

بسم الله الرحمن الرحيم

Statement by the representative of the Islamic Republic of Iran

before the Sixth Committee

80th Session of the United Nations General Assembly

Agenda item 80: “Report of the International Law Commission on the work of its seventy-sixth session”

Cluster II-Chapters: V (Immunity of State officials from foreign criminal jurisdiction), VII (Subsidiary means for the determination of rules of international law), VIII (Settlement of disputes to which international organizations are parties), IX (Non-legally binding international agreements), X (Prevention and repression of piracy and armed robbery at sea), and XI (Succession of States in respect of State responsibility)

New York, 6 October 2024

Mr. Chairman,

In my statement on Cluster II, I will address Chapters V, VII, VII, IX, X and XI respectively on “Immunity of State officials from foreign criminal jurisdiction”, “Subsidiary means for the determination of rules of international law”, “Settlement of disputes to which international organizations are parties”, “Non-legally binding international agreements”, “Prevention and repression of piracy and armed robbery at sea”, and “Succession of States in respect of State responsibility”.

Mr. Chairman,

With respect to the topic “**Immunity of State Officials from Foreign Criminal Jurisdiction**”, we take note of the second report of the Special Rapporteur which contains an overview of the comments and observations received from Governments on draft articles 7 to 18 and the draft annex.

The work on the topic has been, since its inclusion on the agenda of the ILC in 2007, a topic of controversial and contentious differing views among member States and therefore cannot be deemed conclusive as it stands today. States’ views differ on the scope of immunity *ratione materiae* and immunity *ratione personae*.

As we have stated before, designating which State officials are entitled to absolute immunity *ratione personae* from foreign criminal jurisdiction must be commensurate with the actual realities on the ground. In fact, limiting immunity *ratione personae* to the troika is not consistent with the realities of modern international relations. This means that such officials are more than the ILC’s suggested “troika”. Other officials are at times mandated to perform high-profile State functions equivalent to those of Heads of State, Heads of Government and Ministers for Foreign Affairs.

Meanwhile, we believe that immunity should not be deemed as equivalent to impunity, therefore its scope is limited in favour of the responsibility and accountability of State officials; this should, however, benefit from widespread and consistent State practice. As an example, State practice and *opinio juris* of member States differ vastly as concerns the crimes listed in draft Article 7. Some States are

not even party to the relevant treaties in which a given crime has been defined. As a result, it is too early for the work of the Commission on the topic to take the format of draft Articles.

Furthermore, some cases referred to by the Special Rapporteur have been raised by few States on selective and controversial basis, lacking any legal credibility. In assessing such unilateral measures as “*practice*”, the Special Rapporteur is expected to also consider associated facts including reaction of the relevant State vis-à-vis such practice at any given stage. Such opposing reactions suggest that the said practice lacks legal validity, and as such fails to be regarded as established custom.

Mr. President,

Concerning the second topic, *i.e.* “**Subsidiary means for the determination of rules of international law**”, we take note of the third report of Mr. Charles Chernor Jalloh, the Special Rapporteur, contained in document A/CN.4/781 and the preliminary bibliography, as well as presentation of draft Conclusions 9 to 13.

We agree with the Special Rapporteur that as per Article Article 38, paragraph 1 (d) of the Statute of the ICJ, is a difference between publicists determined by the expression “the most highly qualified”. While the content and the quality of the teaching does matter, for the sake of subsidiary means for the determination of rules of international law, official bodies or institutions affiliated with the States or international organizations are the most relevant. Therefore, as regards draft Conclusion 9 on “Outputs of private expert groups”, we find the

reference to draft conclusion 3 in the second paragraph to be of crucial significance. The same applies to draft conclusion 10 on “pronouncements of public expert bodies”. We highlight that such pronouncements could play a role in determination of a rule of international law as long as, and to the extent that, they are reflective of state practice and *opinio juris* or contribute to understanding recognition thereof. This is particularly relevant with respect to specific bodies referred to in the report such as the ILC or the ICRC.

As concerns draft conclusion 11 on “resolutions of international organizations and intergovernmental conference” may in certain circumstances contribute to the determination of the existence and content of rules of international law, they should be treated with caution; in some cases, states may decide to joint consensus based on political convenience rather than *opinio juris* towards a particular pronouncement contained in a given resolution.

Concerning draft conclusion 12 on “coherence in decisions of courts and tribunals”, we highlight that judicial decisions could contribute to the formation of a rule of customary international law if, and only if, they are consistent with established principles and rules of international law and are widespread, *i.e.*, reflecting legal traditions of various legal systems of the world. That said, if a judicial decision were contrary to an established rule of international law it would not give rise to the formation of a rule of customary international law even if it were widespread in the eyes of certain States.

Last but not least, we have difficulty concurring with the Special Rapporteur on the necessity of including the draft conclusion 13 on the relationship between subsidiary means and supplementary means of interpretation; the ILC has previously concluded and presented its work on “Draft Conclusions on Subsequent Agreements and Subsequent Practice in Treaty Interpretation (2018)” as well as other relevant works concerning interpretation and application of treaties. It does not seem the best option to formulate a specific draft conclusion on such a relevance, which could have theoretically existed in any other work of the ILC related to sources of international law; instead clarification could be given in the commentary if deemed necessary by the members of the Commission.

Mr. Chair,

Regarding the topic “**Settlement of disputes to which international organizations are parties**”, we take note of the third report of the Special Rapporteur which addresses disputes between international organizations and private parties.

The Special Rapporteur rightly notes that disputes involving issues of diplomatic protection, human rights, staff regulations, legal personality of international organizations and immunities and privileges could not be classified as either international or domestic; while these appear to require a combination of solutions of an international and municipal character, we submit that regardless of the type of dispute, a clearly drafted headquarters agreement and efficient internal regulations of an international organization ensuring guarantees of due process and access to justice by private entities could pave the way for a smooth settlement

of disputes. Cases transcending treaty and contractual relationships are mostly governed by national laws requiring, where appropriate, waiver of immunity by the relevant organization.

As concerns draft Conclusion 7, we concur with the Special Rapporteur as to the distinction between “international” and “non-international” disputes.

On the mode of dispute settlement, negotiations and consultations remain the first and the most efficient methods. We support the availability of diverse choices proposed in draft guideline 2 to disputes involving private entities. With respect to private parties, negotiation remains particularly important to prevent a non-liquet.

It is further highlighted that Immunity should not appear as a bar to access to justice by private entities and in particular individuals. While immunity from legal process is rooted in functional immunity of international organizations and their independent legal personality, this, at times, leads to denial of access to justice by individuals. There have been cases in Iran, for instance, that court proceedings regarding post-marriage settlement or insurance benefits of a former local employee of an international organization have faced the shield of immunity. Therefore, we concur with the Special Rapporteur’s referenced statement that a proper balance between the interest of organizations in securing their independent functioning through jurisdictional immunity and the interest of private parties in terms of access to effective remedies must be struck. In this respect, it seems appropriate to add a statement either in draft guideline 9 or the commentaries to

encourage international organizations to waive their jurisdictional immunity in case this remains the only means to serve justice to individuals. This is also in line with human considerations referred to by the Special Rapporteur.

Finally, draft guidelines 10 and 11 on access to justice and procedural rule of law are essential for an effective dispute settlement between international organizations and private parties.

Mr. Chairman,

Regarding the **“Non-legally binding international agreements”**, we take note the second report of the Special Rapporteur, Mr. Mathias Forteau, which includes an examination of the subject matter of the topic, the terminology to be used and the scope of the topic.

On draft Conclusion 1 on “purpose”, we agree with the Special Rapporteur that the work should aim at clarifying State practice on non-legally binding international instruments without being prescriptive. We highlight that intent of the parties to such instruments is primarily to enjoy utmost flexibility in drafting, signing and implementing a set of arrangements that could otherwise seem difficult to carry out and probably more time consuming.

Concerning draft Conclusion 2 on “use of terms”, we note that the Special Rapporteur has paid attention to the variety of terms used by different States in lieu of the term “agreement”; at the same time, we wonder whether the majority of States concur with the use of the term given the diverse interpretations based

on the definition of treaties under the VCLT. For the records, we prefer the use of the generic term “non-legally binding instrument” to refer to “any mutual commitment entered into at the international level which, as such, does not create any rights or obligations or has no binding legal effect”, to repeat the words of paragraph 1 of draft Conclusion 2.

On draft Conclusion 3 on the “scope” of the draft Conclusions, we concur with the inclusion of instruments between States, States and international organizations or between international organizations. However, inclusion of “agreements entered into by sub-State authorities” deserves caution since the latter do not always act on behalf of the State and such instruments need scrutiny on a case by case basis.

Due to the diverse laws, regulations and practices at the national level concerning non-legally binding instruments, we welcome the draft Conclusion 4 concerning “without prejudice” clause. In certain circumstances, however rare, a non-legally binding international instrument might be treated differently in the domestic systems of the parties thereto.

Regarding draft conclusion 5 on “Assessment of whether an agreement is legally binding or not”, we note that the intention of the parties to be legally bound by a specific instrument or not should be derived, first and foremost, from the very explicit text of the same, and secondly from the express statement of the parties as per draft conclusion 6. The elements indicative of such an intention can be studied on a case by case basis.

On the final outcome of the work of the Commission, “Guidelines” seem the most appropriate format the work of the Commission could take.

Mr. Chairman,

Concerning the next topic, **“Prevention and Repression of Piracy and Armed Robbery at Sea”**, we take note of the “note” contained in document A/CN.4/786 presented by the newly appointed Special Rapporteur, Mr. Louis Savadogo containing a roadmap for future deliberations on the topic.

Piracy is a major security challenge in international waterways. Piracy and armed robbery threaten maritime security and freedom of navigation and increase the cost of shipments carried by sea, thus having adverse consequences on worldwide trade. Piracy is a serious crime affecting the community of nations.

In cases of armed robbery at sea occurring within internal waters, territorial waters, or archipelagic waters of a coastal State, the coastal State has the responsibility for exercising its jurisdiction.

With regard to the legislative practice of the Islamic Republic of Iran, in particular articles 185, 653, and 683 of the Penal Code of the Islamic Republic of Iran, which have been referred to by the Special Rapporteur, my delegation would like to share a couple of clarifications and observations: firstly, Article 185 of the Penal Code referred to by the Special Rapporteur, was in fact part of the previous Penal Code of Iran dated July 1991, which is no more extant and has been replaced by a new provision, *i.e.* Article 281 in the new Penal Code dated April 2013.

Secondly, the provisions of Article 281 are general in character and could also cover armed robbery at sea; thirdly, “armed robbery at sea” is considered as “*Muharabba*”, i.e., very serious crime that is punishable by severe penalties under the Islamic Penal Code of Iran. If the criminal conduct falls short of “*Muharabba*”, then Articles 652, 653 and 683 would nonetheless apply.

It is noteworthy that the “draft Legislation on Maritime Robbery” was approved by the Council of Ministers in July 2022 and submitted to the *Majlis* (Parliament) subsequently. The draft Legislation is currently under consideration and review in relevant specialized commissions in *Majlis*.

Mr. Chairman,

The placement of military personnel or other security personnel including private security personnel or Privately Contracted Armed Security Personnel (PCASP) on board merchant ships gives rise to some challenging questions under general international law and the law of the sea, including issues of jurisdiction, liability, and right of innocent passage. States have diverse positions and views on these issues, as reflected, for example, in IMO member States' highly nuanced responses to the IMO's “Questionnaire on Information on Port and Coastal State Requirements related to Privately Contracted Armed Security Personnel on Board Ships”. We encourage the ILC to refer to the International Maritime Organization's (IMO) survey as a helpful source of identifying State practice and views concerning the matter as well as various guidelines and recommendations of the IMO on privately contracted armed security personnel.

That said, my delegation believes that piracy is the only crime in the face of which the exercise of universal jurisdiction is undisputed even without any *erga omnes partes* basis.

Mr. Chairman,

Regarding the topic “**Succession of States in respect of State Responsibility**”, we take note of the establishment of the Working Group of the Whole and appointment of Mr. Bimal Patel as Chair of the Working Group. It is regrettable that due to the reduction of the length of the seventy-sixth session, the Working Group could hold a single meeting with the oral report of the Chair.

We note the discontinuation of the work of the Commission on the topic mainly due to the paucity of State practice. As highlighted by some members of the Commission, States generally prefer to resolve questions concerning the succession of States in respect of State responsibility through conclusion of ad hoc agreements. The work of the Commission could serve a useful guideline for having the relevant successor and predecessor States accountable for internationally wrongful acts.

To conclude, **Mr. Chair**, we follow the work of the Commission with interest and look forward to comments by member States and substantive debate by the members of the Commission particularly on the topics left untouched due to paucity of time.

Thank you.