



**PERMANENT MISSION OF ROMANIA
TO THE UNITED NATIONS**

Check against delivery

The 77th Session of the General Assembly

Resumed Session of the Sixth Committee

Agenda item 78 “Crimes against humanity”

Cluster III - National measures (Articles 6, 7, 8, 9 and 10)

**Statement delivered by Ms. Alis Lungu, Legal Adviser
Permanent Mission of Romania to the United Nations**

New York, 11 April 2023

Madam Chair,

Romania fully aligns with the statement delivered on behalf of the European Union and its Member States and would like to add the following remarks in its national capacity.

As agreed for the purposes of our substantive discussions, we will tackle the questions falling under Cluster III, namely national measures (articles 6-10).

Draft article 6

Draft article 6 is of paramount significance, as it imposes on States concrete obligations to enact the appropriate criminal legislation which allows for the establishment and exercise of jurisdiction over the alleged offenders, as well as for the provision for appropriate penalties, taking into consideration the grave nature of these crimes.

We would like to share some relevant information regarding our national legislation.

The Romanian Criminal Code regulates the crimes against humanity in Article 439, which follows closely the definition provided in Article 7 of the Rome Statute and Draft Article 2 on Prevention and Punishment of Crimes Against Humanity. These crimes are punishable in the Romanian Criminal Code by appropriate penalties, taking into consideration their grave nature - life imprisonment or imprisonment for 15 to 25 years and a ban from exercising certain rights.

We are also very much in favour of the non-application of any statute of limitation for these offences as included in para. 5 of draft article 5. Romania has already taken such a policy decision. According to Article 153 paragraph 2 letter a) of the Romanian Criminal Code, genocide, crimes against humanity and war crimes shall not be subject to any statute of limitations. Romania is a party to the 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity and to the 1974 European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes.

Draft article 7

The establishment of a broad jurisdictional base is a key element in the effectiveness of a future instrument.

Paragraph 1 of draft Article 7 establishes three forms of national jurisdiction, based on the principles of territoriality, active personality and passive personality. The third one is, in our view, optional, considering the wording used. All these three forms are taken into account by the Romanian Criminal Code, in its articles 8, 9 and 10.

As regards paragraph 2 of draft Article 7, we would like to make reference to the provisions of article 11 of the Romanian Criminal Code, which provides that the Romanian Criminal law will be applicable to the offences committed abroad by a foreign citizen or a stateless person, in cases where the alleged offender is willingly present on Romanian territory:

- with respect to a crime which Romania committed to suppress under an international treaty, irrespective of its criminalization under the national law of the State on whose territory it was committed;
- based on the principle *aut dedere aut judicare*, when the extradition or the surrender of the person is refused.

In view of the gravity of these offences and the importance of using all tools to tackle them efficiently, Romania supports paragraph 3 of this draft Article, which leaves open the possibility for a State to establish other jurisdictional grounds upon which to hold an alleged offender accountable, in accordance with national law.

Draft article 8

We welcome the inclusion of a provision related to a “prompt, thorough and impartial investigation” whenever there are “reasonable grounds” to believe that crimes against humanity are being committed (or have been committed) in any territory under a State’s jurisdiction.

Such an investigation would not only allow the identification of alleged offenders but it would also prevent the continuance of ongoing crimes and their recurrence.

Draft article 9

The preliminary measures provided in draft article 9 are quite common in national proceedings with a view to avoiding the risk of flight by the alleged offender, as well as further criminal acts. In light of the seriousness of the crimes against humanity, the inclusion of such a provision seems fully justified.

At the same time, we consider that these preliminary measures must equally observe the standards related to fair treatment and full protection of the rights, provided in draft article 11.

Draft article 10

Romania shares the view of the Commission that the Hague formula, which has already been incorporated into many international treaties, seems to be the most appropriate approach in shaping the text of this draft article.

We also welcome the reference to “competent international criminal court or tribunal”, in view of the significant part such judicial institutions play today in the fight against impunity.