



PERMANENT MISSION OF THE REPUBLIC OF SINGAPORE
UNITED NATIONS | NEW YORK

**STATEMENT BY MR SCOTT TAN,
DELEGATE TO THE 78TH SESSION OF THE UNITED NATIONS
GENERAL ASSEMBLY, ON AGENDA ITEM 79, ON THE REPORT OF
THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS
SEVENTY-THIRD AND SEVENTY-FOURTH SESSIONS
(CLUSTER III: CHAPTERS VII AND IX OF A/78/10),
SIXTH COMMITTEE,
1 NOVEMBER 2023**

Mr Chair,

1 Thank you for giving me the floor. Singapore commends the Commission and Special Rapporteur Professor Charles Chernor Jalloh for their work on the topic “**Subsidiary means for the determination of rules of international law**” and congratulates the Commission on its provisional adoption of draft conclusions 1, 2 and 3 and their commentaries. Singapore considers that the Commission’s work on this topic will serve as a useful complement to the Commission’s earlier work on Articles 38(1)(a) to (c) of the Statute of the International Court of Justice.

2 Turning now to the provisionally adopted draft conclusions and commentaries, my delegation notes with interest the Commission’s choice at subparagraph (a) of draft conclusion 2 to omit the qualifying word “judicial” used in Article 38(1)(d) of the Statute of the International Court of Justice and to instead refer simply to “decisions of courts and tribunals”. We agree with the Commission’s suggestion to use the broader formulation to make clear that decisions on matters of international law issued by adjudicative bodies may also fall under the scope of draft conclusion 2. In this regard, we also agree that the term “courts and tribunals” should be understood broadly. It may encompass entities carrying out functions akin to that carried out by a court or tribunal when adjudicating a dispute. The Commission helpfully cites the dispute settlement bodies of the World Trade Organization as one such example. Another possible example is the Council of the International Civil

Aviation Organization (ICAO Council). Although the International Court of Justice has said that the ICAO Council is not “a judicial institution in the proper sense of that term”, the Court has recognised the Council’s function of settling disagreements between two or more contracting States relating to the interpretation or application of the Chicago Convention and its Annexes.¹

3 In relation to subparagraph (c) of draft conclusion 2, my delegation also notes with interest that the Commission may further elaborate on the contents of the third category of subsidiary means, namely, “any other means generally used to assist in determining rules of international law”. We look forward to the Commission’s future work on this and have two preliminary comments at this juncture. First, if the Commission identifies additional subsidiary means that could fall within the “any other means” category, the Commission should also explain *how* it arrived at its conclusion, especially how these subsidiary means are “generally used to assist in determining rules of international law”. Second, the Commission should be cautious to avoid an undue expansion of the categories of subsidiary means beyond those currently widely accepted.

4 Finally, we note that paragraph (4) of the commentary to draft conclusion 3 clarifies that the term “should” in the *chapeau* of draft conclusion 3 indicates that the reference to the criteria is not mandatory, although it may be desirable in many cases. The commentary also notes at paragraph (3) that “not all factors would be applicable to all the categories of subsidiary means.” Having considered these clarifications in the commentary, my delegation is of the view that it would be clearer if the term “should” in the *chapeau* of draft conclusion 3 were to be replaced with “may” instead, so that it reads as follows: “When assessing the weight of subsidiary means for the determination of rules of international law, regard may be had to, *inter alia*...” The use of the term “may” would make it clearer that the factors to which regard should be had will ultimately depend on the circumstances in question.

5 Thank you very much for your kind attention.

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¹ *Appeal relating to the Jurisdiction of the ICAO Council under Article 84 of the Convention on International Civil Aviation (Bahrain, Egypt, Saudi Arabia and United Emirates v. Qatar), Judgment, I.C.J. Reports 2020, p. 104, para. 60.*