PERMANENT MISSION OF THE REPUBLIC OF SIERRA LEONE TO THE UNITED NATIONS

STATEMENT

BY

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To the

Sixth Committee of the
United Nations General Assembly

"Chps: IV (Settlement of Disputes to which international organizations are parties) and V (Subsidiary means for the determination of rules of international law."
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Chair,

1. On the topic of **Settlement of Disputes to which International Organizations are Parties**, the delegation of Sierra Leone notes that the Commission's work was based on the solid Second Report of the Special Rapporteur, **Mr. August Rhenish**, which focused on the discussion of "***international disputes***," analysis of the practice of settling international disputes to which international organizations are parties, as well as of policy issues relevant to the Commission's work on the topic.

2. We further note that the Commission provisionally adopted four ***draft Guidelines (3, 4, 5, and 6) with commentaries***. These guidelines, particularly 4, 5, and 6, offer a strong framework for resolving disputes between international organizations and States, including African States.

3. We acknowledge the Commission's approach of not further qualifying disputes at this early stage, recognizing the varied nature of disputes involving international organizations at both international and national levels. While disputes with States are typically governed by international law, those involving private parties are more likely to arise under national law or specific contractual rules. We consider private disputes, especially those involving tortious acts, the most important aspect of this topic. When the Commission does consider the issue of private disputes, we stress the critical need for it to balance the immunity of international organizations with the human rights imperative of providing victims access to remedies for harm, addressing the concerns of all parties involved.

4. ***On draft Guideline 3 (Scope of the Present Part)***, we commend the ILC for clearly defining the scope that addresses disputes between international organizations

and States. It provides essential clarity by distinguishing the types of disputes within its ambit, primarily those under international law. We note that while disputes between international organizations are rare, disputes between international organizations and States, particularly involving privileges, immunities, or operational functions, occur more frequently.

5. In this connection, we stress that the broad scope is vital to ensure that it can accommodate various types of disputes, including those that arise under domestic law, without compromising the international legal framework that governs these interactions. Such clarity is necessary to guide States and international organizations on dispute settlement mechanisms and ensure consistency with past practices.

6. Moving to ***Draft Guideline 4 (Resort to Means of Dispute Settlement),*** we support the approach recommending that disputes be resolved peacefully, in good faith, and a spirit of cooperation and consistent with ***Draft Guideline 2(C***). We appreciate the alignment with ***Article 33 of the United Nations Charter***, which lists peaceful dispute resolution mechanisms, and appreciate the guideline's flexibility in allowing parties to choose methods appropriate to the circumstances and nature of the dispute. The peaceful means were reaffirmed by the ***15 November 1982 Manila Declaration on the Peaceful Settlement of International Disputes,*** which was moved by a Special Committee on the UN Charter by Sierra Leone and seven other States in the early 1980s.

7. However, this recommendation should also acknowledge the complexity of certain disputes, particularly those involving international organizations' immunity. Such

disputes may require special attention to maintaining the balance between immunity and the need for access to justice, especially for individuals affected by international organizations' actions. In this respect, we welcome the inclusion of cooperative dispute resolution methods, which can foster amicable outcomes while offering recourse to third-party adjudication where necessary.

8. We note the reference to ***Draft Guideline 5 (Accessibility of Means of Dispute Settlement)*** and emphasize the importance of making dispute settlement mechanisms more widely accessible. The guideline's focus on practical accessibility beyond mere legal availability is crucial to ensuring that international organizations and States can effectively resolve their disputes.

9. We appreciate the Commission's recognition of smaller or less-resourced parties' potential challenges in accessing

arbitration and judicial settlement. As we have stated, international organizations, particularly those operating in developing regions, should not face prohibitive costs or procedural barriers preventing them from accessing justice. This guideline is essential to ensure equitable access to arbitration and judicial mechanisms, promote fairness in resolving disputes, and avoid a situation where financial or logistical constraints hinder the adequate settlement of disagreements.

10. On ***Draft Guideline 6 (Requirements for Arbitration and Judicial Settlement),*** my delegation strongly supports the provisions that enshrine the principles of independence, impartiality, and due process in arbitration and judicial settlement. These elements are fundamental to upholding the rule of law in settling disputes involving international organizations. The requirement for impartial adjudication is particularly critical, as it ensures that both international

organizations and States can trust the integrity of the process. Therefore, Sierra Leone would have preferred to have an explicit mention of the rule of law in the guideline itself, as proposed by the Special Rapporteur and several other members. We also would have liked to see the term "***integrity***" be used to supplement the terms ***independence and impartiality***.

11. Furthermore, we believe that due process, including the right to be heard and the ***principle of equality of arms***, is a core requirement in any adjudicatory procedure. Adherence to these principles will enhance confidence in international dispute settlement mechanisms and contribute to the legitimacy of their outcomes. We, therefore, fully endorse the mandatory language used in this guideline, which reinforces the non-negotiable nature of these procedural safeguards.

Chair,

12. Let me now move on to the topic of "**Subsidiary Means for the Determination of Rules of International Law**." We begin by thanking the Special Rapporteur, Mr. Charles Chernor Jalloh, for his thorough and highly analytical Second Report on the topic. Our observations on this topic are grounded in the fundamental provisions of **Article 38(1)(d)** and **Article 59** of the Statute of the International Court of Justice (ICJ). As the Second Report amply demonstrates, these articles form the basis for understanding how judicial decisions and teachings are used as subsidiary means for determining international legal rules.

13. Since last year, my delegation and many others have welcomed the Commission's initiative to address the critical practical issues related to Article 38(1)(d) of the ICJ

Statute. To ensure the topic's relevance, many delegations considered it essential to account for State and international practice since 1945.

14. Thus, we reaffirm that a comprehensive analysis of modern subsidiary means, including the resolutions of international organisations and the work of expert bodies, is critical for determining the rules of international law today. That is why Sierra Leone, in addition to welcoming the Commission's decision to examine decisions and teachings, strongly supports examining the other means generally used to determine rules of international law reflected in practice - as set out in draft conclusion 2(c) adopted last year. In this regard, for instance, Sierra Leone refers to the ICJ's jurisprudence, including the ***Ahmadou Sadio Diallo*** case, where decisions of human rights treaty bodies such as the Human Rights Committee were

accorded great weight, underscoring the role of specialized bodies in interpreting human rights treaties.

Chair,

15. Sierra Leone also welcome the great progress made on this topic during the 75th session of the Commission. Against that backdrop, we wish to offer our observations on draft conclusions 4 through 8. which the Commission adopted this year, together with their commentaries.

16. For **Conclusion 4 (Decisions of Courts and Tribunals),** we acknowledge the emphasis placed on the role of decisions of international courts and tribunals, particularly the ICJ, as subsidiary means for determining the existence and content of rules of international law in ***para 1***. The draft conclusion aligns with the Commission's previous work. It rightly underscores the centrality of decisions of the ICJ as the principal judicial of the United Nations. I quote ***para 11***

of the commentary, "***implying that a hierarchy exists vis-à-vis other international courts and tribunals created by States or international organizations exercising specific competencies conferred on them by their constitutive instruments***." We further agree that while the value to attribute to all decisions must be assessed on a case-by-case basis and turns predominantly on the quality of their reasoning, the decisions of specialized courts and tribunals in various fields must also be taken into account and, in some cases should be accorded greater weight.

17. Regarding ***paragraph 2*** of draft conclusion 4, Sierra Leone also recognises the growing relevance of decisions by national courts, particularly where international legal obligations intersect with domestic judicial practice. We also agree with the Commission's commentary that "sound reasons exist to distinguish between the decisions of international courts and tribunals and those of national

courts," which is why using the latter is relatively more qualified. The use of national court decisions in shaping international law should also be examined through the lens of representativeness and the extent of their applicability to international legal disputes. Sierra Leone stresses that, in terms of users of international law, consulting a representative set of court decisions from the various legal systems, regions, and languages of the world is imperative. For that reason, we agree with the Commission that such an approach would contribute to enhancing legitimacy and the development of a truly universally applicable body of international law.

18. Moving to **Conclusion 5 (Teachings)**, we applaud the Commission for adopting this conclusion. We consider that teachings, especially those that reflect a diverse range of legal systems and regions, are critical in determining the existence and content of international law even though

they are not sources of international law. We agree with the framing of this conclusion, especially the first sentence, which indicates that there may be a preponderance of views found in teachings from those with competence in international law from the various legal systems and regions of the world when considered against the totality of writing available. In such instances, Sierra Leone agrees that this could indicate that those views – to the extent that they are diverse and representative – should be afforded greater weight.

19. We support the Commission's approach to emphasize the importance of representativeness, including gender and linguistic diversity, in evaluating the relevance and authority of teachings. We noted the historical reference to gender considerations in assessing teachings. At the same time, last year, Sierra Leone expressed concern about excluding an explicit mention of racial diversity in

the draft conclusion. Although the commentary confirms that racial diversity must still be considered, racial diversity should have been explicitly included for the same reasons that linguistic and gender diversity were included. This would in accordance with their usual treatment as prohibited grounds of discrimination under universal and regional international human rights law.

20. We also underscore the significance of individual scholarly work and private expert groups contributing to a global understanding of international legal principles. This would include those produced by the Institute of International Law and the ***International Committee of the Red Cross, whose legal analyses have significantly shaped modern international humanitarian law.*** We hope the Commission will revisit the status of the work of State-created bodies such as the ILC and UNCITRAL. Those bodies do not produce teachings as such; the quality of

their works also differs, not least because of their mandates and the symbiosis and interaction between them and States.

21. In **Conclusion 6 (Nature and Function of Subsidiary Means)**, my delegation endorses the distinction between the sources of international law and the subsidiary means for determining them. The role of subsidiary means, while not sources of law in themselves, remains crucial in elucidating the rules of international law. We agree that a key function of subsidiary means is to assist with determining the rules of law. This, however, is a primary but not the only function of subsidiary means. We take note of paragraph 2 of draft conclusion 6 and its commentary. We believe that the Commission should not constrain itself too much by being too categorial, especially given that the specific examples of such subsidiaries include decisions of courts and tribunals, teachings, resolutions of international

organizations, and the works of expert bodies can play other subsidiary roles.

22. To conclude on this draft conclusion, we believe that the broader application of subsidiary means, especially in developing areas of international law, such as *climate change litigation* or *emerging cyber norms*, can contribute to a more dynamic and responsive legal framework.

23. On **Conclusion 7 (Absence of Legally Binding Precedent in International Law),** we appreciate the Commission's reaffirmation that a system of binding precedent does not bind international courts and tribunals, yet may follow previous decisions on points of law, as provided for by instruments like the **ICJ Statute under Article 59**. The decision of the ICJ in the ***LaGrand*** case, which first acknowledged the binding effect of provisional measures, is an example of how international courts – not just the ICJ

- have shaped significant procedural rules that are followed despite the absence of formal precedent. Sierra Leone believes that while there is no formal doctrine of ***stare decisis***, consistent jurisprudence aids in legal stability and predictability, fostering the development of international law.

24. We further agree on the need for more nuance, as stated in the second sentence of this draft conclusion. The reason being that, despite the general rule, practice amply shows that there are many instances when a decision might have to be followed because this is provided for in a specific instrument such as a treaty or a rule of international law, whether articulated in a founding or later treaty or judicial decision or for that matter, in another type of document. We noted the multiple examples supporting the ILC's conclusion given of various courts and tribunals where that was the case, including, for

instance, the Special Court for Sierra Leone and the East African Court of Justice. To the latter, the Commission might wish to add pertinent examples of the ECOWAS Court of Justice upon revising the commentary.

25. Regarding **Conclusion 8 (weight of decisions of courts and tribunals)**, we agree with the Commission that the three criteria mentioned therein should be the ***lex specialis*** that guide the assessment of the quality of decisions. The commentary explains that these specific factors are meant to supplement the general criteria for assessing subsidiary means, as shown in ***draft conclusion 3,*** adopted last year. However, Sierra Leone considers some general criteria inappropriate for evaluating decisions made by courts and tribunals. Political or other inherently subjective factors cannot be used to evaluate the quality of decisions of a court or tribunal, which may, in some cases, be legally sound but politically sensitive. This is the case in domestic

practice and equally so in international law. It might be helpful to specify specific criteria to guide the assessment of teachings and other means used to determine rules of international law in future conclusions.

26. In conclusion, Sierra Leone expects the work on *subsidiary means for determining rules of international law* to continue advancing, focusing on fostering inclusivity, transparency, and consistency across international and domestic judicial practices. We mainly support the inclusion of regional perspectives in international legal decisions to reflect the realities of developing states, especially those in Africa, as part of shaping a genuinely universal body of international law.

27. Again, we thank the Commission and its Special Rapporteurs, Mr. Jalloh and Mr. Rhenish for the high quality of their work and the results achieved so far.

Thank you, Chair.