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Crimes against Humanity

Statement by

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Mr. Chair,

On the issues pertaining to cluster 3 of our debate (national measures), I wish to make the following remarks on behalf of the Czech Republic.

Draft article 6 is indispensable for the implementation of the future convention. The article uses neutral and generic wording which, according to our delegation, is appropriate for this type of draft convention. The States would be able to specify in their national law criminalization of conduct associated with crimes against humanity.

As regards modes of participation under draft article 6, paragraph 2, the Commission phrased them in broad language, which allows States to specify these modes in their national criminal law and to retain their existing terminology. We welcome that the text is not overly prescriptive. Generic approach is adopted also in respect of the superior responsibility under draft article 6 paragraph 3 and superior orders in draft article 6 paragraph 4. We consider the text of these provisions adequate and reasonable.

We welcome the inclusion of paragraph 5 of draft article 6 providing for the irrelevance of official position when prosecuting crimes against humanity. We note that the Commission “did not find it necessary to specifying that the official position cannot be raised as a ground for mitigation or reduction of sentence, because the issue of punishment is addressed in draft article 6, paragraph 7”. On the other hand, in criminal law, the legal certainty is of paramount importance. Therefore, it might be appropriate to exclude the official position as a ground for mitigation or reduction of sentence expressly in the text of the draft article.

According to Commission’s commentary, paragraph 5 has no effect on any procedural immunity that a foreign State official may enjoy before a national criminal jurisdiction; such immunity continues to be governed by relevant conventional and customary international law. We agree with this position and interpretation. This conclusion is equally valid for other conventions against so-called “official crimes”, such as enforced disappearances or torture, and does not need to be stated in the text of the draft articles. Crimes against humanity are by definition committed pursuant to the policy of the government of a State to attack civilian population. Therefore, the definition and the whole structure of obligations under the draft articles lead to the inapplicability of the immunities *ratione materiae*. On the other hand, we would like to stress that the immunities *ratione personae* enjoyed under customary international law by incumbent Heads of State, Heads of Government and Foreign Ministers, would remain in place and apply also within the new treaty.

We support and commend the text on the prohibition of statutes of limitation under draft article 6, paragraph 6. This prohibition is important because significant time will often elapse before it is possible to investigate, prosecute, and punish these types of crimes.

We also welcome the inclusion of the provision on the liability of legal persons in draft article 6, paragraph 8. At the same time, we take note of the fact that there is a divergence of views among States on this issue. There is also no uniform approach in relevant existing treaties. In this regard, we note that the provision is very flexible and allows States to respect their national legal principles when establishing criminal, civil, or administrative liability of legal persons.

Draft article 7 constitutes, together with **draft article 9** on preliminary measures when the offender is present, the prerequisite for the implementation of obligation *aut dedere, aut judicare* under **draft article 10**. The principle of *aut dedere, aut judicare* is a necessary element to ensure that States do not become safe havens for the perpetrators of crimes against humanity. Further, we welcome that the draft article 10 includes the word “surrender” and thus reflects different terminology used in various international instruments. The surrender to the international criminal tribunal would obviously be possible only where relevant State has recognized the jurisdiction of such tribunal.

In general, these articles, including **draft article 8** on investigation, are well conceived and their adoption as part of a convention on crimes against humanity would be a substantive development in the prosecution of crimes against humanity.

Thank you, Mr. Chair.