



Permanent Mission of Italy
UN - New York

Resumed session – Crimes against humanity (Cluster 4)

Statement of Italy

Delivered by Mr Enrico Milano

Thank you Madam Chair/Mr Chair,

My delegation aligns itself with the statement delivered by the distinguished representative of the European Union and would like to add a few remarks in national capacity concerning the provisions of Cluster 4.

With regard to the provisions on extradition in draft Article 13, Italy would like to make four observations.

First, we welcome the fact that draft Article 13 is modelled on Article 44 of the UN Convention against Corruption and on Article 16 of the UN Convention on Transnational Organized Crime since the two conventions have received almost universal ratification and those two provisions have proved to be effective tools for inter-state cooperation in matters of extradition.

Second, we support the exclusion of the “political offence” exception as a ground for refusing an extradition request.

Third, we also support the specification under paragraph 7 that extradition “shall be subject to the conditions provided for by the national law of the requested State or

by applicable extradition treaties, including the grounds upon which the requested State may refuse extradition.” That enhances legal certainty, which is one of the essential condition for effective judicial cooperation.

Fourth, we support the insertion of a specific paragraph, similar to Article 44, paragraph 15, of the UN Convention against Corruption, limiting the obligation of extradition when the requested State has substantial grounds to believe that such request may lead to prosecution or punishment on accounts of a person’s gender, race, religion, nationality, ethnic origin, culture, membership of a particular social group, political opinions or other grounds that are universally recognized as impermissible under international law. That limitation is in line with international human rights standards.

With regard to draft Article 14 on mutual legal assistance, we are of the view that the insertion of the non-prejudice clause under paragraph 7 related to the relationship with other bilateral or multilateral treaties providing for mutual legal assistance is appropriate for the purpose of legal certainty. However, the commentary to the draft article may be confusing when it states that “if particular paragraphs of draft article 14 require the provision of a higher level of assistance than is provided for under the other mutual legal assistance treaty, then the obligations set forth in those paragraphs shall be applied as well”. The commentary indeed seems to suggest national authorities would have to make, on a case-by-case basis, a comparative evaluation of the level of assistance provided under Article 14 and under the relevant treaty and apply either of them according to the higher level provided. In this context, we note that other international agreements on mutual legal assistance have been drafted to give prevalence to application by States of “other agreements” if that “facilitates their cooperation”. While we do not seek to express a preference or position on this at this stage, we wish to take this opportunity to stress that a future convention will have to establish with precision its relationship with other treaties providing for

mutual legal assistance, also given the fact that a future treaty will not enjoy the benefit of a commentary to guide the interpretation of its provisions.

Finally, with regard to draft Article 15 we wish to express our general support for the dispute settlement provision contained therein, while expressing doubts over the need to insert the opt-out clause under paragraph 3 as drafted, unless a new specific provision is inserted prohibiting reservations from the treaty. In this respect, we note that the precedent of Article 66, paragraph 3, of the UN Convention against Corruption, mentioned in the commentary, is indeed relevant but de facto relates to the possibility of reservations to compulsory dispute settlement being made at the time of signature, ratification, acceptance or approval of or accession to the Convention. This matter will have to be carefully reviewed in the course of future treaty negotiations.

That concludes Italy's submission on Cluster 4.