



**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 80

Cluster III

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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*, Montenegro*, Serbia*, Albania*, the Republic of Moldova, Bosnia and Herzegovina* and Georgia, and the EFTA country Liechtenstein, member of the European Economic Area, as well as Monaco and San Marino align themselves with this statement.

Mr./Madam Chair,

Article 6 Criminalization under national law

The EU and its Member States consider that draft article 6 is central to achieving the objectives of a future Convention, as it contributes to accountability and to ensuring that the perpetrators of crimes against humanity are held to account. It serves as a deterrent to discourage the commission of crimes, and contributes to their prevention.

States have different approaches to criminalization, and a treaty criminalizing crimes can go at the heart of national criminal laws. Therefore, **paragraph 1 and 2** of draft article 6 must be given close consideration. The main thrust of these paragraphs is the obligation of States to adopt laws criminalizing crimes against humanity in their national system in order to avoid loopholes of impunity.

On **paragraph 4, 5, 6** some delegations noted that the immunity of State officials from foreign criminal jurisdiction has been recognized as customary international law. They proposed to include a specific provision to confirm the rules of immunity.

We note that this paragraph has no effect on any procedural immunity that a foreign State official may enjoy before a national criminal jurisdiction. This issue continues to be governed by conventional

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

and customary law. We note that article 7 of the ILC Draft Articles on Immunity of State officials from foreign criminal jurisdiction states that immunity *ratione materiae* shall not apply in respect of crimes against humanity. Furthermore, we share the view of the ILC that the official position of the perpetrator does not exclude his criminal responsibility, and that the offences in draft article 6 shall not be subject to any statute of limitations. This allows victims to seek accountability years after the crimes have been committed, when the conditions so allow.

On paragraph 7, our position on the death penalty is well known. The EU and a large majority of UN members remain convinced that not applying the death penalty contributes to enhancing the respect for human dignity and to promoting human rights.

On the liability of legal persons, during the April 2023 session, some delegations took the view that **paragraph 8** is not reflective of customary international law, and should therefore be excluded from a future convention. We recall that the ILC's aim was not to codify customary international law, and that a convention may go beyond codification.

Article 7 Establishment of national jurisdiction

The European Union and its Member States note that draft article 7 provides for a range of jurisdictional bases, such as the territoriality, active or passive personality principles. At the same time, it does not exclude other jurisdictional bases. This draft article intends to close the gap of impunity by obliging States to establish jurisdiction over crimes.

While some delegations considered that draft article 7 lends itself to misuse for political consideration, we believe that it ultimately reflects a commitment to fighting impunity and to ensuring that individuals responsible for such egregious crimes face consequences for their action wherever they are.

Article 8 Investigation

In regard to draft article 8, the European Union and its Member States consider that launching good faith investigations, which do not cover and shield the individual concerned from criminal

responsibility, is fundamental in order to achieve the objectives of the draft articles. This draft article seems uncontroversial to most delegations.

Article 9 Preliminary measures when an alleged offender is present

During the April 2023 session, some delegations pointed out to the need to include safeguards in this draft article in order to prevent it from being abused for political purposes. As we said on previous occasions, the preliminary measures taken under this draft article must respect international human rights law and fair trial standards. These safeguards should address concerns of abuses for political purposes. We are convinced that, if preliminary measures are taken in conformity with human rights law and fair trial, the risk of politicization is inexistent.

In regard to the obligation to make a ‘preliminary inquiry into the facts’, which raised some questions in the last session, we would like to point out to the fact that the ICJ has already looked at the scope of this obligation. In the case *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)* related to the Anti-Torture Convention, the ICJ held that it was not sufficient for a State Party to the Convention to have adopted all the legislative measures required for its implementation, but that a State must also exercise its jurisdiction starting by establishing the facts.¹

Article 10 *Aut dedere aut judicare*

The provision in draft article 10 is a must-have in any convention combating international crimes, as it obliges States, if they do not extradite the offender, to submit the case to competent authorities to examine whether prosecution would be appropriate. This is key to eliminating any risk of impunity. However, this does not imply an obligation to prosecute, which remains a prosecutorial discretion.

Although this draft article is silent on the issue of amnesties, we believe that consideration should be given to the possibility of codifying that blanket amnesties are incompatible with the prevention, punishment and prohibition of crimes against humanity.

¹ I.C.J. Reports 2012, p. 422, paragraphs 79-88.

I thank you.