Permanent Mission of the Islamic Republic of Iran to the United Nations

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Statement by

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before the Sixth Committee

78th Session of the United Nations General Assembly

on

Agenda item 79: "Report of the International Law Commission on the work of its Seventy-third and Seventy-fourth sessions",

Cluster I

Chapters IV (General principles of law), VIII (Sea-level rise in relation to international law) and X (Other Decisions and Conclusions)

New York, 23 October 2023

بسم الله الرحمن الرحيم

Mr. Chairman,

Distinguished Delegates,

I would like to begin by expressing my delegation's appreciation and thanks to the International Law Commission for the significant work it has done during the past year.

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My delegation wishes to share some observations concerning the topics **'General Principles of Law'** and **'Sea-level Rise in relation to International Law'**. We would also say a few words on **'Other Decisions and Conclusions'.**

Mr. Chairman

On 'General Principles of law', I would like to recognize the important reports prepared by Special Rapporteur Mr. Marcelo Vazquez-Bermudez that have been key in producing 11 draft Conclusions on the topic. The Commission managed, in its seventy-fourth session, to conclude the first reading of the draft Conclusions.

The following are a few observations that my delegation would like to bring to the attention of the Commission:

1) It is well established that there is no hierarchy among the main sources of international law - 'general principles being one of them- as listed in Article 38, paragraph 1 of the ICJ Statute. However, 'general principles' are far less frequently invoked or referenced in international jurisprudence, including the ICJ's rulings and arguements. This is partly due to the relative opacity of 'general principles' compared to 'international conventions' and 'international custom'. That, however, does not mean that 'general principles' are treated as ancillary or subsidiary. 'General principles of law' have

made important contributions to the development of international law during the past century. For example, international courts and tribunals, particularly the ICJ, have used, as a choice of convenience, some concepts and principles of municipal law in order to fill up certain lacuna in the international legal system. The ICJ has on a few occasions resorted to Article 38, paragraph 1(c) of the Statute. Nonetheless, both ICJ and its predecessor, PCIJ, have in several cases based their legal reasoning on general principles that are derived from domestic legal systems, including the principles of estoppel, acquiescence, good faith, *res judicata*, *nemo judex in re sua*, and *ex injuria jus non oritur.* These principles are general principles of law common to the the various legal systems of the world.

2) 'General principles' may be regarded as a source of international law if they are common to the various legal systems of the world, or "[…] *recognized by civilized nations*", to use the ICJ Statute's terminology in its Article 38, paragraph 1(c); read in conjunction with draft Conclusion 3 (b) that suggests the possibility of formation of a general principle of law 'within the international legal system', the question arises as to how the latter could possibly be compromised with the former, *i.e.*, that 'general principles' must be derived from national legal systems. The explanation provided

under draft Conclusion 7 could hardly rectify this flawed argumentation. Indeed, it has only led to a sort of cyclic paradox. The Commission's mandate is better served if a clear distinction is observed between 'general principles of law' as set out in ICJ Statute's Article 38, paragraph 1(c) and 'principles of international law' as enumerated under different authoritative instruments and documents such as the UNGA Resolution 2625 of 1970. Unlike 'principles of international law' that are intrinsic to the international legal system and are assumed to enjoy the consent and consensus of community of nations, 'general principles of law' must necessarily derive from the various domestic legal systems of the world.

3) We agree with the proposition outlined in draft Conclusion 6 that a general principle of law that is common to the various legal systems of the world may be susceptible to be transposed to the international legal system if and only if it is compatible with the existing fundamental principles of the system. The State's consent is of major importance in international law and as such no new general principle may be transposed to the international legal system if it lacks or challenges in any manner the element of State's consent. This draft Conclusion, as also underpinned and mutually complemented by related provisions and provisos of draft Conclusions 5 and 4, is key in determining the general principles of law.

4) My delegation reiterates that neither general principles of law that may be formed within the international legal system as stipulated in subparagraph (b) of Conclusion 3 and further elaborated in draft Conclusion 7, nor general principles of international law could fall within the ambit of Article 38, paragraph 1(c) of the ICJ Statute. We tend to agree with those members of the Commission who seem to believe that Article 38, paragraph 1(c) does not encompass a second category of general principles of law formed within the international legal system. We understand that the choice of the term 'may be formed' in subparagraph (b) of draft Conclusion 3 is indicative of the Commission's devision or uncertainty as to the existence of such category of general principles of law. That said, we wonder if the Commission would maintain subparagraph (b) that has already been devisive or to omit it all together?

5) As regards draft Conclusions 8 and 9, it should be noted that 'decisions of courts and tribunals' and 'teachings of the most highly qualified publicists of the various nations' could not be put on an equal footing, in terms of their possible ancillary role in determining general principles of law. As a matter of principle and as supported by State practice, 'judicial decisions' should be given more weight than 'teachings' for the purpose of determining general principles of law. Judicial decisions could be invoked in determining a general

principle of law if they are compatible with established principles and rules of international law and are widespread, *i.e.*, reflective of various legal systems of the world. It should also be noted that the ICJ has hardly invoked 'teachings' in its work, although some regional and municipal courts have relied on 'teachings' to corroborate their judicial reasoning.

Mr. Chairman,

I now address the topic of "**Sea-level rise in relation to international law**".

The topic is of considerable importance for small island States and others that could be adversely affected by sea level rise. We appreciate the Commission for all the efforts they have put into preparing a number of reports on this topic.

As a matter of fact, many countries particularly developing countries, the least developed countries and small island developing States are vulnerable to negative impacts of climate change and global warming with sea level rise being just one of them.

Sea-level rise is a phenomenon that directly threatens the very survival of certain small Island States but it could also affect many others in one form or the other.

That said, and while every possible measures should be entertained, in accordance with scientific findings and solutions, to prevent such disasters and/or reduce their consequences, my delegation would like to offer the following observations on the ILC's project:

1) The topic should be considered in line with the respective basic legal parameters of Statehood under international law, including the law of the sea as codified in UNCLOS 1982. 'Defined territory' is the principal component of State, as generally recognized under international law and in particular under Article 1 (b) of the 1933 Montevideo Convention on the Rights and Duties of States. This is also particularly evident from the 1982 UNCLOS that allocate sovereign rights and maritime zones based on the size and form of their adjacent coastal territorial land.

2) Under international law, a State is entitled to certain rights at sea by virtue of the fact that it possess a territory. Obviously, the land must have a coast. In the North Sea Continental Shelf cases, the ICJ in its Judgment of 20 February 1969 expressed the principle that "the land dominates the sea". That said, the question arises as to what will happen to delimitation lines when a State loses the land territory?

3) My delegation notes the observation of the Co-Chair of the Study Group (Ms. Oral) concerning the role of the principle of "*uti possidetis juris*" to emphasize the importance accorded to ensuring the continuity of pre-existing boundaries in the interests of legal stability and the

prevention of conflict". It is arguable, however, if the principle of *uti possidetis juris* could be relied on, *mutatis mutandis*, as a guiding principle for maintaining the immutability and continuity of existing delimitation lines.

4) We tend to share the views of the Study Group and the Co-Chairs' preliminary observations, that the principle of *rebus sic stantibus* would not apply to delimitation lines as it is subject to the exclusion set forth in article 62, paragraph 2 (a), of the 1969 Vienna Convention on the Law of Treaties (VCLT).

5) The principle of territorial integrity of States is of fundamental importance in international law. The nature and status of this principle as well as the practice of States and international organizations indicate that no derogation is permitted from this principle.

6) The application of the principle of equity to sea-level rise in the context of climate change in favour of preservation of existing maritime entitlements merits further consideration.

7) Concerning the right of innocent passage, according to the 1993 "Act on the Marine Areas of the Islamic Republic of Iran in the Persian Gulf and the Oman Sea", warships and certain other ships are required to receive prior authorization to engage in innocent passage. Article 9 of the 1993 Marine Areas Act provides that: "Passage of warships, submarines,

nuclear-powered ships and vessels or any other floating objects or vessels carrying nuclear or other dangerous or noxious substances harmful to the environment, through the territorial sea is subject to the prior authorization of the relevant authorities of the Islamic Republic of Iran. Submarines are required to navigate on the surface and to show their flag." Therefore, merchant vessels are not required to seek prior authorization.

8) The General Assembly in its resolution 77/276 of 29 March 2023 requested for an advisory opinion of the ICJ on the obligations of States in respect of climate change. The resolution includes *inter alia* the topic of sea-level rise. As the resolution merely focuses on one assumed cause of climate change, we logically expect the Court to consider the matter holistically and comprehensively.

9) The Islamic Republic of Iran attaches great importance to addressing climate change and its environmental impacts. Nonetheless, the imposition of unilateral coercive measures (UCMs) is the most crucial barrier, preventing the targeted countries from meeting their environmental obligations. These unlawful unilateral coercive measures have jeopardized our efforts to combat environmental problems, including by impeding our access to new technologies, know-how and adequate financial resources.

In certain situations and circumstances states are not able to fulfill their environmental obligations in full or in part. Then the principle of

common but differentiated responsibilities, as set out in principle 7 of the Rio Declaration on Environment and Development is an important principle that should be taken into account.

Finally, **Mr. Chairman**, regarding the chapter ten of the ILC Report "**Other decisions and conclusions of the Commission**", we take note of the new topic of "Non-legally binding international agreements" proposed to be included in the program of work of the ILC and look forward to the future work of the commission on this topic. My delegation is of the view that title of the new topic is better to be changed **"Non-legally binding international instruments"**.

My delegation also pays tribute to all former and late members of the Commission for their professionalism, dedication and brilliant works towards fulfilling the mandate of the Commission concerning codification and progressive development of international law ultimately contributing to the rule of law.

My delegation takes note of the appointment of Mr. Claudio Grossman Guiloff as Special Rapporteur for the topic "**Immunity of State officials from foreign criminal jurisdiction**". We propose that in order to strike a balance between his expertise and background in the field of human rights and other fields of international law, a working group be established at the seventy-fifth session of the Commission well before the second reading of the draft articles.

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Finally, we welcome the initiative of the Commission to hold meetings with legal advisers of Ministries of Foreign Affairs dedicated to the work of the Commission. In order to take full advantage of the forthcoming meetings however, my delegation proposes that instead of one and a half days of meetings, the Commission conduct two to three days of meetings.

I thank you Mr. Chairman.