



PERMANENT MISSION
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TO THE UNITED NATIONS

S T A T E M E N T

by

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Mr. Chair,

Slovakia fully aligns itself with the statement made on behalf of the European Union and its Member States. I will proceed by sharing further comments in national capacity on draft articles 6 through 10 addressing the obligation of criminalization under national law, the establishment of national jurisdiction, investigation, the preliminary measures when an alleged offender is present and the principle *aut dedere aut judicare*.

The obligation of States to criminalize crimes against humanity under their national laws is one of the key provisions of the draft articles and the point of reference for subsequent draft articles, including on effective inter-State cooperation. Even though draft article 6, paragraph 1 does not explicitly refer to the definition of crimes against humanity articulated in draft article 2, we share the Commission's view that any potential deviations from its exact wording in national laws cannot result in qualifications or alterations that would significantly depart from the meaning as defined in draft article 2, paragraphs 1 and 2. As regards paragraph 2 of draft article 6, we note that the Commission eventually decided not to include incitement or conspiracy, even though the Genocide Convention does address both. We believe that including these two modes of accessorial criminal responsibility would further strengthen the preventative aspect of the draft articles. Moreover, holding to account those responsible for inciting or conspiring to commit crimes against humanity might reinforce the overall deterrent effect. We look forward to hearing from other States whether these actions are sufficiently covered by subparagraph c) through the phrase "otherwise assisting in or contributing to the commission or attempted commission of such crime".

Regarding command responsibility, we would prefer a more detailed regulation comparable to the one that appears in the Rome Statute. At the same time, we understand the intention of the Commission not to be overly prescriptive and to allow States to implement the provision bearing in mind their national laws, practice, and jurisprudence. Slovakia also agrees with the Commission's commentaries that the official position of an individual does not relieve anybody from accountability under international law. We welcome the clarification in paragraph 5 that requires States not to exclude substantive criminal responsibility of a person holding official position. By contrast, paragraph 5 has no effect on any procedural immunity that a foreign

State official may enjoy before a national criminal jurisdiction, which continues to be governed by conventional and customary international law. With regard to paragraphs 6 Slovakia is a State Party to the 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity and has implemented its obligations in domestic legislation. With regard to paragraphs 4 and 7, our national laws prescribe that no order of a government or of a superior can be used as a ground for excluding criminal responsibility for crimes against humanity. Crimes against humanity are punishable by imprisonment of 12 to 25 years or the imprisonment for life. Furthermore, we are pleased to share that despite not recognizing criminal liability of legal persons for crimes against humanity during the Commission's works in 2016, Slovakia has amended its legislation in the meantime. The paragraph 8 on the liability of legal persons is very carefully drafted and based on a widely accepted language and contains multiple safeguards which allow States a high degree of flexibility in implementation.

Mr. Chair,

Draft article 7 outlines standard jurisdictional bases for prosecuting crimes of such a gravity as crimes against humanity. In paragraph one, we recognize the primary territorial and personal jurisdictions, the latter both active and passive. Passive personal jurisdiction under the Slovak Penal Code is conditioned by criminalization of the conduct in *locus delicti* or conduct occurring in the territory under no national jurisdiction. With respect to the jurisdiction over stateless persons, while taking note of the formulation based on 1979 Convention against the Taking of Hostages, we believe States should seriously consider this jurisdictional basis every time if there is a reasonable risk of impunity gap. In the same vein, we welcome the inclusion of paragraph 2, which is essential for the full implementation of *aut dedere aut judicare* principle in draft article 10. This obligation, indeed, helps to prevent an alleged offender from seeking refuge in a State that would otherwise have no direct connection with the offence in question.

Turning to draft article 8, we understand that this provision, in principle, applies to the State with territorial jurisdiction. On the other hand, this paragraph in no way precludes States with other jurisdictional bases from investigating. We note that the actual wording draws from other comparable treaty provisions and commentaries provide guidance on the meaning of

prompt, thorough and impartial investigation. In comparison, draft article 9 is applicable to the State, where the alleged offender is present, and which has jurisdictional basis in line with draft article 7, paragraph 2. We note that the language provides various safeguards for the State concerned to make assessment and, if the circumstances so warrant, to take the alleged offender into custody or take other legal measures and immediately make a preliminary inquiry into the facts. The ultimate purpose and added value of this draft article is to enable prosecution, extradition or surrender of the alleged offender, and close the impunity gap.

In concluding, I will provide a few remarks with regard to draft article 10 capturing the *aut dedere aut judicare* principle contained in numerous widely ratified multilateral treaties. The principle encapsulates an obligation of the State under whose jurisdiction the alleged offender is present to prosecute unless it extradites or surrenders this individual. The consequence of non-extradition or non-surrender is the obligation of a State in question to bring the case to the competent authorities for prosecution. Obligation to prosecute should be interpreted in a way fully respecting the prosecutorial discretion. It only requires the State concerned to submit the case to the competent authority and not to refrain from pursuing prosecution and to conduct sham proceedings solely to shield the alleged offender.

Thank you.