



PERMANENT MISSION OF ROMANIA
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Sixth Committee**

Agenda item 79
**Report of the International Law Commission
(75th Session, A/75/10)**

Cluster II

Chapter IV – Settlement of disputes to which international organizations are parties
Chapter V – Subsidiary means for the determination of rules of international law

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Chapter IV – Settlement of disputes to which international organizations are parties

1. Romania would like to thank the Special Rapporteur, Mr. August Reinisch for his well-structured and informative Second report, which offers a very useful overview of the practice of settling international disputes to which international organizations are parties.
2. Equally, Romania commends the Commission for the adoption of four more Draft Guidelines and the commentaries thereto.
3. As a whole Romania finds the Draft Guidelines and Commentary well-balanced and realistic.
4. Romania welcomes the fact that the Draft Guideline 4 reflects the well-established principles of the free choice of dispute settlement means, as well as of the non-existence of a hierarchy between the modalities of peaceful settlement, as outlined in the UN Charter.
5. Romania understands that the aim of Draft Guideline 5 is to recommend for access to arbitration or judicial settlement to be made more widely available, a recommendation that Romania would support. The wording refers nevertheless to all means of disputes settlement, while the commentary correctly notes that some forms, as negotiations or consultations, are practically always available (so there would be no need to recommend for these modalities to be made more readily accessible). Romania suggests that the drafting of Guideline 5 could be adjusted to limit the recommendation to the insurance of increased accessibility to arbitration and judicial settlement.
6. We would also commend the Commission for the reference to core features of the rule of law in Draft Guideline 6.
7. Romania is looking forward to the continuation of the work of the Commission on this important topic.

Chapter V – Subsidiary means for the determination of rules of international law

1. We would like to commend the Commission for the considerable progress it has reached on the issue of subsidiary means for the determination of rules of international law, in particular through the adoption of Draft Conclusion 4 to 8, as well as the commentaries thereto. Also, we would like to congratulate Mr. Charles Jalloh, the Special Rapporteur, on the informative and well researched Second Report, and more generally on his overall work on this very important topic.
2. Starting with Draft Conclusion 4, we find the difference in wording between paragraph 1 (dealing with the decisions of international courts and tribunals) and paragraph 2 (concerning the decisions of the national courts), in the text of Conclusion 4 as entirely warranted, given the unequal importance of the two categories of courts for elucidating the substantive content of rules of international law. Also, the Commission is justified in highlighting the role of the International Court of Justice, as the most authoritative international court, in the determination of the content of international law.
3. Turning to Draft Conclusion 5, we agree that not every work of publicists should be given the same weight when seeking to determine the substance of international law, and that the salient factors by which the influence of teachings should be assessed are agreement between multiple writers, the expertise of the authors, as well as representativeness.
4. We consider that it is established beyond doubt now that subsidiary means are not sources of international law, as evidenced in particular by the exhaustive survey of State practice and doctrinal teachings undertaken by the Special Rapporteur in his Second Report. We find that Draft Conclusion 6 succinctly and aptly clarifies the nature and role of the subsidiary means.
5. There also could be no uncertainty that precedent has no formal authority in international law, and we could fully support the Draft Conclusion 7 and the Commentary thereto.
6. In conclusion we would like to congratulate the Commission on the work undertaken thus far and to wish it success in the further consideration of this topic. Thank you!