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UNGA 79 Sixth Committee / Agenda item: 79 - Report of the International Law Commission on the work of its seventy-first session: Cluster II

Statement by the Delegation of Armenia

Mr Chairman,

On the topic 'Settlement of disputes to which international organizations are parties', we question the expansion of the definition of 'international organization in draft guideline 2(a) from that adopted in the 2011 Articles on the Responsibility of International Organizations for Internationally Wrongful Acts.[1] In particular, the clause 'one organ capable of expressing a will distinct from that of its members' could give rise to multiple interpretations.

Concerning the commentary to draft guideline 3, while publicly-known disputes between international organizations are 'very rare',[2] there exists a judicial case concerns duties of demining and public order in a peace operation involving two organizations that might be useful to investigate.[3] Regarding draft guideline 5, an issue that could be examined to make arbitration and judicial settlement 'more widely accessible' is the settlement of disputes

domestic jurisdictions, yet is not widely used in the majority of other national jurisdictions or international courts and tribunals. Whereas the 'equality of parties' is not suitable because of its narrower meaning, the 'sound administration of justice' could be used due to its broader and recognised meaning at the International Court of Justice. Alternatively, the term 'procedural fairness' might be considered. While reserving our position on the proposed format of guidelines,[4] we concur that the core question is their 'normative content'.[5] Guidelines could be binding if incorporated, for example, into treaties or other legal instruments as an annex. Thus, the question is its practical function.

On 'subsidiary means for the determination of rules of international law', subsidiar % to be a vast topic as shown by the rich and yet 'illustrative' memorandum prepared by the Secretariat.[6] Concerning the 'decisions' of courts and tribunals, we suggest that the scope of the project be limited to references to decisions of one court or tribunal by another. Analysis of the treatment by the International Court of Justice of its own precedents would require

[1] A/CN.4/766 ('Second Reinisch Report') para. 7.
[2] Ibid., para. 15.
[3] App. Nos 71412/01 & 78166/01, European Court of Human Rights (2 May 2007) paras 82-120.
[4] Ibid., para. 4.
[5] A/79/10, para. 18.
[6] A/CN.4/765, paras 2-5.

engagement with complex jurisprudence.[7] A factor that could be added to draft conclusion 8 is 'the extent to which the decision concerns the same rule of international law'.[8]

Due to their different contexts and statutory rules, differences have arisen for areas of general international law, such as the famous distinction between State responsibility and criminal responsibility for the attribution of conduct.[9] These distinctions between subject-matter jurisdictions diminish when the courts or tribunals apply the same rules of general international law or the same treaty provision, such as the Genocide Convention.[10] Examples include jurisdiction, treaty interpretation and the identification of customary international law.[11] Another factor for draft conclusion 8 might include the composition of a panel, such as whether there is a qualitative difference between a decision of an inter-State arbitral tribunal or a Chamber comprising five judges or arbitrators, on the one hand, and a decision of the full International Court of Justice, on the other hand. The eminence or expertise of individual arbitrators or judges concerning the subject-matter might be another consideration, such as the persuasiveness of a