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Crimes against Humanity

Statement by

Mr. Emil Ruffer

**Director of the International Law Department
Ministry of Foreign Affairs of the Czech Republic**

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One Dag Hammarskjöld Plaza, 48th floor
885 Second Avenue, New York, NY 10017
tel.: +1 (646) 981 4001, fax: +1 (646) 981 4099
www.mzv.cz/un.newyork

Mr. Chair,

On the issues pertaining to cluster 4 of our debate (international measures), I wish to make the following remarks on behalf of the Czech Republic.

In our opinion, the **draft articles 13 and 14** on extradition and mutual legal assistance provide an excellent basis for further negotiations. The Commission decided to model these provisions mainly on the existing, widely accepted provisions of the UN Convention against Corruption and the UN Convention against Transnational Organized Crime. We consider this decision prudent. Draft article 13 is, in general, not overly prescriptive, yet it provides sufficient legal clarity for States using it as the basis for extradition from another State. The grounds for refusing extradition are dealt with in general terms, with reference to national law or applicable treaties. In this regard, it is important that whatever the reason for refusing extradition, the obligation to submit the case to its own competent authorities for prosecution under draft article 10 remains applicable. We note with satisfaction that, apart from paragraph 12 of draft article 13, the issue of multiple request for extradition is not dealt with in detail in the draft articles and was left to the discretion of States. There are huge differences among State practice in this area and the requested State should be able to take into account all criteria relevant in the concrete situation of multiple requests.

As regards **draft article 14**, in our opinion it provides very needed and, in general, sufficient legal framework for mutual legal assistance in this area. We note that the draft articles do not affect States' obligations under other treaties on mutual legal assistance. It also encourages States to enhance their mutual legal assistance through concluding other agreements or arrangements. These provisions allow necessary flexibility in this area. At the same time, States should use the instrument, which provides higher level of assistance in the concrete case.

The **Annex** contains a number of generally known procedural regulations on mutual legal assistance. In our opinion, it would be a useful guidance for international cooperation concerning crimes against humanity. It can serve as a model for cooperation or even, perhaps, for implementation as national legislation.

At this stage, we would not like to go into detail on certain minor drafting suggestions we already mentioned in our written comments to the Commission's draft. In general, we are of the opinion that draft articles 13 and 14 provisions would constitute a necessary and welcome basis for the interstate cooperation in dealing with crimes against humanity.

We appreciate the inclusion of the provision on the settlement of disputes in the draft articles. We note that the **draft article 15** provides for immediate resort to the International Court of Justice, if the negotiations between States fail, unless States agree to submit the matter to arbitration. This approach reflects the seriousness of the crimes against humanity and finds its model in existing relevant treaties on other crimes under

international law. At the same time, it is important that States would be able to opt out from this settlement of disputes mechanism, as suggested in the draft, and thus could retain certain flexibility in this area. We are also of the opinion that the draft convention should not expressly prohibit reservations and that the general regime under the Vienna Convention on the Law of Treaties should apply. This approach would follow other widely accepted criminal law treaties and would allow States to harmonize their treaty obligations with internal law requirements. We should try to avoid efforts, which could unnecessarily undermine the ability of States to ratify the treaty. Our common aim should be to create a viable treaty regime that does not deepen, but closes the divide among States in the area international criminal justice.

Thank you, Mr. Chair.