



PERMANENT MISSION OF JAMAICA
TO THE UNITED NATIONS

INTERVENTION BY

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TO THE UNITED NATIONS GENERAL ASSEMBLY

IN THE SIXTH COMMITTEE

SEVENTY-EIGHTH SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY

**CHAPTER VII: Subsidiary means for the determination of rules of
international law**

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Mr. Chairman,

My delegation thanks the International Law Commission and Mr. Charles Chernor Jalloh, Special Rapporteur , for their commitment to the progressive development of international law as evidenced by their diligent work on the topic, “Subsidiary means for the determination of rules of international law.”

Similarly to the topic on General Principles of Law relating to International, the starting point is the Statute of International Court of Justice, specifically paragraph (1) (d) Article 38. This provision tells us that subject to article 59, both ‘judicial decisions’ and teachings of the most highly qualified publicists of the various nations’ are to be regarded as ‘subsidiary means for the determination of rules of law’. The referenced Article 59 of the Statute stipulates that decisions of the Court are only binding on the parties to the cases that are brought before it. To this end, my delegation supports the view that there is no hierarchy between the two categories and that subsidiary means for the determination of rules of law should be viewed as auxiliary sources, the purpose of which are to point Courts to the existence and scope of the content of rules. Further, my delegation agrees with the Commission that “the use of any subsidiary means to elucidate the sources of rules of international law be carried out using a coherent and systematic methodology.”

In its bid to fulfil its mandate regarding the progressive development and codification of international law, my delegation notes that the Commission read Article 38, paragraph 1 (d) in a manner that reflects contemporary developments. To this end, we note that “judicial decisions” has been formulated to mean “decisions of courts and tribunals.” Further, paragraph (6) of the Commentaries to draft Conclusion, provided a broad definition of decisions to include what may be deemed decisions of quasi-judicial bodies.

It is also noted that advisory opinions of the International Court of Justice may also be considered. We note, and appreciate that this is possible in light of the fact that the common law principle of *stare decisis* is not applicable to the International Court of Justice; thereby, placing both contentious and advisory opinions on equal footing. Regarding “courts and tribunal,” we query whether the advisory opinions of the Caribbean Court of Justice would also be contemplated as it also has the jurisdiction

to produce decisions in both contentious proceedings, by way of its Appellate and Original jurisdiction, and in cases where an advisory opinion is requested by Member States. We also noted the inclusion of other regional judicial bodies namely, the African Court on Human and Peoples' Rights, the Court of Justice of the European Union, the Economic Community of West African States (ECOWAS) Court of Justice, the European Court of Human Rights and the Inter-American Court of Human Rights in the report, and recommend the inclusion of the Caribbean Court of Justice in this list.

We, however, wish to highlight that the Jamaican delegation is not prepared, at this juncture, to comment on the ability of treaty rights bodies also being classified as "courts and tribunals" for the purposes of these conclusions, and desire to study this matter further. In this regard, it is noted that the composition of treaty rights bodies often varies and a similar judicial or quasi judicial process may not be engaged by all treaty bodies. We, nevertheless, look forward to the further clarification of this issue by the Commission

As it concerns national courts, my delegation notes that decisions of national courts may be critical in determining the content of a customary international law, notably, state practice and *opinio juris*. Such decisions may also be critical in matters relating to the determination of general principles of law. We look forward to the Commission's elaboration on the practice of using decisions of national courts as subsidiary means for the determination of international law in future draft conclusions as indicated in paragraph (9) of the Commentary to draft conclusion 2.

Pertaining to subparagraph (2) of draft conclusion 2, my delegation supports the view that teachings should not emphasise only the status of an individual as an author but that this must be counterbalanced with the quality of the work, which the Commission deems to be more important. Mr. Chairman, my delegation would request further clarification on the inclusion of non-written forms of teachings, particularly against the backdrop that unlike written works, users do not immediately have access to sources and other information to interrogate the basis on which the author formed their conclusions.

Mr. Chairman, my delegation notes that the purpose of conclusion 3 is to aid the Court in determining the weight that should be given to each subsidiary means. The criteria, in the view of the Jamaican delegation, is not conjunctive. We understand that each subsidiary means may be applied on a case by case basis as well as having regard to the relevant source of international law. We also appreciate the degree of flexibility that may be applied. Nevertheless, my delegation queries whether the term “relevance to the issues and facts being considered by the court or tribunal” or another formulation should be inserted as a criterion, for the purposes of clarity. This criterion would likely be important where a decision is on all fours with the matter that is being considered. In such a circumstance, the court or tribunal may elevate the weight of that particular subsidiary means.

In conclusion, Mr. Chairman, my delegation applauds the International Commission and Mr. Charles Chernor Jalloh, Special Rapporteur, for their continued work on this topic and will continue to look forward to its development.