

# Islamic Republic of

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Permanent Mission to the United Nations

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Statement by

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**Before The Sixth Committee of the Seventy- Second**  
**Session of the United Nations General Assembly**

**On agenda item 86:**

**“Effects of armed conflicts on treaties”**

New York, 20 October 2017

*In the name of God, the Compassionate, the Merciful*

**Mr. Chairman,**

We would like to reiterate our appreciation for the work of the International Law Commission and commend its work in filling the lacunae in international treaty law on the topic under consideration.

My delegation’s approach closely follows the initial framework established by the Commission on the topic, based on the theory that parties are supposed to conclude treaties in good faith and with the intention of complying with them, in line with the *pacta sunt servanda* principle. This is why we support the draft articles in general and article 3 in particular which establishes the basic orientation of the other draft articles, namely that armed conflict does not, *ipso facto*, terminate or suspend the operation of treaties. As a presumption of continuity, the Commission has also rightly decided not to recast this provision in affirmative terms.

With respect to other draft articles, we have some comments and observation which we allude as follows:

***First, on the Definition of armed conflict:***

In our view, an attempt to define “armed conflict” would go beyond the main purpose of the draft articles, which was not to determine the nature of armed conflict as such, rather to examine the legal effects of armed conflicts on treaties. Even more importantly, in draft article 2(b), the definition of “armed conflict”, to a large extent, modelled on that used by the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia (ICTY) in the Tadić decision. That

definition is too broad and risks becoming a matter of legal controversy. It is therefore not advisable to include a definition of armed conflict in the draft articles and if any, it should have deployed the universally accepted definition stipulated in the common article 2 of the 1949 Geneva Conventions.

***Second, on the Non-int'l armed conflict:***

The definition of “armed conflict” in draft article 2 includes no explicit reference to “international” or “non-international” armed conflict because, according to the commentary, the Commission intended to avoid reflecting specific factual or legal considerations in the article and running the risk of conflicting interpretations. The term “non-international armed conflict” however, appears in draft article 6, paragraph (b). My delegation is of the view that a consistent approach should be followed, based on which there would be no reference, either explicitly or implicitly, to this type of armed conflicts throughout the draft articles as it may cause a number of legal uncertainties and difficulties. In fact, the differences between conflicts among States and non-international conflicts, and the divergent resulting obligations indicate a need for two separate classifications. Furthermore, article 73 of the Vienna Convention on the Law of Treaties, forming the basis of the Commission’s work, refers clearly and exclusively to the “outbreak of hostilities between States”. Besides, the possible effects of non-international conflicts on treaties are incorporated in chapter V of the draft articles on the responsibility of States for internationally wrongful acts (Circumstances precluding wrongfulness).

***Third, indicative list of treaties:***

This presumption that some specific treaties, because of their fundamental importance, should not be affected by armed conflict, has been the primary orientation of draft articles. Treaties on the law of armed conflict and international humanitarian law and treaties establishing borders could be cited as vivid examples of such categories. In fact, a treaty which establishes an objective situation, such as a boundary, belongs, by its nature, to the category of treaties creating permanent regime. As such, even a fundamental change of circumstances, such as armed conflict, cannot be invoked as a ground for terminating or withdrawing from these treaties. This is why we have welcomed the inclusion in the list of treaties that remained applicable during armed conflict, those which established or modified land and maritime boundaries, and interpreted the category as including treaties establishing river boundaries.

Nonetheless, the way that the draft article 9 (dealing with notification of intention to terminate, withdraw from or suspend the operation of a treaty) has been drafted is as if it applies to all treaties, including the above-mentioned ones and can be misinterpreted by a State to invoke that loophole. So, it would be more appropriate to restrict the scope of this provision.

It is against this background that we are not satisfied with introducing the criterion of the “characteristics” of armed conflict, in draft article 6(b), in order to determine the status of a treaty as it could contradict and negate the effect of the intention of the parties and undermine the principle of stability of treaty relations.

***Fourth, on the miscellaneous issues (right to self-defense and aggressor state):***

The draft article 14 (Effect of the exercise of the right to self-defense on a treaty) is another welcome inclusion. We also fully support the draft article 15 (Prohibition of benefit to an aggressor State) referring to the crime of aggression, rightly mentioned to be within the meaning of the Charter and General Assembly resolution 3314 (XXIX). Besides, we believe that this formula could be further

supplemented by mentioning the use of force in violation of Article 2, paragraph 4, of the Charter of the United Nations. In fact, a clear distinction should be made between situations of unlawful use of force by a State and those of self-defense, in accordance with the Charter of the United Nations. It has always been Iran's principled position that the State resorting to unlawful use of force must not be allowed to benefit from such unlawful act in any manner. It is also a general principle of international law that no State may benefit from its own wrongful act.

However, the wide implication of the saving clause in draft article 16 (Decisions of the Security Council) gives rise to doubts. The Islamic Republic of Iran believes that the "without prejudice" clause contained in draft article 16 is not only superfluous, considering articles 25 of the Charter of the United Nations, but also relates to subject matter that falls outside the mandate of the International Law Commission and, therefore, should be deleted.

Moreover, the Islamic Republic of Iran does not agree with the interpretation of article 103 of the United Nations Charter as rendered in the commentary to this draft article which says that, in addition to the rights and obligations contained in the Charter itself, article 103 applies to obligations flowing from binding decisions taken by United Nations bodies, in particular, the primacy of Security Council decisions under this article. Legally speaking, article 103 is drafted in order to resolve conflicts between the provisions of the Charter itself on the one hand, and obligations arising from other international treaties on the other.

**Mr. Chairman,**

As we have noted, the stability, integrity and continuity of international treaties remain to be the core of this topic. We reiterate our position that the mandate of the International Law Commission concerning the effects of armed conflicts on treaties is to supplement, and not to change the existing framework of the international law of treaties, in light of the provisions of the Vienna Convention on the Law of Treaties of 1969, as a primary instrument for the interpretation of treaties, some of its provisions have crystallized into customary international law.

In the light of the above, we suggest that the draft articles in question would be used as a practical guidance to States, as there is no need to have them, in its current form, elaborated into a convention.

I thank you.

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