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Crimes against Humanity

Statement by

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Mr. Chair,

On the issues pertaining to cluster 2 of our debate (definition and general obligations), I wish to make the following remarks on behalf of the Czech Republic.

Draft article 2 ensures the important objective to harmonize the definition of crimes against humanity under national laws of States. We welcome the approach by the Commission to take article 7 of the Rome Statute as the reference point for draft article 2. The Rome Statute contains the first, widely recognized and accepted comprehensive treaty definition of crimes against humanity. In our opinion, possible expansion or narrowing of the definition could blur the lines of the definition of crimes against humanity under treaty law. The flexibility in this area is sufficiently guaranteed by paragraph 3 of draft article 2, which provides that the draft is without prejudice to any broader definition provided for in an international instrument, customary international law or national law. We believe that also States, which are not Parties to the Rome Statute, would regard the stability and consistency of the treaty definition of crimes against humanity as reasonable and valuable. At the same time, we are aware of certain concerns regarding the interpretation of the suggested definition of crimes against humanity. Therefore, also for the sake of facilitating consensus, we are convinced that the definition has to be construed strictly and narrowly. Its interpretation has to take into account that crimes against humanity represent conduct “which is impermissible under generally applicable international law, as recognized by the principal legal systems of the world”.

Concerning **draft article 3**, we note that it contains the paragraph explicitly stating the obligation of States not to commit crimes against humanity. This addition explicitly endorses the International Court of Justice finding in the Bosnian Genocide case, that there also exists a prohibition addressed directly to States. It means that States must not engage in crimes against humanity and must ensure that others within their jurisdiction and control do not commit crimes against humanity, including armed forces, rebel groups, and other non-state actors. The article also rightly emphasizes, in its second paragraph, the obligation to punish crimes against humanity, whether or not committed in time of armed conflict, and emphasizes that “no exceptional circumstances whatsoever” may be invoked as a justification for crimes against humanity.

Draft article 4 on prevention is an indispensable part of the draft. It requires States to establish a normative and administrative infrastructure against the occurrence of crimes against humanity. These obligations of prevention are familiar and similar to those in the Convention against Torture and other widely endorsed international treaties. The generic terminology is desirable in order to include any conceivable preventive measure. Perhaps, the draft article might benefit from mentioning certain concrete examples of preventive measures, following the pattern of relevant provisions of previous conventions (the United Convention against Torture or the United Nations Convention on Enforced Disappearances). Further, draft article 4 rightly incorporates the requirement that States

must act “in conformity with international law” when they take action to prevent the commission of crimes against humanity. This requirement excludes the possibility to invoke the provision in support of the legality of use of force without relevant State consent or without authorization by the Security Council.

Thank you, Mr. Chair.