

Statement of the Republic of Korea

Item 79 - Report of the ILC on the work of the seventy-fourth session

Sixth Committee, 78th Session of the UNGA

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Subsidiary Means for the Determination of Rules of International Law

Madam Chair,

My delegation has expressed warm welcome on the Commission's decision to include "Subsidiary means for the determination of rules of international law" in the programme work. Expressing our deep gratitude for the excellent work done by Special Rapporteur Mr. Charles Jalloh and all the ILC members on this topic, my delegation hopes that this topic will be brought to a successful conclusion, since it will have a significant impact on the development of international law, in particular, the crucial subject of the sources of international law.

Regarding judicial decisions, my delegation agrees with the view of the special rapporteur that, although international law does not have the principle of *stare decisis*, judicial decisions play an important role in the determination of rules of international law.

My delegation also confirms the Korean government's respect for the decisions of international courts and tribunals, which are crucial for the attainment of the rule of law in international relations. Having said that, judicial decisions are indeed not binding on the states that are not parties to the relevant cases, and it would also be advisable to take a balanced and cautious approach to the assessment and weighting of judicial decisions by taking into account the criteria indicated in Draft Conclusion 3. Sometimes, different courts and tribunals occasionally adopt divergent reasoning for identical legal questions. One also encounters cases in which dissenting or separate opinions prove to be more convincing than the majority view, subsequently securing a wider acceptance by the international community. An apt example would be the recent ICJ judgment on the question of extended continental shelf. In the powerful dissenting opinion written by a former ICJ president, the majority opinion was characterized as "disquieting". Such examples highlight the need to be more cautious and balanced in utilizing judicial decisions as a subsidiary means for the determination of rules of international law.

Concerning Draft Conclusion 2, my delegation would like to point out the difference between the 2021 Syllabus and Draft Conclusion 2 provisionally adopted at the current ILC session. The syllabus mentions two categories of judicial decisions and teachings, which is consistent with Article 38(1)(d) of the ICJ Statute, while Draft Conclusion 2 provides for the additional category of "any other means generally used to assist in determining rules of international law". The

Commission may need to consider carefully whether this additional category may expand the scope of the topic substantially beyond the scope delineated by Article 38(1)(d) of the ICJ Statute. In this connection, the Commission may want to further clarify the criteria for “any other means generally used to assist in determining rules of international law”.

Hoping that the Commission will continue to make outstanding contribution to advancing the discussion on this important topic, the Korean government will keep proactively participating in the discussion and fully cooperate with the Commission.

Succession of States in respect of State Responsibility

My delegation would like to express its deep appreciation for the outstanding contribution of Mr. Pavel Šturma, who submitted five reports while serving as special rapporteur for this topic. The hard work of all ILC members on this important topic and the assistance provided by the Secretariat, in the form of a memorandum in particular, are also highly appreciated.

With no report submitted during the present session, the Commission has not engaged in any substantive discussion. Instead, it has established a working group and appointed Mr. August Reinisch as its chair. My delegation would like to congratulate Mr. Reinisch on his appointment as chair of the working group and offer a few comments on the future direction of the Commission’s work on this topic.

In our previous comments presented before this Committee, my delegation pointed out the relative paucity of State practices and also the lack of consistency in those practices with respect to this topic. It is also to be noted that there is a substantial divergence of views among commentators on this topic. Furthermore, the “track record” of the ILC’s work on this topic, (that is, the 1978 Vienna Convention on Succession of States in respect of Treaties; the 1983 Vienna Convention on Succession of States in respect of State Property, Archives and Debts; and the Draft Articles on Nationality of Natural Persons in Relation to the Succession of States), is less than impressive. These considerations lead one to wonder whether the topic is fit or ripe enough for a codification or progressive development by the ILC, in particular, in the form of draft articles which would eventually be converted into a binding legal instrument by States. This concern was partially addressed by the ILC’s decision to change the form of the final outcome from draft articles to draft guidelines.

Taking account of these circumstances, my delegation thinks that the decision made by the ILC to continue its discussion on the topic but not proceed with the appointment of a new special rapporteur is appropriate. My delegation also welcomes that the ILC has required “the Working Group be re-established at the seventy-fifth session of the Commission, with the present open-ended composition, with a view to undertaking further reflection on the way forward for the topic.”

My delegation would like to request the Commission to engage in further reflection not only on the way forward for the topic but also on how to improve its work, in particular, at the stage of choosing topics.