of rules of international law)**

8. Chair, please allow me to start with the topic subsidiary means for the determination of rules of international law. The Kingdom of the Netherlands wishes to thank the Special Rapporteur for his second report. It also wishes to thank the Commission as a whole for its work on this topic.
9. As my Government expressed during the previous session, it is convinced of its potential as the work on this topic could, for example, help to identify how soft law, including non-binding agreements between States, may contribute to the identification, interpretation and application of international law. In my Government's view, this is of particular practical relevance, especially since the topic of non-legally binding international agreements is also being discussed in the ILC.

10. My Government once more wishes to underscore that it agrees with the notion of the Special Rapporteur that subsidiary means for the determination of rules of international law are not sources of international law in the formal sense. Nevertheless, as reflected in Draft Conclusion 6, the function of subsidiary means is to assist in confirming or determining the meaning of a particular rule. As this is one of the most fundamental understandings of subsidiary means for the determination of rules of international law, my Government wishes to propose to move Draft Conclusion 6 on the “nature and function of subsidiary means” right after current Draft Conclusion 2, as a new Draft Conclusion 3.

11. Chair, my Government wishes to make three additional comments on the Draft Conclusions as presented in the ILC Report on the topic of subsidiary means.

12. First, with regard to the enumeration as included in Draft Conclusions 4 and 8, my Government supports the use of “inter alia” as this makes clear that the lists with criteria are not-exhaustive or exclusive. Furthermore, my Government supports the inclusion of the broader term of “decisions” so as to include a wider set of decisions from a wide variety of bodies.

13. Second, with regard to decisions of national courts and tribunals, referred to in paragraph 2 of Draft Conclusion 4, my Government supports the Commission's findings that these may be used in certain circumstances as subsidiary means. My Government concurs with the Commission that greater weight should be placed on the decisions of national higher courts, such as supreme or constitutional courts.

14. Third and finally, when reading Draft Conclusions 3 and 5 together, the Kingdom of the Netherlands does believe that greater weight should be attached to decisions and teachings that are *collectively* supported by groups of judges, or groups of experts. A perfect example of the latter is the International Law Commission itself, as it operates with a mandate from the UN General Assembly. As already indicated in my Government's opening remarks, the Commission currently functions a 'science-policy interface' in the realm of international law. Albeit without an intergovernmental mandate, the *L'Institut de droit international* and the International Law Association produce scientific results that are collectively supported by their respective members. Their scientific results are considered valuable by my Government. The added value of these collective scientific results also lies in the universality of such groups. My Government believes that the groups need to be as diverse as possible, representing all regions and legal systems of the world. In this respect, multilingualism should be taken into account when attaching weight to the work of such groups of experts.

Thank you Chair.