

Statement by

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before the Sixth Committee

79<sup>th</sup> Session of the United Nations General Assembly

on

Agenda item 79: "Report of the International Law Commission on the work of its seventyfifth session"

Cluster I

Chapters: 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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Mr. Chairman,

In my statement( )w .tn C<3Q812d06 I will discuss Chapters IV and V of the ILC's Report and share our views on the topics "Settlement of disputes to which international organizations are parties" and "Subsidiary means for the determination of rules of international law"

On the first topic, namely, Settlement of disputes to which international organizations are parties, we take note of the second report of the Special Rapporteur, Mr. August Reinisch, contained in document A/CN.4/766, as well as

the memorandum prepared by the United Nations Secretariat on the practice of States and international organizations.

Certain aspects of the current work of the Commission need to be viewed in the light of its previous work in relation to international organizations, in particular the 2011 Draft Articles on the Responsibility of International Organizations. In a relevant note, we concur with the Special Rapporteur to limit the scope of the ILC's work on the topic to intergovernmental organizations and to exclude non-governmental organizations and business entities. In this respect, we are still not convinced by the decision of the Commission to expand the definition of "international organizations" as previously adopted in 2011.

We note that the Special Rapporteur has presented a focused study of international disputes, the practice of settling international disputes to which international organizations are parties, as well as policy issues and suggested guidelines.

The study of different modes of dispute settlement and rules of law renders inevitable consideration of the topic in light of the law of immunities. The notion that an international organization enjoys jurisdictional immunities has consequences for the settlement of disputes to which it is a party. In a given situation where an international organization has no choice of a means of dispute settlement and has no s, a14Tw 4i3

constitutive instrument of the organization or the relevant host country agreement  
and a higher accessibility may better assist in filling the gap in this respect.

Turning to draft Guideline 6, arbitration and judicial settlement have been  
rightly subjected to

traditions of various legal systems of the world. That said, if a judicial decision were contrary to an established rule of international law it would not give rise to the formation of a rule of customary international law even if it were widespread in the eyes of certain States.

We concur with the Special Rapporteur as to the paramount significance of decisions of the ICJ as subsidiary means for the determination of the existence and content of rules of international law as reflected in draft Conclusion 4. In this context, we highlight that the decisions of other courts and tribunals may be considered as having a role as subsidiary means for the determination of rules of international law commensurate with the degree of their representativeness, quality of reasoning as well as their expertise as mentioned in draft Conclusion 3. As stated by the Court in *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)* (2010) 11 I.C.J. 438, para. 114.

the Court, for instance, whether it is a court of first instance or supreme court, as well as the relevance of the decision to international law

Compared with “judicial decisions”, teachings are evidently less frequently resorted to for determination of rules of international law by courts and tribunals or even jurists. As suggested by the late Professor and Judge James Crawford, “judicial decision

Article 59 of the Statute of the ICJ, we underline that reference to previous judicial decisions by courts and tribunals are primarily premised upon similar judicial and at times factual characteristics and this may