

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 4: International measures (Article 13 Extradition; Article 14 (and annex) Mutual legal assistance; Article 15 Settlement of disputes)

(Resumed session 1-5 and 11 April 2024-New York)

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Mr. Chair.

With regard to inclusion of the term “membership of a particular social group” in paragraph 11 of draft Article 13 on the substantial grounds for refusal to extradite, the Islamic Republic of Iran is of the conviction that the term would be subject to a wide range of divergent interpretations that will impede cooperation for extradition. Thus, the ILC had better delete it from the draft Article to make it clearer and more robust.

On the question related to Article 14(2) regarding mutual legal assistance with respect to liability of legal person, we have already and in more details reflected our views on the liability of legal persons under cluster 3 and for the reason we have mentioned, my delegation 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. In the absence of liability of legal persons, *a fortiori*, mutual legal assistance in relation to offences committed by legal persons would be extraneous to the question we have at hand.

Having considered the commentary on Draft Article 13, it appears that the Commission, in principle and built upon various treaties dealing with extradition, concurs with the very importance of dual criminality requirement yet has decided not to include this provision owing to the Commission’s views as to possible effects of such provisions. Without commenting on the chain of reasoning employed in this respect by the Commission regarding the UNCAC, which deals with quite different set of crimes, the

Islamic Republic of Iran is not content 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, the most important one being the Rome Statute. The inclusion of a provision on the requirement of double criminality would have the added value of having more legal clarity and certainty and also better satisfaction of the requirement of dual criminality.

Mr. Chair.

As regards the paragraph 9 of draft Article 14, the rationale behind the idea of devising such a mechanism or arrangements is missing, the most similar instruments related to genocide and war crimes do not have these mechanisms. Moreover, noting the commentary, the mere existence of a mechanism in the Additional Protocol 1 to the 1949 Geneva Convention which is a different framework governed by international humanitarian law, could not be considered a precedent for the current discussions.

Taking into account the purview of the Draft Articles obscurity exists with respect to the relevance of such provisions that ultimately could render the Draft Articles subordinate or subject to “international mechanisms” often established by politicized decisions and lack the competence to entertain matters of judicial nature rather are prone to be abused for political purposes. Such procedures would undermine the status of Draft Articles among States and might lead to the abuse of the Draft Articles as an instrument in the interest of politicized objectives not that of justice.

Noting the reference made in the Commentary on the discretionary or exhortatory nature of draft article 14(9), we would like to highlight that due to the reasons we elaborated and the inherent flaws in such procedures which risk delving into highly politicized matters, it is immaterial that the provisions of draft article 14(9) are not of an obligatory nature, since the very establishment of such procedures is fraught with legal challenges, uncertainties and difficulties. As such, we are of the view that qualification of acts amounting to crimes against humanity should be left to an international organ of a judicial nature and that judicial decisions are only relevant when rendered by a competent judicial organ in accordance with international law.

I thank you.