

Sixth Committee (Legal) — 78th session

Crimes Against Humanity

Portugal

Cluster 5: Safeguards (Articles 5, 11 and 12)

Madam Chair,

Portugal aligns itself with the statement delivered by the European Union and would like to offer the following comments in its national capacity.

Our position on the draft articles under this cluster is known and has been restated again at last year's resumed session of the Sixth Committee. Allow me to highlight some of its main features, taking also into consideration the statements of the many delegations that have intervened on this cluster today as well as last year.

Madam Chair,

We welcome the explicit reference to the principle of *non-refoulement* in draft Article 5. This principle constitutes an essential protection under international human rights law, refugee law, or international humanitarian law. In our view, this principle has also a key role in the prevention of crimes against humanity by prohibiting States to transfer 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.

Madam Chair,

We also welcome draft article 11 and the clarification that the rights of the alleged offender must be guaranteed “at all stages of the proceedings”. We see the respect for the rules of fair treatment and for the rights of the alleged offenders as a balanced and indispensable element to ensure the legitimacy of national efforts to investigate and prosecute persons for crimes against humanity.

Therefore, we take good note that the ILC has specified that the expression “fair treatment at all stages of the proceedings” is intended to incorporate all the guarantees generally recognized under international law to a detained or accused person, in particular those contained in Article 14 of the International Covenant on Civil and Political Rights. We also appreciate the explicit reference to a “fair trial”.

Madam Chair,

Portugal welcomes the relevance given in the draft Article 12 to the rights of victims, witnesses and other persons affected by the commission of crimes against humanity, which necessarily include those most vulnerable as are women and children. This strong reference is not only consistent with international law but is also instrumental to empower victims to speak up, report crimes, and participate in criminal proceedings.

We also note that, in accordance with paragraph 2, the obligation contained therein is to be implemented “in accordance with national law”. This allows States enough flexibility to tailor the requirements included in this provision to the characteristics of their national criminal law system and is without prejudice of additional guarantees of victims that each national system might establish.

Moreover, we support the principle contained in paragraph 3 according to which victims have the right to obtain reparation for both material and moral damages. Nevertheless, we would prefer a stand-alone article dealing specifically with reparation that would give greater centrality and importance to this right and to the obligation of States to ensure such right of the victims.

Thank you.