Statement on behalf of
the Republic of South Africa

by

Ms Keke Mantsho Annastacia Motsepe
Counsellor: Legal
Permanent Mission of the Republic of South Africa to the United Nations

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Agenda item 79

“Report of the International Law Commission: Cluster II”

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Thank you Chair for giving me the floor.

In this Cluster, South Africa's intervention will focus on the topic "settlement of disputes to which international organisations are parties". South Africa wishes to thank the Special Rapporteur for the work he has carried out in relation to the settlement of disputes to which international organisations are parties. South Africa is generally grateful for responses by States and international organisations in relation to questions posed by the International Law Commission and, once again, extends its gratitude to those who provided inputs on the aforementioned topic, which have assisted greatly in providing insight into the practice of others in relation to the settlement of disputes to which international organisations are parties.

Chair

The Guidelines adopted by the Commission, which are under discussion this year, relate to disputes that have an international character. South Africa's own practice in its treaties concluded with international organisations is mostly to provide for the resolution of disputes through consultation and negotiation and, in some instances, arbitration. Thus far, South Africa's experience has been that such a provision on dispute settlement has been adequate.

Chair

In relation to Guideline 5 – which addresses accessibility of means of dispute settlement and provides that judicial settlement and arbitration should be made more widely accessible – it is not entirely clear to my delegation how the conclusion was reached that the availability of arbitration and judicial settlement may increase the willingness to find a negotiated settlement. Whilst documents supporting this conclusion are cited in the report of the Commission, it is noted that these are relatively outdated, and it would be helpful to understand whether there is anything more recent that substantiates such a view – especially having regard for growing support (on the domestic level at least) for alternative means for dispute settlement.

South Africa additionally notes that arbitration and judicial settlement are extremely expensive, and this may serve as a barrier to access, both for States and international organisations. Moreover, the immunities and privileges of an international organisation will in many cases limit access to judicial settlement.

Chair

As regards Guideline 6, concerning requirements for arbitration and judicial settlement, we note the use of the term "shall". South Africa does not question the core importance that adjudicators should be independent and impartial or that arbitration and judicial settlement should follow due process. Indeed, South Africa ardently supports such a position and agrees that these are obligations that appear in international law. However, we do wish to note that the guidelines are intended to be non-binding and as such, peremptory terms, such as "shall" should not be included. As such, South Africa prefers the proposed Guideline in paragraph 246 of the Special Rapporteur's second report on the settlement of disputes to which international organisations are parties (A/CN.4/766). Alternatively, it may be necessary to amend the wording of the Guideline to reflect that whilst the substance may be a reflection of such an obligation, the Guidelines themselves are not establishing such an obligation.

Chair

At present, South Africa does not offer comments on draft Guidelines 3 and 4, but notes that it may choose to comment thereon in future.

Chair

South Africa remains grateful to the Commission and its members for the extensive and well-researched work they carry out.

I thank you.