

Comments of the Czech Republic on the International Law

The International Law

future convention on prevention and prosecution of crimes against humanity. We welcome the fact that many of the provisions of the draft were modelled on existing provisions from other multilateral conventions that had been widely supported by States. We also appreciate that the articles are not overly prescriptive and enable States to implement them in accordance with their domestic legal system and practice. Such reliance on existing legal regimes and avoidance of undue complexity should encourage ratification and wide acceptance of the articles by States, when a convention is concluded on their basis. The Czech Republic believes that current

Article 6

Article 6 is indispensable for the implementation of the proposed convention. The article uses neutral and generic wording which, according to the Czech Republic, is appropriate for this type of draft convention. The States would be able to specify in their national law criminalization of conduct associated with crimes against humanity.

As regards modes of participation under article 6, paragraph 2, the Commission phrased them in broad language, which allows states to specify these modes in their national criminal law and to retain their existing terminology. We welcome that the text is not overly prescriptive. Generic approach is adopted also in respect of the superior responsibility under article 6, paragraph 3, and superior orders in article 6, paragraph 4. We consider the text of these provisions adequate and reasonable.

We welcome the inclusion of paragraph 5 of article 6 providing for the irrelevance of official position when prosecuting crimes against humanity.

It is necessary to specify that the official position cannot be raised as a ground for mitigation or reduction of sentence, because the issue of punishment is addressed in draft article 6, on the other hand, in criminal law, the legal certainty is of paramount importance.

Therefore, it might be appropriate to exclude the official position as a ground for mitigation or reduction of sentence expressly in the text of the article.

According to Comm

immunity that a foreign State official may enjoy before a national criminal jurisdiction; such immunity continues to be governed by relevant conventional and customary international law.

We agree with this position and interpretation. This conclusion is equally valid for other conventions against so-

does not need to be stated in the text of the draft articles. Crimes against humanity are by definition committed pursuant to the policy of the government of a state to attack part of its population. Therefore, the definition and the whole structure of obligations under the draft articles lead to the inapplicability of the immunities *ratione materiae*. On the other hand, this does not apply to the immunities *ratione personae* enjoyed under customary international law by incumbent Heads of State, Heads of Government and

the jurisdiction of the ICJ, we reserve our position on this issue, which deserves further analysis also with regard to other widely accepted criminal law treaties. The same applies to possible reservations and the question whether they should be expressly prohibited. Generally, we should try to avoid insisting on provisions and arrangements, which could unnecessarily undermine the ability of States to ratify the future convention. Our common aim should be to create a workable treaty that does not deepen, but closes the divide among states in the area international criminal justice.

Annex

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.