

Subsidiary Means for the Determination of Rules of International Law
(Chapter VII)

Statement by Denmark on behalf of the Nordic countries

31 October 2023

Mr./Madam

I would like to congratulate the International Law Commission for having commenced its work on the topic of subsidiary means for the determination of rules of international law. We are grateful to the Special Rapporteur, Mr. Charles C. Jalloh, and the Commission for the work done on the topic thus far.

The Nordic countries look forward with interest to its further consideration. Overall, we support the approach of working towards a set of draft conclusions as the outcome for this topic.

At this early stage of work, the Nordic countries would like to make the following general comments as regards the topic during its seventh session:

First of all, we would like to fully support the important contributions made by the Commission in promoting conceptual clarity and consistency in the application of the term "subsidiary means for the determination of rules of international law". While there is no single, clear definition of the term in international legal practice or theory, it is clear that subsidiary means referred to in Article 38 (1) d are of a different nature than the primary sources of law insofar as this term is applied as a reference to formal sources of law, as the first reports set out to do.

Article 38 (1) d refers to something qualitatively different from the latter, namely a non-formal source, i.e. helpful, material.

provide added perspective. As rightly pointed out in the comments provisionally adopted by the Commission in draft conclusion 1, notably a careful study of various authentic language versions of the provisions sheds important light in this regard.

The H) U H Q F K D X W K H Q W L F W H [W m e d i a P u b l i c B o t h O u n d e r S e n t e n c e A u x i l i a r y , i . e . h e l p f u l , c h a r a c t e r o f s u c h m e a n s f o r t h e d e t e r m i n a t i o n o f r u l e s i n c i d e n t a l l y , t h i s d o e s n o t c o n t r a d i c t o n e o f t h e e a r l i e r e s t a b l i s h e d i n t e r p r e t a t i o n s . I n W K H P H D Q L Q J t h e E n g l i s h l a n g u a g e w h e n t h e p r o v i s i o n w a s o r i g i n a l l y d r a f t e d i n J u l y 1 9 7 0 a n d d e c i s i o n s a n d t e a c h i n g s a r e t h u s a u x i l i a r y t o t h e s o u r c e s i n a r t i c l e 3 8 (1) a n d n o t f u n c t i o n a l l y a n a l o g o u s t o t h e m .

We would like to commend the Commission for applying such a multilingual effort to interpretation of the Statute, in conformity with the rules of interpretation of treaties authenticated in several languages, as contained and reflected in article 33 of the Vienna Convention on the Law of Treaties.

Mr./Mme chair

The Nordic countries would also like to stress the importance of promoting clarity in distinguishing between analysis and theoretical assessments of the practical effects of decisions and teachings as seen from a social or anthropological perspective. The causes of law, i.e. the factors that may influence the growth of international law, must not be confused with the formal sources of law.

The Nordic countries agree that the practice of the ICJ has had a strong impact on the clarification and progressive development of international law. We welcome that and we strongly support the role of the ICJ as an essential gravitation point for the international legal system as such and promotion of systemic integration of this system.

But this is not to be confused with a claim that the practice of the Court is itself a formal source of rights and obligations for states not party to a dispute. In a similar instance also recalled in article 59 of the statute where it is stipulated that a decision of the court has no binding force except between the parties and in respect of the particular facts in issue. The Nordic states agree with the statement of the Special Rapporteur in his concluding remarks

