



PERMANENT MISSION OF THE REPUBLIC OF SIERRA LEONE TO THE UNITED NATIONS

STATEMENT BY

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AT THE SIXTH COMMITTEE ON THE

AGENDA ITEM 79: “REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS 74 SESSIONS”

Second cluster: Settlement of disputes to which international organizations are parties; and Prevention and repression of piracy and armed robbery at sea

and

Third cluster: Subsidiary means for the determination of rules of international law; and Succession of States in respect of State responsibility

NEW YORK, 1 NOVEMBER 2023

Chair,

1. On the topic **Settlement of Disputes to which International Organizations are Parties**, Sierra Leone notes the work of the Commission was based on the Special Rapporteur's *First Report*, which addressed the scope of the topic, definitional issues, and analysis of the subject matter of the topic in light of previous work of the Commission.
2. We welcome the decision of the Commission to change the title of the topic from "Settlement of international disputes to which international organizations are parties" to "Settlement of disputes to which international organizations are parties". This allows for an expanded scope, and aids clarity, particularly on the feasibility to distinguish between international disputes and non-international disputes.
3. We take note that the Commission provisionally adopted draft Guidelines 1 and 2, with commentaries. On **draft Guideline 1 (Scope)**, we firstly must highlight its nexus to draft Guideline 2, which sets out the use of the terms "international organization", "dispute" and "means of dispute settlement", all three terms serving to delimit the scope of the topic.

4. Since the envisaged product for this topic are guidelines, and given the early stage of the work of the Commission on the topic, we agree with the position not to further qualify disputes. We note that international organizations may be parties to a variety of disputes both on the international and the national level. Their disputes with members and host States, but also with third States or other international organizations will most often arise under international law. However, their disputes with private parties are likely to arise under national law or specifically stipulated applicable rules. Sierra Leone considers that addressing disputes under national law will require the Commission to examine the question of the immunity of international organizations balanced against human rights considerations of the need for victims to obtain remedies for harm caused to them.

5. On **draft Guideline 2 (Use of terms)**, contains definitions of the three core terms. “international organization”, “dispute” and “means of dispute settlement”. On “international organization”, we note the departure from definition of “international organization” contained in article 2 of the articles on the responsibility of international

organizations adopted by the Commission in 2011. While we appreciate the reason for such a departure, ultimately, consistency to limit fragmentation is a critical issue for the Commission to take into consideration.

6. Sierra Leone further considers that the clarification of international legal personality is helpful but does not see the need to include the notion of at least one organ capable of expressing a will distinct from that of its members.
7. On the definition of the term “dispute”, we note that it builds on the definition contained in the *Mavrommatis Palestine Concessions* judgment and is sufficiently general to encompass legal disputes arising at the international level and under national law whether of a public or private law nature.
8. We note the non-reference to “policy” and would welcome the approach to explain why draft Guideline 2, subparagraph b, only refers to disagreements on a point of law or fact and not to mere policy disputes. We also welcome similar rationalization relating to how a dispute with political aspects would still not deprive it of its legal character.

9. On subparagraph c, Sierra Leone is comfortable with the approach taken, noting that the ILC work is inspired by article 33 of the Charter of the United Nations, but excludes the words “of their own choice”. We think there is merit to either include the important aspect of choice, and the commentary clarifying that there may be situations where this choice may be absent.
10. On another note, we see that the term “means of dispute settlement” has been retained under the “Use of terms” provision instead of being given substantive treatment. We are of the view that this should not exclude the possibility of a more substantive treatment in draft guideline provisions, if deemed necessary.
11. Finally on this topic, we wish to note that Sierra Leone is receptive to the plans of the Special Rapporteur to analyse in detail the practice of the settlement of “international” disputes to which international organizations are parties, that is, mostly disputes arising between international organizations and States in his next report. The possibility to address in details particular issues, we agree can be inspired by the needs of States, and this can be evidenced from interactions with the next report.

12. Sierra Leone thanks the Commission and Special Rapporteur, Professor August Reinisch, for the work done so far on the topic.

Chair,

13. Moving onto the topic **Prevention and Repression of Piracy and Armed Robbery at Sea**, which is of high interest of my delegation and other African and Asian States that are particularly impacted by modern acts of piracy. Firstly, as a fundamental point, the delegation of Sierra Leone agrees that draft articles are the most appropriate outcome for this topic. We agree that draft articles could be more suitable for a topic in the realm of criminal law, and would allow the Commission to provide States with a concrete objective and practical legal solutions to the problems posed by piracy and armed robbery at sea. This can be done whilst respecting and not affecting the integrity of the United Nations Convention on the Law of the Sea (UNCLOS).

14. In relation to **draft Article 1 (Scope)**, my delegation welcomes the bifurcated approach taken by the Commission based on the two crimes, namely, piracy and

armed robbery at sea. We look further to the Commission's further qualification of the criminal acts or their geographical scope in subsequent draft articles.

15. On draft **Article 2 (Definition of Piracy)** and regarding paragraph 1, we welcome the overall goal of the Commission to preserve the integrity of the internationally agreed definition of piracy contained in Article 101 of UNCLOS, with thorough explanation of key terms in the commentary to clarify the Commission's understanding of the scope and content of the definition.
16. We take note with appreciation of the Commission rationalization for the inclusion of **paragraph 2 of draft Article 2**, with article 58, paragraph 2 of UNCLOS, referring to articles 88 to 115 of UNCLOS.
17. On **draft Article 3 (Definition of Armed Robbery at Sea)**, we also welcome the approach to keep with the practice of the UN Security Council, to modify the text contained in the annex to resolution A.1025 (26), adopted by the Assembly of the International Maritime Organization (IMO) on 2 December 2009. We also welcome the inclusion of the inchoate offences relating to armed robbery at sea.

18. Sierra Leone thanks the Commission and Special Rapporteur, Professor Yacouba Cisse, for the work done so far on the topic.

Chair,

19. Let me now move onto the cluster three topics, starting with **Subsidiary Means for the Determination of Rules of International Law**, which is intended to serve as a final piece of the Commission's work on sources of international law as enumerated in Article 38(1) of the Statute of the International Court of Justice, widely recognised "as the most authoritative and complete statement" of the sources of international law.

20. We take note that under Article 38(1)(d) of the ICJ Statute, the Court is directed to examine, when resolving disputes between States in accordance with international law, to also apply "judicial decisions" and "teachings of the most highly qualified publicists of the various nations" as "subsidiary means" for the "determination of rules of law." Sierra Leone therefore welcomes the Commission aims to clarify the key issues that have arisen in practice in relation to the directive included in the Statute of the ICJ. For the outcome of the topic to be useful, it must take into

account developments in State and international practice since 1945.

21. At the outset, like most members of the Commission, we also welcomed the thorough first report of the Special Rapporteur on this topic, which provided a strong and scientifically rigorous foundation for the Commission's substantial progress on this topic during its seventy-fourth session.

22. Since **draft Conclusion 1 (Scope)** is introductory in nature, and clear in our view, we will start with **draft Conclusion 2 (Categories of subsidiary means for the determination of rules of international law)**. This draft conclusion sets out three main categories of subsidiary means for the determination of rules of international law. These are: (a) decisions of courts and tribunals; (b) teachings, in the sense of by those of scholars from the various nations, regions and legal systems of the world; and (c) any other means generally used to assist in determining rules of international law.

23. We note that the first two categories (a) and (b) are rooted in, and largely track, the language of Article 38, paragraph 1 (d), of the Statute of the ICJ. The formulations

used by the Commission here mirror the prior conclusions of the Commission in the 2018 conclusions on identification of customary international law and general principles of law adopted on first reading this year. We take note of the third category, “any other means”, which in our view merits studying, given the possible added value to examine other subsidiary means used in practice to assist in the determination of the rules of international law. These would necessarily include subsidiary means that have developed in practice since 1945 in particular certain resolutions of international organizations, and the works of expert bodies created by States such as the human rights treaty bodies as well as private expert bodies, for example, the Institute of International Law and hybrid or mixed bodies such as the International Committee of the Red Cross. We agree with the proposed exclusion of unilateral acts of States since those are not subsidiary means.

24. On the two well established categories, the delegation of Sierra Leone wishes to put on record its particular agreement with the Commission reference to “teachings” in the second category, abandoning the “most highly qualified publicists” reference actually contained in Article 38, paragraph 1 (d) of the ICJ Statute. The “most highly

qualified publicists” formulation, similar to “the general principles of law recognized by civilized nations”, is rooted in a historical time not reflective of the modern contemporary character of international law. The reference to “most highly qualified publicists” is also elitist, and focuses not on the scientific quality of the individual’s work, but on the individual.

25. On **draft Conclusion 3 (General criteria for the assessment of subsidiary means for the determination of rules of international law)**, which is really about the weight to be given to materials that are already considered subsidiary means starts with the criterion of the “degree of representativeness” of the materials being used as subsidiary means. This is significant as it recognizes the importance of taking into account the views and approaches of the various legal systems and regions of the world, with the necessary flexibility when considering rules that are bilateral or regional in nature.

26. Sierra Leone looks forward to the progress of this study and remains hopeful that the Commission will be flexible to firstly address concerns relating to representation from the geographic, gender, racial and linguistic considerations on the category and substance of teachings; and

secondly on the issue of conflicting decisions between international courts and tribunals, found in practice, and referred to as the question of fragmentation of international law.

27. We take note with interest the provisional adoption by the Drafting Committee of draft Conclusions 4 and 5 and look forward to the adoption of their commentaries next year. We further take note of the request of the Commission for States to make written comments on this topic which call has been renewed again this year. Sierra Leone was pleased to submit examples of our national practice last year.

28. Lastly, on this topic, Sierra Leone thanks the Commission and commends the Special Rapporteur, Professor Charles Chernor Jalloh for the important work done so far on the topic.

Chair,

29. Finally, Sierra Leone takes note of the development with respect to the topic **Succession of States in respect of State responsibility**, with the Commission establishing a Working Group, in order to consider the way forward on the topic, which we look forward by the next session.

30. Sierra Leone once more commends the Co-Chairs, Special Rapporteurs, Chairs of Study and Working Groups, and the entire Commission for the important work done in its 74th session. We thank the members that have made time to be in New York to engage representatives in the Sixth Committee and legal advisers from capitals.

31. I thank you.