

# Islamic Republic of I R A N

Permanent Mission to the United Nations

Statement by

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before

The Sixth Committee of the 72<sup>nd</sup>. Session of the  
UN General Assembly

On Report of the International Law Commission on  
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(agenda item 81) Cluster II

(Chapters VI and VII)

*Immunity of State officials from foreign criminal  
jurisdiction*

New York, 27 October 2017

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

**Mr. Chairman,**

On the topic “**Immunity of State officials from foreign criminal jurisdiction**”, I would like to appreciate the Special Rapporteur Ms. Concepción Escobar Hernández, for her considerable efforts on the topic.

The immunity of State officials from foreign criminal jurisdiction is deeply grounded in the principle of sovereign equality of States and the premise that the State and its rulers are one and the same for the purposes of immunity as a result of which the states and their officials shall not be subject to the national jurisdiction of other states. That premise holds true with regard to State officials other than the “troika” assuming greater importance in international affairs.

Draft article 7 proposed by the Special Rapporteur lists out the crimes under international law in respect of which immunity from foreign criminal jurisdiction *ratione materiae* shall not

apply. We note the unusual way in which this draft article was provisionally adopted by the Commission. This indicates that there has been a fundamental division of opinions on certain issues among members, reflecting the difficulty and sensitivity of the topic as it involves highly complex and politically delicate issues for the States.

We believe that the Special Rapporteur has stepped into the path of progressive development of international law by proposing draft article 7 which does not benefit from sufficient State practice. This is why we do not agree that the draft article represents an appropriate means of addressing the issue.

We are also of the view and indeed propose that, instead of enlisting specific crimes, such exception is best to be applied solely with regard to the most serious crimes of international concern, as we have doubt whether State practice and jurisprudence support the inclusion of crimes of torture, enforced disappearance and apartheid under the scope of exceptions to the immunity *ratione materie* from foreign criminal jurisdiction.

In this line, we agree with some members of the Commission that the report does not provide a comprehensive pertinent jurisprudence on the non-applicability of immunity *ratione materie* by mostly relying on cases of civil proceedings and not penal.

We would also like to refer to paragraph 8 of the commentary on draft Article 7, that it is not possible to assume that the existence of criminal responsibility for any crimes under international law committed by a State official automatically precludes immunity from foreign criminal jurisdiction; and that further, immunity does not depend on the gravity of the act in question.

Regarding the annex on list of treaties referred to in draft article 7, since all the listed treaties are not universally accepted, definitions provided for in the annex fail to enjoy universal acceptance.

Accordingly, due to the sensitivity of the nature of immunity as the direct consequence of the principle of sovereign equality of States, we suggest that the Commission proceeds on the topic with more caution. In fact, though the Commission does not determine the legal status of draft provisions, the divergent views could be due to the fact that the fifth report did not afford convincing evidence to support its conclusion.

We look forward to the future work of the Special Rapporteur on procedural aspects of immunity which seems being more important and pertinent than the substantive matters for the topic under consideration. In this regard, it is important to respect the international legal order which is based upon the sovereign equality of States, as developing any new framework in dealing immunity of state official, if not agreed, would be likely to endanger inter-State relations and even the very objective of ending impunity of most serious international crimes.

**Thank you**