

Permanent Mission of India to the UN

New York

**6th Committee of the 79th Session of the UNGA
(Agenda item 79)**

**Report of the International Law Commission on the work of its seventy-
fifth session
(Cluster II)
India Statement**

Following the Clusters' arrangement of topics, our focus today would be on the topics of Cluster II and more particularly on the topics "Settlement of Disputes to which International Organizations are Parties"; and "Subsidiary means for the determination of rules of international law".

Mr. Chairman,

2. India has the honour to address the Sixth Committee on the work of the International Law Commission relating to the topic of 'Settlement of disputes to which international organizations are parties' based on the second report prepared by Special Rapporteur Mr. August Reinisch.

3. India has consistently advocated for peaceful dispute resolution through dialogue and mutual consultation. As a founding member of the United Nations Charter, India firmly adheres to the principles and purposes of the Charter, including the pacific settlement of disputes. This commitment is evident in India's approach to resolving disputes in the trade and investment regime, where we prioritize arbitration and other alternative dispute resolution mechanisms. We believe that extrapolation of this concept to the international organizations would benefit in the peaceful resolution of the disputes between international organizations and disputes between international organizations and States.

4. On the work of the Commission, the draft guidelines 3-6 provide a solid foundation for addressing disputes between international organizations and States. They emphasize the importance of good faith, cooperation, and the use of appropriate dispute settlement mechanisms.

Mr. Chairman,

5. Though the draft Guidelines address disputes arising between international organizations, as well as disputes between international organizations and States, such disputes may encompass a wide range of issues, including treaty violations, jurisdictional conflicts, breaches of international customary law, and other matters relevant to the relationships between these entities. We feel that more elaboration would be required in draft guidelines 3.

6. Under the Guidelines, the choice of mechanism should be guided by the circumstances and nature of the dispute, taking into account factors such as the subject matter, the parties involved, and the urgency of the matter. Potential options may include negotiation, mediation, conciliation, arbitration, and judicial settlement

7. We take note of Draft Guideline 6 which strikes a balance between the need for independence and impartiality in adjudicators and the importance of due process and thereby helping to ensure that arbitration and judicial settlement proceedings are conducted fairly and equitably. However, we believe that, they also require adherence to due process principles. This encompasses procedural fairness, including the right to be heard, the right to present evidence, and the right to a fair trial.

8. We also draw attention to the issue of enforcement of dispute settlement in case of the International Organizations. This could potentially

become a major issue as mere award or judgement against an organization is not sufficient in case of dispute resolution. We believe that the draft Guidelines would bring greater clarity and usefulness for the International Organizations in dealing with the cases.

9. On the topic “Subsidiary means for the determination of rules of international law”, we thank SR Mr. Charles Chernor Jalloh for his comprehensive second report on the topic. We have taken note of the three draft Conclusions 6 to 8.

10. Draft Conclusion 6 aims to clarify the role of subsidiary means for the determination of rules of international law vis-à-vis the sources of international law. Draft Conclusion 7 deals with the question of precedent in international law. As per the general rule, in international adjudication involving States, is that decisions of courts are binding only on the parties to case-as is stated in Article 59 of the ICJ Statute.

11. Draft Conclusion 8 sets out more specific criteria to guide users when employing decisions of courts and tribunals in the determination of the existence and content of rules of international law.

12. “Subsidiary means” are subordinate to the sources of international law found in subparas (a) through (c) of Article 38, para (1) of the ICJ Statute. It plays an assistive role in relation to the sources of international law. indicates that judicial decisions are applied subsequently to, and are dependent on, a prior principal determination of legal rules. They cannot stand alone but must refer back to other legal sources.

13. The function of subsidiary means is to assist in the determination of rules of international law. In this context, it must be explored whether the subsidiary means are limited only to judicial decisions and teachings of the

most highly qualified publicists of the various nations or whether they also encompass additional subsidiary means, taking into account the practices of States and international courts and tribunals.

I thank you.
