



**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 V

United Nations, New York

12 April 2023

– 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.

Mr./Madam Chair,

[Article 5 *Non-refoulement*]

Draft Article 5 *Non-refoulement* prohibits States from expelling, returning, surrendering or extraditing a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to a crime against humanity. The principle of *non-refoulement* forms an essential protection under international human rights, refugee, humanitarian and customary law. As such, this principle is not new nor specific to the draft articles on crimes against humanity, but we nonetheless welcome that this is explicitly referred to in the draft articles.

Under international human rights law, the prohibition of *refoulement* is explicitly included in the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the 2006 International Convention for

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

the Protection of All Persons from Enforced Disappearance. Under humanitarian law, the principle has been incorporated in the 1949 Fourth Geneva Convention. Equally, the prohibition of *refoulement* is a key principle of international refugee law, and has been incorporated in the 1951 Convention relating to the Status of Refugees.

At EU level, the principle of *non-refoulement* is embodied in Article 19(2) of the Charter of Fundamental Rights of the European Union, which states that '[n]o one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.'

[Article 11 Fair treatment of the alleged offender]

The EU and its Member States attach great importance to fair trial and due process rights, which are particularly relevant in the context of criminal proceedings. We therefore very much welcome a draft article on this important matter.

We welcome the clarification that the rights of the person must be guaranteed 'at all stages of the proceedings'.

In the EU, the right of suspects and of accused persons to a fair trial is laid down as a general principle in the constitutions of its Member States and under Article 6(3) of the Charter of Fundamental Rights of the European Union. This guarantees that anyone suspected or accused in criminal proceedings is innocent until proven guilty.

The right to a fair trial is equally enshrined in Article 6 (1) of the European Convention of Human Rights. This has been extensively interpreted by the European Court of Human Rights that has generated an entire body of due process rights.

We note that in their submissions to the ILC, a number of delegations suggested that draft Article 11 be strengthened to make a more precise distinction between the rights of suspects and the rights of accused, and to set out clearly the presumption of innocence and the rights of the accused.

[Article 12 Victims, witnesses and others]

Rights of victims and witnesses in criminal proceedings are of paramount importance for the EU and its Member States. We therefore support the inclusion of a draft article on this important matter.

It is crucial to empower victims to report crime, participate in criminal proceedings, claim compensation and ultimately recover – as much as possible – from the consequences of crime. The point of views of victims must be encouraged and considered at appropriate stages of criminal proceedings. We welcome that measures are to be taken ‘in accordance with national law’ (paragraph 2). This leaves flexibility for States to decide how best to implement their obligations and provide broader rights.

In that connection, we would like to mention that the EU Strategy on victims' rights (2020-2025) pays particular attention to victims with specific needs, or the most vulnerable victims, such as child victims, victims with disabilities, elderly victims, or victims of gender-based violence. We do all we can to

prevent and combat gender-based violence and to support victims of such crimes.

We believe that the scope of draft Article 12 could be more ambitious and could include a separate provision on the rights of the child.

Victims have the right to obtain reparation for damages. This includes both material and moral damages (paragraph 3 of draft Article 12), which we welcome

We also welcome the fact that, as explained in the commentaries, the rights set forth in draft Article 12 should not be read as excluding the existence of other rights for victims, witnesses or others under international or national law, such as the right to information or the right to truth.

I thank you.