

PERMANENT MISSION OF JAMAICA TO THE UNITED NATIONS

INTERVENTION BY

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ON THE REPORT OF THE INTERNATIONAL LAW COMMISSION (ILC)

TO THE UNITENDATIONS GENERAL ASSEMBLY

IN THE SIXTH COMMITTEE

SEVENTEIGHTH SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY

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

1 NOVEMBER, 2023

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

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)

. 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, 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,

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.

we query whether the advisory opinions of the

Caribbean Court of Justice would also be contemplated as it

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

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

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

to the issues and f 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,