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Settlement of disputes to which international organizations are parties

Mr. Chair,

My delegation would like to begin by expressing its deep appreciation to Special Rapporteur Mr. August Reinisch and the members of the Commission for their diligent work in leading discussion on the *Settlement of disputes to which international organizations are parties*. In particular, we take note of the adoption of draft guidelines 3 to 6 and their accompanying commentaries during this session.

As respecting the Commission's decision to adopt the term "disputes" rather than "international disputes," we acknowledge the ongoing work to clarify the legal implications of disputes of non-international character under international law. However, my delegation underlines the importance of ensuring that this work remains within the scope of the ILC's mandate, and we urge the Commission to maintain an appropriate balance within the established framework of international law.

Regarding draft guideline 5, my delegation understands the Commission's intention to highlight them as they are "particularly inaccessible if not expressly stipulated." However, my delegation still has questions when draft guideline 5 is read in conjunction with draft guideline 6, which might unintentionally suggest that the Commission accords preferential treatment or is introducing a hierarchy between the various means of dispute settlement as mentioned in draft guideline 2(c).

In the realm of diplomacy, it is well known that negotiation, rather than arbitration and judicial settlement, is frequently employed for a variety of reasons. States refrain from referring their disputes to arbitration or judicial settlement due to, among other factors, the high costs involved, the lengthy duration of the proceedings, the limited experience with these forms of dispute settlement, and reservations about the effectiveness of remedies. Furthermore, disputes between States and international organizations, where there are substantial differences in negotiating power and available resources, particularly require further clarification and a thorough supplementary review of national practices to determine whether post-dispute access to arbitration or judicial procedures is feasible.

My delegation hopes that the Commission will bring the topic to its successful completion by enhancing the practical value of its work and looks forward to the third report by the Special Rapporteur and the discussion thereon by the Commission.

Subsidiary means for the determination of rules of international law

Mr. Chair,

Turning to the topic of *Subsidiary means for the determination of rules of international law*, my delegation extends its deep appreciation to Special Rapporteur Mr. Charles C. Jalloh and the Commission for their diligent efforts in leading this discussion

We also commend the Second Report in which the Special Rapporteur analyzed a broad range of relevant practice and also paid much attention to the debate conducted in the Sixth Committee. Such an exercise is crucial in order to make the Commission's work more communicative, incorporating the views of the Sixth Committee into the Commission's final product. Furthermore, we take note of the Commission's adoption of draft conclusions 3 through 6.

Decisions of courts and tribunals, and teachings have been addressed in the Statute of the International Court of Justice and previous Commission's work, namely, the Identification of Customary International Law, Peremptory Norms of General International Law, and General Principles of Law. This current topic reexamines their role, and we find particular value in how draft conclusion 3 and draft conclusion 8 concretely identify the fragmented criteria for assessing subsidiary means.

My delegation, however, believes that further clarification is needed on how to secure the representativeness of domestic judicial decisions when they are used as a subsidiary means for determining the rules of international law. In light of the diversity in legal traditions and systems across various States, establishing clear criteria for assessing representativeness will be crucial in future discussions.

Regarding draft conclusion 4, my delegation supports the view that the specific mention of the ICJ does not seek to establish a hierarchy among international courts and tribunals but rather to emphasize the role of the ICJ. In this regard, my delegation would like to recall that in the previous session, we referred to the ICJ judgment concerning the question of extended continental shelf as an example of a case requiring careful assessment.

The Republic of Korea also welcomes the reference to gender and linguistic diversity as criteria for assessing the representativeness of teachings in draft conclusion 5. This is a commendable step towards a more inclusive and equitable approach in determining international legal rules.

Concerning draft conclusion 6, it clarifies that subsidiary means are not a source of international law but assist in determining the existence and content of international law rules. We believe this clarification plays an important role in understanding the function and limitations of subsidiary means. Therefore, my delegation suggests that draft conclusion 6 should follow immediately after draft conclusion 1, as it is structurally more appropriate.

Lastly, my delegation welcomes draft conclusion 7, which reaffirms that the principle of *stare decisis* does not apply in international law. However, it would like the Commission to provide further explanation on the phrase reading "unless otherwise provided for in a specific

instrument or rule of international law". We are of the view that, at present, no rule of international law recognizes *stare decisis.* In this regard, the Commission's assertion that *stare decisis* may be applied when recognized by a rule of international law—citing the Inter-American Court of Human Rights' interpretation of the American Convention on Human Rights as an example—raises some concerns. Some member States of the American Convention oppose this view, and it remains unclear whether this case truly represents the application of *stare decisis* or is instead based on the authority of the court. Therefore, further clarification is needed on whether examples of *stare decisis* are being applied exceptionally under international law.

The Republic of Korea believes that this work will make a significant contribution to the development of international law and the realization of justice, and we look forward to continued meaningful progress in the future.

Thank you. /END/