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 of the

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 II

Chaps: V (Settlement of disputes to which international organizations are parties) and VI (Prevention and repression of piracy and armed robbery at sea)

New York, 31 October 2023

بسم الله الرحمن الرحيم

Mr. Chairman,

Distinguished Delegates,

In my today's statement, I will address Chapters V and VI of the ILC Report and share the views of my delegation on two respective topics, namely "**Settlement of disputes to which international organizations are parties**" and "**Prevention and repression of piracy and armed robbery at sea**".

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I will first address the topic of **"Settlement of disputes to which international organizations are parties**".

We express our appreciation to the Special Rapporteur, Mr. August Reinisch for his dedication and tireless efforts in preparation of the first Report on this topic.

The report of the Special Rapporteur has been devoted to the important issue of definition. Nevertheless, it would be more useful to begin by identifying the problems of practical concern to States and international organizations on which the Commission could provide clarification or guidance. Without having some sort of common understanding on those fundamental issues, it would be relatively difficult to delimit the scope of the topic. Therefore, further elaboration and illustration of the practice of States and international organizations in the next report would be advisable.

In view of the preliminary character of the first report, my delegation wishes to offer a few observations.

1) The first observation concerns the necessity of defining and/or re-defining the notion of international organizations in the report in view of international practice as to the identification and discernment of international organizations.

The Commission has already referred to 'international organizations' as " intergovernmental organizations" in most of its previous works including in the Vienna Convention on the Law of Treaties (1969), the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations (1986), the Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character (1975), and the Vienna Convention on Succession of States in respect of Treaties (1978). In all instances, 'international organization' is defined an 'inter-governmental organization'. Therefore, the Commission should build on its previous definitions of international organizations and integrate the elements that were generally accepted as constituting international organizations.

2) With respect to the scope of the topic, we concur with the Special Rapporteur that it should cover only intergovernmental organizations and that non-governmental organizations and business entities should be excluded. Hence, regarding the proposed definition of the term "international organization", we would like to propose the deletion of the words "and/or other entities" from the text in order to clarify that non-governmental organizations (NGOs) and business entities are not

regarded as 'international organizations', and dispel any future doubt or debate on this matter.

3) The term 'other entities' in the definition proposed by the Special Rapporteur is too broad; it could include international organizations and other entities that do not have international legal personality. We understood the words 'and/or other entities' to refer only to other international organizations, including regional economic integration organizations, which have been a party to the establishment of other international organizations by treaty.

4) It would be necessary to determine how the topic relates to the law of immunities. The notion that an international organization enjoys jurisdictional immunities, have consequences for the settlement of disputes to which it is a party. A key question appears to be as to what extent an international organization could continue to rely on its jurisdictional immunity when it has neither established appropriate means of dispute settlement nor waived its immunity.

5) We agree with the Special Rapporteur that any dispute to which international organizations are parties should be addressed. However, the disputes should be limited to legal disputes but policy disagreements

should be excluded from the topic. We should also distinguish between legal disputes that are political in nature or have a political aspect; and those that are not legal disputes at all. Therefore, the purely political differences of opinion fall outside the scope of the topic. Any argument to the contrary to include 'non-legal disputes', *i.e.*, disagreements concerning policy matters, raises serious questions as to the applicability of principles and rules of international law in cases involving non-legal disputes that should be dealt with through diplomatic channels as part of routine diplomatic functions.

6) In addition to international disputes, disputes of a private law character can also be considered by the Commission. It is not yet clear, though, that what exactly should be understood by 'disputes of a private law character'. More importantly, what exactly should be included as part of the scope of the topic. Therefore, the scope of such 'disputes of a private law character' must be clearly delineated.

7) If the Commission agrees that disputes of a private law character fall within the scope of the topic, it needs to decide whether to deal with all such disputes or only some of them. Disputes of a private law character could also raise important issues related to immunity from jurisdiction as well as immunity from execution that might have to be resolved in order

for the private parties involved to obtain redress. Indeed, rules of immunity are a part and parcel of the law of international organizations. If the Commission decides to include such disputes in the scope of its work, it would most likely have to consider the jurisdictional immunities and immunity from execution of international organizations and their scope of application.

8) Regarding the definition suggested by the Special Rapporteur in the final part of his report and the proposed guideline 2 (c) concerning the use of the term 'dispute settlement', we suggest to add 'good offices' to the definition. 'Good office' is often confused with 'mediation'. However, in 'good offices', the third party merely brings the disputing parties together for negotiations, usually without active participation, whereas in 'mediation' a mediator as a third party conducts the negotiations and plays a more active role in the process of discussions and dialogue. The United Nations Handbook on the Peaceful Settlement of Disputes between States has also elaborated the similarities and differences of "good offices" and "mediation" which could be consulted as a helpful guidance.

9) Concerning the final point on this topic, my delegation believes that 'draft guidelines' would be an appropriate form for the outcome of the Commission's work on this topic.

Mr. Chairman,

Now I turn to Chapter VI of the ILC Report and the topic of **"Prevention and repression of piracy and armed robbery at sea"**.

My delegation wishes to express its appreciation to the Special Rapporteur, Mr. Yacouba Cisse for preparation of his first report on the topic.

The first report includes an in-depth analysis of judicial and legislative practice of various States with regard to the crimes of piracy and armed robbery at sea. This is in line with the General Assembly resolution 77/103 of 7 December 2022, which has underlined "the importance of an in-depth analysis of State practice and the consideration of diversity of legal systems of Member States to the work of the International Law Commission."

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. Given that, my delegation believes that the element of "threat" in draft article 3 (a) concerning the definition

of armed robbery at sea, provisionally adopted by the Drafting Committee should also be included in draft article 2 (1)(a).

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, in accordance with Part II of the 1982 United Nations Convention on the Law of the Sea (UNCLOS).

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.

First, 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 is replaced by a new provision, Article 281 in the new Penal Code dated April 2013.

Second, the provision of Article 281 that is general in character could also cover armed robbery at sea.

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Third, '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*.

The draft Legislation encompasses the main elements of piracy stipulated in Article 101 of the UNCLOS, namely the high seas or any other place outside the jurisdiction of any State, two ships, and private ends. If the crime is committed within the waters under the national jurisdiction of the Islamic Republic of Iran, the perpetrator shall be subject to punishment in accordance with the provisions of this draft Legislation. Any act criminalized under the draft Legislation that may cause serious and widespread damage to marine environment is considered as an aggravating factor for penalty. Punishment is also subject to aggravation if vulnerable people, including women and children, are among the crew or passengers of the targeted ship. Piracy is regarded an imprescriptible

crime under the draft Legislation; therefore, no statute of limitations applies.

The Islamic Republic of Iran has signed the UNCLOS but has not so far ratified it. Iran believes however that the provisions of UNCLOS on piracy reflect customary international law and that is why the draft Legisltion on Piracy is significantly informed by the relevant provisions of UNCLOS.

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 Costal State Requirements related to Privately Contracted Armed Security Personnel on Board Ships".

We encourage the ILC to study the International Maritime Organization's (IMO) survey as a helpful source of identifying State

practice and views concerning the matter as well as various guidance and recommendations of IMO on privately contracted armed security personnel.

We believe that it would be advisable for the merchant ships to not place on board, such PCASP, as far as possible. It remains questionable if a merchant ship, which deploys armed personnel on board, would continue to enjoy all the characteristics accorded to 'merchant ship' or it may transform it into a 'warship'. The wording of article 29 of the 1982 UNCLOS concerning the definition of warships does not provide a complete response to this uncertainty, although it may provide some clues.

The Special Rapporteur himself has emphasized in paragraph 42 of the Report that: "the question of the legality under international law of the presence of private security personnel on board merchant ships is controversial". Given the current legal uncertainty surrounding various legal aspects of the deployment of private security personnel on board merchant ships, my delegation believes that the issue merits further consideration and scrutiny by the Special Rapporteur and the Commission. In the meantime, however, one should consider Article 6, paragraph 3 of the Resolution adopted on 30 August 2023 by the Institute of International Law (*Institut de Droit International*) concerning "Piracy,

Present Problems". The aforesaid provision reads: "Flag States shall ensure that privately contracted armed security personnel act in conformity with generally accepted international standards for maintaining the safety and security of vessels and aircraft at sea." The merchant ships could resort to relatively more tenable alternatives to shield them from piracy. They may, for instance, install barbed wire on their decks as a viable alternative and practical option to counter piracy and neutralize pirates instead of deploying armed security and military personnel for the same purpose.

It gets all the more complicated when official armed forces, especially those in offensive posture, are deployed aboard commercial vessels and oil tankers with the express intention of engaging the enemy. Such vessels/tankers could hardly be assumed to maintain their 'merchant' ship status, if not essentially transforming them to warship. The security ramifications exceed legal implications. Such scheme may defeat the declared purpose in the long run.

Mr. Chairman,

Now, please allow me to draw your attention to another issue of concern that adversely affects freedom of navigation and undermines the rule of law, particularly in the high seas.

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Mr. Chairman,

When defining 'piracy' and 'armed robbery at sea', due regard should be given to all manifestations of 'piratic' practices, including those conducted by States. My delegation is fully aware of the constituting elements of 'piracy' under customary international law as also codified under UNCLOS. We also understand the parameters of 'armed robbery at sea' and the qualifications required for characterizing an act as 'armed robbery at sea'. Nevertheless, we deem it necessary for the International Law Commission to give a serious thought to violent forcible entry by armed forces of a State on board foreign flagged commercial ships for the purpose of confiscating their consignments or other purposes that have no legal or legitimate grounds under international law.

A very clear example of this unlawful practice, which could hardly be named other than 'State piracy', is the United States' seizure of Iranian cargoes on the high seas. The seizure of Iranian owned cargos by the U.S. in the high seas which entails the use and deployment of military force against merchant ships, not only is unlawful but also endanger freedom of

navigation, propagate lawlessness and undermines the rule of law, particularly the law of the sea.

In August 2020, the United States confiscated four fuel consignment owned by Iran after it had forcibly seized the foreign-flagged oil tankers bound for Venezuela. The U.S. Department of Justice confirmed later in a press release dated 14 August 2020 that the proceeds of the forfeited shipments were successfully directed to a fund for compensating the U.S. so-called "Victims of State-Sponsored Terrorism"!

As recently as August 2023, another cargo of Iranian crude oil that had been seized by the United States was unloaded near Houston, Texas.

The United States government has invoked its domestic courts' rulings issued on the basis of certain legislations and executive orders that imposed economic sanctions and other restrictive measures against Iran. This is all the more absurd since the United States cannot justify its unlawful act against freedom of navigation by invoking its domestic law or ruling which have no bearing on international law.

After all, extraterritorial application of domestic law is not permitted under international law. Nor are the unilateral coercive measures lawful in accordance with international law, including international human rights law.

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The unlawful seizure of Iranian vessels for monetary purposes, demonstrates the United States' admission and acknowledgement of the existence of the element of "private ends" in its 'piratic practice' against Iranian commercial ships. My delegation will argue, then, that the United States' forcible seizure of commercial vessels and confiscation of their shipments for the purpose of financing the Fund established by the government to redress certain individuals, contains essential elements of acts of piracy.

It is also important to note in this regard that the United States legislation "defines piracy in very general terms, describing piracy as violence against maritime navigation", as it has been referenced by the Special Rapporteur in paragraph 201 of his report. The list of 'illegal acts at sea' under the United States Code on Crimes and Criminal Procedure includes plunder of distressed vessel, attack to plunder vessel, receipt of pirate property, and robbery ashore (See. U.S. Code, Chapter 81- Piracy and Privateering, Sections 1658-1661).

Given that, my delegation believes that the United States' forcible seizure of Iranian commercial ships contains all the elements of 'act of piracy' as identified in the United States domestic law, as well.

In this regard, it is worth noting that certain municipal courts have attributed private ends to political acts. The Belgian Court of Cassation in its Judgment dated 1986 in the case *Castle John and Nederlandse Stichting Sirius v. NV Mabeco and NV Parfin* found that "a Greenpeace vessel which attacked an allegedly polluting Dutch ship committed an act of piracy as the act in question was not political in character." In another case decided in 2013, the U.S. Court of Appeals in the case *Institute of Cetacean Research v. Sea Shepherd* held "that private ends included those pursued on personal, moral or philosophical grounds, regardless of Sea Shepherd's belief that its conduct served public values". Hence, it cannot simply be argued that any robbery or depredation for political reasons is automatically excluded from the definition of piracy.

Mr. Chairman, I now turn to the final part of my delegation's statement.

Iranian armed forces participated in several anti-piracy patrols. Over the past years, the Iranian Navy has been involved in anti-piracy activities in the Indian Ocean and the Gulf of Aden both in the protection of Iranian nationals and vessels and in the protection of foreign nationals and non-Iranian vessels. During these operations, Iranian warships repelled attacks by pirates; several cargo ships and oil tankers have been protected and the offenders have been brought into the country for trial. This can be construed as an instance of the exercise of universal jurisdiction by Iran.

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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.

It is noticeable that the Security Council in resolution 2442 adopted on 6 November 2018 (S/RES/2442) concerning the situation in Somalia, and in particular with respect to piracy and armed robbery at sea off the coast of Somalia, *welcomed* the Shared Awareness and De-confliction Initiative (SHADE) and the efforts of certain individual countries, *inter alia* the Islamic Republic of Iran. In addition, the Secretary-General has already publicly recognized the efficacy and dedication of Iran's efforts aimed at countering piracy in numerous reports.

In conclusion, **Mr. Chairman,** my delegation would like to underline the importance of the topic at hand not only for clarifying the definition of piracy and the applicable rules related to it but also for better preserving the rule of law and securing the freedom and safety of navigation at sea. In this context, the importance of addressing all instances and manifestations of piracy and armed robbery at sea, including those perpetrated by the States such as those conducted by a certain state cannot be overemphasized.

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I thank you, Mr. Chairman.