Permanent Mission of the Islamic Republic of Iran to the United Nations

622 Third Ave New York, NY 10017 ny.mfa.gov.ir Tel:+1(212)687-2020 Fax:+1(212)867-7086 E-mail: Iran@un.int

We also reemphasize 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 there is doubt whether State practice and jurisprudence support the inclusion of crimes, such as torture or enforced disappearance, under the scope of exceptions to the immunity ratione materie from foreign criminal jurisdiction. For example, the ECtHR in Jones v. United Kingdom effectively concluded that torture is an official act entitled to immunity from civil suits in the courts of other countries.

Second, Draft Article 17 shall be read together with Draft Article 7. We are of the view that under the circumstances in which there are considerable controversies over Draft Article 7 and the statements of States in the Sixth Committee over the course of previous years that are a testimony to this, Draft Article 17 will be applied only as a dispute production machine which will escalate tensions in relations between States.

I would also like to note that the final clauses, including a dispute settlement clause, sense only if the final product will be a treaty. While the Commission had yet to decide on the final product of the topic, it seems the time is not ripe enough to include such a clause in the Draft. Moreover, in light of its relationship with the Sixth Committee, the Commission mostly had avoided inserting such clauses in its final products from the beginning of its work. It is a significant reminder that J R Y H U Q P H Q W Y L H Z V D U H Y L W D O I R U W K H

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be taken as a precedent. Mr. Tladi, the Special Rapporteur for that topic, did not exclude the possibility that draft conclusion 21 might be reviewed to take account of the reactions of States while noting that the Z R U G L Q J ³ U H F R P P H Q G H G S U D F W L F H ´ K D G E H
the draft conclusion.

Third, regarding the relationship between the immunity in national and international criminal tribunals, we believe that the fact that a person can be prosecuted by an international tribunal cannot affect the immunity of the same person before the Forums of any foreign State. This emanates from the stark difference between the origins of immunity. The latter emanates from the principle of sovereign equality of States, while the first derives from the consent of States to the M X U L V G L F W L R Q R I W K H L Q W H U Q D W L R Q D O W
S U H M X G L F H úsuch that the relation between national courts and international tribunals is of no relevance for the purpose of the current topic which relates only to the manner of application of foreign criminal jurisdiction. Moreover, such a clause has already been mentioned in Draft Article 1(2) in more acceptable and logical wording which can also be construed as a mle ed> 5b41mrinceh-4(t )sv(b)-2e0(co)-se co

Concerning the proposal of the Special Rapporteur on ³UHFRPPHQGHG JRRG SUDFWLFHV´ ZH DUH RI practices which are based on policy preferences and lack of concrete measures may lead to unbalanced practices which can disrupt international legal order based on recognized general principles of international law including, but not limited to, non-intervention, international cooperation and sovereign equality of States.

Finally, we once again express our dissent with paragraph 4 of draft article 11 regarding the procedural requirements of the waiver of immunity. We are of the view that the waiver of immunity as a procedural rule is the exclusive right of sovereign States which shall be declared by the State concerned in a manner that manifests the will of that State to waive the immunity of its official. Therefore, the state of the concerned official has an exclusive authority to invoke and waive the immunity of its officials, and the waiver should be not only clear and expressed but also should mention the official whose immunity is being waived. In relation to draft article 11(4), we cannot concur with the Special Rapporteur about a general obligation included from a treaty on a substantial matter related to individual responsibility that can be deemed as an express waiver.

Madam Chairperson,

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