

**Statements by Mr. Mohammad Ghorbanpour
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Cluster 1: Introductory provisions (preamble and Article 1)

The preambular section of each international instrument is considered one of its most important parts, given its role in implementing and interpreting the instrument. It should be streamlined, concise, and encompassing. In addition, taking into account the current text under consideration, the principles and purposes of the Charter of the United Nations, including the principle of non-intervention in the internal affairs of States, should be recalled in the preambular section. This principle is the most relevant principle of the UN Charter to this draft Articles which also has been recalled in both Article 3 of "Declaration on Rights and Duties of States", and Article 1-e of resolution entitled "Consideration of Principles of International Law Concerning Friendly Relations and Co-operation Among States in accordance with the Charter of the United Nations".

Moreover, my delegation believes that all relevant principles of international law pertaining to this draft Articles, including immunity of State officials and immunity of States and their properties have not adequately been incorporated in the Charter of the United Nations. Therefore, my delegation suggests deleting the last part of the preamble's third paragraph, which subsequently reads “Recalling the relevant principles of international law.”

My delegation always has maintained the legal position that there is no legal loophole regarding the criminalization of crimes against humanity in international law due to the existing instruments, such as the Statute of the International Criminal

Court. However, if there is a desire to dedicate a specific instrument to Crimes Against Humanity, it should not be verbatim from ICC Statute. In this regard, my delegation proposes either the reference to Article 7 of the Rome Statute of the International Criminal Court to be deleted or the word “Considering” be replaced by the word “Noting” in the preamble's seventh paragraph.

Cluster 2: Definition and general obligations (Articles 2, 3 and 4)

With respect to **Article 2**, considering my delegation's position regarding the relevance of this draft Articles with the ICC Statute, which was expressed in Cluster 1, my delegation does not agree with such a broad description of this crime. Furthermore, this definition does not encompass all acts that can be considered crimes against humanity, such as imposing unilateral coercive measures against civilians with intentional insertion of suffering to make them dissatisfied with their governments, particularly when it results in deaths, as well as instigation, provocation, and incitement that turn peaceful protests into violence and vandalism, resulting in crimes against humanity. If there is a desire to keep this extensive definition in Article 2, including the previous additions that just suggested, it is necessary to dedicate a separate Article entitled "Elements of Crime" to this draft articles. In addition, since Crimes Against Humanity are one of the most egregious crimes under international law, the threshold should be higher than for other less serious crimes. As a result, we believe that the enumerated acts listed in article 2-1 are considered "Crimes Against Humanity" if they are committed as part of a widespread "and" systematic attack against civilians.

My delegation believes, given the correlations and interconnections between "General obligations" and "Obligation of prevention", in **Articles 3 and 4**, respectively, there should be a more appropriate reflection of States' obligations in both articles. While the general understanding is that committing a crime against humanity in peacetime occurs within the territory of a state among internal players, including a government or incumbent authority against ordinary people, however, the critical invisible role of external players, particularly foreign states, in committing or paving the way for committing this crime in other territories cannot be overlooked. As a result, my delegation believes that the draft Article 4 "obligation of prevention" should address, among others, the obligations of states not to intervene in the internal affairs of other states that result in crimes against humanity.

While paragraph 1 of Article 3 outlines the general "obligation to act" of all States not to engage in acts that constitute crimes against humanity, draft Article 4 is silent in addressing the "obligation to refrain" not to “organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another State, or interfere in civil strife in another State and their populations”. In the same vein, it is incumbent upon States to prevent acts of provocations, incitement, or instigations from occurring on their territories or the territory they control, leading to insurgency and disruptions within sovereign States, thus fostering the commission of a crime against humanity. This proposal's logic is based on disastrous past practices in the history of international relations that have been led to the conduct of different heinous crimes and foreign military interventions in other territories. Instigation, provocation, and incitement against or among the general public through foreign-based mass media, as well as the organization, financing, and dispatch of terrorist or armed groups to other states, raise legitimate concerns that foreign interventions in domestic affairs of States could lead to civil wars or, at the very least, internal political upheaval. There are ample examples that such interventions in the internal affairs of States have turned peaceful protests into violence and vandalism and, finally, the perpetration of crimes against humanity. In this regard, our proposal adds a new paragraph 2 to draft Article 4 and is based on Article 2 of “Declaration on the inadmissibility of intervention in the domestic affairs of States and the protection of their independence and sovereignty” which states that “No State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another State, or interfere in civil strife in another State and their populations.”

Cluster 3: National measures (Articles 6, 7, 8, 9 and 10)

It is understood that “the United Nations Convention against Corruption” (UNCAC) and “United Nations Convention against Transnational Organized Crime and the Protocols Thereto” (UNTOC) serve as primary inspirations for the draft Articles on the Prevention and Punishment of Crimes Against Humanity. Nevertheless, it should be borne in mind that the two topics deal with two distinct sets of crimes that are very different in nature and content. Draft **Article 6** does not fall outside this conclusion and is a repurposed UNCAC and UNTOC articles. There is no such specific article within the “Convention on the Prevention and Punishment of the Crime of Genocide”. My delegation believes that a prospective instrument for such a crime need not go into as much detail as the existing draft Article 6 does. However, my delegation suggests deleting all of draft Article 6 except the first part of paragraph 1, which states, "Each State shall take the necessary measures to ensure that crimes against humanity constitute offences under its criminal law," and leaving the specific criminalization of this crime to national jurisdictions if delegations wish to include such language in this draft Article. Meanwhile, and without prejudice to my earlier position, my delegation considers paragraph 6 as an infringement to national laws requiring states to amend their internal legislation. Although there is no “statute of limitations” for such crimes under Iranian laws, this innovation goes against the sovereign States’ rights to enact legislation on their own and is beyond the ILC mandate. Concerning paragraph 8 of this Article, my delegation would also like to reiterate the well-established principle of “individual criminal responsibility” and to express that no such liability of legal persons is recognized within Iranian laws.

With respect to draft **Article 7**, while an attempt has been made to anticipate and establish various national jurisdictions, however, this draft Article falls short of addressing the question of priority of jurisdiction to avoid the potential conflicts of jurisdictions. In determining this priority, my delegation believes that an actual

connection between a State wishing to exercise its jurisdiction and the territory where the alleged crime occurred, as well as the State of the alleged person's nationality, is required. Although draft Article 13(12) attempts to resolve a conflict of jurisdictions by prioritizing "the State whose territory the alleged offence occurred," we believe one paragraph should be devoted to this significant issue by addressing "the necessity of existence of actual connection to exercise jurisdiction." This can assist States when they seek to take use of the dispute resolution mechanism outlined in draft Article 15 in the event of a jurisdictional conflict.

With respect to draft **Article 9**, and consistent with States human rights obligations, any confinement of a suspect in the form of custody or through any other measures should be time-bonded. Furthermore, as outlined in my remarks regarding draft Article 8, there should be an actual connection between a state that desires to prosecute a crime and the territory where the crime has been committed, or the suspected person is its national. It is our belief that a State where a suspected person is present on its territory, and in the absence of actual connections such as territoriality or personality jurisdictions, is the last jurisdiction that has the competence to prosecute that person. Having said that, my delegation is unsatisfied with the final clause of paragraph 3 of Article 9, which leaves the exercise of jurisdiction up to a State's "intention"- a State that a suspect is present even when there is no territoriality or personality jurisdictional ties to that State. My delegation's comment is supported by draft Article 13(12), which states that when an extradition request is made before a State where a suspect has been detained, "the State in whose territory the alleged offence has occurred" is given priority.

Cluster 4: International measures (Articles 13, 14 and 15 (and annex))

Draft **Articles 13 and 14**, concerning Extradition and Mutual legal assistance, respectively, are strikingly similar to those of UNCAC and UNTOC. While reiterating our position previously expressed on those Conventions when they are supposed to be the source of aspiration to draft the current instrument in our hands, my delegation believes this prospective instrument should follow the pattern of “Convention on the Prevention and Punishment of the Crime of Genocide” in terms of drafting, and arrangements in those draft Articles should be left to sovereign States. Without prejudice to its position, however, my delegation could not go along with draft Article 14 (9) in any way since it acknowledges mechanisms that were neither adopted by consensus nor were legitimate and legal since they were established based on political agendas by bodies that lacked the authority and competence to do so or will be established with a similar practice.

In terms of draft Article 15, my delegation generally supports the current formulation, particularly paragraph 3, which serves as a safeguard for the ICJ's non-compulsory jurisdiction.

Cluster 5: Safeguards (Articles 5, 11 and 12)

Concerning draft **Article 5**, it is my delegation's position that the way it has been drafted will pave the way for arbitrary interpretation by requested States to refuse to grant extradition to the requesting States. In addition, paragraph 2 of the same article addresses the grounds or criteria that the requested State shall consider when considering whether a requested person is in danger of being subjected to a crime against humanity. These criteria are less than the threshold for committing crimes against humanity. Moreover, the principle of non-refoulement is a principle applicable in international human rights law. According to this principle, no person shall be expelled, returned, or extradited if there are reasonable grounds for which that person will be subjected to instant acts such as torture, degrading treatment, or execution. In this draft Article, an unsuccessful attempt has been made to extend this principle to crimes against humanity. The extension of this principle from documents related to international human rights law to crimes against humanity, simply because it appears in other documents is not acceptable. Moreover, the question is how a court that does not have access to evidence can refuse to grant extradition based on suspicion of subjecting a person to crimes against humanity, a crime with specific characteristics which committed over time. As mentioned, this principle even applies in situations where there are reasonable grounds for committing less serious crimes against a requested person. In sum, this draft Article has not been drafted in an accurate manner. We do not have similar languages within the "Convention on the Prevention and Punishment of the Crime of Genocide" too. Therefore, my delegation requests its deletion.

With respect to draft **Article 11(3)**, my delegation suggests the addition of "the Vienna Convention on Consular Relations, 1963" as another source that the implementation of this draft Article should be in conformity with it. Concerning draft **Article 12**, my delegation's general recommendation is to leave this topic to the national jurisdiction of States. However, with respect to the issue of reparation,

as has been articulated in paragraph 3, my delegation believes that only jurisdictions where the crime takes place have competence to consider the request for reparation. Meanwhile, to compensate the alleged victims of the crime against humanity, those competent authorities must strictly abide by the principle of immunity of States and their properties in all their proceedings. My delegation believes that this principle should be reflected in this draft Article.