



IRELAND

Sixth Committee

United Nations General Assembly 78th Session

Statement of Ireland on Agenda Item 79:

**Report of the International Law Commission on the work of its
seventy-third and seventy-fourth sessions**

**Cluster III – Chapter VII (Subsidiary means for the determination of
rules of international law)**

Delivered by James Kirk

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New York, 1 November 2023

– CHECK AGAINST DELIVERY –

Chair,

1. In relation to the topic “Subsidiary means for the determination of rules of international law”, Ireland wishes to thank the Special Rapporteur, Mr Charles Chernor Jalloh, for his rigorous and in-depth work on the elaboration of the draft conclusions.
2. In addition, we welcome the excellent Memorandum prepared by the Secretariat on elements in the previous work of the Commission that could be particularly relevant to this topic. It provides a helpful insight, in particular, into the Commission’s understanding of the use of judicial decisions for the determination of rules of international law, as discussed at paragraphs 21 to 34 of the Memorandum.
3. Ireland appreciates the broad focus of the draft conclusions on the meaning, content and consequences of the use of subsidiary means. Ireland welcomes the Commission’s articulation of the auxiliary function of subsidiary means, particularly at paragraph 6 of the commentary on draft conclusion 1. Ireland agrees that subsidiary means do not constitute a separate or distinct source of international law, but rather are a means of elucidating the law.
4. In respect of draft conclusion 2, which sets out the categories of subsidiary means for the determination of rules of international law, Ireland welcomes the use of the succinct formulation “teachings” at subparagraph (b).
5. Further to the view expressed during the debate on draft conclusion 2 that a reference to “the most highly qualified publicists” could be historically and geographically charged, Ireland suggests that this is an opportune time to examine also the reference in Article 38(1)(d) of the Statute of the International Court of Justice to publicists “of the various nations”.
6. Ireland notes that, notwithstanding the decision to refer simply to “teachings” in draft conclusion 2, draft conclusion 5 replicates the wording “most highly qualified publicists of the various nations”. We wonder whether the use of the word “State” instead of the word “nation” might be more fitting in the modern legal context, perhaps in a more open and inclusive formulation such as the “international community of States”. Indeed, this would be consistent with the use of “States” in subparagraph (e) of draft conclusion 3.
7. We suggest that it is now timely to adopt a consistent approach to the use of the word “State” rather than “nation”, both in these draft conclusions and more broadly. Ireland will continue to consider the draft conclusions and intends to submit written comments on this topic in due course.
8. Thank you, Chair