



**United Nations General Assembly | Sixth Committee
78th Resumed Session**

**Crimes against humanity
(Agenda item 80)
Cluster V**

April 3rd, 2024

(check against delivery)

Madam Chair,

Brazil commends the International Law Commission for including the principle of “non-refoulement” in draft article 5. This incorporation reflects a widespread understanding that no state should deport or return individuals to territories where their life or freedom would be jeopardized.

Such a principle is enshrined in various international and regional instruments. Initially conceived within the framework of the 1951 Refugee Convention, the principle of “non-refoulement” has expanded its scope.

Many human rights oversight bodies interpret their respective instruments as establishing an absolute prohibition on expulsion or return, usually based on the risk of "irreparable harm."

Brazil considers that the principle of "non-refoulement" reflects international customary law.

Madam Chair,

Some delegations have expressed that a future Convention should be compatible with the Convention on International Cooperation in the Investigation and Prosecution of the crime of Genocide, Crimes against Humanity, War Crimes and other International Crimes, adopted in Liubliana in May 2023.

This Convention has a broader scope than the draft articles as it also encompasses other serious crimes and its main objective is to facilitate international cooperation. Brazil acknowledges that this Convention and the draft articles may offer complementary frameworks, and could co-exist.

At the same time, Brazil notes that the so-called Liubliana-the Hague Convention was negotiated outside the framework of the United Nations, and has limited participation, while a convention on crimes against humanity should aim at universality.

In this context, Brazil believes that we should not reproduce language from the Liubliana-the Hague Convention, or redraft the ILC articles in order to make them compatible with the Convention. For instance, we prefer to retain current draft article 11(2)(a), which seems to be more protective of stateless persons.

Brazil believes that any possible incompatibility between the Liubliana-the Hague Convention and a future treaty on crimes against humanity is to be governed by article 30 of the Vienna Convention on the Law of Treaties on the application of successive treaties relating to the same subject matter, especially its paragraphs 3 and 4.

Madam Chair,

Brazil welcomes draft article 11 on the fair treatment of the alleged offender. We stress the need to guarantee at all stages of the proceeding the full protection of their rights under human rights law and international humanitarian law.

My delegation joins others in considering that article 11 could be strengthened in order to bring it closer to the fair trial guarantees provided in multilateral instruments.

A future convention would benefit from more precision and could draw inspiration from articles 55 and 63 of the Rome Statute for instance.

Brazil also welcomes article 11(2), which recognizes the rights of a person in prison, custody or detention in a State that is not of their nationality to communicate with and to be visited by representatives of their State of nationality, as well as to be informed of these rights.

My delegation considers that this paragraph is aligned with the 1963 Vienna Convention on Consular Relations and the jurisprudence of international courts.

Brazil recalls that in the La Grand Case, the International Court of Justice clarified that article 36 of the Vienna Convention creates individual rights for the national concerned. In the Avena case, the Court highlighted that “violations of the rights of the individual under Article 36 may entail a violation of the rights of the sending State, and that violations of the rights of the latter may entail a violation of the rights of the individual”.

The Inter-American Court of Human Rights, in its Advisory Opinion on the Right to information on consular Assistance in the

framework of the Guarantees of the due process of law, stated that the same article “confers rights upon detained foreign nationals, among them the right to information on consular assistance, and that said rights carry with them correlative obligations for the host State”.

The Inter-American Court also stressed that the article concerns the protection of the rights of a national of the sending State and “is part of the body of international human rights law”.

For these reasons, Brazil considers that redrafting the article to deprive individuals from the referred right would run contrary to the jurisprudence of international courts and the international human rights law.

Madam Chair,

The section regarding victims, witnesses, and other individuals could be enhanced by including a clear definition of "victim." For instance, Rule 85 of the Rules of Procedure and Evidence of the International Criminal Court could serve as a valuable reference for formulating such a definition.

Brazil commends the International Law Commission's language emphasizing the necessity of implementing measures to

safeguard victims' rights. These include the right to reparation, the consideration of their perspectives and concerns in criminal proceedings, and protection from mistreatment and intimidation resulting from any complaints.

This protection extends not only to victims but also to other complainants, witnesses, relatives, representatives, and any other individuals involved in investigations, prosecutions, extraditions, or other proceedings covered by the draft articles.

I thank you.