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Minister Counsellor

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"Chps: IV (Settlement of Disputes to which international organizations are parties) and V (Subsidiary means for the determination of rules of international law."

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1. On the topic of 6HWWOHPHQW RI 'LVSXWHV ,QWHUQDWLRQDO 2UJDQL]DWLRQV DUH 3DU the delegation of Sierra Leone notes that the Commission's work was based on the solid Second Report

3. We acknowledge the Commission's approach of not further qualifying disputes at this early stage, recognizing the varied nature of disputes involving international organizations at both international and national levels. While disputes with States are typically governed by international law, those involving private parties are more likely to arise under national law or specific contractual rules. We consider private disputes, especially those involving tortious acts, the most important aspect of this topic. When the Commission does consider the issue of private disputes, we stress the critical need for it to balance the immunity of international organizations with the human rights imperative of providing victims access to remedies for harm, addressing the concerns of all parties involved national

6. Moving to *Draft Guideline 4 (Resort to Means of Dispute Settlement)*, we support the approach recommending that disputes be resolved peacefully, in good faith, and a spirit of cooperation and consistent with *Draft Guideline 2(C)*. We appreciate the alignment with *Article 33 of the United Nations Charter*, which lists peaceful dispute

arbitration and judicial settlement. As we have stated, international organizations, particularly those operating in developing regions, should not face prohibitive costs or procedural barriers preventing them from accessing justice. This guideline is essential to ensure equitable access to arbitration and judicial mechanisms, promote fairness in resolving disputes, and avoid a situation where financial or logistical constraints hinder the adequate settlement of disagreements.

10. On *Draft Guideline 6 (Requirements for Arbitration and Judicial Settlement)*, my delegation strongly supports the provisions that enshrine the principles of independence, impartiality, and due process in arbitration and judicial settlement. These elements are fundamental to upholding the rule of law in settling disputes involving international organizations. The requirement for impartial adjudication is particularly critical, as it ensures that both international

organizations and States can trust the integrity of the process. Therefore, Sierra Leone would have preferred to have an explicit mention of the rule of law in the guideline itself, as proposed by the Special Rapporteur and several other members. We also would have liked to see the term "*integrity*" be used to supplement the terms *independence and impartiality*.

11. Furthermore, we believe that due process, including the right to be heard and the *principle of equality of arms*, is a core requirement in any adjudicatory procedure. Adherence to these principles will enhance confidence in international dispute settlement mechanisms and contribute to the legitimacy of their outcomes. We, therefore, fully endorse the mandatory language used in this guideline, which reinforces the non-negotiable nature of these pr ean˘ e

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12. Let me now move on to the topic of “6XEVLGLDU\ 0HDQ

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begin by thanking the Special Rapporteur, Mr. Charles Chernor Jalloh, for his thorough and highly analytical Second Report on the topic. Our observations on this topic are grounded in the fundamental provisions of $UWLFOH G and $UWLFOH of the Statute of the International Court of Justice (ICJ). As the Second e Ú

Statute. To ensure the topic's relevance, many delegations considered it essential to account for State and international practice since 1945.

14. Thus, we reaffirm that a comprehensive analysis of modern subsidiary means, including the resolutions of international organisations and the work of expert bodies, is critical for determining the rules of international law today. That is why Sierra Leone, in addition to welcoming the Commission's decision to examine decisions and teachings, strongly supports examining the other means generally used to determine rules of international law reflected in practice - as set out in draft conclusion 2(c) adopted last year. In this regard, for instance, Sierra Leone refers to the ICJ's jurisprudence, including the *Ahmadou Sadio Diallo* case, where decisions of human rights treaty bodies such as the Human Rights Committee were

accorded great weight, underscoring the role of specialized bodies in interpreting human rights treaties.

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15. Sierra Leone also welcome the great progress made on this topic during the 75th session of the Commission. Against that backdrop, we wish to offer our observations on draft conclusions 4 through 8. which the Commission adopted this year, together with their commentaries.

16. For &RQFOXVLRQ 'HFLVLRQV RI &RXUW we acknowledge the emphasis placed on the role of decisions of international courts and tribunals, particularly the ICJ, as subsidiary means for determining the existence and content of rules of international law in *para 1*. The draft conclusion aligns with the Commission's previous work. It rightly underscores the centrality of decisions of the ICJ as the principal judicial of the United Nations. I quote *para 11*

courts," which is why using the latter is relatively more qualified. The use of national court decisions in shaping international law should also be examined through the lens of representativeness and the extent of their applicability to international legal disputes. Sierra Leone stresses that, in terms of users of international law, consulting a representative set of court decisions from the various legal systems, regions, and languages of the world is imperative. For that reason, we agree with the Commission that such an approach would contribute to enhancing legitimacy and the development of a truly universally applicable body of international law.

18. Moving to &RQFOXVLRQ 7HDFKLQJV We applaud the Commission for adopting this conclusion. We consider that teachings, especially those that reflect a diverse range of legal systems and regions, are critical in determining the existence and content of international law even though

they are not sources of international law. We agree with the framing of this conclusion, especially the first sentence, which indicates that there may be a preponderance of views found in teachings from those with competence in international law from the various legal systems and regions of the world w iou rs wdnaw y Mt

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the draft conclusion. Although the commentary confirms that racial diversity must still be considered, racial diversity should have been explicitly included for the same reasons that linguistic and gender diversity were included. This would in accordance with their usual treatment as prohibited grounds of discrimination under universal and regional international human rights law.

20. We also underscore the significance of individual scholarly work and private expert groups contributing to a global understanding of international legal principles. This would include those produced by the Institute of International Law and the *International Committee of the Red Cross, whose legal analyses have significantly shaped modern international humanitarian law.* We hope the Commission will revisit the status of the work of State-created bodies such as the ILC and UNCITRAL. Those bodies do not produce teachings as such; the quality of

their works also differs, not least because of their mandates and the symbiosis and interaction between them and States.

21. In &RQFOXVLRQ 1DWXUH DQG)XQFWLR 0HDQV, my delegation endorses the distinction between the sources of international law and the subsidiary means for determining them. The role of subsidiary means, while not sources of law in themselves, remains crucial in elucidating the rules of international law. We agree that a key function of subsidiary means is to assist with determining the rules of law. This, however, is a primary but not the only function of subsidiary means. We take note of paragraph 2 of draft conclusion 6 and its commentary. We believe that the Commission should not constrain itself too much by being too categorial, especially given that the specific examples of such subsidiaries include

organizations, and the works of expert bodies can play other subsidiary roles.

22. To conclude on this draft conclusion, we believe that the broader application of subsidiary means, especially in developing areas of international law, such as *climate change litigation* or *emerging cyber norms*, can contribute to a more dynamic and responsive legal framework.

23. On &RQFOXVLRQ $EVHQFH RI /HJDOO\ %L LQ ,QWHUQDWLRQDO /DZ we appreciate the Commission's reaffirmation that a system of binding precedent does not bind international courts and tribunals, yet may follow previous decisions on points of law, as provided for by instruments like the ,&- 6WDWXWH XQGHU. The $UWLF decision of the ICJ in the *LaGrand* case, which first acknowledged the binding effect of provisional measures, is an example of how international courts – not just the ICJ

- have shaped significant procedural rules that are followed despite the absence of formal precedent. Sierra Leone believes that while there is no formal doctrine of *stare decisis*, consistent jurisprudence aids in legal stability and predictability, fostering the development of international law.

24. We further agree on the need for more nuance, as stated in the second sentence of this draft conclusion. The reason being that, despite the general rule, practice amply shows that there are many instances when a decision might have to be followed because this is provided for in a specific instrument such as a treaty or a rule of international law, whether articulated in a founding or later treaty or judicial decision or for that matter, in another type of document. We noted the multiple examples supporting the ILC's conclusion given of various courts and tribunals where that was the case, including, for

instance, the Special Court for Sierra Leone and the East African Court of Justice. To the latter, the Commission might wish to add pertinent examples of the ECOWAS Court of Justice upon revising the commentary.

25. Regarding &RQFOXVLRQ ZHLJKW RI GHFLVL DQG WULEXQDOV, we agree with the Commission that the three criteria mentioned therein should be the *lex specialis* that guide the assessment of the quality of decisions. The commentary explains that these specific factors are meant to supplement the general criteria for assessing subsidiary means, as shown in *draft conclusion 3*, adopted last year. However, Sierra Leone considers some general criteria inappropriate for evaluating decisions made by courts and tribunals. Political or other inherently subjective factors cannot be used to evaluate the quality of decisions of a court or tribunal, which may, in some cases, be legally sound but politically sensitive. This is the case in domestic

practice and equally so in international law. It might be helpful to specify specific criteria to guide the assessment of teachings and other means used to determine rules of international law in future conclusions.

26. In conclusion, Sierra Leone expects the work on *subsidiary means for determining rules of international law* to continue advancing, focusing on fostering inclusivity, transparency, and consistency across international and domestic judicial practices. We mainly support the inclusion of regional perspectives in international legal decisions to reflect the realities of developing states, especially those in Africa, as part of shaping a genuinely universal body of international law.

27. Again, we thank the Commission and its Special Rapporteurs, Mr. Jalloh and Mr. Rhenish for the high quality of their work and the results achieved so far.

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