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 73rd Session of the UN General Assembly
On Report of the International Law Commission
on the Work of its seventieth session
(agenda item 82) Cluster I

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

Chapters: IV (Subsequent agreements & subsequent practice), V (Identification of Customary international law), XII (Commemoration) and XIII (Other decisions)

Mr. Chairman,

I would like to begin by thanking the Chairperson of the Commission, Mr. Eduardo Valencia-Ospina, for his comprehensive report to the Sixth Committee and all members of the Commission for their considerable efforts in the past year. My delegation is also grateful to the Chairperson of the Drafting Committee, Mr. Charles Chernor Jalloh, for all of his hard work during the session. We believe that the annual report of the Commission contained in document A/73/10 shed proper light on many aspects of the topics under the consideration of the Commission.

Mr. Chairman,

This year, we mark the seventy years of the work of the Commission, as a subsidiary body of the UN General Assembly which has played an instrumental role in the codification and progressive development of international law over the last 7 decades. The Commission still occupies a unique position in this field by putting together experts from different regions and principal legal systems of the world to develop universal international law.

As regards the Commission is the expert international legal body whose recommendations are directly addressed to States, it is essential to be guided in the selection of its topics, by the recommendations at fiftieth session in 1998 upon which must reflect the needs and priorities of States; and be at a sufficiently advanced stage in terms of State practice to permit progressive

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development and codification. More importantly, interacting with States throughout the process of its work, the ILC should performs a special duty to assist the UN in its broadly conceived function in the codification and progressive development of international law. In this regard, the Commission should be highlighting and taking the positions voiced by the Member States in the Sixth Committee of the UN General Assembly, to ensure that the outcomes of the Commission's work can best reflect the consensus and priority needs of States.

We take note the events organized in New York and Geneva which provided occasion to express constructive ideas and recommendations on the achievements and prospect of the commission. We hope that the Commission would take into account these recommendations by which would strengthen and promote its functions within its mandate for future work.

Mr. Chairman,

With regard to topic "**other decisions**", the Islamic Republic of Iran takes note of the Commission for consideration of its programme of work, and welcome the Commission's decision to include the topic "General principles of international law" in its long term programme of work. We congratulate Mr. Marcelo Vazquez-Bermudez for his appointment as Special Rapporteur for the topic and looks forward to discussing his initial report.

We believe that work on the topic "General principles of international law" would constitute useful contributions to the codification of international law, since the topic has the most common basis for other topics namely; the peremptory norms of general international law and identification of customary international law which are currently under consideration of the Commission.

Having considered the observations and comments of Member States before the sixth committee in the past and this year, we have yet to develop a common understanding of the concept of universal criminal jurisdiction, including its definition and distinction from related concepts. Therefore, it is still premature for the Commission to include the topic in its long – term programme of work and would not be advisable at this stage, since there are significant differences and diversity approaches among Member States.

Mr. Chairman,

Turning now to the topic of "**subsequent agreements and subsequent practice in relation to the interpretation of treaties**", we thank, Mr. Georg Nolte, the Special Rapporteur for its fifth report contained in document A/CN.4/715 which addressed the comments and observations made by States on the draft conclusions and commentaries. We note the adoption by the Commission, on second reading of the topic and its recommendation to the General Assembly to take note in a resolution of the draft conclusions.

Before addressing substantive comments on the topic, I would like to begin with general observations regarding the status of the draft conclusions; namely, whether the conditions under which the subsequent agreements or practice in relation to the interpretation of treaties should be applied. As indicted in the report of the Commission, the draft conclusions do not address all conceivable circumstances in which subsequent agreements and subsequent practice may play a role in the interpretation of treaties. For example, one aspect not dealt with generally is the

relevance of subsequent agreements and subsequent practice in relation to treaties between States and international organizations or between international organizations. As such, the draft conclusions could not be applied in the case of conflict between a treaty and subsequent practice of a sovereign state to that treaty as well as to bilateral treaties between states.

Moreover, the draft conclusions aim to facilitate the work of those who are called on to interpret treaties or the application of provisions of treaties which are unclear and vague and or the application of the treaty which establishes the agreement of the all parties regarding its interpretation. More importantly, we deem that the subsequent practice of a sovereign state in application of a treaty which is inconsistent with the agreement of other parties of that treaty regarding its interpretation should not be considered as an authentic means of interpretation.

It is also understood from the draft conclusions that a subsequent agreement as an authentic means of interpretation under article 31, paragraph 3 (a), is an agreement between all parties to the treaties reached after the conclusion of a treaty, regarding the interpretation of the treaty or the application of its provisions rather than one or more parties.

Against this backdrop, my delegation would like to reiterate its position before the previous sessions of the six committee that subsequent agreements and subsequent practice in relation to the interpretation of treaties are understood to be confined within the framework of articles 31 and 32 of the Vienna Convention on the law of treaties. While Article 31 sets forth general rule of interpretation, Article 32 refers to supplementary means of interpretation which includes the preparatory work of the treaty and the circumstances of its conclusion; these may embrace any memoranda or statements and observations of governments, diplomatic exchanges, negotiation records, minutes of commission and plenary proceedings, as well as the circumstances of the conclusion of the treaty including the political, social and cultural factors – or the milieu – surrounding the treaty's conclusion. Even more broadly, other elements not expressly stipulated in article 32 may include travaux preparatoires of an earlier version of the treaty, agreements and practices among a subgroup of parties to a treaty not falling within the ambit of authentic interpretation in Article 31 (2), and 31 (3) (a) and (b) and non-authentic translations of the authenticated text.

Therefore, recourse to "supplementary" means of interpretation after employing the means of the general rule of interpretation as prescribed in article 31 is aimed at providing further evidence of, or shedding further light on, the intentions of the parties, and their common understanding regarding the meaning of treaty terms. As such, it can only serve as means to aid the process of interpretation and in the words of the Commission – as recorded in its Report in 1966 – recourse to these means is "discretionary rather than obligatory".

On draft Conclusion 6[SEP] regarding identification of subsequent agreements and subsequent practice, the subparagraph 1 refers whether parties to a treaty have taken a position regarding its interpretation. It seems that the distinction between the two forms of agreement is not quite clear in practice. In this regard, we deem that interpretation of treaty under article 31, paragraph 3 needs an explicit agreement and position taken by the parties to the treaty. However, if the parties have merely agreed not to apply the treaty temporarily or agreed to establish a practical arrangement (*modus vivendi*), it should be subjected to keep the general treaty obligations unchanged.

With regard to the issue of "evolutionary" interpretation in draft conclusion 8, we consider that the intention of all parties to treaty at the time of conclusion of the treaty should be taken into consideration and also be ascertained at the time of the act of interpretation, and in light of all the interpretive means available in accordance with articles 31 and 32 – including subsequent agreements and subsequent practice.

Draft conclusion 9 identifies criteria that may be helpful in determining the interpretative weight to be accorded to a specific subsequent agreements or subsequent practice in the process of interpretation in a particular case. we concur that the weight of a subsequent agreements or subsequent practice as a means of interpretation under article 31, paragraph 3, depends on its clarity and specificity. However, it should include the number of parties to the treaty as well.

On draft Conclusion 10 (2), as we have noted earlier also with regard to identification of customary international law, "silence" on the part of a State may be due to diverse political considerations and may not carry opinio juris to give effect to the terms of a particular treaty. In addition, the term "when the circumstances call for some reaction" is subjective and it is not clear under what threshold silence on the part of a State may contribute to subsequent practice in the interpretation of a treaty.

Decisions adopted within the framework of a Conference of States Parties and constituent instruments of international organizations, under draft Conclusions 11 and 12 may only contribute to subsequent practice in interpretation of a treaty when they expressly reflect consent by States in application of the terms of a treaty.

Furthermore, we cannot agree that a pronouncement of an expert treaty body can give rise or refer to a subsequent agreement or subsequent practice by parties under article 31 (3) or more categorically under article 32. While subsequent practice or agreements is understood to refer to actual practice or agreement of all the States Parties to a treaty, pronouncements of experts serving in their personal capacity cannot be regarded as such.

Mr. Chairman,

With regard to the topic **"Identification of customary international law",** we commend Sir Michael Wood, the Special Rapporteur for its fifth report contained in document A/CN.4/717 which addressed for the first time, both the comments and observations made by States in writing in response to the Commission's request and debate in the Sixth Committee in 2016 and put them at the same level. We take note of the adoption by the Commission, on second reading, of a set of 16 draft conclusions, together with commentaries thereto, as well as its recommendation to the General Assembly to take note the topic in a resolution, and ensure their widest dissemination; commend the draft conclusions, together with the commentaries thereto, to the attention of States.

My delegation would like to emphasize its previous position that the practice of States is an indispensable requirement in formation, expression and identification of rules of customary international law; in this vein, inaction by States cannot be considered as State practice, since it is more political than legal in character. Also, practice of States parties to an international organization and that of the organization itself, need to be considered separately and only proven practice of States can be considered as evidence for identification of customary international law.

With this in mind, I wish to touch upon our main concerns over some of the draft Conclusions in this regard. On draft conclusion 9 regarding the requirement of a general practice as a constituent element of customary international law, the principle of opinio juris should consist of the practice of all States and all legal systems in force rather than the practice of affected States that contribute to the formation, or expression, of rules of customary international law.

With regard to draft article 11, we are not in agreement with the reference to "widely ratified treaties" made in the commentary, as reflective of customary international law. We believe that "universal acceptance or widely ratified treaties" could be considered as an indicative tool for identification of customary international law.

On draft Conclusion 12, which refers to resolutions of international organizations and intergovernmental conferences, we continue to believe that the evidentiary basis of resolutions of international organizations remain open to question, since such resolutions are at times adopted by political organs and they are political rather than legal in nature and do not reflect *opinio juris of member States.*

Regarding the decisions of courts and tribunals, the distinction needs to be made between decisions of the International Court of Justice, as the main judiciary organ of *U*nited *N*ations and other international tribunals. In this regard, we maintain that the decisions of the International Court of Justice, commonly referred to as the World Court, are of pivotal significance and could not be considered as having the same weight as the decisions of other international courts and tribunals. Therefore, it is difficult to accept the decisions of other international courts to serve as subsidiary means for the identification of customary international law. As such, the decisions of national courts which reflect the legal system of the State in question could not be considered as subsidiary evidence for the identification of customary international law.

On issue of persistent objector, we support the view that where the objection is made by a sovereign state to a rule of customary international law in the process of formation in a clearly expressed manner and made known to other States, it is sufficient to determine that objection, and it is not therefore essential to be repeated to continue to be in force.

Thank you, Mr. Chairman.