



**Report of the International Law Commission on the work of its seventy-fifth session**  
***(Agenda item 79)***

**CLUSTER II**

- **Settlement of disputes to which international organizations are parties**  
***(Chapter IV)***
- **Subsidiary means for the determination of rules of international law**  
***(Chapter V)***

Mr. Chair,

In my statement of today, I will address the topic “**Settlement of disputes to which international organizations are parties**”, and the topic “**Subsidiary means for the determination of rules of international law**”.

In the interest of time, my delegation will deliver an abbreviated version of its statement. The full statement will be available on the website of the Sixth Committee.

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

I would like to start my intervention on the first topic by once again commending the Commission for including this topic in its programme of work, and by thanking the Special Rapporteur, Mr. August Reinisch, for his thorough work.



This topic remains of great importance, especially since disputes involving international organizations continues to be an area in which we ought to strive for further insight and consensus. Portugal, therefore, reaffirms its commitment to the debate and the work towards shedding further light on this complex issue.

Mr. Chair,

Portugal would like to underscore that the guidelines proposed in this second report, continue to strive for a balanced and appropriate approach.

To begin with, my delegation welcomes the definition of international disputes in draft Guideline No. 3. The scope of such a definition covers many disputes in which international organizations may be involved, including with States, natural persons, and other international organizations. However, we stress the importance of conciliating this Guideline No. 3 with Guideline No. 1, thus ensuring a consistent understanding of the scope of disputes covered under these Guidelines.

Portugal considers that disputes arising from an essentially private law relationship, including contractual disputes — be it a labour contract or a service supply contract — should also be addressed. Those type of contracts (i) represent a significant percentage of disputes to which international organizations are parties; and they (ii) raise complex legal issues, including in respect of individuals' access to adequate disputes settlement mechanisms. These disputes may collide with the privileges and safeguards granted to international organizations in their constitutive instrument. As such, Portugal would welcome further clarification on this issue in the next report.



Mr. Chair,

Portugal would like to emphasize the importance of all forms of alternative dispute resolution and the benefits of settling conflicts outside of formal adjudication or court proceedings. The relevance and effectiveness of these methods can differ greatly depending on the specific facts and nature of the dispute.

We encourage the inclusion of a future guideline that can address this issue based on past and current practice. In this regard, the Permanent Court of Arbitration, established by the 1899 Treaty, along with the 1907 Convention for the Pacific Settlement of International Disputes International and the Permanent Court of Arbitration Optional Rules for Arbitration Between International Organizations and Private Parties, provide a good basis for this exercise.

As for draft Guideline No. 4, we believe that it provides a solid foundation for unresolved disputes to which an international organization is a party. However, we suggest that the way forward could involve the establishment of several independent and impartial non-judicial mechanisms, including the mechanisms that open the possibility to confer upon adjudicators the option to settle the dispute amicably.

In any case, we would like to draw your attention to the fact that the benefits of such mechanisms lie in permitting tailor-made procedural solutions contingent on the circumstances of the dispute in question. Therefore, the lessons-learned resulting from these experiences may sound at times inconsistent as they are deeply rooted in different and specific practices and challenges.



Mr. Chair,

In what concerns Draft Guideline No. 5, Portugal agrees that means of dispute settlement, including arbitration and judicial settlement, should be more widely accessible.

However, we are of the view that the lack of specificity on how to ensure access to those means of dispute settlement may leave room for unwanted discretion, which is detrimental to the weaker party, often the individual. This may raise questions of fairness and equity.

Mr. Chair,

I would like to conclude my intervention on this topic by reaffirming Portugal's appreciation for the work of the Commission and the Special Rapporteur on this topic. We look forward to continuing discussing this topic next year.

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

Mr. Chair,

I will now turn to the topic "**Subsidiary means for the determination of rules of international law**".

We would like to start by conveying our appreciation to the Commission and the Special Rapporteur, Mr. Charles Jalloh, for the work done so far on this important subject.



Mr. Chair,

The decisions of courts and tribunals, teachings, as well as State practice most often invoked for the determination of rules of international law have its origin in a few specific countries or regions. There are explanations for this prevalence, which we will not discuss here. However, we feel obliged to underline the risks of generalizing specific views and interpretations about certain International Law norms and regimes. Often, they mirror past and present power relations, as well as the capacity – or lack thereof – that different states have in building, recording, and disseminating its own practice.

We therefore support the Commission in continuing its work cautiously and mindful of the existing structural differences between states and regions, which should not override the principle of sovereign equality between states.

Mr. Chair,

On this note, Portugal appreciates the Commission's efforts towards placing greater emphasis on decisions of international courts and tribunals as subsidiary means while adverting *caution* on those of national courts – as reflected in the terms “may be used” and “in certain circumstances” – We also welcome its call for a combined reading of the criteria established in Draft Conclusions 3, 7 and 8.

While commending this development, we also believe that it would be beneficial to have further clarification regarding the framework enabling national court decisions to be used as subsidiary means. Enhancing legal transparency and certainty is crucial, especially in the way that decisions of national courts may or may not affect a State's international obligations and relationships.



Mr. Chair,

As regards Draft Conclusion 5, Portugal welcomes the Commission's finding that in assessing the representativeness of teachings, due regard should also be had to, *inter alia*, gender and linguistic diversity.

Portugal welcomes the inclusion of Draft Conclusion 6. By incorporating a definition of the nature and function of subsidiary means - not as a source, but as a measure of assistance in determining the existence and content of rules of International Law - we find that the Commission provides States and other subjects of International Law with much needed clarity, contributing to stability, predictability, and the development of International Law.

As concerns Draft Conclusion 7, Portugal takes good note of the Commission's view that a system of legally binding precedent in international law does not exist.

Mr. Chair,

Portugal commends the efforts made in discerning between the sources of international law and the subsidiary means relevant for the determination of international law rules. We hope the result of these discussions further translates into a common understanding on the subject. We look forward to the continuing participating in the discussions regarding this topic.

I thank you, Mr. Chair.