Islamic Republic of
I R A N
Permanent Mission to the United Nations

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Statement by

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The Sixth Committee of the 74rd Session of the UN General Assembly

On Report of the International Law Commission on the Work of its seventy first session

(Agenda Item 82) Cluster I

Cluster I - Chps: I, II, III, IV (Crimes against humanity),

V (Peremptory norms of general international law (jus cogens)

and XI (Other decisions)

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

Mr. Chairman,

I would like to begin by thanking the Chairperson of the Commission, Mr. PAVEL STURMA, for his comprehensive report to the Sixth Committee as well as all members of the Commission for their considerable efforts in the past year.

We commend the instrumental role of the commission in the codification and progressive development of international law over the last 7 decades and welcome the Commission's interaction with Member States in the Sixth Committee, which could ensure that the outcomes of the Commission's work both in the selection of topics and final products, reflect the consensus and priorities of States.

Mr. Chairman,

This year the Commission has adopted the second reading of the draft articles on "prevention and punishment of crimes against humanity" and their commentaries on second reading. we would like to thank the Special Rapporteur Mr. Sean D. Murphy for his contributions to this process.

We, the Member States, are all committed to the noble objective of preventing and punishing crime against humanity, fighting impunity and ensuring accountability for serious crimes. The project would be effective if guided purely by human rights and human dignity and provide assurances to prevent and punish crimes against humanity free from political considerations and selective approaches detrimental to the whole process.

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In continuation of my delegation's previous remarks, I would like to make the following comments in this regard:

1. The obligation of States to prevent crimes against humanity, as currently drafted, is too broad and leaves very less freedom for the national systems in terms of administrative and procedural matters. More importantly, paragraph b of the draft article 4 provides that States are under an obligation to cooperate, as appropriate, with "other organizations". According to the commentary, "other organizations" includes non-governmental organizations. However, the commentary has not addressed the legal basis of such an obligation, if any, as well as the practice of States in that respect. We believe that it is inappropriate to impose such an obligation upon States.

2. With respect to paragraph 8 of draft article 6 concerning the liability of legal persons, it seems that the Commission has introduced an innovative approach, which to be considered as progressive development of international law. We are reluctant to go along with this substantial change which modify the very well-established principle of "individual criminal responsibility" crystalized in article 25 of the ICC Statute. This innovative approach may also conflict with other well-established rules of international law and affect international legal order. Moreover the inclusion of liability of legal persons may create practical difficulties and uncertainty with respect of the implementation of other provisions of convention including Article 14 " mutual Legal Assistance. Therefore, it is advisable to left this issue to the national law and decision of States.

3. We are concerned about the possible implication of Paragraph 3 of draft article 2 which provides: "This draft article is without prejudice to any broader definition provided for in any international instrument, in customary international law or in national law." We are doubtful as to what extend the addition of this phrase could serves the purpose of harmonization of national laws or it may pave the way for further fragmentation of the concept. Besides, the new suggestion in making reference to the "customary international law" is a very new one that will challenge the non-hierarchical order between the main sources of international law and, in practice, put into question the defined scope of the proposed text. This is also the case with regard to the international instrument, especially in the light of the explanation made in the commentary that it is to be understood that is beyond legally binding international agreements and can encompass other instruments like the international organizations resolutions.

4. Considering the requirement of double criminality under the laws of both the requesting and requested States of the offence for which extradition is to be granted, we do not concur with exclusion of the requirement of double criminality in the present work since it is a well-established principle in the area of extradition that is upheld by numerous international instruments and is a well-established principle of international customary law.

5. with regard to inclusion of the term "membership of a particular social group" in draft article 13, paragraph 11 on the substantial grounds for refusal to extradite, we believe that the term would be subject to a wide range of divergent interpretations that will impede cooperation for extradition. Thus, we believe that it would be better to delete it from the article to make it clearer and more robust.

In the light of the above and taking into consideration the diverging comments and observations of the Member States, it is our understanding that the draft Articles still need some work so as to allow the relevant authorities of the Member States to make an informed decision, bearing in mind that instances of crimes against humanity have been elaborated in numerous international

instruments and established mechanisms and principles such as the principle of *aut dedere aut judicare* and the bilateral judicial assistance agreements provide for sufficient legal basis for prevention and punishment of crimes against humanity.

We are of the view that such an important instrument should be the product of an inclusive intergovernmental and member states driven process and the work of the ILC could be considered as a valuable source in a well-defined process that could be shaped under the auspices of the Sixth Committee.

Mr. Chairman,

Turning to the topic of peremptory norms of general international law (jus cogens) we would firstly like to thank the Special Rapporteur, Mr. Dire Tladi, for his fourth report as well as to congratulate the Commission on the adoption of the draft conclusions on the first reading. We would like to make following comments on the topic.

As we reiterated last year, the notion of regional jus cogens as peremptory norms of general international law, does not find support in the practice of States and may generate conceptual and practical difficulties in relation to inherently universal character of jus cogens. Therefore, we agree with the approach of the Commission and Special Rapporteur on the exclusion of norms of a purely bilateral or regional character from the scope of the topic.

On the Draft Conclusion 16 "obligations created by resolutions, decisions or other acts of international organizations conflicting with a jus cogens", my delegation is of the view that non-derogability of rules of jus cogens would be equally applicable to the resolutions, decisions and other acts of the UN bodies including in particular the Security Council. In this regard, we are of the conviction that article 103 of the UN Charter only affirms that in the event of a conflict between the obligations under the present Charter itself and the obligations under any other international agreement; their obligations under the present Charter would prevail. Therefore, in the event of conflict between norms of jus cogens and the Charter obligations, jus cogens norms remain superior and Article 103 of the United Nations Charter will not be applied.

In this context, those resolutions of the Security Council that are contrary to general principles of international law and the provisions of the UN Charter, will not create any obligation for States.

Although the possibility of the adoption of a Security Council resolution in conflict with a rule of Jus Cogens is unlikely, however it is not impossible. Further, a Security Council resolution may at the stage of implementation, lead to a potential conflict with rules of Jus Cogens, as it has been the case in the history of the work of this Council. Thus, it is necessary to provide a clear reference to the Security Council resolutions in the draft conclusion to indicate the sensitivity of matter and importance of resolving this conflict. We note that the reference to the Security council resolutions that had been suggested by the Special Rapporteur in his third report, regrettably has been deleted from the text of the draft conclusion. This is surprising as a brief statistical review of the positions expressed by Member states in the course of ILC discussion during the 73rd session of General Assembly demonstrates that only less than 2 percent of the Member States were proposing the deletion of the explicit reference to the UN Security Council while others, i.e. almost all Member States were, explicitly or implicitly, in favour of such reference. This change may even be interpreted in a way that put into question the credibility of the UN Security Council as if it is above the law and does not consider itself to be bound by law even the most fundamental ones that is the preemptory

norms of international law. We also remain cautious on its diverse consequences on the notion of jus cogens and urge the Commission to revisit its approach in this regard.

With regard to the Article 22, we are of the view that elaboration of a "without prejudice" clause, is not in line with the scope of the topic and we request its deletion.

Lastly, on the draft conclusion 23 on the introduction of a non-exhaustive list of jus cogens norms, my delegation would like to reiterate that developing a list of jus cogens norms needs further consideration. Notwithstanding the reservations raised by a number of states against developing a list of jus cogens norms, it is hardly to be convinced by the necessity of having such list. From the methodological point of view, this list may substantially change the process-oriented nature of this topic. It may also lead to a misinterpretation that the Commission is the main body to recognize and identify the jus cogens rules. In our view the commission should concentrate on discussing methodological aspects and secondary rules, rather than the legal status of particular norms. Furthermore, identifying some of the norms as jus cogens norms, might be controversial at this stage and require an in-depth study and merits to be chosen as future topics for consideration by the Commission.

Mr. Chairman,

We took note of topics proposed for the long-term program of work of the ILC. It is essential that the commission in the selection of its topics take into account the needs and priorities of States and select topics that enjoy sufficient state practice.

In this regard, my delegation takes note of the Commission's decision to include the topic "Prevention and repression of piracy and armed robbery at sea" through which one of the major concerns of the international community could be addressed.

To that end, it is important that this project should avoid any contradiction with the existing applicable treaties including the 1982 Convention on the Law of the Sea that has already codified the customary international law and as such defined the legal regime for piracy. I wish to add that Coastal States have exclusive sovereign rights in their territorial sea and whereas, by definition, the armed robbery occurs in the territorial sea of a coastal State, has not been included in the UNCLOS. Thus, armed robbery is still governed by arrangements determined or agreed upon through bilateral and multilateral agreement by coastal States.

With regard to the issue of engagement in combating piracy or pursuit against pirates, we are of the view that whereas the exclusive responsibility in this regard lies with states by means of public vessels, the involvement of private companies in this process, lacks a legal basis under international law. Furthermore, pursuing into the territorial sea and internal waters from the high seas and exclusive economic zone for the purpose of capturing pirate vessels is not authorized by international law.

Taking into account the above-mentioned points, my delegation while affirming the importance of the proposed issue, is of the view that it shall be considered with cautious and needs more studies on different aspects of the issue.

On the proposed item "Reparations to individuals for gross violations of international human rights law and serious violation of international humanitarian law", it is important that this topic is mixing up two different sets of international law with their own characteristics and requirements. We

also note that there is a direct link between this topic and Articles on responsibly of states for wrongful acts and in the absence of any result on the articles on state responsibility, it would be difficult to reach consensus on this issue. Moreover, this topic does not enjoy sufficient state practice and could be considered as progressive development of international law.

This is exactly the case for the concept of universal criminal jurisdiction which does not easily lend itself to codification, considering the very limited and varying State practice. Therefore, we consider it premature for the Commission to include these two topics respectively in its long – term programme of work and in its acting programme.

I thank you Mr. Chairman.