



Concept Note for Webinar on “Subsidiary Means for the Determination of Rules of International Law: Developments and Prospects”

The Asian-African Legal Consultative Organization (AALCO) in collaboration with the Allameh Tabataba'i University, Islamic Republic of Iran proposes to organise a webinar on “**Subsidiary Means for the Determination of Rules of International Law: Developments and Prospects**” on **24 February 2026**. This timely gathering will explore recent developments in the conceptualisation and application of subsidiary means in international law following the ongoing work of the International Law Commission (ILC).

Background and Rationale

The concept of subsidiary means for the determination of rules of international law has undergone significant evolution since its inclusion in Article 38(1) (d) of the Statute of the International Court of Justice. While traditionally viewed merely as tools to identify existing legal rules rather than as sources of law themselves, judicial decisions and scholarly writings have gradually assumed greater importance in the development and clarification of international legal norms. The International Law Commission, with Prof. Charles C. Jalloh as Special Rapporteur, commenced work on this topic at its seventy-third session in 2022, moving it from the long-term programme to its current work programme.

The topic’s inclusion reflects growing recognition of the need to clarify the nature, scope, and function of subsidiary means vis-à-vis the primary sources of international law. The Commission’s seventy-fourth session in 2023 saw the presentation of the Special Rapporteur’s first report and the provisional adoption of the first three draft conclusions. The work gained remarkable momentum at the seventy-fifth session in 2024, where the Commission considered the Special Rapporteur’s second report and provisionally adopted draft conclusions 4, 5, 6, 7, and 8 together with their commentaries.

Continuing its work on the topic at the seventy-sixth session (2025), the Commission had before it the third report of the Special Rapporteur dealing with the work of private and public expert bodies, and the possible consideration of resolutions of international organizations and of intergovernmental conferences as subsidiary means. The report also addressed the question of the risk of

conflicting decisions of international courts and tribunals and the possible link between the supplementary means of interpretation under the law of treaties and the subsidiary means of determining rules of international law along with draft conclusions on each of issues addressed in the report.

Taking into account the debate in the plenary, there was wide support for the referral of all the draft conclusions proposed in his third report to the Drafting Committee, however the adoption of the entire set of draft conclusions was postponed to the seventy-seventh session, owing to the unavailability of time for the translation and consideration of the commentaries.

The latest developments reveal the Commission's nuanced approach to understanding subsidiary means not as formal sources of law but rather as material sources that assist in interpretation and provide added perspective. The Commission's efforts toward promoting "conceptual clarity and consistency" in the application of the term "source of law" have received broad support from States and regional organizations.

Objectives of the Webinar

Against this backdrop of significant developments, our webinar seeks to:

1. Examine the ILC's comprehensive approach to subsidiary means, with particular focus on the work of the Commission on the topic till date
2. Analyse the relationship between Articles 38(1)(d) and 59 of the ICJ Statute, addressing the controversial question of precedent in international adjudication
3. Explore the putative value of judicial decisions, work of private and public expert bodies, resolutions of international organizations and intergovernmental conferences as subsidiary means for determination of rules of international law
4. Consider regional perspectives, particularly from Asia and Africa, on the development and application of subsidiary means
5. Facilitate dialogue between academic experts and practitioners on the future trajectory of subsidiary means in international law

Proposed Speakers

The webinar will feature distinguished speakers representing diverse perspectives and expertise:

1. **Prof. Charles C. Jalloh:** Special Rapporteur on Subsidiary Means for the Determination of Rules of International Law, International Law Commission; Professor of Law, Florida International University.

2. **Prof. Mohamed Helal:** Professor of Law at the Ohio State University, Member of the Permanent Court of Arbitration (PCA), Member of the African Union Commission of International Law and Legal Counsel to the Ministry of Foreign Affairs of Egypt.
3. **Prof. Seinho Yee:** Professor of International Law, China Foreign Affairs University and Member of Institut de Droit International.

Format and Key Discussion Points

The webinar will be a two-hour interactive dialogue combining scholarly presentations with semi-structured discussions.

Expected Outcomes

The webinar aims to produce several tangible outcomes:

1. A report synthesising the discussions and insights which will be shared with AALCO Member States and the ILC
2. The identification of specific areas where further research or clarification is needed, particularly from Asian-African perspectives

Logistics and Technical Arrangements

The proposed webinar will be conducted via a secure online platform. AALCO Secretariat will provide the technical infrastructure.