



REPUBLIC OF UGANDA

STATEMENT
DELIVERED BY MR. MARVIN IKONDERE
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PERMANENT MISSION OF UGANDA TO THE UN
ON BEHALF OF THE REPUBLIC OF UGANDA
ON AGENDA ITEM 79
CLUSTER III
SUBSIDIRAY MEANS FOR THE DETERMINATION OF THE
RULES OF INTERNATIONAL LAW

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1. would like to express appreciation to the International Law Commission for the “Report of the International Law Commission on the work of its seventy-fourth session.” The International Law Commission continues to do valuable work for the international community generally, and the General Assembly in particular, in relation to the progressive development and codification of International Law.
2. As already expressed in the Sixth Committee debate in its seventy-sixth session (2021) and seventy-seventh (2022) session, Uganda welcomes the addition of subsidiary means for the determination of rules of international law to the Commission’s current programme of work. We fully support the appointment of Professor Charles C. Jalloh of Sierra Leone as the Special Rapporteur of the topic, one of two African special rapporteurs concurrently playing a leadership role serving the Commission as special rapporteurs.
3. Subsidiary means for the determination of rules of international law is an important inclusion in the Commission’s work. It is also, as we and several other delegations from different regions of the world have highlighted, a natural next step consistent with the Commission’s prior work on the sources of international law under Article 38 of the Statute of the International Court of Justice.

4. Uganda welcomes the special rapporteur's scientifically rigorous and balanced first report, which in our view, like that of most members of the Commission, provided a comprehensive overview and mapping of the key issues in this important topic. We equally welcome the ILC's 2023 report on subsidiary means.
5. We congratulate the special rapporteur and the Commission on the substantial progress made with the adoption of Draft Conclusions 1, 2 and 3 and their commentaries, and having taken note of Draft Conclusions 4 and 5, provisionally adopted by the Drafting Committee, as orally revised. We look forward to the commentaries to these two last mentioned conclusions next year.
6. Uganda would like to express general support for the Draft Conclusions and their commentaries and just have a few remarks. Our delegation finds Draft Conclusion 1, regarding "Scope", appropriate as it is in line with the previous work of the Commission on Article 38 and sources of international law, especially in the draft conclusions on General Principles of Law and Customary International Law.
7. In terms of Draft Conclusion 2, we welcome this early discussion on the categorization of subsidiary means and agree with the non-exhaustive nature of the categories expressed in the chapeau and by the

inclusion of subparagraph 2(c), which I will return to shortly.

8. We especially note and commend the broadening of the categories of “decisions of courts and tribunals” and “teachings”. In terms of the former category, by dropping the reference to “judicial” as included in Article 38(1)(d) of the ICJ Statute, the Commission is in conformity with their work on General Principles of Law and Customary International Law and Uganda welcomes the possibility that a wider set of decisions from a variety of bodies could be covered by the draft conclusions under consideration.
9. Furthermore, we fully support the Commission's choice to not include the phrase “most highly qualified publicists” and just use the term “teachings” to describe the second well established category of subsidiary means. We underline that the “teachings” formulation was also used in the General Principles of Law and Customary International Law. We are in full agreement with the Commission, as provided in the commentaries to Draft Conclusion 2(b), that the phrase “most highly qualified publicists” as it appears in Article 38(1)(d) of the ICJ Statute, is “a historically and geographically charged notion that could be considered elitist”.
10. As already mentioned, Uganda supports the non-exhaustive nature of the categories of subsidiary

means, and thereby the inclusion of Draft Conclusion 2 which provides that subsidiary means for the determination of rules of international law include “any other means generally used to assist in determining rules of international law” and thus recognizing a third category of subsidiary means. We have taken note of the debate in the Commission regarding this category of subsidiary means and agree with the inclusion of the work of expert bodies and resolutions/decisions of international organisations, but that unilateral acts should not be included. In terms of the work of expert bodies, we support the inclusion of the work of both public and private expert bodies, such as the Institute of International Law, the International Law Association and the International Committee of the Red Cross. We further note that the work of State-empowered bodies, such as the Human Rights Committee, and the special procedures of the Human Rights Council and even the International Law Commission have a different quality due to the involvement of States. Therefore, we encourage the Commission to explore the role of those bodies and its own role by considering how its prior work has been relied on for the determination of rules of international law.

11. Uganda acknowledges the usefulness of the general criteria for the assessment of subsidiary means provided for in Draft Conclusion 3, and especially commends the Commission on the inclusion

of Subparagraph (a) which refers to the “degree of representativeness” which will, hopefully, lend itself towards a more inclusive approach by taking into account the views and approaches of the various legal systems and regions of the world, especially those that are typically underrepresented. We would like to draw special attention the commentary to Draft Conclusion 3, which we fully support, namely that it cautions that “the criteria is not mandatory” and “should be used dependent on the circumstances under which they are being used” and applied with “flexibility.”

12. Now moving to Draft Conclusion 4 and 5, which have not yet been adopted by the Commission, but will be next year. Uganda takes note of the language of the two draft conclusions and will await the commentaries to make more substantive comments. Save to say that we have taken note of the discussion in the Commission regarding the lack of diversity in teachings usually consulted, with the effect of generally excluding scholars from Africa and the Global South more generally. We wish to commend the Commission on the significant advancement of including “gender and linguistic diversity” as conditions in the provision, with gender diversity being included for the first time in the Commission’s history. Furthermore, we note that in paragraph 106 of the 2023 ILC Report on subsidiary means, the Commission also debated whether to include racial diversity. We are in complete agreement with this last-

mentioned proposal, and expressly support the revision to include that element into Draft conclusion 5 alongside “gender and linguistic diversity.”

13. Turning to a more general remark regarding the topic of subsidiary means, we appreciate that the special rapporteur, in his first report, raised the question of unity and coherence of international law. In the Sixth Committee debates on the inclusion of subsidiary means as a topic, over the past couple of years, certain delegates did express that it may “help remedy certain consequences of the fragmentation of international law.”

14. We welcome the discussion that took place in the Commission this year on whether the unity and coherence of international law, sometimes referred to as the question of fragmentation, should be examined in the subsidiary means topic, at least in terms of the possible conflict between judicial decisions issued by different courts and tribunals. We note that this fragmentation issue arises in practice, for example, when there were conflicting judicial decisions issued on essentially the same legal question by the International Court of Justice and the International Criminal Tribunal for the Former Yugoslavia in relation to the appropriate test for State responsibility in the *Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia*

and Montenegro), 26 Feb. 2007, in which the ICJ determined that the “effective control test” applies and in the *Tadić* Decision of the ICTY Appeals Chamber dated 15 July 1999 (Case no. IT-94-1-A) in which the latter found the “overall control test” more apposite.

15. We agree with the majority of the Commission members that this issue is worth clarifying and therefore warrants further examination. Since the subsidiary means topic partly concerns judicial decisions, and seems to logically include where different international courts issue different decisions on the same legal issue, we find this topic the appropriate one in which to engage substantively on the matter. Uganda therefore greatly appreciates the special rapporteur’s transparent invitation for State input and his commitment to take into careful account the views of States on this and other issues. Uganda is of the opinion that the Commission has not substantively addressed the fragmentation of international law and that the present topic presents an opportunity to clarify it, should the Commission wish to do so. The issue is of great practical importance, especially with the risk of conflicting judicial decisions arising from the proliferation of international courts and tribunals.

16. Mr. Chairman, as we conclude our statement on this third cluster, focusing today on the subsidiary means for determination of rules of international law,

Uganda once more thanks all members of the Commission and the special rapporteur for their important contributions. We remain, as always, supportive of the work of the International Law Commission and look forward with anticipation to the second report of the special rapporteur focusing on judicial decisions in 2024 and the conclusions and commentaries to draft conclusions 4 and 5. We hope that diverse jurisprudence will be examined, by the Commission, including the judicial and quasi-judicial decisions of African States and our subregional and regional courts and tribunals and their possible role in determining rules of international law. I thank you.
