

بسم الله الرحمن الرحيم

**Statement by the representative of the Islamic Republic of Iran**

**before the Sixth Committee**

**80<sup>th</sup> 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 I, Chapters: I, II, III, VII (Sea-Level Rise in relation to International Law),  
VI (General Principles of Law) and XII (Other decisions and conclusions)**

**New York, 28 October 2024**

**Mr. Chair,**

At the outset, I would like to express our 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. However, we regret that due to the liquidity crisis has had adverse impacts on the activities of the Commission.

My delegation wishes to share some observations concerning the topics ***“Sea-level rise in relation to international law”*** and ***“General principles of law”***. We will also share our views on ***“Other Decisions and Conclusions”*** as included in the first cluster.

**Mr. Chair,**

Regarding the fourth topic, *i.e.* ***“Sea-Level Rise in Relation to International Law”***, we take note of the final consolidated report of the Study Group chaired by the two co-Chairs on issues related to statehood and to the protection of persons affected by sea-level rise, namely Ms. Galvão Teles, and Mr. Ruda Santolaria.

As concerns the law of the sea aspects of sea-level rise, 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). It is expected that the approach of the Study Group on the topic be in line with the facts on the ground, as well as the well-established principles of international law.

It seems, however, that there are differing views concerning the issue of statehood. The International Court of Justice in the recent advisory opinion on

“obligations of States in respect of climate change” states that “once a State is established, the disappearance of one of its constituent elements would not necessarily entail the loss of its statehood”.<sup>1</sup> Judge Tomka, however, in his declaration casts doubt as to the validity of this view. In his words, “The classical notion of statehood is virtually inseparable from a land and a people. By way of example, Article 1 of the Montevideo Convention on the Rights and Duties of States, which reflects customary international law on this issue, provides that ‘[t]he State as a person of international law should possess’ certain enumerated characteristics. ‘Should possess’ is a modal construction which conveys an ongoing normative condition: a State is a State only so long as it has (a) a permanent population, (b) defined territory, (c) government, and (d) the capacity to enter into relations with other States.”

Specifically, Judge Tomka states that the ILC Study Group “documents a recent tendency, shared by a growing number of States, favouring the view that statehood may survive even in the case of the total disappearance of territory. These developments are significant. They do not, however, permit a full-throated,

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<sup>1</sup> International Court of Justice, Advisory Opinion on “Obligations of States in relation to Climate Change”, para. 363.

unqualified conclusion that a customary rule has crystallized around this point, at least not yet. It is not for nothing that several States have emphasized a distinction between the partial and total loss of territory, while many others have maintained studied silence, if not formally reserving their positions. This may indicate that there is still some way to go before a collective opinio juris reflecting a new rule of custom is judicially cognizable. It seems fair to say that many States, perhaps a majority, have not taken a firm and public position on this issue, either in these advisory proceedings or in other fora. The authors of the ILC Study Group's reports themselves suggest that States consider new 'binding or non-binding instruments' in order to 'specifically address the legal issues' — actions that would hardly be necessary if the case were so clear-cut." This demonstrates the complexity of the issue in the face of the crossroads between objective reasoning and equity, reflective of the difficult task of the Commission in this regard.

This concern seems pertinent since the members of the Study group generally agree that "international recognition, institutional practice and political will would be decisive and that the Commission's work could help foster a favourable interpretative environment."

The work of the Study Group in relation to the protection of persons affected by sea-level rise presents an unprecedented balanced combination of what international law has to offer in terms of international human rights law, international refugee law, international humanitarian law and disaster law frameworks. Practicality remains central when it comes to implementation, which highly depends on cooperation of States and voluntary contribution.

On the final output, due to the complex and novel issues discussed in relation to the three sub-topics, we concur with several members of the Commission on appropriateness of draft Conclusions or guidelines with commentaries to clarify the scope and details of each provision including State practice, jurisprudence and where necessary doctrinal writings.

**Mr. Chair,**

On “General Principles of law”, we note the introduction of the fourth report by the Special Rapporteur containing comments and observations received from governments as well as the Special Rapporteur’s suggestions on the final outcome of the Commission’s work on the topic.

“General principles of law” have made important contributions to the development of international law during the past century. International courts and tribunals have used some concepts and principles of municipal law in order to fill up certain lacuna in the international legal system. In particular, the ICJ has on a few occasions resorted to Article 38, paragraph 1 (c) of the Statute. Nonetheless, both ICJ and its predecessor, PCIJ, have in several cases based their legal reasoning on general principles that are derived from domestic legal systems, including the principles of estoppel, acquiescence, good faith, *res judicata*, *nemo judex in re sua*, and *ex injuria jus non oritur*. These principles are general principles of law common to the various legal systems of the world, a strong evidence as to the centrality of States in the formation and recognition of general principles of law.

It is further noted that while there is no hierarchy among the main sources of international law, “general principles” are far less frequently invoked or referenced in international jurisprudence, including the ICJ's rulings and arguments. This is partly due to the relative opacity of “general principles” compared to “international conventions” and “international custom”, which does not mean they are ancillary or subsidiary by nature.

On draft Conclusion 2, we highlight the use of the term “community of nations” in paragraph 1. In our view, however, the newly proposed paragraphs, have fallen short of improving the draft Conclusion by making reference to primary recognition by States and its contribution to the formation of general principles of law. Recognition of general principles of law remains central to States and as such we see little merit in the involvement of recognition by international organizations or other actors. We therefore submit that as stated in paragraph 1, any recognition by “international organizations or other actors” could be helpful in assessing recognition by the community of nations. Such secondary recognition could not occur unless after the formation of general principles of law which is, by essence subject to recognition by the community of nations. That is why we wonder whether this could even rise to the level of “recognition” in the first place.

My delegation reiterates that neither general principles of law that may be formed within the international legal system as stipulated in subparagraph (b) of Conclusion 3 and further elaborated in draft Conclusion 7, nor general principles of international law could fall within the ambit of Article 38, paragraph 1(c) of the ICJ Statute. Article 38, paragraph 1(c) does not encompass a second category of general principles of law formed within the international legal system. We

understand that the choice of the term 'may be formed' in subparagraph (b) of draft Conclusion 3 is indicative of the uncertainty as to the existence of such category of general principles of law.

We agree with the proposition outlined in draft Conclusion 6 that a general principle of law that is common to the various legal systems of the world may be susceptible to be transposed to the international legal system insofar as it is compatible with the existing fundamental principles of the system. State consent is of major importance in international law and as such no new general principle may be transposed to the international legal system if it lacks or challenges in any manner the element of State consent. This draft Conclusion, as also underpinned and mutually complemented by related provisions of draft Conclusions 5 and 4, is key in determining general principles of law.

As regards draft Conclusions 8 and 9, it should be noted that “decisions of courts and tribunals” and “teachings”, in the newly edited version of draft Conclusion 9 could not be put on an equal footing in terms of their possible ancillary role in determining general principles of law. As a matter of principle and as supported by State practice, “judicial decisions” should be given more weight than

“teachings” for the purpose of determining general principles of law. Judicial decisions could be invoked in determining a general principle of law if they are compatible with established principles and rules of international law and are widespread, i.e., reflective of various legal systems of the world. It should also be noted that the ICJ has hardly invoked “teachings” in its work, although some regional and municipal courts have relied on “teachings” to corroborate their judicial reasoning. In this regard, we support the Special Rapporteur’s new qualifier, that is, the phrase “especially those generally reflecting the coinciding views of persons with competence in international law from the various legal systems and regions of the world” which is far more articulate and updated than the vague and obsolete term “the most highly qualified publicists”.

Regarding the proposed change to draft Conclusion 10, we find it reasonable to change the order of the two provisions since the primary functions of general principles of law seems to be their contribution to coherence rather than being a last resort option.

Furthermore, as concerns draft Conclusion 12 on the possibility of existence of “general principles of law with a limited scope of application”, we have difficulty

understanding what kind of distinction is being meant. Does the general term “general principle of law” exclude those with a limited scope of application? Or are there certain types of general principles of law that are not covered by the preceding draft Conclusions? We hope further discussion and elaboration by the Special Rapporteur could clarify the content of the proposed draft Conclusion.

Finally, we find “guidelines” to be the most appropriate outcome for the work of the ILC on this topic.

**Mr. Chair,**

On Chapter XII regarding “*Other decisions and conclusions*”, we note introduction of new topics for inclusion in the agenda of the ILC, that is, “The principle of non-intervention in international law”, “Identification and legal consequences of obligations *erga omnes* in international law” and “Legal aspects of accountability for crimes committed against United Nations personnel serving in peacekeeping operations”.

As pointed out in the report of the ILC on the work of its forty-ninth session referred to in UN General Assembly resolution A/Res/52/156 of 12 January 1998, the selection of topics for the long-term programme of work should be guided by

certain criteria which need to be observed. We highlight that the proposed topics should first reflect the needs of States in respect of the progressive development and codification of international law, should be sufficiently advanced in stage in terms of State practice to permit progressive development and codification; and should be concrete and feasible for progressive development and codification.

On the proposed topic “non-intervention in international law”, we would like to highlight that the principle of non-intervention forms the very essence of international relations emanating from Article 2 (7) of the UN Charter. As a corollary of sovereign equality of States, the Special Rapporteur is expected to consider the centrality of sovereignty and the recent trends to encroach upon and corrode the same, in particular, through interference in internal affairs of other States at the pretext of respect for human rights, countering non-proliferation or WMD and similar excuses. On the other hand, while imposition of unilateral coercive measures remains a notorious instance of intervention, modern forms of intervention include, and are not limited to, unilateral designation of States and their organs by a handful of States by baseless accusations and fabricated pretexts, interference in governance or election systems of other countries, and affecting the internal affairs other States through cyber operations.

We also emphasize the significance of classifying foreign State funding of non-governmental organizations in other states under the umbrella term of “intervention”. The same applies to the resurgence of certain obsolete terms such as “humanitarian intervention” or “humanitarian interference”, particularly when used under the guise of the “responsibility to protect”.

Finally, we propose the inclusion of The Algiers Accords of 19 January 1981 as concluded between the Islamic Republic of Iran and the United States in the bibliography of the work on the topic. The General Declaration thereof, in particular, explicitly holds that: “The United States pledges that it is and from now on will be the policy of the United States not to intervene, directly or indirectly, politically or militarily, in Iran's internal affairs”. The interventions of the US following the Iranian revolution remains the subject of numerous pending cases at the Iran-US Claims Tribunal and could be a relevant primary source for the Special Rapporteur in the years to come.

As regards “Identification and legal consequences of obligations *erga omnes* in international law”, as an initial remark, we would like to pose a question regarding locus standi as also pointed out by the Special Rapporteur. While we do

understand the evolving nature of “law” as a living being, we wonder how one may expect States to bring claims against another State party to an international convention and seize the jurisdiction of an international court based on obligations erga omnes partes in particular taking into account the fact that the said State, upon joining the Convention decades ago, had never pondered its breaches might be the subject of a dispute in the Court of law. Such an anachronistic application of international law in apparent defiance of State consent should be subject to scrutiny by the ILC under the proposed topic.

**Mr. Chair.**

Before concluding my remarks, I am compelled to refer to the serious situation that is impeding the efficient participation of my delegation in the works of the Sixth Committee whereby the Host Country of the United Nations Headquarters has refrained from issuing visas for the Iranian delegation to, inter alia, the Sixth Committee. Such impediments which constitute flagrant violation of obligations of the Host Country including those stipulated in the Headquarters Agreement (1947), have obstructed our representatives including the Legal Advisor and Director-General for International Legal Affairs of the Iranian Foreign Ministry

from participating in the discussions in relation to International Law Commission as well as in the International Law Week, among others.

We submit our strong objection to such violations and once again reiterate that the United States should comply with its obligations on the basis of good faith, non-discrimination and irrespective of its bilateral considerations. Given that our delegation has been prevented from participating in this year's session of the Sixth Committee, we reserve our rights and any further position under all agenda items and draft resolutions and decisions presented thereunder.

**I thank you Mr. Chair.**