

**Statement on behalf of the European Union and its Member States**

**by**

**Mr. Thomas Ramopoulos**

**Counsellor**

**Delegation of the European Union to the United Nations**

**at the Sixth Committee**

**on the Agenda item 79:**

**Cluster II: Report of the ILC on the work of its 75th session**

**Chp IV (Settlement of disputes to which international organizations are parties)**

**United Nations**

**New York**

The European Union has the honour to address the Sixth Committee on the work of the International Law Commission (ILC) relating to the topic of **Settlement of disputes to which international organizations are parties** based on the second report prepared by Special Rapporteur Mr. August Reinisch.

The Candidate Countries Montenegro , Serbia , Albania , Ukraine, the Republic of Moldova, Bosnia and Herzegovina and Georgia, align themselves with this statement.

exhaustive manner. To the extent that other draft guidelines refer to means of dispute settlement, as defined in draft guideline 2, subparagraph (c), there would therefore be no need to specifically reference the guideline in which that definition is provided. Thus, in draft

omitted. Moreover, given that the definition includes arbitration and judicial settlement,

arbitration and judicial settlement guideline 5 would in principle be redundant.

At the same time, the European Union notes that, as explained in commentary (3) to draft guideline 5, while negotiations or consultations are practically always available, this is not the case for dispute settlement involving third parties. Against this background, the aim of draft guideline 5 appears to be to make the latter means of dispute settlement

guideline 5), rather than those means of dispute settlement that are practically always available. However, the

going beyond the aim.

Against this background, the European Union would suggest to consider specifying in draft guideline 5 those means of dispute settlement, which require being accessible more widely. A wider accessibility of means of dispute settlement involving third party adjudication would be without prejudice to the right of the parties to a dispute to determine the appropriate means of dispute

33 UN Charter), as recognized in commentary (3) to draft guideline 4. In the event the parties to a dispute had previously agreed to a system of mandatory adjudication, for instance in a public international law instrument setting up an international organization, their choice to determine the appropriate means of dispute settlement might be limited by the obligations undertaken therein.

This is for instance the case of the disputes between the Member States and the institutions of the European Union.

The European Union would like to reaffirm that, while the European Union has been established by public international law instruments, these instruments have established a new legal order. Under Article 344 of the Treaty on the Functioning of the European Union (TFEU), Member States undertook not to submit a dispute concerning the interpretation or application of the EU Treaties to any method of settlement other than those provided for in those Treaties. Hence, in accordance with the jurisprudence of the Court of Justice of the European Union, any internal disputes (be it between two or more EU Member States amongst themselves or between one or more EU Member State and the EU institutions) in relation to European Union law, including when implementing public international law obligations, fall within the exclusive jurisdiction of the Court of Justice of the European Union. While public international law principles can still be used for interpretative purposes by the Court of Justice of the European Union, these disputes are governed by European Union law and remain subject to the specificities of that legal framework.

In any event, the European Union understands that, according to commentary (4) to draft

The European Union welcomes the reference to the law and practice of regional economic integration organizations in paragraphs (5) and (6) of the commentary on draft guideline 3.

The European Union moreover welcomes draft guideline 4 according to which disputes within the scope of t  
and in a spirit of cooperation by the means of dispute settlement that may be appropriate to the circumstances and the nature of the dispute. This wording

In conclusion, the European Union wishes to express its appreciation once again for the work done so far by the ILC on this important topic and is looking forward to continuing and contributing further to the debates on this matter in the 6th Committee.



**Statement on behalf of the European Union and its Member States**

**by**

**Mr. Frank Hoffmeister**

**Director, Legal Department**

**European External Action Service**

**at the Sixth Committee**

**on the Agenda item 79:**

**Cluster II: Report of the ILC on the work of its 75th session**

**Chp V (Subsidiary Means for the determination of Rules of International Law)**

**United Nations**

**New York**

**24 October 2024**

**CHECK AGAINST DELIVERY**

Mr. Chairperson,

It is an honour for me to address the 6<sup>th</sup> Committee, on behalf of the European Union, on **subsidiary means for the determination of rules of international law**.

The Candidate Countries Montenegro , Serbia , Albania , Ukraine, the Republic of Moldova, Bosnia and Herzegovina and Georgia, align themselves with this statement.

The European Union would like to congratulate the ILC and the Special Rapporteur, Mr. Charles Chernor Jalloh, with the progress made in the consideration of this important topic.

It welcomes the provisional adoption of draft conclusions no 4 to 8 on subsidiary means for (a)-28(n)-24(s)-30( ) 1 0 0 1 72.8 1 72.8 1 72.8 24(s)88ger7TJETQ1(e)30 43W\*nB



regional judicial body. Indeed, the CJEU has substantial case-law dealing with matters of international law and its jurisprudence could be an instructive subsidiary means for the determination of rules of international law.

Second, as to paragraphs (4) and (5) of the commentary to paragraph 1 of draft

tribunals, the European Union agrees with the Commission in pointing to the

Third, the European Union would like to address the nature and function of subsidiary means referred to in draft conclusion 6 and the related commentary.

Regarding the first paragraph of draft conclusion 6, and to reiterate its comments made in its previous statement on this topic, the European Union would like to confirm that it concurs that subsidiary means referred to in Article 38 (1) (d) of the Statute of the ICJ are not a source of international law. The European Union remains of the view that the Commission may wish to explain the differences



decision that has been overturned (or is currently on appeal) should not, as a matter of principle, be relied upon under Art. 38 (1) (d) of the ICJ Statute.

Mr. Chairperson,