

under domestic law.

In the Philippines, there have been cases involving labor rights and international organizations. However, in a case, the Supreme Court has held that Asian Development Bank has immunity from suit in at case based on the Charter and Headquarters Agreement, and thus cannot be sued. The filing of the petition by the foreign ministry affirms the government's own recognition of ADB's immunity. Also, the Court noted that the service contracts entered by the ADB were official acts over which a waiver of immunity would not attack.

Draft Guideline 4

We welcome Draft Guideline 4 which recommends using peaceful dispute settlement methods as listed in draft guideline 2, subparagraph (c), that includes methods from Article 33 of the Charter of the United Nations as reaffirmed by the Manila Declaration on the Peaceful Settlement of International Disputes on the understanding that it does not prioritize any specific method.

We agree with the Guideline's emphasis on the free choice of dispute settlement and the inclusion of language indicating that the means chosen should be "appropriate to the circumstances and the nature of the dispute." We also appreciate that this specific language is inspired by paragraph 5 of the Manila Declaration which refers to "such peaceful means as may be appropriate to the circumstances and the nature of their dispute".

In the same vein, we welcome the reflection in paragraph 5 of the Manila Declaration in the Guideline's call for disputes to be settled in good faith and cooperation, noting that these are essential for guiding dispute resolution efforts.

Draft Guideline 5

We note that Draft Guideline 5 addresses the accessibility of dispute settlement means, as distinguished from Guideline 4, which recommends using appropriate means for dispute resolution. BT8 12 Tf61JET@.498 12 Tfhovito

Turning now to “Subsidiary means for the determination of rules of international law.” we thank the Special Rapporteur Mr. Charles Chernor Jalloh for the second report addressing the work of the Commission on the topic and the views of States in this Committee. As well, on the nature and function of subsidiary means, focusing on judicial decisions as subsidiary means for the determination of rules of international law; the general nature of precedent in domestic and international adjudication, including the relationship between Article 38, paragraph 1 (d), and Article 59 of the Statute of the International Court of Justice; and the future programme of work on this topic.

In relation to the discussions, we wish to share the following views:

On Draft Conclusion 4

With respect to Paragraph 1 referring to “Decisions” and “International courts and tribunals”

We reaffirm our agreement with the draft conclusion commentary of Conclusion 1 from the Commission’s 74th session that, in relation to ICJ Article 38, paragraph 1 (d) which uses the term “judicial decisions”; this sub-paragraph omits the word “judicial” to ensure that the draft conclusion applies to a wider set of decisions from a variety of bodies, which broadens the scope.

We agree that “Courts and tribunals” should encompass both international courts and tribunals and national courts or municipal courts.

We concur with the idea that this broader meaning of ‘decisions’ include not only final judgments, advisory opinions, awards and any other orders issued in incidental or interlocutory proceedings, including provisional measures.

We also understand “International courts and tribunals” in its broad sense, intended to cover “any international body exercising judicial powers” called upon to determine the existence and content of rules of international law.

On the phrase “In particular of the International Court of Justice”, we see the value of highlighting decisions of the “International Court of Justice” to (1) give due deference to the ICJ’s extensive judicial practice; (2) in recognition that the ICJ is the “principal organ of the United Nations”, as stated in Article 92 of the UN Charter; (3) ICJ has the special status as the only standing international court of general subject matter jurisdiction; and (4) Each member of the United Nations, under Article 94 of the UN Charter, undertakes to comply with the ICJ’s decision in any case to which it is a party.

Nevertheless, spotlighting the ICJ’s role in this Guideline does not imply that a hierarchy exists in relation to other international courts and tribunals created by States or international organizations.

On Paragraph 2

On Paragraph 2, we understand that the present formula, in contrast to Article 38 par 1 (d) of the ICJ Statute, draws distinction in practice between decisions of national courts and

international courts. The distinction is warranted in the sense that, as rightly pointed out in the report, while decisions of international courts and tribunals are authoritative means for identifying existence and scope and content of international law as their decisions reflect the views of international tribunals that are constituted to interpret and apply international law, the decisions of national courts stem from a particular legal system which may incorporate international law only in a particular way and to a limited extent.

While we note that the Commission has stated that Draft Conclusion 4 must be read together with Draft Conclusion 3, 7, and 8, which sets out illustrative criteria for the assessment of the weight to be given to decisions of any court or tribunal; bearing in mind that best efforts should be made to use a representative set of court decisions from various legal systems, regions and language of the world to enhance the legitimacy and development of international law, we would caution against rigid application of these criteria for the assessment of subsidiary means for the determination of rules of international law.

We would urge the Commission to consider anew the criteria, particularly the specific references to the level of agreement among those involved and the reception by States and other entities.

On Draft Conclusion 5

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We endorse the suggestion that the aforementioned draft conclusions could give guidance not just to courts and tribunals as users of judicial decisions, but to others including policymakers, legal advisers, agents and advocates.

We intend to revisit these views when we consider again these topics in subsequent sessions.

Thank you, Mr. Chair. **END**