

Crimes against humanity

Agenda item 80

78th session (resumed)

DRAFT DECLARATION FOR THE USE OF EXCHANGE OF VIEWS ON
THEMATIC CLUSTER V (SAFEGUARDS)
DRAFT ARTICLES 5, 11 AND 12

Thank you, Mr Chair.

Türkiye has comments on draft Articles 5, 11, and 12.

Article 5

With regard to Draft Article 5, Türkiye considers that further deliberations are needed on whether a “non-refoulement” clause in this nature is necessary under the purpose and scope of the draft articles.

While acknowledging that “non-refoulement” is one of the fundamental principles of human rights law, Türkiye believes that Draft Article 5 is unclear as to how this principle will be applied.

In this respect, Türkiye thanks to the accurate questions put forward by the co-facilitators that shed light on the ambiguities and questions created by Draft Article 5 in its current form, which indicate that there is a need for a continued discussion on this provision.

With regard to the content of Draft Article 5, Türkiye shares the opinion that the reference to “non-refoulement” in the title, and the use of the formulation in the 1951 Refugee Convention, could lead to a misunderstanding that the provisions are being limited to only refugees or asylum seekers.

Even *if the terms of “expulsion” and “extradition” were included in the title, this would not be sufficient to align the title to the terms used in the Draft Article paragraph 1*”. Because there would still be an inconsistency with the term “surrender”. Türkiye concurs with the view that this Draft Article is limited to interstate cooperation, whereas the term “surrender” refers to the act of delivery of a person to an international court. Therefore, Türkiye believes that the term “surrender” in paragraph 1 should be re-examined.

On the other hand, as for paragraph 1, Türkiye shares the concern that was expressed by some delegations regarding the lack of clarity as to how to determine the existence of “*substantial grounds for believing that he or she would be in danger of being subjected to a crime against humanity*”, and that this phrasing can be open to abuse and politicization of extradition and legal assistance procedures.

As for paragraph 2, we think that there should be an alternative drafting for the following reasons:

As known, despite their interactions, international criminal law, international human rights law and international humanitarian law clearly differ in their scope. On the other hand, the draft articles focus on the crimes against humanity. Therefore, according to Türkiye, for determining whether there is a non-refoulement obligation, the competent authorities of a given state should take into account “the existence in the State concerned of a consistent pattern of acts listed in draft Article 2”; instead of the “gross, flagrant or mass violations of human rights” or “serious violations of international humanitarian law”.

The terms “human rights violations” or “violations of humanitarian law” are broader than the term “crimes against humanity”. Therefore, reference to “a consistent pattern of gross, flagrant or mass violations of human rights or of serious violations of international humanitarian law” goes beyond the scope of the draft in question.

Finally, the term of “all relevant considerations” in draft article 5 (2) is inherently vague and my delegation considers that further clarification is required to preclude potential misuses.

Article 11

On draft Article 11, Türkiye would like to make a short comment only on the 2nd paragraph.

Türkiye concurs with the view that it is important to ensure that the provisions of paragraph 2 of Article 11 are fully consistent with the provisions of Article 36 of the Vienna Convention on Consular Relations, which in general regulates communication and contact with nationals of a sending state.

Article 12

Turning to Draft Article 12, Türkiye shares the view that a clarification in paragraph 1 indicating that this obligation would apply with respect to alleged crimes against humanity occurring ‘within the territory under that State’s jurisdiction’ is needed. Draft Article 8 requires States to conduct prompt and impartial investigations with respect to alleged crimes against humanity being committed under their jurisdiction, and in the commentaries, the relationship between Draft Article 12 and Draft Article 8 is noted.

As for the question on the right to truth, Türkiye refers to its statement related to Cluster 1 and reiterates that, it is ambiguous whether ‘the right to truth’ is a concept with enough clarity and widespread acceptance in international law.

Again, in response to the relevant question put by the Cofacilitators, for the reasons explained in our statement concerning Cluster 1, we would like to reiterate that Türkiye is hesitant about following a seriatim approach concerning certain groups.

With regard to the question as to “whether clarification of the scope of the obligation to make reparation is necessary in cases where jurisdiction is based on passive personality or universality”, Türkiye would like to refer to its statements concerning draft article 7/1 (c). Unlike territorial or active personality jurisdiction, passive nationality jurisdiction has a long-standing contentious status in international law, and the inclusion of passive nationality jurisdiction poses a clear risk of being exploited for political reasons and potential conflict of jurisdiction, and again, universal jurisdiction should only be exercised in respect of nationals of states parties.

With regard to subparagraph 1 (b), Türkiye believes that further clarification is necessary for the term of “other persons”.

With respect to paragraph 3, Türkiye prefers a general reference to the “right to reparation” in draft paragraph (3), as the right to restitution may vary from State to State.

With regard to the reparations on a “collective basis”, my delegation takes note of the discussions held during the previous session and reserves its position for the time being.

Finally, in response to the relevant question of the co-facilitators, we support the inclusion of a paragraph allowing derogation based on Article 4(1) of the ICCPR.