

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

**Statement by the representative of the Islamic Republic of Iran
Before the Sixth Committee**

**On Draft Articles on the Prevention and Punishment of Crimes against Humanity
Cluster 3: National measures (Article 6 Criminalization under
national law; Article 7 Establishment of national jurisdiction;
Article 8 Investigation; Article 9 Preliminary measures when
an alleged offender is present; Article 10 *Aut dedere aut
judicare*)
(Resumed session 1-5 and 11 April 2024-New York)**

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Mr. Chair.

With respect to paragraph 8 of draft Article 6, the criminal liability of legal persons in the context of crimes against humanity continues to face legal difficulties arising from the definition, interpretation, and enforcement as well as disagreements on various aspects of this topic including in the light of the principle of *nullum crimen sine lege* and non-existence of such liability in certain legal systems. From a practical standpoint, the inclusion of liability of legal persons may also create practical difficulties and uncertainty regarding the implementation of other provisions of draft Articles including draft Article 14 on “Mutual Legal Assistance”.

As reflected in the records of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, there has been deep divergence of views as “to the advisability of including criminal responsibility of legal persons in the Statute”. Similarly, and as highlighted in the Commentary of the Draft Articles, “criminal liability of legal persons has not featured significantly to date in international criminal courts and tribunals” and the ICTY and ICTR did not have criminal jurisdiction over legal persons.

In relation to the Nuremberg Tribunal which had specific context and circumstances, even though the International Military Tribunal could pronounce an organization as criminal, it was not meant to investigate and prosecute legal persons rather a specific procedure to allow for prosecution and trial of individuals was sought for a specific context. The Commentary of the Draft Articles has elaborated that in this Tribunal only natural persons were prosecuted and penalized. The Commentary has enumerated many other relevant frameworks where jurisdiction over criminal liability

is absent, and this evinces persistent disagreements over this notion throughout various processes.

We note that certain other conventions on countering specific crimes such as the United Nations Convention against Corruption and the United Nations Convention against Transnational Organized Crime include provisions on legal persons, e.g. Articles 26 and 10 of respectively the said conventions which require States Parties thereto, to adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with those Convention. These conventions have been referred to in the Commentary of Draft Articles as instances of criminal jurisdiction over legal persons in view of the Commission.

However, we are not convinced with such references or bases; in as much as these conventions aim to counter “crimes”, namely, transnational organized crimes and corruption offences, such conventions deal with quite different set of crimes which include different elements of *means rea* and *actus reus* for that matter, the gravity and nature of the crimes referred to are also different from that of the crimes against humanity. Thus, reference to these conventions fails to have relevance to our discussion on liability of legal persons. In the light of the foregoing, the Islamic Republic of Iran is reluctant to go along with this substantial change and addition to the very well-established principle of “individual criminal responsibility” crystalized in Article 25 of the Rome Statute. This issue is better left to the national law and decision of States.

Mr. Chair.

As to the question on the need for specific provisions on immunity of states officials, we see merits in stipulating such provisions, but for that purpose due regard shall be had to international law governing the immunity of states officials and no attempt should be made to allow for any derogation from international legal obligations in respect of immunity of foreign officials.

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 could assist States when they seek to resolve jurisdictional conflict.

With respect to draft Article 9, any confinement of an alleged offender in the form of custody or through any other measures should be time-bounded. Furthermore, as outlined before by my delegation, regarding draft Article 8, there should be an actual connection between a state intending to prosecute a crime and the territory where the crime has been committed, or the alleged offender is its national. We are doubtful of plenary exercise of jurisdiction by a State where an alleged offender is present on its territory, and in the absence of actual connections such as territoriality or personality jurisdictions.

Having said that, while we are still considering various aspects of Article 9, my delegation is not content 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 an alleged offender 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.

Thank you.