

*Check against delivery*

**Statement by**  
**Mr. Mahdad Fallah Assadi,**  
**Representative of the Islamic Republic of Iran**  
**before the Sixth Committee of the**  
**78<sup>th</sup> Session of the United Nations General Assembly**  
**on**  
**Agenda item 79: "Report of the International Law Com**

**New York, 1 November 2023**

**Mr. Chairman,**

At the outset, we would like to express our appreciation to the Special Rapporteur, Mr. Charles Jalloh for his preliminary work on the topic of "**Subsidiary means for the determination of rules of international law**" and preparation of his first report. My delegation also commends the other members of the International Law Commission (ILC) and appreciates the Secretariat for preparation of the Memorandum.

My delegation takes note of the inclusion of this topic in the Commission's program of work. It helps the Commission to continue its long-standing work in the clarification of the sources of international law.

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Permanent Mission of the Islamic Republic of Iran to the United Nations

622 Third Ave New York, NY 10017 ny.mfa.gov.ir Tel:+1(212)687-2020 Fax:+1(212)867-7086 E-mail: Iranunny@mfa.gov.ir

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**Mr. Chairman,**





legal position by a Party to a contentious case, which makes its best efforts through legal reasoning by legal advisers, and Counsel simply to guarantee that it wins the case in a particular inter-State dispute which has its own relevant legal and factual background.

In addition, there is a logic to make a distinction between written and oral pleadings. While written pleadings including the application, memorial, counter-memorial, reply and rejoinder are signed and submitted by the Agents of States before the ICJ, oral pleadings are usually made by Counsel and advocates. On the other hand, Agent's speech reflects both a State practice and official position of a State.

In addition, possible interventions by States as *a*

the law. As suggested by the late Professor and Judge James Crawford, "judicial decisions" are regarded as evidence of the law.

The Commission itself makes more use of the "judicial decisions" rather than "teachings." Thus, there appears to exist a normative difference between these two subsidiary means. During the drafting of the Statute of the Permanent Court of International Justice (PCIJ) by the Advisory Committee of Jurists, members of the Committee touched this issue. Some drafters including the French member of the Advisory Committee were of the view that "judicial decisions or Jurisprudence" is more important than "teachings or doctrine", "since the judges in pronouncing the sentence had a practical end in view".

This reasoning is logical and persuasive. As the Special Rapporteur has rightly pointed out, the ICJ's reliance on "teachings" is rare and it has cited "teachings" only in few cases. Even in the rare instances that the Court referred to teachings, its citation of writers does not seem to be representative of the various nations. That being so, it does not have sufficient diversity to be reflective of principal legal systems of the world significantly ignoring or neglecting the Global South. In this regard, we would like to highlight the important status of the Islamic legal systems as a principal legal system in many countries which deserves appropriate attention.

In the same vein, the weight attached to the works of prominent and pioneer private expert groups or eminent groups of scholars such as Institute of International Law (*Institut de Droit International*) and the International Law Association should be much higher than those of individual scholars and a single authority should. Some international lawyers and judges have opined that the reference to "the determination of rules of law" in Article 38, paragraph 1 (d), connotes a decision which would elucidate the existing law (*de lege lata*), and not bring new law (*de lege ferenda*) into being. If we stick to this argument, then no role would be left for the ICJ and other international courts and tribunals in the progressive development of international law.

Having said that, there are many reasons to believe that international courts and tribunals play an important role in the progressive development of international law. No doubt, the ICJ has made many contributions to develop international law. With this in mind, we agree with the Special Rapporteur that "the formal "subsidiary" status of judicial decisions belie in practice their fundamental role an









customary international law if and only if they are widespread and consistent with established principles and rules of international law.

**Mr. Chairman,**

Allow me to refer to the Chapter nine of the ILC Report, which deals with the topic of "**Succession of States in respect of State responsibility**".

My delegation would like to thank the Commission for the decision to establish a Working Group on the topic and we welcome the appointment of Mr. August Reinisch as Chair of the Working Group. We are also grateful to the insight of the Commission not to proceed with “draft articles” as a final outcome of the ongoing work but rather to proceed with a “draft guidelines” for the topic under consideration.

Finally, recalling the position and observations of the Islamic Republic of Iran on this topic before the seventy-seventh session of the Sixth Committee and its other sessions,<sup>3</sup> we will provide our complementary comments and observations on the draft guidelines worked out by the Drafting Committee in due time.

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<sup>3</sup> See. Statement delivered by the Islamic Republic of Iran before the 73<sup>rd</sup> (Cluster III) Session of the Sixth Committee of the United Nations General Assembly under the Agenda item 78: Report of the International Law Commission on the work of its Seventy-third session.

**Mr. Chairman,**

Having reached the end of my statement corresponding to the final cluster on the Report of the Commission on the work of its seventy-fourth session, my delegation once again expresses its gratitude to the members of the ILC, and the Chair, Vice-Chairs, Rapporteur and the Secretariat of the Sixth Committee and wishes the successful completion of all the ongoing works currently underway.

**I thank you Mr. Chairman.**