Permanent Mission of Italy
UN – New York

Sixth Committee Resumed session

Crimes against Humanity

Cluster 3

Statement of Italy – delivered by Mr Enrico Milano

Check against delivery

Thank you Mr/Mdm Chair.

Italy aligns itself with the statement delivered by the distinguished representative of the European Union and would like to add a few remarks in a national capacity..

Mr Chair/Mdm Chair,

Italy is generally supportive of draft Article 6 as drafted. Similarly to what is provided under the 1948 Genocide Convention, the 1984 UN Torture Convention and the 2006 UN Convention on Enforced Disappearance, Article 6 sets out the obligation of criminalization of typical conducts associated with crimes against humanity under the national law of any State Party to the future agreement. This is an important obligation since it is instrumental to limiting the legal gaps in national legislation that may facilitate impunity for the most heinous crimes.

In line with the jurisprudence of international criminal courts and tribunals, Italy is also supportive of the provisions in Article 6 related to the responsibility of commanders and superiors and the non-invocability of superior orders as a cause excluding criminal responsibility. The latter may in some cases lead to mitigation in punishment.

With regard to paragraph 5 of Article 6, as previously stated in this Committee, Italy supports the non-applicability of functional immunities to State officials when crimes against humanity have been allegedly committed in the exercise of official functions, in line with the legal solution provided by the International Law Commission in the context of its work of immunity of state officials. In our view it is important to support the application of personal immunities of Heads of States, Heads of Governments and Foreign Ministers when in office, without prejudice to the obligations arising from the mechanisms of cooperation with international courts, as those provided in the Rome Statute.

Given their gravity, Italy is also supportive of the non-applicability of statute of limitations to crimes against humanity in accordance with paragraph 6 of Article 6.

As for the notion of "appropriate penalties" under paragraph 7 of Article 6, this is reflected in more recent treaties, such as the UN Convention against Torture. Penalties for crimes against humanity must be determined on the basis of an evaluation of the specific crime committed, of the severity of the criminal conduct and of the context of the commission. While it would be unrealistic to expect a future international convention to determine with precision those penalties like it is normally done in the statute of international criminal courts and tribunals, Italy would like to reiterate its principled position against the death penalty, no matter the gravity of the criminal conduct at hand.

Article 6, paragraph 8 provides for the liability of legal persons for the commission of crimes against humanity. Italy can support the provision as it is written and notes that the liability of legal persons for the commission of crimes against humanity will have to be determined in accordance with the national law of the State and could be of a criminal, administrative or civil nature.

Turning to Article 7, Italy is generally supportive of the provision as drafted in order to minimize the risk of jurisdictional loopholes, at the same time ensuring a connection between the State exercising jurisdiction and the alleged author of the offence or the offence itself.

For the same reasons, Italy would like to express its general support of Article 10 and the incorporation in a future convention of the principle of *aut dedere aut judicare*, in line with many multilateral treaties criminalizing certain conducts. The obligation to extradite also applies with regard to international criminal courts and tribunals exercising their competence in the prosecution of crimes against humanity, if the national authorities are not in a position to investigate or prosecute the relevant crimes.

That concludes our submission on Cluster 3.

Thank you.