



**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 V**

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**– CHECK AGAINST DELIVERY –**

Thank you, 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\*, Ukraine, the Republic of Moldova, Bosnia and Herzegovina\* and Georgia, and the EFTA country Liechtenstein, member of the European Economic Area, as well as San Marino, align themselves with this statement.

Madam Chair,

### **Article 5 Non-refoulement**

The European Union and its Member States view draft article 5 as an important safeguard in protecting individuals from being forcibly expelled, returned, surrendered or extradited to a country where there are substantial grounds for believing that he or she would be in danger or subjected to a crime against humanity. We are aware of the fact that during the April 2023 session several delegations raised concerns about draft article 5, and considered that it lacks support for general State practice and *opinio juris*, and that, as such, cannot be considered as a codification of existing customary international law. Concerns of politicization and abuse of this draft article were also expressed.

We take this opportunity to explain our view.

While various conventions have defined non-refoulement in different ways, they have all intended to protect individuals from being forcibly returned or expelled to a country where they may be at risk of persecution, torture, or other ill-treatment. Its inclusion in an important number of international treaties,<sup>1</sup> almost universally ratified, the ensuing extensive State practice and jurisprudence, have elevated the principle of non-refoulement to the status of customary international law.

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

<sup>1</sup> Article 3(1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); Article 16(1) of the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED); Article 33(1) of the 1951 Convention relating to the Status of Refugees; Article 45 of the 1949 Fourth Geneva Convention.

Throughout decades, national courts of the EU Member States, the Court of Justice of the European Union and the European Court of Human Rights have developed constant jurisprudence on the application of the principle of non-refoulement. The principle of *non-refoulement* is enshrined in EU law in Article 18 and 19 of the EU's Charter of Fundamental Rights. Judgments of the Court of Justice of the European Union and the European Court of Human Rights have subsequently consolidated the application of this principle in the EU and developed clear criteria for its application. Non-refoulement is subject in the EU and its Member States to close judicial scrutiny. This prevents it from being abused or misused for political purposes.

### **Article 11 Fair treatment of the alleged offender**

For the European Union and its Member States fair treatment and fair trial are important due process rights and fundamental principles of the rule of law. They are of particular relevance in criminal proceedings.

During the April 2023 session, some delegations proposed to strengthen this draft article by providing greater guarantees. We very much support that approach.

Fair trial protects the alleged offender from procedural abuses and contributes to enhancing cooperation and the rule of law at international level.

In addition to fair treatment, States are required to provide the alleged offender with 'full protection'. The term 'full protection' was viewed by delegations as insufficiently substantiated and generated controversy in the April 2023 session. While we understand that the term might be understood differently through the lenses of various legal systems and traditions, we believe that such concerns could potentially be addressed by listing the rights that the term 'full protection' comprises.

### **Article 12 Victims, witnesses and others**

The EU and its Member States believe that a future convention on crimes against humanity should ensure a victims- and survivors-centered approach. While the draft articles aim at preventing crimes against humanity from happening, when they do occur, the victims and survivors of such horrendous crimes must be at the heart of any criminal proceedings.

Accountability is key for ensuring justice to victims and survivors. It is however not sufficient. The process leading up to and following accountability is equally important. Ensuring that victims are heard, engaged with, and that they and their families are not subject to retaliation is key for delivering justice. Additionally, the dignity of victims must be reestablished. This can be achieved through reparation, restitution, compensation, satisfaction or rehabilitation, as well as guarantees of non-repetition. We are pleased to see that these elements of criminal proceedings *and* reparation are duly reflected in the draft articles.

In the April 2023 session, several delegations noted that the draft articles do not include a self-standing article on victims and that the term ‘victim’ remains undefined. Some delegations argued that the definition of the term should be left at the discretion of national legislators.

We see the advantages and disadvantages of a self-standing article and of a definition of ‘victim’ and are still pondering them. However, should consensus emerge for the inclusion of a definition of ‘victim’, the definition in the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Law and Serious Violations of International Humanitarian Law annexed to General Assembly resolution 60/147 is an important point of reference.

As a general remark, we believe that draft article 12 combines a number of issues that would require further clarification. We are cognizant of the fact that States might address remedies and reparations through a range of ways, and they must be able to retain a measure of flexibility in doing so. The question of whether or not statutory limitations should apply to proceedings where victims request reparation is also an important one. We therefore believe that all these issues would warrant an in-depth discussion in a formal negotiating setting.

I thank you.