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Chair: Mr. Guerra Sansonetti (Vice-Chair) . . . . . (Bolivarian Republic of Venezuela)

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In the absence of Mr. Chindawongse (Thailand), Mr. Guerra Sansonetti (Bolivarian Republic of Venezuela), Vice-Chair, took the Chair.

The meeting was called to order at 10.05 a.m.

Agenda item 79: Report of the International Law Commission on the work of its seventy-third and seventy-fourth sessions (*continued*) (A/78/10)

1. **The Chair** invited the Committee to continue its consideration of chapters VII and IX of the report of the International Law Commission on the work of its seventy-fourth session (A/78/10).

2. **Mr. Waweru** (Kenya) said that the work of the International Law Commission on the topic "Subsidiary means for the determination of rules of international law" would complement its earlier work on related topics and, if brought to a successful conclusion, would have a significant impact on the development of international law.

3. Regarding "Other decisions and conclusions of the Commission", as set out in the Commission's report (A/78/10), Kenya welcomed the opportunities that had been provided for extensive engagement between the Committee and members of the Commission and was grateful to the Chair of the Commission's Working Group on methods of work for his untiring efforts to improve such engagement. It also welcomed the views expressed by members of the Working Group on how best to enhance the interaction with the Committee and other legal bodies, in particular the position that the relationship between the Commission and the Committee should be given priority, through formal and informal contact. In that regard, his delegation welcomed the Working Group's decision to establish a standing agenda that would be discussed and debated each year.

4. In tandem with those efforts of the Commission, the Committee should conduct an in-depth review of its working methods regarding the consideration of the Commission's report and identify practical and pragmatic ways to revitalize its discussions under the relevant agenda item, the consideration of which had become ritualistic. His delegation suggested that the bureau of the Committee and Member States could hold information consultations on that matter during the current session, building on the discussions that had taken place during the recent side event on strengthening the engagement of States of the global South with the work of the Commission.

5. **Mr. Nyanid** (Cameroon) said that his delegation welcomed the meticulous approach of the International Law Commission to the topic "Subsidiary means for the determination of rules of international law". The speed at which the topic had been moved from the Commission's long-term programme of work to its current programme of work reflected the importance of the topic and the Commission's commitment to it. His delegation also commended the positivist and voluntarist approach of the Commission, as evidenced by the legal interplay between the Commission and the Drafting Committee as to the fate of the provisionally adopted draft conclusions on subsidiary means for the determination of rules of international law, the broad scope of the research conducted thus far, and the use of various sources to present a comprehensive view of the topic.

6. Referring to various points raised in the Commission's report (A/78/10), he said that his delegation agreed with the Special Rapporteur's proposal that the outcome of the topic should take the form of draft conclusions, with the aim of clarifying the law based on current practice, in keeping with the related prior work of the Commission. His delegation agreed with the Special Rapporteur that subsidiary means for the determination of rules of international law were an important component of the international legal system. It also agreed with the need to clarify such subsidiary means, not so much to address the horrible effects that they might endure owing to what the Special Rapporteur called in his report "the passage of time" – which according to his delegation would suggest their erosion – but more to ensure that those tools, which helped courts and lawyers to identify the rules of international law applicable in any given situation, were better understood and identified by all. For example, apart from the fact that it contained the phrase "civilized nations", despite its obvious age, Article 38 of the Statute of the International Court of Justice was, like a thoroughbred stallion, still bursting with youthful energy. Cameroon further agreed with the Special Rapporteur that the Commission should take a cautious and rigorous approach rooted in the manner in which subsidiary means were actually employed to determine the rules of international law.

7. The decisions of the International Court of Justice were considered authoritative statements in international law, to the extent that once the Court decided that a particular principle was a rule of customary international law, it was virtually impossible to claim that it was not, even though the decisions of the Court were in principle binding only on States that had accepted the optional clause on its compulsory jurisdiction contained in Article 36, paragraph 2, of the Statute of the Court. The decisions of other international

courts and tribunals, such as the International Tribunal for the Law of the Sea, the International Tribunal for the Former Yugoslavia and the International Criminal Court, as well as the decisions of quasi-judicial treaty bodies, such as the Human Rights Committee, were also considered authoritative. The decisions of national and regional courts applying international law could be relevant, but they seemed to be given less weight than those of international courts, especially if they were issued by courts in the global South. There was therefore a great deal to untangle in that regard.

8. His delegation suggested that the understanding of the term "teachings of publicists" be expanded to cover all relevant materials and not confined to the works of persons who were already well known, since those people had only become well known because they had been given a platform that had allowed their works and their contributions to legal thought to be recognized, first by the research community and then by the community of States. Moreover, his delegation wondered whether the individual views of researchers and experts and the opinions of well-known bodies composed of eminent jurists from the various legal systems should not be given more weight than the decisions of national courts or individual theories on a point of international law.

9. Cameroon noted with interest the Special Rapporteur's position that unilateral acts of States or politically sensitive matters such as religious law should not be addressed as subsidiary means in addition to judicial decisions and teachings. It also noted that the Commission had suggested that the equally sensitive question of conflicting judicial decisions concerned the institutional competencies and hierarchical relations between tribunals *inter se*, and was better left to those tribunals to address themselves. It also noted various commitments made by the Commission regarding the finalization of the draft conclusions on the items set out in Article 38, paragraph 1 (*d*), of the Statute of the International Court of Justice, in light of the proposed timeline. It acknowledged the indication by the Special Rapporteur that he was committed to scientific rigour and did not believe in speed in the consideration of the topic coming at the expense of the substance and rigour of the work.

10. Given the non-exhaustive nature of the subsidiary means for the determination of rules of international law, the Commission should carefully consider soft law instruments, in particular resolutions, declarations and similar acts of international organizations, which, while not legally binding, were the basis for political commitments and also, in many cases, new norms of international law, to ensure greater diversity in the Commission's work on the topic. Those instruments, including General Assembly resolutions, were negotiated in good faith by parties who expected the non-binding commitments set out therein to be respected to the extent possible. Moreover, soft-law instruments were often worded in such a way as to serve as a point of reference in policy development. Such was the case, for example, with the United Nations standards and norms in crime prevention and criminal justice, the Model Treaty on Extradition and the Model Treaty on Mutual Assistance in Criminal Matters.

11. His delegation believed that General Assembly resolutions might also have normative value, which meant that they could serve as evidence for establishing the existence of a rule or the emergence of an *opinio juris*. As stated by the International Court of Justice in its advisory opinion on the *Legality of the Threat or Use of Nuclear Weapons*: "General Assembly resolutions, even if they are not binding, may sometimes have normative value. They can, in certain circumstances, provide evidence important for establishing the existence of a rule or the emergence of an *opinio juris*. To establish whether this is true of a given General Assembly resolution, it is necessary to look at its content and the conditions of its adoption; it is also necessary to see whether an *opinio juris* exists as to its normative character. Or a series of resolutions may show the gradual evolution of the *opinio juris* required for the establishment of a new rule." Resolutions of the Security Council based on Chapter VII of the Charter of the United Nations, which contained binding wording that had force of law for all Member States, were a special case, as they often contained elements of both soft law and hard law.

12. The Commission should give careful and critical attention to the question of equity, even though recourse to equity by an international judge or arbitrator was possible only if the parties agreed to it. Indeed, Article 38, paragraph 2, of the Statute of the International Court of Justice explicitly provided that "this provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agreed thereto." Thus, an international judge could apply equity *infra legem* or equity *praeter legem* in order to fill gaps in customary international law or treaty law that might subsist despite the application of general principles of law, or could even directly violate the letter of the law.

13. Turning to the topic "Succession of States in respect of State responsibility", he said that his delegation commended the work of the former Special Rapporteur, which had given shape to the topic. The comments made by his delegation at previous sessions remained valid. Cameroon encouraged the Commission

to make every effort to reach a consensus on the way forward for the complex topic. His delegation was advocating substance, rather than form and did not support any radical deviation, much less breaking with convention. The outcome of the topic should address the many important questions that remained regarding the relevant legal regime. His delegation welcomed the establishment of the Working Group to consider the way forward on the topic. The Working Group's examination and evaluation of the work carried out thus far would establish a good foundation for the future work on the topic.

14. **Ms. Bailey** (Jamaica), addressing the topic "Subsidiary means for the determination of rules of international law", said that, according to Article 38, paragraph 1 (*d*), of the Statute of the International Court of Justice, both "judicial decisions" and "teachings of the most highly qualified publicists of the various nations" were subsidiary means for the determination of rules of law, and the application of subsidiary means was subject to Article 59 of the Statute, which provided that decisions of the Court were binding only on the parties to the cases brought before it. Accordingly, her delegation was of the view that there was no hierarchy between the two categories of subsidiary means, and that such means should be viewed as auxiliary sources, the purpose of which was to point to the existence and scope of the content of rules of international law.

15. With regard to the draft conclusions on subsidiary means for the determination of rules of international law provisionally adopted by the International Law Commission, her delegation agreed with the statement in the general commentary that it was vital that the use of any subsidiary means to elucidate the sources of rules of international law be carried out using a coherent and systematic methodology.

16. On draft conclusion 2 (Categories of subsidiary means for the determination of rules of international law), her delegation noted that the Commission had chosen to construe Article 38, paragraph 1 (*d*), of the Statute in a manner that reflected contemporary developments. Specifically, it had decided to use the phrase "decisions of courts and tribunals", rather than "judicial decisions", and had indicated in paragraph (6) of its commentary to the draft conclusion that decisions, understood in a broad sense, included what could be considered decisions of quasi-judicial bodies.

17. Jamaica agreed with the view held by Commission members that advisory opinions of the International Court of Justice could also be considered "decisions of courts and tribunals", given that there was no notion of precedent (*stare decisis*) in international law; consequently, decisions in contentious cases and advisory opinions were placed on an equal footing. It wondered whether the advisory opinions of the Caribbean Court of Justice, which had jurisdiction to issue decisions in contentious proceedings and also advisory opinions, could be included under "decisions of courts and tribunals". Her delegation would also like that Court to be included among the regional judicial bodies listed by the Commission in the commentary to the draft conclusion. However, it was not prepared, at the current juncture, to comment on the question of whether treaty bodies should be classified as "courts and tribunals" for the purposes of the draft conclusions and would appreciate it if the Commission could provide further clarification on that question, taking into account the fact that the composition and processes of treaty bodies varied.

18. Jamaica considered that the decisions of national courts could be critical in determining the content and existence of a rule of customary international law established through State practice and *opinio juris*, as well as in determining general principles of law and rules of conventional law. It welcomed the Commission's intention to elaborate upon the practice of the use of international and national courts and tribunals as a subsidiary means for the determination of rules of international law in future draft conclusions, as stated in paragraph (9) of its commentary to the draft conclusion.

19. With regard to the "teachings" referred to in subparagraph (b), it was important to consider not only the status of the individual as an author but also the quality of the work, which the Commission rightly considered ought to be the primary consideration. Her delegation would appreciate further clarification regarding the inclusion of teachings in non-written form. It should be borne in mind that while sources and other relevant information were cited in written works, such information was not as immediately accessible for non-written works, making it more difficult to examine the basis on which authors formed their conclusions.

20. With regard to draft conclusion 3 (General criteria for the assessment of subsidiary means for the determination of rules of international law), the purpose of which was to assist in the determination of the weight that should be given to each subsidiary means, her delegation's understanding was that the listed criteria were not conjunctive and that each criterion could be applied on a case-by-case basis and with regard to the relevant sources of international law. While the level of flexibility provided by the draft conclusion was commendable, in the interest of clarity, it might be more useful to add a criterion such as "relevance to the issues

and facts being considered by the court or tribunal", to allow a court or tribunal to give greater weight to a subsidiary means that concerned a matter very similar in facts and issues of law to the one under consideration.

21. **Ms. Güç** (Türkiye), referring to the topic of subsidiary means for the determination of rules of international law, said that her delegation welcomed the first report of the Special Rapporteur (A/CN.4/760) and the memorandum by the Secretariat (A/CN.4/759). As the Special Rapporteur acknowledged in his report, Türkiye had always supported the inclusion of the topic in the International Law Commission's programme of work. Given the importance of the topic to States and practitioners of international law, as well as its close connection with other projects of the Commission, her delegation considered that work on the topic should proceed apace, and was therefore pleased that extensive relevant materials had been produced at such an early stage of the work. Türkiye considered that the outcome of the topic should be consistent with the outcomes of the work on related topics, and was therefore pleased to note that the Commission had indicated in its report that there had been consensus among its members on the need, where possible, for consistency with the prior work of the Commission on other topics relating to the sources of international law. The overview of the previous studies contained in the memorandum by the Secretariat could help to ensure consistency in that regard.

22. With regard to the draft conclusions on subsidiary means for the determination of rules of international law provisionally adopted by the Commission, her delegation shared the view that unilateral acts should not fall within the scope of the Commission's work on the topic. A cautious approach should be taken with regard to the resolutions and decisions of international organizations, since such organizations were not mentioned in Article 38, paragraph 1 (*d*), of the Statute of the International Court of Justice. Türkiye also shared the view that there was a need for more diverse sources and references in more languages and from the various regions of the world and legal traditions to be used in the consideration of the topic.

23. The criteria for the assessment of subsidiary means for the determination of rules of international law set out in draft conclusion 3 could be strengthened. The draft conclusion should be revisited because the suggested criteria were subjective and the connection with the fragmentation of international law needed to be clarified. The criterion of "the quality of the reasoning", set out in subparagraph (b), for example, was vague and, as noted by the Commission in the commentary to the draft conclusion, "subjective". The Commission also commented that the criterion was "not necessarily applicable to all subsidiary means", without providing any guidance as to the elements to be assessed in determining its applicability. Although it cited "the quality of the reasoning of a judicial decision" as an example, the criterion might require further reflection, because that element was ambiguous and its close connection with the issue of the fragmentation needed to be clarified.

24. Her delegation had similar concerns about the subjectivity of the criteria of "the expertise of those involved", mentioned in subparagraph (c). As for subparagraph (d), which referred to the level of agreement among those involved, although the level of agreement in judicial decisions could be established rather easily, the level of convergence among scholars with respect to dissenting and concurring opinions might be subject to a variety of potential interpretations.

25. "The reception by States and other entities", mentioned in subparagraph (e), was another overly subjective criterion. In its commentary to the draft conclusion, the Commission described the external component of "reception" as "the reaction after the decision was made", thus compelling States to react to decisions. However, the absence of a comment or expression of position on a particular decision could not be construed as an endorsement of the content of the decision. Moreover, depending on the scope of the decision and the importance attached to it, the reaction process might take a considerable length of time. The phrase "after the decision" was vague; it was not clear whether an immediate action was meant, or whether actions that took place later in time were also in view. It would also be useful for the Commission to clarify the meaning and scope of the term "other entities". With regard to the "mandate conferred on the body", referenced in subparagraph (f), her delegation considered that the "mandate" of a body should be determined on the basis of its founding instrument, rather than on an interpretation as reflected in its own judgments, decisions or comments.

26. Turning to the topic "Succession of States in respect of State responsibility", she said that her delegation wished to reiterate the positions set out in its previous statements. Türkiye continued to have doubts as to whether it was possible to differentiate between the political and legal aspects of the topic, which were largely intertwined. The scarcity of available State practice and the prevalence of significant differences over the existing ones might even raise doubts about the suitability of producing guidelines. Her delegation was pleased to see that the shortcomings of the Commission's work thus far had been highlighted by the

Working Group on the topic. It also noted the divergence of views on the way forward. The concerns and comments expressed by Türkiye and other delegations during earlier stages of the work should be taken into consideration in the Commission's future deliberations.

27. **Ms. Kaeval** (Estonia) said that her delegation welcomed the inclusion of the topic of subsidiary means for the determination of rules of international law in the current programme of work of the International Law Commission and commended the progress that had already been made, including the publication of the first report of the Special Rapporteur (A/CN.4/760) and the memorandum by the Secretariat (A/CN.4/759). Estonia supported the scope of the work proposed by the Special Rapporteur, which would complement the Commission's work on other provisions of Article 38 of the Statute of the International Court of Justice. Although Article 38 was well established in practice as a key provision on sources of international law, her delegation agreed with the views expressed by the Special Rapporteur in his report that the Commission's work on subsidiary means would provide useful guidance, and that materials pertaining to practice from a wide range of States, regions and legal systems should be taken into account, in order for the work to be as comprehensive as possible. Draft conclusions, accompanied by commentaries, would be an appropriate form for the outcome of the Commission's work and would be consistent with its handling of related topics.

28. Referring to the draft conclusions on subsidiary means for the determination of rules of international law provisionally adopted by the Commission, she said, with regard to draft conclusion 1 (Scope), that her delegation agreed with the descriptive nature ascribed to subsidiary means. It was clear that subsidiary means were auxiliary to or supportive of the other sources of law listed in Article 38 of the Statute of the International Court of Justice. The Commission was therefore correct to have indicated in its report (A/78/10) that subsidiary means were not sources of law that could be applied alone, but they could play a key role in determining the existence and content of a rule of international law.

29. Regarding draft conclusion 2 (Categories of subsidiary means for the determination of rules of international law), her delegation supported the decision to use the phrase "decisions of courts and tribunals", in subparagraph (a), rather than the narrower "judicial decisions" found in Article 38, paragraph 1 (*d*), of the Statute of the Court. Her delegation looked forward to the Commission's more in-depth consideration of the practice of using decisions of international and national courts and tribunals as subsidiary means for the determination of rules of international law, in particular its assessment of the role of judgments of national courts in its work on the future draft conclusion 4.

30. In that regard, Estonia supported the suggestion of several members of the Commission that additional criteria should be provided for resorting to the decisions of national courts as subsidiary means, and looked forward to further debate on the view of other members that only the decisions of national courts applying international law could be considered as constituting subsidiary means. Her delegation also noted with interest the Commission's view that national court decisions played a dual role as evidence of State practice and as a form of subsidiary means for the identification of the existence and content of a rule of international law.

31. Estonia supported subparagraph (c), concerning other means generally used to assist in determining rules of international law, beyond judicial decisions and teachings. Resolutions and decisions of international organizations, in particular, should be considered supplementary means. Estonia agreed with the Commission's view that Article 38, paragraph 1 (*d*), of the Statute of the International Court of Justice was not exhaustive. However, in order for a means to be considered a "subsidiary means" for the purposes of the topic, it must be assessed as such in accordance with the criteria for the assessment of subsidiary means for the determination of rules of international law set out in draft conclusion 3.

32. Estonia noted that, as indicated in the Commission's report, the Special Rapporteur had observed that subsidiary means would have varying levels of weight and authority, which would depend on, inter alia, the legal context, the way in which they were drafted and the expertise of the individuals involved in the drafting. Estonia looked forward to future work on resolutions and decisions of international organizations in particular, since matters in emerging fields, such as cyberspace, tended to be addressed in non-legally binding resolutions.

33. Her delegation was pleased that the issue of diversity, including gender diversity, had been raised and welcomed the Special Rapporteur's commitment to ensuring representativeness in the work of the Commission. It supported the plans for future work on the topic, including the Special Rapporteur's intention to address the origins, nature and scope of subsidiary means as well as judicial decisions and their relationship to the primary sources of international law. It looked forward to the Commission's commentaries on the future draft conclusions 4 and 5, concerning decisions of courts and tribunals, and teachings, respectively. The

Commission's analysis and its draft conclusions extended the scope of Article 38, paragraph 1 (*d*), of the Statute of the International Court of Justice, something which her delegation supported, in the light of recent developments in international law.

34. **Ms. Flores Soto** (El Salvador) said that her delegation welcomed the inclusion of the topic "Subsidiary means for the determination of rules of international law" in the programme of work of the International Law Commission. The Commission's work on the topic would complement its work on other parts of Article 38 of the Statute of the International Court of Justice. Her delegation generally agreed with the Commission's proposed methodology. It supported draft conclusions as the outcome of the topic, given the explanatory nature of such texts and the Commission's approach to similar topics in its previous work. The Commission should take a systematic and dynamic approach to the analysis of the relationship between judicial decisions and teachings, bearing in mind that even though judicial decisions were only binding on the parties, they could point to or give rise to other sources of international law.

35. The Commission should set aside sufficient time to consider the matter of the decisions of courts and tribunals and the significant challenges they posed owing to the risk of conflicting decisions. It should also ensure that its analysis was based on an adequate amount of State practice from different regions of the world. Her delegation considered that draft conclusions could also provide guidance on the identification of elements from that such practice that could be used in the determination of rules of international law, and supported the suggestions in that regard reflected in paragraphs 93 and 94 of the Commission's report (A/78/10).

36. Many questions remained about the scope and application of Article 38 of the Statute of the International Court of Justice, despite the large amount of data available concerning the Article. El Salvador was of the view that the Article did not set out an exhaustive list of sources of law, much less a hierarchy of sources. The Commission should bear in mind that other primary or secondary sources of law might exist, and that the relationship between the various sources of international law was dynamic. It must also ensure that its work on the current topic was consistent with its work on topics such as "General principles of law" and "Peremptory norms of general international law (*jus cogens*)".

37. With regard to the draft conclusions on subsidiary means for the determination of rules of international law provisionally adopted by the Commission, her delegation was pleased that the general criteria for the assessment of subsidiary means for the determination of rules of international law set out in draft conclusion 3 included the degree of representativeness of the means. "Representativeness" should be seen through the lens of geographic equity.

38. Referring to the draft conclusions provisionally adopted by the Drafting Committee, she said that her delegation strongly supported the inclusion of gender and linguistic diversity as criteria for determining the representativeness of teachings in draft conclusion 5, and agreed with the provision in the draft conclusion that teachings, especially those generally reflecting the coinciding views of persons with competence in international law from the various legal systems and regions of the world, might serve as a subsidiary means for the determination of the existence and content of rules of international law. Her delegation supported the proposal for the Special Rapporteur to be able to analyse in detail other subsidiary means, such as the decisions of international organizations and the works of expert bodies.

39. Turning to the topic of "Succession of States in respect of State responsibility", she said that her delegation appreciated the former Special Rapporteur's valuable work on the topic. It noted the Commission's decision to establish a Working Group to undertake further reflection on the way forward for the topic, identifying the various complexities surrounding the provisions adopted by the Commission thus far and outlining the options open to the Commission. El Salvador supported the proposed method of work, but urged the Commission to ensure that the Working Group was representative and took into account the views expressed by Member States.

40. **Ms. Solano Ramirez** (Colombia), addressing the topic "Subsidiary means for the determination of rules of international law", said that her delegation commended the Secretariat for its memorandum (A/CN.4/759) and looked forward to its memorandum surveying the case law of international courts and tribunals and other bodies, to be submitted for the seventy-fifth session of the International Law Commission, to be held in 2024.

41. Addressing the various comments made in the Commission's report (A/78/10) and the draft conclusions on subsidiary means for the determination of rules of international law provisionally adopted by the Commission, she said that her delegation shared the view that the topic was very important and that the Commission should proceed patiently and take as much

time as necessary to carry out its work, with a view to ensuring that the final product was of the highest quality and utility for the international community.

42. With regard to the scope of the topic, her delegation suggested that the Special Rapporteur proceed with caution. Although it agreed that there were other subsidiary means beyond those mentioned in Article 38 of the Statute of the International Court of Justice, it believed that it would be an enormous task to examine all existing subsidiary means. It therefore welcomed the Commission's decision to focus on decisions of courts and tribunals, and teachings, since those two means were very broad and required all the attention and focus of the Special Rapporteur.

43. The Special Rapporteur should concentrate on the reality of State practice, rather than solely on reviewing the jurisprudence of courts and tribunals, in order to ensure that the work did not become a legislative exercise that was not the object of the draft conclusions being developed. The Commission should also avoid confusing other potential sources of international law with other subsidiary means for the determination of rules of international law. That was an important and sensitive matter that was related to the work being carried out, for example, on general principles of law. The Special Rapporteur should therefore focus only on subsidiary means, in order to avoid entertaining contradictions and straying outside the scope of the topic. As some members of the Commission had acknowledged, matters such as the fragmentation of international law could fall outside the scope of the topic. The aim of the Special Rapporteur and the Commission should be to study the function of subsidiary means and to analyse in particular the meaning of the term "determination".

44. With regard to teachings, Colombia would prefer the phrase "*publicistas más competentes*" (most qualified publicists) to the phrase "*publicistas altamente calificados*" (highly qualified publicists). The latter phrase was not only ambiguous but had also been used in the past to discriminate against publicists from the global South. Her delegation expected that the Special Rapporteur and the Commission would share that concern. With regard to the criterion of "diversity" or "representativeness", Colombia agreed that the works of all publicists from all regions and the various legal systems and of various genders should be examined and used by those who resorted to subsidiary means. However, her delegation believed that that task fell on the interpreter, namely the person who used the subsidiary means, and the draft conclusions should invite the user of subsidiary means to resort to diverse and representative sources. Her delegation was concerned, however, that the Commission seemed to be confusing the methodology for the analysis of sources of international law with the methodology for the analysis of subsidiary means. Further clarification on that matter, for example in the commentaries to the draft conclusions, would be appreciated.

45. Concerning the criteria for the assessment of subsidiary means for the determination of rules of international law set out in draft conclusion 3, the meaning of the phrase "weight of subsidiary means" was not entirely clear and should be further explained by the Commission. With regard to subparagraph (a), the meaning of "degree of representativeness" should be explained in the text, not just in the commentary. Concerning subparagraph (b), the criterion of "the quality of the reasoning" was important but difficult to assess. While it might be implicitly included in the other criteria, it was important to ensure that the meaning was not vague, as a lack of clarity could lead to the criteria being applied in an incorrect and counterproductive manner. On subparagraph (c), the criterion of "the expertise of those involved" was logical in respect of teachings, but it was unclear how it could be applied to the decisions of courts and tribunals without assessing the criteria for the selection of judges in every State. Similarly, with regard to subparagraph (d), it was not clear how "the level of agreement among those involved" in decisions of courts and tribunals could be assessed, particularly in the case of majority decisions.

46. With regard to subparagraph (e), the Commission seemed to be confusing the function of "the reception by States and other entities" in the case of sources of international law, such as custom, with the function that it could play in the case of subsidiary means. Such confusion appeared to apply to several of the draft conclusions. If the function of subsidiary means were to assist in the determination of sources of international law, but were not sources of law per se, their role should be reviewed by those who would be resorting to them to "determine" sources of international law and the methodology regarding the use of subsidiary means to determine the existence and content of sources of law should be different from the methodology regarding sources themselves. In that connection, the reception would have to be made clear from the source of international law, such as custom or a general principle of law, but its role in the case of a subsidiary means remained unclear. That potential confusion might be dispelled when the Commission was able to define the term "determination" in the title of draft conclusion 3 with greater clarity and thereby clarify what function subsidiary means played and how they should be used.

47. Addressing the topic "Succession of States in respect of State responsibility", she said that her delegation welcomed the establishment of a Working Group on the topic and noted the Commission's decision to re-establish the Working Group at its seventy-fifth session with a view to taking a decision on the way forward for the topic. Her delegation urged caution in that regard, particularly since Member States had provided input and demonstrated an interest in the important topic. If the Commission wished to change course, it should clearly explain its reasoning.

48. Her delegation wished to draw attention once again to the Commission's working methods as they related to those of the Committee. The Committee would benefit from a discussion of its working methods and how to prevent impasses in its discussions, especially those concerning the Commission's outputs. Her delegation called on members of both the Committee and the Commission to strive for better cooperation. In that regard, Colombia welcomed the establishment of the Working Group on methods of work of the Commission and the Working Group on the long-term programme of work, but urged the Commission to continue to take into account the concerns of Member States. It called upon the Committee to consider mechanisms that would help it to decide whether to take a more structured approach to the Commission's outputs that would foster predictability and enable a more efficient use of resources and expertise.

49. Her delegation stood ready to engage in discussions in that regard in New York and in Geneva. It had many ideas, including a proposal to develop a guide on the Commission and its products, which it would present at the appropriate time. The objective should be to ensure that the Commission and the Committee were able to improve their work on the important topics under consideration and, ultimately, to ensure the promotion of international law.

50. **Mr. Baghaei Hamaneh** (Islamic Republic of Iran) said that his delegation wished to comment on the current situation in Gaza. It felt morally and legally obliged to take the floor to ensure that it could not be presumed that the false and contaminated narratives put forward about the situation in the bleeding Gaza Strip had been swallowed by any reasonable persons of right conscience in the room. In the past two weeks, delegates had heard a deliberate and foul twisting of facts and distortions of truth, in what amounted to a sheer travesty. Gaza had been under intense carpet bombardment for 28 consecutive days and nights. More than 32,000 innocent people had been brutally killed or maimed, and many more remained missing under the rubble. The entire population was being subjected to a deliberate starvation campaign.

51. Yet, the representative of the occupying regime had taken the floor to talk about her country's so-called care for civilians. That statement raised a number of questions: Were the children who had been butchered in hospitals and homes, who comprised 45 per cent of the victims, not civilians? Were the innocent women and elderly people who had been slaughtered throughout Gaza combatants? Were the hundreds of people who had been killed and wounded in the West Bank human shields of Hamas? Were all the people in Gaza – who had no place to flee – human shields? How could the representative of Israel claim that the apartheid system cared for civilians when its own Minister of Defence had said that no electricity, food or fuel would enter Gaza and that Israel was "fighting human animals" and would "act accordingly"? That blatantly dehumanizing language was expressly genocidal and had been described by Human Rights Watch as an invitation to commit a war crime.

52. Gaza had been an open prison for the 2 million people living there for the past two decades. Now, the military of the apartheid regime was turning it into an enormous open mass grave for innocent children. The situation was harrowing and heartbreaking, again raising a number of questions: How could the United Nations have the face to talk about international humanitarian law when there was no minimum respect for its rules? How could the international community take pride in having humanized war through common article 1 of the Geneva Conventions of 12 August 1949 when large-scale war crimes and crimes against humanity were being committed in cold blood before its very eyes, and while Israel was accorded absolute impunity by its enablers and supporters in the West? Those supporting Israel were clearly complicit in the heinous crimes being committed and should be held accountable before the court of history and human conscience.

53. It must not be forgotten that the root causes of the present situation were protracted occupation and cruel subjugation, which had metamorphized into a senseless apartheid that gave Israel free licence to humiliate, dehumanize, persecute and kill. The international community must be courageous enough to speak out against the cruel injustice being inflicted on the besieged Palestinian people in Gaza, who for 75 years had been seeking respect for their fundamental right to self-determination and other basic human rights.

54. All of the Member States represented in the Committee were parties to the Geneva Conventions and,

as such, were legally bound under common article 1 of those Conventions to respect and ensure respect for international humanitarian law. They must not let themselves be silenced by those who had consistently weaponized the label of anti-Semitism in order to silence their critics. The ongoing brutality in Gaza had nothing to do with Judaism or the teachings of prophet Musa and other great prophets, whom his country deeply revered. The Palestinian people had been suffering from occupation for eight long decades. The story of Palestine had not begun on 7 October 2023; it went back to the Nakba, and even earlier.

55. The catastrophe in Gaza required all decent people of good conscience to call for an end to the brutality. It was high time for the international community to shoulder its collective moral and legal responsibility towards the great people of Palestine, who had long struggled to uphold their basic human rights and human dignity by seeking to free themselves from the yoke of oppressive occupation and subjugation.

56. **Archbishop Caccia** (Observer for the Holy See) said that his delegation welcomed the International Law Commission's consideration of the topic of subsidiary means for the determination of rules of international law. As indicated in the Commission's report (A/78/10), the Special Rapporteur had noted that Article 38 of the Statute of the International Court of Justice was widely recognized by States, practitioners and scholars as the most authoritative statement of the sources of international law. The study of subsidiary means thus concerned the foundational sources from which international legal norms emerged, and the formulation by the Commission of guidance on the use of subsidiary means would be an important contribution to the development of international law. A thorough analysis was needed to address the issue of subsidiary means, which had significant implications for international law and its interpretation, in order to ensure the validity and strength of the conclusions that would be drawn. To that end, the Commission should increase its efforts to take into account diverse sources and reference materials from various regions and legal traditions, and in different languages.

57. As could clearly be inferred from the French and Spanish versions of the Statute of the International Court of Justice, subsidiary means for the determination of rules of international law served an auxiliary function and thus were not sources of law in themselves. Regrettably, there was increasing confusion within the international community regarding binding and non-binding sources of international law. It was important to ensure that suggestions *de lege ferenda* did not result in a potential means being granted the status of a subsidiary means without due consideration of the views of States. In relation to the draft conclusions on subsidiary means for the determination of rules of international law, that risk would be greatly increased if the opinions of bodies without judicial character were included in the meaning of "decisions of courts and tribunals", as used in subparagraph (a) of draft conclusion 2 (Categories of subsidiary means for the determination of rules of international law). In that regard, the recommendations and general comments issued by human rights treaty bodies should not be equated with judicial decisions, since those bodies were not adjudicative, did not involve due process and were not always immune to political considerations. Moreover, in some cases, members of treaty bodies were not experts in international law or treaty law.

58. With regard to the general criteria for the assessment of subsidiary means for the determination of rules of international law outlined in draft conclusion 3, his delegation attached particular importance to the criteria of "the reception by States and other entities" and "the level of agreement among those involved". Those criteria were objective, universal and based on consensus and should, therefore, be given priority in order to promote a more transparent decision-making framework for the international community. Conversely, criteria based on subjective standards, such as "the quality of the reasoning" and "the expertise of those involved", were highly problematic, as they could be subject to divergent interpretations. Referring to the draft conclusions provisionally adopted by the Drafting Committee, he said that the decisions of national courts, mentioned in paragraph 2 of draft conclusion 4 (Decisions of courts and tribunals), should be used with caution, ensuring that the decisions of courts of certain States were not favoured over those of courts of other States. Similarly, national and regional legal principles should not be assumed to be universal, meaning that decisions of regional courts and tribunals with limited membership should be used with caution in situations involving States outside their respective jurisdictions.

59. **Ms. Sayej** (Observer for the State of Palestine) said that her delegation wished to respond to the propaganda, presented as verified information, in the statement delivered by the representative of Israel at the thirty-first meeting of the Committee. It would provide an accurate update on the war being waged by Israel against the Palestinian people, including Palestinian children, in Gaza, focusing on the crimes committed by Israel in recent days.

60. The representative of Israel had claimed that Israel was making every effort to avoid civilian casualties and was going above and beyond the letter of the law in

taking every precautionary measure possible to mitigate unintended harm to civilians. Yet, Israel had killed 280 Palestinians between 31 October and 1 November 2023 alone. Moreover, Israel had killed a total of 8,805 Palestinians since 7 October, including at least 3,600 children and 2,200 women. A further 21,000 had been injured. There were 995 unidentified victims, including at least 248 children, and 1,950 people, including almost 1,000 children, remaining under the rubble. More than 420 children were being killed or injured every day. The number of children killed in Gaza since 7 October was more than the number of children killed annually in all of the world's conflict zones combined every year since 2020. The United Nations Children's Fund (UNICEF) had described Gaza as a graveyard for children.

61. More than two thirds of the Palestinian civilians who had died had been killed in their homes. A total of 192 Palestinian families had lost 10 or more of their members, 136 families had lost between 6 and 9 members and 444 families had lost between 2 and 5 members. The dead included 133 babies under the age of 1, many of whom had been issued death certificates but no birth certificates. Some babies were not even living long enough to be given a name. Incidents in recent days included the killing of 18 Palestinians from three generations of a single family in the bombing of their family home on 30 October, in an attack that left several others injured. Also on 30 October, an Israeli tank had fired on a taxi bearing a white flag, killing everyone in the car, with an Israeli military spokesperson later admitting that the Israeli Defense Forces had had no information on who was inside.

62. On 31 October, Israel had bombed the Jabalia refugee camp, destroying an area of 50,000 square feet that had contained 30 residential buildings. At least 195 people had been killed, and 100 remained trapped under the rubble. When asked by a CNN journalist why Israel had bombed the camp even though many innocent civilians were there, an Israeli military spokesperson had gleefully responded that that was the "tragedy of war". His comments demonstrated that Israel had been aware of the presence of civilians but had proceeded with the strike, in violation of the principle of distinction. Such actions were consistent with the comments made by another Israeli spokesperson, who had stated that Israel was dropping hundreds of tons of bombs on Gaza with a focus on destruction, not accuracy. According to the Office of the United Nations High Commissioner for Human Rights (OHCHR), the attacks on the Jabalia camp were disproportionate and could amount to warm crimes. Nevertheless, Israel had bombed the camp again on 1 November, less than 24 hours after the first attack. It had also bombed the Nuseirat camp, on 31 October, killing 45 Palestinians. On the same day, it had bombed two buildings in Khan Yunis, killing 12 Palestinians and injuring 40.

63. As at 30 October, more than 1.4 million people in Gaza had been internally displaced, with more than 600,000 sheltering in United Nations facilities. Those facilitates were currently at nearly four times their intended capacity, on average. Meanwhile, as at 1 November, Israel had bombed or damaged 44 United Nations installations and killed 70 United Nations staff members. That was the highest number of United Nations aid workers that had ever been killed in such a short period of time. Israel had also bombed at least 246 schools and damaged or destroyed more than 170,000 units of housing. There was thus little solace to be found in the lie that Israel was taking "precautionary measures" to mitigate harm to civilians. Indeed, her delegation would be interested to hear how Israel imagined the situation in Gaza would be different if harm had been intended. It was extremely unsettling that a country would kill thousands of children and then tell the world that their deaths were simply a tragedy of war.

64. With regard to the humanitarian situation, the representative of Israel had claimed that Israel had increased the flow of water into Gaza and facilitated the transfer of humanitarian aid. However, Gaza remained under a full electricity blackout. On 30 October, Israel had bombed the two main water wells in Nuseirat. Neither the water desalination plant nor the Israeli pipeline supplying Gaza City and northern Gaza was operational. While the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) and UNICEF had provided limited amounts of water to a number of water wells in Gaza City and northern Gaza, water was being provided by trucks only, and water trucking activities had stopped in recent days owing to the ongoing military operations. The pipeline from Israel to western Khan Younis, which had previously provided 600 cubic metres of drinking water per hour, had been closed since 30 October, while the pipeline from Israel to northern Gaza had been closed since 8 October. Only one desalination plant was operating in the whole of Gaza, at 5 per cent capacity, and the six wastewater treatment plants were non-operational owing to a lack of fuel or power.

65. In the past 24 hours alone, Israel had destroyed one primary care clinic and damaged two hospitals, including the main cancer treatment centre in Gaza. The Director-General of the World Health Organization had expressed great concern for the patients who had lost their only possibility of receiving life-saving cancer treatment and pled for full medical and fuel aid access to Gaza. All 13 hospitals operational in northern Gaza –

where thousands of patients and staff, as well as around 117,000 internally displaced persons, were living – had received repeated evacuation orders from Israel. Israel had also bombed 11 bakeries since 7 October, leaving people struggling to obtain bread and queuing for hours at bakeries, where they were exposed to air strikes.

66. Of the estimated 50,000 pregnant women in Gaza, 5,500 were due to deliver within the next 30 days. For the 1,000 patients dependent on dialysis and the 130 premature babies in incubators, life hung by a thread as hospital backup generators ran on fumes. Some 9,000 cancer patients were not receiving adequate care. The previous week, the babies of two pregnant women who had been hit by an Israeli air strike had been delivered by emergency caesarean section, by medical staff forced to work by the light of mobile phones and without water to wash their hands. Many Palestinian women had resorted to taking menstruation-delaying pills owing to the desperate, unsanitary circumstances they had been forced into. Women had no privacy and did not have access to sanitary napkins or water to take baths or showers.

67. Humanitarian agencies and personnel in Gaza were facing significant constraints in providing humanitarian assistance. Humanitarian partners could not safely reach people in need or warehouses where aid was stored. As stated by the Secretary-General in his statement issued on 31 October 2023, "the level of humanitarian assistance that has been allowed into Gaza up to this point is completely inadequate and not commensurate with the needs of people in Gaza, compounding the humanitarian tragedy." The Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator had stated in his statement issued on 1 November 2023 that "in Gaza, women, children and men are being starved, traumatized and bombed to death. They have lost all faith in humanity and all hope of a future. This despair is palpable." The head of Oxfam had indicated that the humanitarian crisis unfolding as a result of the Israeli siege of Gaza was the worst the organization had seen in its 80-year history. Yet, Israeli officials continued to deny that there was a humanitarian crisis in Gaza.

68. The war waged by Israel against the Palestinian people, including children, was so despicably criminal in its intent and execution that United Nations experts had felt compelled to issue a statement urging lawyers advising the Israeli military to refuse to give legal authorization for actions that could amount to war crimes. However, such crimes continued to be committed, with complete and abject disdain for humanity. Israel was displaying contempt for the most basic tenets of society – life, truth and morality – on a daily basis.

69. Lastly, her delegation reiterated the 75-year-long demand for Israel to release the Palestinian people, whom it had held hostage to its cruelty, brutality and criminality for decades, and repeated its calls for the international community to fulfil its obligations and ensure the release of the Palestinian people from the racist regime and system of apartheid to which they were subjected.

70. **Mr. Jalloh** (Special Rapporteur for the topic "Subsidiary means for the determination of rules of international law") said that he was grateful for the substantive comments made by some 53 delegations from all regions of the world. The high level of participation in the discussion indicated great interest in the topic and underscored its significance for the codification of the law relating to the sources of international law. As he had indicated in paragraph 33 of his report (A/CN.4/760), he valued the comments of all States, whether or not they endorsed the outcome of the work on the topic so far or expressed doubts. Although he might not always agree with all delegations on the points of substance, he would always consider their views with sensitivity and deep reflection.

71. Indeed, as had been demonstrated in the past, the constructive comments and criticisms of those States that might be perceived as being more critical of the Commission's work offered it the opportunity to strengthen its work, and that would apply to the topic of subsidiary means. States were intended as the primary beneficiaries of the Commission's work. In that regard, he reiterated the Commission's request, contained in chapter III of its report (A/78/10), for any information on relevant State practice that could be useful to its work on the topic. He hoped to receive submissions from States from all geographic regions and thus ensure that the principal legal systems and regions of the world were better reflected in the Commission's future work.

72. On substance, he planned to analyse the Committee's debate on the topic and include a detailed summary in his second report. On first impression, delegations generally appeared to support the Commission's decision to prepare a set of draft conclusions on the topic. Delegations had also generally welcomed draft conclusion 1, on the scope of the topic, with a number of delegations raising some questions about its formulation and requesting clarifications in the commentary thereto. Delegations had also generally welcomed draft conclusion 2, on the categories of subsidiary means for the determination of rules of international law, with most supporting the inclusion of

the two established categories and the use of the terms "decisions" and "teachings" in subparagraphs (a) and (b) of the draft conclusion.

73. Many delegations had also appeared to express support for the third category, namely "any other means generally used to assist in determining rules of international law", proposed in subparagraph (c), while others had expressed some doubts and called for caution regarding that category. He would continue to reflect on comments received from Commission members and Member States and likely proceed as signalled in the Commission's report. Based on the comments made during the Committee's discussion, he would consider further assessing the works of expert bodies and the decisions and resolutions of international organizations. There seemed to be general support for the criteria for the assessment of subsidiary means proposed in draft conclusion 3, for which he was grateful.

74. **Ms. Galvão Teles** (Co-Chair of the International Law Commission) said that a large number of delegations had participated in the discussion of the Commission's report (A/78/10) and the Commission had taken note of all comments and observations, which had covered both new topics and those for which the Commission was concluding its work. Delegations had also expressed broad support for the inclusion of the topic of non-legally binding agreements in the Commission's programme of work. Member States' comments made in the Committee as well as their written replies to the requests for information set out in chapter III of the report, in particular information submitted between the Commission's first and second reading of its planned outputs, were crucial to its work. The Commission and Member States should work together to improve the situation so that input on the work of the Commission came from all regions, legal systems and legal traditions. In that respect, the Commission's International Law Seminar and the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law, including the regional courses on international law and the International Law Fellowship Programme, constituted important components of capacity-building.

75. The Commission had taken note of the suggestions made to improve the format of its report in order to make it more user friendly. Regarding efforts to improve dialogue between the Commission and the Committee with a view to helping States better prepare for the annual discussion of the report, the two virtual briefings held by the Commission in May and September in 2023 appeared to have been beneficial and the Commission planned to continue that practice. It hoped that discussions regarding the identification of new topics would be held in 2024 in the context of its seventy-fifth anniversary. The Commission's session to be held in New York in 2026 would also provide an opportunity for Member States to provide input on new topics, including those reflecting pressing challenges to the international community, and to continue supporting the Commission in fulfilling its responsibilities on the codification and progressive development of international law. The Commission noted with great interest the follow-up activities being carried out by the Committee with respect to the draft articles on the protection of persons in the event of disasters and the draft articles on prevention and punishment of crimes against humanity, and looked forward to future developments in that regard.

76. She was grateful for the support expressed by delegations for the decision to have two women chair the Commission's seventy-fourth session: Ms. Nilüfer Oral, who had chaired the first part of the session, and herself, who had chaired the second part. It was a symbolic arrangement that promoted gender parity in the Commission and showed that it could work in an innovative and collaborative manner. The Commission, whose composition in the current quinquennium included former and new members, had shown great commitment to its mandate, which was apparent in the large number of its members, approximately 20, who had attended the Committee's meetings on the report of the Commission. She thanked the Secretariat teams in Geneva and New York for their dedicated work in support of the Commission.

77. **Ms. Oral** (Co-Chair of the International Law Commission) said that the Committee's discussion of the Commission's work had been particularly significant in 2023, as the Commission had commenced a new quinquennium with many new members, and with four new topics, including that of non-legally binding agreements, on which it would begin its work in 2024. Delegations' clear and substantive remarks would guide the Commission's work. The Commission would strive to enhance its dialogue and outreach with the Committee, in particular to ensure that Member States from all regions of the world made their views on the Commission's work known. Noting that, with the exception of the Chair, the participation of members of the Commission, including Special Rapporteurs, in the meetings of the Committee was not mandated, she thanked those who had attended on a voluntary basis.

78. The Committee had held its discussions against a challenging backdrop of conflict in the world. In that context, it was important to recall that the Committee, as the legal body of the General Assembly, and the

Commission, as a legal expert body, shared the common language of international law and the common goal of ensuring the centrality of international law in the fulfilment of the objectives of the Charter of the United Nations.

Agenda item 82: Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization (*continued*) (A/78/33, A/78/114 and A/78/296)

79. **Ms. Nze Mansogo** (Equatorial Guinea) said that it was important to strengthen the role of the Organization in order to enable it to respond more effectively to the current persistent and varying challenges in the world. For that purpose, reforms must be introduced to balance the powers of its main organs and strengthen dialogue and cooperation among them, while remaining faithful to the principles and procedures of the Charter and preserving its legal framework as a constitutional instrument. The reform and expansion of the membership of the Security Council were urgent matters. In that regard, there should be balanced geographic distribution in the membership. To that end, her delegation would continue to call for greater and better representation of Africa on the Council. The use of the veto power in the Council should also be reviewed; its application and use should be limited, especially in situations of humanitarian crisis.

80. With regard to the information contained in the reports of the Secretary-General (A/78/114 and A/78/296), her delegation had taken note of the Council's efforts to improve the design and monitoring of sanctions, but did not consider such efforts to be sufficient. The unilateral, indiscriminate and disproportionate application of sanctions only generated more suffering in the population, in particular among vulnerable groups, and exacerbated the socioeconomic situation in countries under sanctions. Sanctions would constitute an important instrument to maintain and achieve international peace and security only when their application was transparent and equitable.

81. The work of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization in defence of the purposes and principles of the Charter was indispensable for the maintenance of international peace and security, the development of inter-State cooperation and the promotion of international law. Her delegation had been an active participant in the Special Committee's 2023 session, although it had been disappointed that, for a second consecutive year, the Special Committee had not been able to adopt a substantive report. In that regard, it called on delegations to avoid discussing issues in the Special Committee from a political perspective, which was what had prevented it from being able to adopt a substantive report.

82. Her delegation called for mediation to be used in the peaceful settlement of disputes and in the management, prevention and resolution of conflicts, in accordance with Article 2, paragraph 3, of the Charter. In addition, Member States should apply to the International Court of Justice and use preventive diplomacy in the first instance to avoid escalations of disputes that could jeopardize international peace and security. While recognizing that the success of the Special Committee in fulfilling its mandate depended on the will of Member States, her delegation encouraged the Special Committee to continue urging States to focus their attention on the need to prevent and resolve conflicts by peaceful means and to continue to carry out its other functions. Her delegation welcomed and took note of all proposals submitted by States to the Special Committee; it supported in particular the revised proposals submitted by Ghana, the Islamic Republic of Iran and Mexico.

83. **Mr. Geng** Shuang (China) said that in the current context of regional conflicts and global challenges, it was all the more important for the international community to safeguard the Charter, which was the cornerstone of the international order. In that regard, his delegation supported the work of the Special Committee, including its useful discussions on sanctions with regard to the question of the maintenance of international peace and security. Sanctions were a means rather than an end. Sanctions, which should be consistent with the Charter and the relevant principles of international law, should not be imposed until all other peaceful means had been exhausted, and their impact on the general population and third States should be minimized. Member States should enforce sanctions in strict compliance with the relevant Security Council resolutions.

84. The Security Council should take a prudent and responsible approach to the application of sanctions and all relevant parties should strictly comply with the Council's resolutions. Certain States routinely resorted to unilateral sanctions, which fostered humanitarian crises, eroded the rule of law at the international level and undermined the stability of international relations. Such acts should be rejected by the entire international community.

85. Disputes should be settled by the concerned countries through peaceful means, such as negotiation and consultation, and the right of each country to independently choose the means of settlement should be

respected. As a permanent member of the Security Council, China consistently advocated objectivity and impartiality and was committed to playing an active role in the peaceful settlement of regional and international disputes. In February 2023, China had issued the Global Security Initiative concept paper, where it called for the peaceful settlement of disputes through dialogue and consultation. China had also published a position paper on the political resolution of the Ukraine crisis, which contained 12 proposals, including respecting sovereignty, ceasing hostilities, resuming peace talks and ending unilateral sanctions.

86. The current conflict between Palestine and Israel had caused massive civilian casualties. China condemned all acts that harmed civilians and rejected any practice that violated international law. Military means was not the solution; responding to violence with violence only perpetuated a vicious cycle. China called for an immediate cessation of hostilities and a response to the humanitarian crisis in order to prevent further impacts on regional security and stability. The international community should continue to pursue a two-State solution and redouble its efforts to promote a comprehensive, just and lasting solution to the crisis. The Security Council, which bore the primary responsibility for the maintenance of international peace and security, should fulfil its role in resolving the crisis.

87. At its 2023 session on the question of the peaceful settlement of disputes and the means for the settlement of disputes referred to in Article 33 of the Charter, the Special Committee had discussed State practices regarding the resort to regional agencies or arrangements, which offered a unique advantage but should be resorted to in a manner consistent with the Charter and subject to the consent of the parties involved, and should not be reduced to mere tools for perpetuating the cold war mentality or stoking confrontation between blocs. In addition, those regional agencies or arrangements should not undermine the central role of the Security Council in the maintenance of international peace and security or overstep their geographical or substantive scope by engaging in the use of force without the Council's authorization.

88. In recent years, in response to the demand for international mediation, China and like-minded countries had been laying the groundwork for the establishment of an international organization for mediation, which would be the first intergovernmental legal organization dedicated to the settlement of international disputes through mediation and represented a major effort to implement the principle of the pacific settlement of international disputes enshrined in the Charter. In February 2023, a preparatory office had been established in Hong Kong and two negotiation sessions had been held on the elaboration of a convention for the establishment of the organization.

89. In June 2023, China had enacted a law on foreign relations that set out the State's commitment to safeguarding the purposes and principles of the Charter and preserving the international system with the United Nations at its core, the international order based on international law and the basic norms governing international relations. The law also provided that China would fulfil its responsibility as a permanent member of the Security Council to maintain international peace and security.

90. **Ms. Bhat** (India) said that pursuant to Article 2 of the Charter, States had the responsibility to settle their disputes by peaceful means; Article 33 of the Charter further articulated that duty and provided the means by which they could choose to do so. The International Court of Justice, as the principal judicial organ of the United Nations, had a significant role to play in promoting the peaceful settlement of disputes and should be used more frequently for that purpose. Her delegation appreciated the proposal revised by the Russian Federation recommending that the Secretariat be requested to establish a website dedicated to the peaceful settlement of disputes between States and to update the *Handbook on the Peaceful Settlement of Disputes between States*, which would be useful to all Member States.

91. The Security Council must act on behalf of all Member States when discharging its primary duty to maintain peace and security. Sanctions authorized by the Council in line with Chapter VII of the Charter could serve as an important tool to that end. However, such measures must be applied judiciously and only as long as they were necessary. Member States had been increasingly stressing the unintended consequences of sanctions measures, including their humanitarian impacts. The legitimate trade and economic activities of the concerned State and its regional partners must not be impacted adversely by sanctions. In that respect, the Council should consult key countries in the region before considering any sanctions measures.

92. Many delegations found that it was in their interest to continue discussing the substantive nature of Article 50 of the Charter. In that context, her delegation took note of the role played by the General Assembly and the Economic and Social Council in assisting third States confronted with special economic problems arising from the implementation of preventive or enforcement measures imposed by the Security Council. It also took

note of the arrangements made in the Secretariat for assisting third States affected by the application of sanctions and encouraged the Secretariat to explore practical and effective assistance measures for affected third States. Her delegation encouraged the Department of Economic and Social Affairs to continue its collaborative work with other relevant parts of the Secretariat to improve the sanctions monitoring framework and sanctions assessment methodology.

93. Her delegation commended the continuing efforts of the Secretariat and the Secretary-General to update and eliminate the backlog in the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council*, which were key reference sources and an effective means of maintaining the institutional memory of the Organization. It encouraged the Secretariat to continue its efforts to make those publications available electronically.

94. As a matter of propriety and pragmatism, her delegation disagreed with the recent trend of the Security Council taking on work that was better carried out by specialized agencies and organs. The principal organs of the United Nations had specific roles and functions and should act in accordance with the purposes and principles of the Organization. The objective of the United Nations, as reflected in Chapter I of the Charter, would be better served when its principal organs worked in harmony and focused on their respective mandates. It was becoming apparent that the Security Council was facing a crisis of identity, legitimacy and relevance.

95. The solution to that crisis involved invoking and working through the Charter provisions that provided for reform and change. The international community required a Council that was representative, credible, legitimate and fully equipped, rather than one that was a relic of the geopolitical construct of the 1940s. The reform of the Council was at the core of the vision of reformed multilateralism, called for by India, which reflected contemporary reality. The Summit of the Future, to be held in 2024, would deliver results only if it responded to the growing calls for reformed multilateralism. The logic of democracy and human suffering across the world called for urgent action to reform the Council.

96. **Mr. Kim** In Chol (Democratic People's Republic of Korea) said that the sovereign equality of States should be strictly observed in all United Nations activities. The arbitrary and high-handed approach of forces that perpetuated a unipolar world was jeopardizing friendly relations among countries. That approach included interference in the internal affairs of sovereign States, constant threats of use of force and misrepresentation of the justified self-defence measures taken by States to safeguard their sovereignty. The purpose of the United Nations would not be fulfilled if the actions of forces imposing Western hegemony under the pretext of implementing a rules-based international order were not addressed. In that regard, the Special Committee should take concrete measures to reject arbitrariness and unilateralism in international relations and ensure global peace and security in line with the purposes and principles of the Charter.

97. Ambitious acts that abused the Organization's name in pursuit of political supremacy must also be addressed. Country-specific resolutions and commissions of inquiry were openly and forcibly contrived under the United Nations name with the aim of subversion, regime change, political and economic isolation, and social division of sovereign States under the pretence of protecting human rights and defending democracy. In order to legitimize the Korean War, in 1950, the United States had unlawfully established the so-called United Nations Command, which still existed on the Korean Peninsula and was becoming a flashpoint for a potential thermonuclear war owing to the nuclear war exercises being conducted by the United States and its followers and the continued deployment of strategic assets.

98. His delegation recalled the resolution on the dissolution of the United Nations Command, adopted by the General Assembly at its thirtieth session in 1975, and the statements of former Secretaries-General affirming that it had no relevance to the United Nations in military, administrative or financial terms. In order to regain its authority and restore its impartiality, the United Nations must put an end to the abuse of its name by immediately dismantling the United Nations Command, which was a remnant of the cold war and was aggravating the security situation in the region as a whole.

99. **Ms. Arumpac-Marte** (Philippines) said that the 1982 Manila Declaration on the Peaceful Settlement of International Disputes was a testament to what the Special Committee could achieve as a forum for meaningful engagement on questions related to the Charter and international law. At the Special Committee's 2023 session, during the thematic debate on State practices regarding the resort to regional agencies or arrangements for the peaceful settlement of disputes, the delegation of the Philippines had shared the perspectives of the Association of Southeast Asian Nations in that regard. On the sidelines of the session, the Philippine delegation, on behalf of the Movement of Non-Aligned Countries, had conducted an interactive dialogue with jurists on the Manila Declaration, an

initiative of the Movement, focusing on the role of international tribunals in the peaceful settlement of international disputes.

100. The Philippines worked with all nations to promote the rule of law, advocating the peaceful settlement of disputes, promoting the rule of international tribunals and legal bodies to foster greater solidarity around the foundational values of the United Nations. In that connection, it welcomed the adoption by consensus of a General Assembly resolution to celebrate the 125th anniversary of the Permanent Court of Arbitration. The Special Committee had a vital role to play in examining the legal aspects of the process of reforming the United Nations. There were proposals before the Special Committee to inform that process which, if they were discussed, could lead to concrete outcomes.

101. Her delegation continued to believe that sanctions should be imposed only as a matter of last resort when there existed a threat to international peace and security, a breach of the peace or an act of aggression, and always in accordance with the Charter. Her delegation noted with appreciation the progress made in preparing studies for the *Repertory of Practice of United Nations Organs* and in updating the *Repertoire of the Practice of the Security Council*, including the relevant websites. Her delegation remained hopeful that the Special Committee would reach a consensus on a full substantive report in its 2024 session.

102. **Ms. Almuaithir** (Saudi Arabia) said that her delegation supported all efforts to revitalize the role of the Special Committee and reform the United Nations in order to better reflect the aspirations of Member States. Under the Charter, each of the principal organs of the Organization had clear responsibilities and powers. The principles enshrined in the Charter were no less important at the current time than they had been upon the Organization's inception. The international community had a duty to take collective action to tackle the underlying causes of threats to international peace and security; foster the peaceful settlement of disputes; strengthen amicable relations among States on the basis of the equal right of all peoples to self-determination; and promote international cooperation to solve economic and social, cultural and humanitarian problems and to strengthen respect for human rights.

103. Her Government was committed to complying with the rules of international law and attached particular importance to the peaceful settlement of disputes. For example, it supported United Nations mediation in Yemen and had worked to address the situation in Ukraine, including by facilitating prisoner exchanges. It urged all United Nations entities to act in accordance with their mandates.

104. Targeted sanctions imposed by the Security Council pursuant to the Charter were a valuable tool for the maintenance of international peace and security, provided that the rights of targeted individuals were respected; that the relevant procedures were fair and clear; and that the sanctions did not affect humanitarian and relief work in targeted States. Her delegation welcomed the role of the International Court of Justice in promoting the peaceful settlement of disputes and ensuring compliance with the decisions of international judicial bodies. It commended the wide-ranging reform programme of the Secretary-General, whose aim was to improve coordination among United Nations entities, strengthen the Organization's transparency and crisis response capacity, bolster its multilateral action, enhance its credibility and uphold the Charter.

105. **Mr. Giorgio** (Eritrea) said that, notwithstanding its ad hoc mandate, the Special Committee could function as an important platform in the collective effort to build the effective multilateral institutions needed to uphold the Charter and strengthen the role of the Organization. It was important to maintain the debate in the Special Committee on the peaceful settlement of disputes, as it offered Member States the opportunity to inculcate a culture of peace in States. Full respect for the principles of sovereignty, territorial integrity and non-interference in the internal affairs of States was essential to peace and security, socioeconomic progress and justice. His delegation welcomed the useful exchange of information on State practice concerning resort to regional agencies or arrangements that had taken place during the Special Committee's annual thematic debate on the means of dispute settlement.

106. Recalling that the Manila Declaration, which was essential to the work of the Special Committee, had been adopted by consensus, his delegation noted with concern that the Special Committee had not been able to adopt a substantive report on its session and viewed with regret the unconstructive attitude shown by some delegations when they had decided to politicize the work of the Sixth Committee. Serious consideration must continue to be given to the various proposals from different delegations aimed at strengthening the role of the United Nations with respect to the maintenance of international peace and security.

107. The balance between and among the primary organs of the United Nations should be maintained, with the General Assembly remaining as the chief deliberative, policymaking and representative body. While the Security Council had authority to impose

sanctions under the Charter, it should avoid double standards and impose sanctions only as a measure of last resort, on the basis of solid evidence and with fair and clear procedures for ending them. In contrast, unilateral coercive measures were inconsistent with the Charter.

108. His delegation was deeply concerned that such illicit acts were increasingly being employed as a tool of aggressive foreign policy by some States. Unilateral coercive measures had a negative impact on human rights related to life, health and freedom from hunger, and had been condemned by the General Assembly, the Human Right Council and the African Union in several resolutions. His delegation thanked the Codification Division for its efforts to update the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council*.

109. **Mr. Kim** Hyunsoo (Republic of Korea) said that it was disappointing that the Special Committee had not been able to adopt a substantive report on its session, for the second consecutive year. Continued failure to agree on any meaningful progress would lead to the erosion of confidence in the body. Member States must revive the spirit of partnership to bring the Special Committee back on the right track.

110. The Secretary-General's report (A/78/114) clearly demonstrated the work of the General Assembly and the Economic and Social Council in the area of assistance to third States affected by the application of sanctions and appropriately captured the fact that current Security Council sanctions were targeted and significantly reduced the possibility of unintended adverse impacts on third States. The report also reflected the fact that, pursuant to its resolution 2664 (2022), the Security Council had instituted humanitarian exemptions to asset-freeze measures imposed by United Nations sanctions regimes. His delegation welcomed the resolution, without prejudice to the necessity of sanctions as important tools to maintain international peace and security.

111. Concerning the remarks made by the delegation of the Democratic People's Republic of Korea, his delegation emphasized that the Sixth Committee was not the appropriate forum to discuss the status of the United Nations Command and the situation on the Korean Peninsula, especially to make remarks based on ungrounded and distorted allegations. There was no doubt, however, that the United Nations Command, which had been officially recognized by the Security Council in its resolution 84 (1950), continued to contribute to the maintenance of peace and security on the Korean Peninsula.

112. The unilateral call by the Democratic People's Republic of Korea to dissolve the Command was nonsensical; that delegation's reference to a certain provision in the resolution adopted by the General Assembly at its thirtieth session was grossly misleading, as the General Assembly had adopted two resolutions on the issue of the Korean Peninsula during the session in question. With regard to the misguided characterization of the combined military exercises of the Republic of Korea and the United States, his delegation noted that those exercises were conducted on a regular basis, were long-standing and defensive in nature, and were aimed at defending the Republic of Korea from the clear military threats of the Democratic People's Republic of Korea. Such defensive measures were the duty of a responsible Government.

113. Indeed, the ever-increasing nuclear and missile threats issued by the Democratic People's Republic of Korea were the very reason why the Republic of Korea was strengthening its deterrence cooperation with the United States. It was a legitimate response to escalatory and dangerous behaviour, in order to enhance security on the Korean Peninsula. Unlike the continued pursuit by the Democratic People's Republic of Korea of its unlawful nuclear programme and development of weapons of mass destruction, his Government's extended deterrence cooperation was in full accordance with the global non-proliferation regime, including the Treaty on the Non-Proliferation of Nuclear Weapons and relevant Security Council resolutions. His Government's efforts to effectively deter nuclear and missile threats would further promote regional peace and security.

Statements made in exercise of the right of reply

114. **Ms. Rubinshtein** (Israel) said that the Palestinian delegation had not made a substantive statement before the Committee, but instead had delivered a right of reply. The delegation of Israel could also provide graphic details about the individuals murdered on 7 October 2023, but it did not wish to exhaust and shock the Committee. When the Palestinian delegation and its supporters issued false data and inaccurate information, they would do well to remember that the data published by the media and the United Nations came from the Gaza Ministry of Health, which was, in effect, Hamas, and that had been the case since Hamas took over Gaza in 2007. That had been reported by the *Washington Post* that morning. Hamas was behind the inflated numbers and false information, and the fact that the United Nations was repeating them did not make them true.

115. Her delegation asked other delegations whether they would believe the information reported by a

ministry set up by a terrorist organization, like Al-Qaida, Boko Haram or Da'esh, which controlled a civilian population in their region. A terrorist organization that built tunnels under hospitals and deprived them of fuel, hid weapons under children's beds and conducted a pogrom on villages, raping, pillaging, beheading and kidnapping civilians could not be believed. The Palestinian delegation should know better than to repeat Hamas lies and propaganda. If the Palestinians and their supporters wanted to help civilians in Gaza, they should condemn Hamas.

116. **Ms. Sayej** (Observer for the State of Palestine) said that it was important that the delegation of Israel had stated on the record that the reports of the United Nations were false and propaganda. Her delegation asked the delegation of Israel whether it also considered the statements of Israeli officials to be propaganda.

117. **Ms. Rubinshtein** (Israel) said that the delegation of Palestine had compared Israeli officials, representing a law-abiding, democratic State, to the Gazan Ministry of Health, which was Hamas.

118. **Ms. Sayej** (Observer for the State of Palestine) said that her delegation again asked the delegation of Israel whether the statements made by Israeli officials calling for war crimes were also false and propaganda.

119. **Mr. Baghaei Hamaneh** (Islamic Republic of Iran) said that respect for and implementation of international humanitarian law fell within the purview of the Committee. A false narrative was being perpetuated about the situation in Gaza. It was important to establish that the current discussion did not concern any grouping, but a people under occupation who had been deprived of their fundamental right to self-determination for seventy years. It was the duty of every Member State to defend the cause of the Palestinian people. Under international humanitarian law, the occupying Power had a clear responsibility to protect the people under its occupation, not butcher them. It was apparent that the latter was taking place. The world was watching what was happening; half of the enclave had been totally demolished. That was not a matter of propaganda. The statement made by the Defence Minister of Israel explicitly calling the people under occupation "human animals" was not propaganda created by the Palestinians. That was a dehumanizing statement preceding the massacre of a people. Individuals should use their own conscience and wisdom to analyse what was taking place and distinguish between right and wrong.

The meeting rose at 1 p.m.