

(Chapter IV)

Statement by Denmark on behalf of the Nordic countries

Xx October 2024

Mr./Madam Chair,

I have the honour of delivering this statement on behalf of the five Nordic countries: Finland, Iceland, Norway, Sweden and my own country, Denmark.

IV - Settlement of disputes to which international organizations are parties

First, the Nordic countries would like to welcome the work on the settlement of disputes to which international organizations are parties and the draft guidelines, which we believe is a suitable outcome for this purpose. We would also like to offer a few observations in this regard. As a general observation, the Nordic countries see merit in underlining the principle of free choice of means of dispute settlement.

further explanations on what constitutes an international dispute are dealt with in the commentaries.

We welcome draft guideline 4 as a basic principle in the settlement of disputes between international organizations or between international organizations and States. We note with appreciation that the draft guideline does not give priority to any specific means of dispute settlement. We agree with the view expressed by some members of the Commission that lack of use of third party adjudication may often be a policy choice rather than an effect of the principle of State sovereignty. It may be appropriate to the extent that some treaties and constituent documents may include obligations regarding settlement of specific disputes.

Regarding the accessibility of dispute settlement means, which is addressed in guideline 5, we agree with the overall recommendation to make the means of dispute settlement available not only to a normative perspective but includes also the practicable use of those means for settling disputes. However, we are hesitant as to whether the express mention of arbitration and judicial settlement, notwithstanding the qualification that they are available only if the parties have agreed to them, in guideline 5 is justified. As noted by some Commission members, judicial settlement is in fact available to international organizations in many circumstances, and voluntary arbitration by agreement is always available. More emphasis on highlighting arbitration and judicial settlement may risk leaving the impression that this is somehow preferable to other means, which need not be the case. In line with the principle of freedom of choice of means, we recommend that

The Nordic countries support the Commission's work towards a set of draft conclusions on the subject of subsidiary means of international law.

The Nordic countries would like to make the following comments as regards the draft conclusions on subsidiary means of international law.

First of all, we recall our support for the important contributions made by the Commission in promoting conceptual clarity and consistency in the work of the Commission. It is far from clear that subsidiary means referred to in Article 38 (b) are a different nature than sources of law insofar as this term is applied as a reference to formal sources of law.

As regards Article 38 (b), the Commission's definition of subsidiary means of international law is of a high quality and different from the traditional sources, e.g. help in the interpretation of a treaty and influence on interpretation. We are happy to note that these concerns have been taken into account in the formulation of draft Article 6, paragraph 1, which stipulates in clear language that subsidiary means are not a source of international law and that their function is to assist in the determination of the existence and content of international law.

The Nordic countries also reiterate the importance of distinguishing between theoretical assessments of decisions and teachings from a historical or analytical perspective. The causes of law, i.e. the factors that may influence the growth of international law, must not be confused with the formal sources of law.

The Nordic countries agree that the practice of the ICJ has had a significant impact on the clarification and progressive development of international law and that we strongly support the role of the ICJ as a gravitation point for the international legal system. We also support the integration of this system into the national legal systems. Paragraph 1, provisional draft conclusions on subsidiary means of international law, seventy-fifth session.

formal But this observation is not intended to state that a party to a dispute is not a source of international law.

We



reminder of the auxiliary function of subsidiary means. Furthermore, the question of their relative weight is also to be carefully considered in order to ensure jurisprudential legitimacy and broad acceptance by the international community.

The Nordic countries reiterate our appreciation to the Commission for engaging with the topic of subsidiary means for the determination of rules of international law. We will continue to collaborate with the Commission on the topic with great interest.

Thank you!