



United Nations General Assembly | Sixth Committee

**Crimes against humanity
(Agenda item 78)
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(check against delivery)

CLUSTER 5

Mr. Chair,

Brazil commends the International Law Commission for its balanced drafting of article 5 on “non-refoulement”. It reflects an understanding widely shared by the international community that no state should expel or return people to territories where their life or freedom would be at risk.

This principle is enshrined in a set of international and regional instruments, such as the Fourth Geneva Convention, the 1951 Convention relating to the Status of Refugees, the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the 2006 International Convention for the Protection of All Persons from Enforced Disappearance, the 1969 American Convention on Human Rights and the 1981 African Charter on Human and Peoples’ Rights.

Initially envisaged in the 1951 Refugee Convention, the principle of “non-refoulement” today has a broader scope. Many human rights monitoring bodies have interpreted their respective instruments as establishing an absolute prohibition of expulsion or return, normally based on the risk of “irreparable harm”.

As already expressed by Brazil in its written comment submitted to the ILC in 2018, draft article 5 should follow a similar approach and include, as grounds for applying the

"non-refoulement" principle, not only the risk that the person will be subjected to a crime against humanity, but also the risk of genocide, war crimes and torture.

Mister President,

On the fair treatment of the alleged offender, Brazil reiterates that draft article 11 could be strengthened in order to bring it closer to the fair trial guarantees provided, for instance, in the Rome Statute.

Some of the guarantees provided in article 55, on the rights of persons during an investigation, and in Article 67, on the rights of the accused, of the ICC treaty are currently not present in the draft articles.

Even though paragraph 1 of draft article 11 establishes the right to a fair treatment, the text would benefit from more precision, which could be attained by resorting to the language of the Rome Statute on the matter.

I thank you.