



**Statement on behalf of the European Union and its Member States  
by Ms. Simona Popan, Counsellor, Delegation of the European Union to the United  
Nations**

**at the Resumed Sixth Committee Session**

**"Crimes against humanity"**

**Agenda Item 78**

**Cluster II**

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**– CHECK AGAINST DELIVERY –**

Thank you, Mr./Madam Chair,

I have the honour to speak on behalf of the European Union and its Member States.

The Candidate Countries North Macedonia\*, Albania\*, Ukraine, the Republic of Moldova and Bosnia and Herzegovina\*, the potential candidate country Georgia, and the EFTA country Liechtenstein, member of the European Economic Area, align themselves with this statement.

**[Article 2 Definition of crimes against humanity]**

The EU and its Member States note that the definition of crimes against humanity in the draft articles largely reproduces Article 7 of the Rome Statute. Therefore, the definition is not new to a large majority of delegations.

Yet, there are two notable differences. The definition in draft Article 2 does not retain the wording ‘any crime within the jurisdiction of the Court’, for self-explanatory reasons, and removed the definition of gender contained in Article 7(3) of the Rome Statute. We are pleased to see that the ILC decided to remove the definition of “gender,” particularly as several laws implementing the Rome Statute into national law have omitted such a definition.

As crimes against humanity protect civilian populations, the attack must be directed against a civilian population. While civilians must be the predominant

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\* North Macedonia, Albania and Bosnia and Herzegovina continue to be part of the Stabilisation and Association Process.

target of the attack, presence of combatants among civilians does not however exclude the fact that the attack is directed against a civilian population.

The attack directed against a civilian population must be widespread *or* systematic. These are disjunctive and not cumulative requirements, as also clarified by the well-established practice of international tribunals, such as ICC, ICTY and ICTR. However, a widespread attack does not necessarily imply a large geographical area, but rather the large-scale nature of the attack that excludes isolated acts of violence. Isolated or unconnected acts of violence are also not to be considered as systematic attacks.

It is noteworthy to underscore that offenders of crimes against humanity are not limited to State officials or State agents. Attacks may also be committed by organizations or groups with the capacity and resources to plan and carry out a widespread or systematic attack, as part of an organizational policy.

Lastly, we note that States may provide in their national legislation a definition that goes beyond the definition contained in the draft articles. The definition is equally without prejudice to broader definitions contained in other international instruments or in customary international law.

### **[Article 3 General obligations]**

Turning now to general obligations in draft Article 3, we would like to underline that States are under the obligations not to engage in, and to prevent and punish crimes against humanity. The obligation not to engage in acts that constitute crimes against humanity is two-fold: (i) an obligation for States not to engage through their own organs; and (ii) an obligation not to commit such acts

through persons over whom they have such a firm control that their conduct is attributable to State. This ties in with the assessment that conduct amounting to crimes against humanity may engage both State responsibility and individual criminal accountability. While crimes are not committed by States, 'acts' may be attributable to States under the rules of State responsibility.

The words 'undertake to', as also employed in the 1948 Genocide Convention, imposes a clear obligation on the parties to prevent and to punish crimes against humanity. These are two distinct, but connected, obligations.

It is important to stress that crimes against humanity do not need to be linked to an armed conflict and can occur in peacetime. Under customary international law, no nexus with armed conflict is required. In that regard, the wording 'whether or not committed in time of armed conflict' is a welcome clarification as it settles a long-standing dispute of whether a nexus to armed conflict is needed. State practice since Nuremberg and jurisprudence of courts attest to this. This is similar to the crime of genocide, which can also occur in peacetime, and in contrast to war crimes, which are always committed in times of armed conflict. Furthermore, the dire reality is that crimes against humanity have been widely inflicted on civilians in many situations outside armed conflicts.

Lastly, we welcome the clarification that no exceptional circumstances whatsoever may be invoked as a justification for crimes against humanity.

#### **[Article 4 Obligation of prevention]**

The obligation of prevention is not specific to the draft articles on crimes against humanity. Obligations of prevention have been included in a number of existing

conventions, such as the 1948 Genocide Convention, the 1973 Apartheid Convention, the 1984 Torture Convention, the 2000 Transnational Organized Crime Convention, the 2006 International Convention for the Protection of All Persons from Enforced Disappearance, as well as a number of regional conventions, for instance the 1994 Inter-American Convention on forced disappearance of persons. Most crimes that may qualify as crimes against humanity have already been widely prohibited in many States, including murder, enslavement, imprisonment, rape and persecution. Therefore, including prevention in addition to prohibition is based on previous treaty practice.

We acknowledge that some delegations in their contributions to the ILC's work considered that the scope of the obligation to prevent is unclear as it is not very specific. While it could be considered to concretize the nature and content of this obligation, it is useful to recall the jurisprudence of the ICJ, which clarified that when engaging in measures of prevention, 'every State may only act within the limits permitted by international law'.<sup>1</sup> The reference to 'in conformity with international law' in draft Article 4 reflects the ICJ jurisprudence.

In this respect, we note that States have a diversity of tools to meet this obligation. Preventive measures not only include internal measures, such as effective legislative, administrative and judicial measures, but also cooperation with other States (as a reflection of the duty of cooperation among States under the UN Charter) and with relevant intergovernmental and other organizations.

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<sup>1</sup> Application of the Convention on the prevention and punishment of the crime of genocide (Bosnia and Herzegovina v. Serbia and Montenegro, para. 430.

We welcome this underlying intention of the draft articles to foster international cooperation.

I thank you.