Check against delivery

Statement by Türkiye

INTERNATIONAL LAW COMMISSION REPORT (CLUSTER II)

Mr./Madam Chair,

I would first like to address the topic "**Settlement of disputes to which international organizations are parties**".

At the outset I thank Special Rapporteur Mr. August Reinisch for his second report and the Secretariat for the memorandum.

We note with interest that the third report in 2025 of the Special Rapporteur will analyse the practice of the settlement of "non-international disputes" to which international organizations are parties, namely disputes of private law character that in practice generally are encountered with.

Türkiye attaches importance to the work of the Commission on this topic, which it considers to be of great practical value. We are convinced that the outcome would not only be beneficial for the States that host international organizations, but also for member states of international organizations.

We welcome the reformulation of draft Guideline 4. As expressed by the Members of the Commission during their deliberation of the report, provisions of a more descriptive nature were appropriate and desirable in the Commission's outputs and the content of the recommendation in the draft guideline should contain normative text. The new version of draft Guideline together with its new title, in our view, is therefore preferable.

In order to ensure the security of critical information with respect to national defence and security of the state involved, the legal regulations regarding the dispute settlement between international organizations and states should envisage the fact that it may be necessary to carry out dispute settlement processes in confidentiality. With this understanding, the phrase "by duly respecting the confidentiality of the matter when necesssary" would be added to the Guideline 4 of the Chapter 4. Hence, it would read as follows:

"Disputes between international organizations or between international organizations and States should be settled in good faith and in a spirit of cooperation, *by duly respecting the confidentiality of the matter when necesssary*, by the means of dispute settlement referred to in draft guideline 2, subparagraph (c), that may be appropriate to the circumstances and the nature of the dispute."

The dispute settlement mechanism envisaged under the rules and procedures of the Understanding annexed to the Marrakesh Agreement of the World Trade Organisation applies to disputes brought pursuant to the consultation and dispute settlement provisions of the agreements listed in Appendix 1 to the Understanding and to consultations and the settlement of disputes between Members concerning their rights and obligations under the provisions of the Agreement Establishing the World Trade Organization. As such, the decisions of the mechanism are binding upon the Parties of the dispute and do not create precedent in that regard. It is therefore questionable whether the mechanism of the WTO could fit within the scope of the current work which relates to settlement of disputes to which international organisations are parties.

We note the discussion under the heading of "access to dispute settlement" which, inter alia, elaborates limited access of international organization to access in general and to International Court of Justice, in particular, a point that was touched upon also by the former President of the ICJ last year during her address to the Sixth Committee. The concerns voiced by the former President about providing access to international organizations on an equal footing with States to the Court in contentious cases merit rigorous consideration.

I would now like to move to the topic "**Subsidiary means for the determination of rules of international law".**

Check against delivery

We thank the Special Rapporteur Mr. Charles Chernor Jalloh for his second report as well as the Secretariat for the memorandum prepared in response to the request by the Commission.

This delegation has already shared its comments regarding the first three draft conclusions which are also valid, in as so far they are related to the draft conclusions adopted at the present session, in particular the draft conclusion 8 where the criteria set out in draft conclusion 3 is referred to.

As regards draft conclusion 4 we join others calling for caution concerning the decisions of national courts. According to paragraph 2 of the draft conclusion for the decisions of the national courts may be used, *in certain circumstances,* as a subsidiary means for the determination of the existence and content of rules of international law. The commentary does not shed much light on what "circumstances" would enable the use of the national court decisions, as it simply refers to the Commission's prior work on the identification of customary international law, to Conclusion 13, paragraph 2 in particular.

As rightly observed in the commentary, national courts sometimes lack international law expertise. Moreover, the decisions of lower national courts can be overturned by higher national courts. This is indeed an important difference between national court decisions and decisions of international courts, as the latter could in certain circumstances become binding once rendered. Hence, the process of becoming final and binding between the decisions of the international courts and national courts, in our view, should be further reflected in the draft conclusions.

Thank you.