In the Name of God, the Most Compassionate, the Most Merciful

Statement by Mr. Ali Garshasbi

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before the Sixth Committee

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Agenda item 79: "Report of the International Law Commission on the work of its seventy-fifth session"

Cluster I-Chapters: I, II, III, VII (Immunity of State officials from foreign criminal jurisdiction), X (Sea-level rise in relation to international law) and XI (Other Decisions and Conclusions)

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بسم‌الله الرحمن الرحیم

Mr. Chair,

Distinguished delegates,

At the outset, I would like to express my delegation's appreciation and gratitude to the International Law Commission for the significant work it has done during the past year. We follow with interest the work of the Commission and hope that it will be successful in delivering its functions as regards codification and progressive development of international law and the rule of law at large.

My delegation wishes to share some observations concerning the topics ***"Immunity of State officials from foreign criminal jurisdiction"*** and ***"Sea-level rise in relation to international law"***. We will also share our views on ***"Other Decisions and Conclusions"*** as included in the first cluster.

Mr. Chair,

Concerning the topic ***"immunity of State officials from foreign criminal jurisdiction"***, we take note of the first report of the Special Rapporteur, Mr. Claudio Grossman Guilof, contained in document A/CN4./775 as well as comments and observations of Governments (A/CN.4/771 and Add.1 and 2).

As reflected in the Special Rapporteur's first report, Iran is of the conviction that certain State officials are entitled to absolute immunity *ratione personae* from foreign criminal jurisdiction. Such immunity covers both acts performed in their official capacity and their private acts. The principle of immunity of the "troika" (Head of State, Head of Government and Minister of Foreign Affairs) which is well established and recognized under customary international law is the key guarantor of stability in international relations and an effective tool for the smooth exercise of prerogatives of the State. This immunity ceases to apply to their private acts as soon as they leave office. However, they continue to enjoy immunity for acts performed in their official capacity without time limit, as those acts are deemed to be acts of the State.

In determining an act as "act performed in official capacity" or "act performed by individuals acting in their personal capacity", as a requirement for the possibility of enjoying immunity, the core criterion is the governmental and official nature of such an act. Therefore, the Islamic Republic of Iran maintains that all such activities that derive from the exercise of elements of governmental authority are entitled to immunity. Accordingly, the Islamic Republic of Iran believes that international crimes, in particular genocide and crimes against humanity, cannot be performed by individuals themselves, without governmental connivance.

Meanwhile, the Islamic Republic of Iran believes that immunity is not equivalent to impunity, and as such limiting the scope of immunity in favour of responsibility and accountability of State officials should benefit from sufficient, widespread, representative and consistent State practice.

To sum up, the Islamic Republic of Iran is of the view that the Commission's draft articles on the topic in question should be guided by existing rules of international law, as also evidenced in the jurisprudence of the International Court of Justice, taking into account the inevitable needs of effective and stable international relations.

Mr. Chair,

Regarding the topic ***"Sea-Level Rise in Relation to International Law"***, we note the reconstitution of the Study Group chaired by the two co-Chairs on issues related to statehood and the protection of persons affected by sea-level rise, namely Ms. Galvão Teles, and Mr. Ruda Santolaria.

The topic is of considerable importance for small island States specifically and more generally for others that could be adversely affected by sea-level rise. As a matter of fact, many countries particularly developing countries, the least developed countries and small island developing States are vulnerable to the negative impacts of climate change and global warming with sea-level rise being just one of them.

That said, we have previously shared our views on the main elements of the work of the Commission on the topic. We basically concur with the views of the Study Group 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).

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.

In this respect, 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.

Mr. Chair,

Before concluding, it would be remiss not to address ***"Other Decisions and Conclusions"***.

On the inclusion of two new topics on the long-term programme of work of the Commission, we remind the long list of items already on the agenda of the Commission. We consider it more viable for the Commission to prioritize the items on its desk based on the views and concerns of member States. Meanwhile, we would like to share our comments on some of the proposed items.

We consider the timely inclusion of "compensation for the damage caused by internationally wrongful acts" to be useful due to the existing lacunae in this regard. A wide array of wrongful acts remain without reparation partly due to a lack of established mechanism for clear and well-defined compensation procedures; hence, in certain cases non-reparation, in general, and non-compensation for damage resulting from wrongful acts, in particular, give rise to a new dispute, at times threatening peace and security. Perhaps that is the reason why the International Law Commission devised diverse forms of reparation in its 2001 Draft Articles on Responsibility of States for Internationally Wrongful Acts which have been a source of reference for the International Court of Justice to encourage the disputing Parties to resort to; a notable example in this regard is the ICJ's *Reparations Judgement of 9 February 2022* in the case concerning *Armed Activities on the Territory of the Congo* (Democratic Republic of the Congo vs. Uganda); in this context, reference should also be made to the judgment of 30 March 2023 of the ICJ in the case concerning *Certain Iranian Assets* (Islamic Republic of Iran vs. United States of America) whereby the Court decided that "failing agreement between the Parties on the question of compensation due to the Islamic Republic of Iran within 24 months from the date of the [present] Judgment, this matter will, at the request of either Party, be settled by the Court, and reserve[d] for this purpose the subsequent procedure in the case". Considering the above, it would be useful for the Commission to examine the practical aspects of compensation, for instance, in terms of establishment of compensation commissions or funds, which could

contribute to prevention of secondary disputes and/or to complementing peaceful settlement of existing disputes.

We further consider that the topic of "due diligence in international law" is too broad and perhaps cumbersome as proposed. It might be more feasible to consider the study of due diligence in relation to a particular branch or otherwise aspect of international law.

Concerning the other topics on the long-term programme of work from previous quinquennia, due to the persistent proliferation of illegitimate unilateral sanctions by certain countries, we propose that the Commission's work on the topic "extraterritorial jurisdiction" would be focused on extraterritorial application of national jurisdiction by way of imposition of unilateral sanctions against third parties.

Lastly and of no lesser importance is the view of the Working Group concerning the preparation of a handbook on the methods of work and procedures of the Commission aimed at enhancing transparency with regard to the work thereof. While welcoming the proposal, my delegation is confident that preparation of such a handbook will provide a more vivid picture of the internal working methods and procedures of the Commission and can contribute to improvement of its work.

I thank you Mr. Chair.