S T A T E M E N T

by

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79th session of the United Nations General Assembly
Sixth Committee

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

New York, 24 October 2024

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Mr. Chair,

In my today's intervention, I will address Chapters IV and V of this year's Report of the International Law Commission, namely the topics "**Settlement of disputes to which international organizations are parties**" and "**Subsidiary means for the determination of rules of international law**".

Turning first to the topic of "**Settlement of disputes to which international organizations are parties**", allow me to start by commending the Special Rapporteur, Mr. August Reinisch and the Commission for the productive work at the present session.

As we already underlined a year ago, we are convinced that the topic itself has a significant potential, taking into account a worldwide tendency of increasing role and activities of international organizations. Addressing the aspects of dispute settlement pertinently complements previous outcomes of the Commission within the law of international organizations.

My delegation has read with great interest the second report of the Special Rapporteur, devoted to international disputes of international organizations. His efficient and thorough approach is much appreciated. Slovakia welcomes that the report touches upon the rule of law aspects Accordingly, we note with satisfaction that at the present session four draft guidelines were provisionally adopted by the Commission, which address the principle of due process and guarantees of independence and impartiality of adjudicators, and advocate for the wide access of justice. Omitting an explicit reference to the rule of law in the text of draft guidelines is in our view, regrettable. On the other hand, we are pleased that the principles of good faith and cooperation are incorporated in the draft guideline 4. These two principles are indispensable part of dispute settlement. Regarding draft guidelines 6, we note the choice of prescriptive wording in respect of specific rule-of-law-related requirements linked to the arbitration and judicial settlement. In our understanding, such wording merely reflects the existence of already established obligation, and as such, we do not question it. However, for the purpose of consistency, the very same approach should then have been taken vis-à-vis the general obligation in draft guideline 4 to settle the disputes in a peaceful way, in good faith and in spirit of cooperation.

As concerns the means of disputes settlement, we agree that no hierarchy or preference to certain means should be included in draft guidelines. The choice of a specific means of dispute settlement might be very much dependent on the nature and circumstances of the dispute itself. It is thus best to leave such choice freely upon the will of parties, except for the cases of mandatory jurisdiction or adjudicatory mechanisms prescribed by particular or regional rules. While giving a priority to the adjudicatory methods with their legally binding outcomes would seem more desirable from the perspective of legal certainty, we observe that the international organizations in practice often prefer less cost-effective solutions, such as amicable settlement or negotiation.

Lastly, we express our satisfaction that the focus by the Special Rapporteur is to be given also to disputes of non-international character, thus broadening the overall scope of the draft guidelines. National judicial authorities in disputes of non-international nature often treat the international law aspects, such as access to justice, and the jurisdictional immunities. In this regard, the model jurisdictional clauses annexed to draft guidelines, which could be used by international organizations and States in their host seat agreements, would be beneficial. We conclude by encouraging the Special Rapporteur and the Commission to continue with their valuable work on the topic.

Mr. Chair,

Moving to the topic of "**Subsidiary means for the determination of rules of international law**", I note with appreciation that the Commission provisionally adopted draft conclusions 4 to 8, with commentaries thereto. I would also like to thank the Special Rapporteur, Mr. Charles Chernor Jalloh for his rigorous second report.

As to the draft conclusion 4, it is without any doubt of great importance to refer to judicial decisions of International Court of Justice, since its authority is undeniable. In certain cases, though, the decisions of other international courts and tribunals could be more relevant due to their expertise in particular areas. These were the preliminary comments of my delegation last year. This year, we welcome the respective clarifications contained in paragraph 11 of the commentaries. Particularly, we note with satisfaction the assertion that highlighting the role of the International Court of Justice does not aim in any way to imply hierarchy vis-à-vis other international court and tribunals.

Last year, Slovakia also called for more precise guidance on the weight of general criteria for assessment of subsidiary means set out in draft conclusion 3 *vis-á-vis* judicial decisions. In this context, we appreciate the provisionally adopted draft conclusion 8. Its drafting might *prima facie* seem a bit confusing in a sense that the criteria set therein are additional, thus distinct to those in draft conclusion 3. At the same time, my delegation notes the explanations provided in paragraph 6 of the respective commentaries articulating that specific criteria in draft conclusion 8 are supplementing the general ones and are meant to be read together.

Regarding the remaining draft conclusions, we are generally satisfied with the draft conclusion 5. In terms of nature and functions of subsidiary means, we concur with the Commission that subsidiary means are not a source of international law and that they have only assisting function in determination of the existence and content of rules of international law.

In relation to future works of the Commission on this topic, my delegation would stress the importance of bringing as much usefulness of draft conclusions for international practice as possible. At the same time, prescriptive nature should be avoided in order not to limit the judicial autonomy of international court and tribunals when resorting to subsidiary means in their decision-making pursuant to their statutes. We do note the Commission's prudence in this regard so far and we are looking forward to engaging in further discussions in the years to come.

I thank you.