



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

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**The 77<sup>th</sup> Session of the General Assembly**

**Resumed Session of the Sixth Committee**

**Agenda item 78 “Crimes against humanity”**

**Cluster IV - International measures (Articles 13, 14 and 15 (and annex))**

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

**New York, 12 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 IV, namely international measures (Articles 13, 14 and 15 (and annex)).

#### **Draft article 13 and draft article 14**

We consider that the draft articles on extradition and mutual legal assistance set a comprehensive normative framework to ensure the implementation of the *aut dedere aut judicare* principle, using the model of other UN Conventions – the 2000 United Nations Convention against Transnational Organized Crime and the 2003 United Nations Convention against Corruption. Drawing inspiration from these two international legal instruments, which enjoy wide ratification, presents the advantage that a significant number of States are already familiar with these detailed and technical procedures.

Barring the “political offense” exception to extradition concurs with the overall approach on such heinous crimes that harm the entire international community.

#### **Draft article 15**

The dispute settlement provision is of high importance to us. We note that the language used by the Commission is standard and draws from other international treaties.

First and foremost, according to article 15, states must engage in negotiations with a view to settling potential disputes concerning the interpretation or application of the provisions. If done in good faith, this form of peaceful settlement of disputes would offer the parties flexibility, less formality, and the ability to control the process.

We welcome the Commission approach to provide for immediate resort to the International Court of Justice (ICJ), unless the two States agree to submit the matter to arbitration, in the scenarios where negotiations were exhausted.

Romania’s general position is to support and encourage the inclusion of compromissory clauses in new bilateral and multilateral treaties conferring jurisdiction on the Court to deal with disputes between States parties. Together with a cross-regional group of States, we are leading an initiative dedicated to the very goal of promoting the jurisdiction of the International Court of Justice, in its broad sense, and strengthening the role of the Court in the international judicial landscape.

With regards to the opt out clause, we acknowledge that such a provision might have a positive influence on the overall number of ratifications of a future convention and that the Commission’s drafting is inspired by existing instruments.

An argument can be made that by introducing an opt out to a compromissory clause, some States may be willing to sign treaties that they otherwise would not have signed, increasing the substantive obligations

they have undertaken, thereby strengthening the international legal framework. However, we think that this fails to take into account the important role of the ICJ in the legal order created by those obligations. The ICJ plays an essential part in ensuring the application of the treaties in question without which the substantive obligations would be reduced to empty words, as well as in providing a platform where State can raise concrete cases of non-compliance.

There are many other compelling reasons for accepting the Court's jurisdiction as a mechanism for dispute settlement:

- a) The Court has a vast expertise in dispute settlements and a comprehensive jurisprudence on various areas of international law;
- b) The jurisdiction of the Court in contentious cases is based on the consent of the States, enabling the Court to settle disputes between States peacefully, through authoritative judgments, and it contributes to building harmonious inter-State relations;
- c) The Court offers an efficient and affordable dispute settlement mechanism;
- d) The Court actively contributes to the realization of the principles and purposes of the United Nations.

For all of these reasons, we should be very cautious in our analysis of the opt out clause. Given what a future instrument would try to achieve, which is to deter and end impunity for crimes against humanity, we are concerned about the possibility of undermining a crucial tool for its effective implementation and fracturing the web of State consent. We note that the Genocide Convention does not contain an opt out clause.

We look forward to hearing all views on these important provisions.

Thank you!