



Crimes against Humanity – Cluster 5

13 April 2022

Statement by H.E. Mohan Pieris, Permanent Representative of Sri Lanka to the UN

Madam Chairman,

We focus today on articles 5, 11 and 12 which collectively deal with safeguards as set out in the draft articles. The draft article focuses on non-refoulement, which is the guarantee against the surrender or extradition of a person to another state where there are substantial reasons to entertain the view that the refouler is in danger of being subject to a crime against humanity. We referred to this yesterday as a matter that forms part of sound public policy. Here, we are transferring a person from one state to that of another. You will recall that the principle is incorporated in several treaties during the 20th century including the 4th Geneva convention in which common article 3 implicitly include the obligation of non-refoulement. This principle has been applied in respect of all aliens and not limited to refugees as popularly known. The principle of non-refoulement often find accommodation in extradition treaties. That principle has been recognized in articles 11 and 13 of the draft convention that we are considering. Suffice to say that this is a salutary safeguard as a matter of public policy. Then we have article 11 which speaks of the fair treatment of an alleged offender including a fair trial and a complete guarantee of its rights under national and international human rights and international humanitarian laws. It is important to appreciate that the protection of draft article 11 recognizes the right of such person who is not of the state nationality who is in custody and continues to guarantee him that protection throughout the proceedings. We might bear in mind that the ICCPR in article 14 sets out the standards to be applied to ensure fair treatment and finally we have article 12 which sets out all important that has not been sufficiently considered until recent times and that is the protection of victim witnesses and others to complain of the commission of a crime against humanity that has affected them. While many treaties in the 1980s sought to provide for this requirement it was only in 1998 when the Rome statute was put in place that the matter of the rights of victims and witnesses were addressed effectively. Regrettably many treaties did not define the term allowing states to apply their existing law and practice so long as it was consistent

with international law. The 2006 international convention of the protection of all persons from enforced disappearances, the convention of cluster munitions refer to victims. It is interesting to note that whilst the 1984 convention against torture and other cruel inhuman or degrading treatment or punishment did not define the term victim it did in comment three set out guidance on who would be treated as victims. It would appear that while the statutes of the international criminal court and tribunals do not define the term victim guidance was available in the rules of the tribunals such as rule 85a of the rules of procedure of the ICC.

Madam Chair, Why is it that we seek to focus on the right to obtain focus on the victims. It appears that what is left to be important in a post crime scenario is the aspect of reparation for material and moral damage on an individual or collective basis for restitution for compensation satisfaction rehabilitation and finally a cessation and guarantee it will never happen again. In other words simply put a mechanism of restorative justice. We remember that resolution 3 of 13th Feb. 46 calling on states to cooperate in the capture extraction of war criminals was one of the initial steps. Later that year we have the charter of the Nuremberg tribunal and its judgment in resolution 95 which was later codified. We then had the Convention of the prevention and punishment of the crime of genocide followed by a series by resolution that culminate with resolution 3074 in 1973 which set out the principles of international corporation in the detection arrears extradition and punishment of persons guilty of war crimes and crimes against humanity. In 2005 the GA announced a set of basic principles and guide lines on the right to a remedy and reparation for victims of grows violations of international human rights law and serious violations of international humanitarian law (60/147)., in 1997 we had resolution 52/135 where we had a group of experts who were required to evaluate the existing material and amongst other things address the issue of individual accountability. We had thereafter a series of procedure that addressed this issue in different parts of the world.

Permit me to digress to respond to an observation made by my distinguished colleague from Cameroon last afternoon on the efficacy of 3074 whether it is in fact being practiced or not. 3074 was essentially to promote international action in order to ensure the prosecution and punishment of persons, guilty of war crimes and crimes against humanity. It is a resolution with 9 paragraphs which amongst them requires states to cooperate with a view to detection, arrest and extradition of persons against whom there is evidence that they have committed war crimes and crimes against humanity. We must believe that the proponents of these instruments which form the foundation of international law intended them to be effective and meaningful. Paragraph 3 of this resolution requires states to cooperate with each other on a bilateral and multilateral basis with a view to preventing crime against humanity and obligating states to take the domestic and international issues necessary for that purpose. We will recall that more recently the security

council in resolution 1674 recognized the responsibility to protect civilians in the times of conflict and consequence many member states have incorporated the provisions of these resolutions into their local laws. We must ensure that the resolution is effective. We must appreciate that it is increasingly recognized that states not only have the powers to exercise universal jurisdictions of the exercise universal jurisdiction but also have the duty to do so or to willing to exercise the jurisdiction to bring them to justice in their own courts. We now see a trend that states have begun to fulfill this obligation to enact legalization to exercise universal jurisdiction under intentional law under exercise such jurisdiction. I hope my friend from Cameroon finds my clarification to be helpful. Madam Chair, I must observe that if accountability defends to the interest of humanity as a formal matter the other measures that implement the rights in the transitional justice structure namely the rights to truth, reparations and guarantees of non-repetition should be considered and conceived as human rights or the individuals. It is my respectful view that the victims of crime who have individually or collectively suffered harm including physical or mental injury , suffering, economic loss or substantial impairment to their fundamental rights as the result of the war crimes or crimes against humanity must be compensation by easy access to justice and fair treatment, restitution, compensation, reparations and assistance to regain their humanity and to ensure that they live in dignity as members of the human family. I might mention in passing that SL in its post conflict reconciliation process has adopted many measures amongst which they address matters of missing persons, reparations and many other restorative justice mechanisms.