



**Statement on behalf of the European Union and its Member States
by Ms. Simona Popan, Counsellor, Delegation of the European Union to the United
Nations**

at the Resumed Sixth Committee Session

"Crimes against humanity"

Agenda Item 80

Cluster II

United Nations, New York

1 April 2024

– CHECK AGAINST DELIVERY –

Thank you, Madam Chair,

I have the honour to speak on behalf of the European Union and its Member States.

The Candidate Countries North Macedonia*, Montenegro*, Serbia*, Albania*, Ukraine, the Republic of Moldova, Bosnia and Herzegovina* and Georgia, as well as San Marino, align themselves with this statement.

Madam Chair,

Article 2 Definition of crimes against humanity

Central to the discussions on draft article 2 during the April 2023 session was the fact that the draft article was modelled on Article 7 of the Rome Statute of the International Criminal Court. Some delegations considered that, as the Rome Statute is not a universally accepted treaty, the definition set forth therein has not been universally accepted. They also considered that the definition is not reflective of customary international law.

We take this opportunity to clarify our position on these aspects.

The European Union and its Member States note that the definition of crimes against humanity in the Rome Statute enjoys wide acceptance. Article 7 of the Rome Statute has been developed through multilateral negotiations involving more than 160 States participating in the Diplomatic Conference in Rome in 1998. Hundreds of nongovernmental organizations also took part in the Diplomatic Conference. The support for the definition of crimes against humanity goes beyond the 124 States Parties to the Rome Statute. It is also important to note that the definition was not among the most controversial issues at the adoption of the Rome Statute, but rather the jurisdiction of the Court.

The definition therefore enjoys large acceptance. It is the outcome of 75 years of practice following on the Nurnberg Charter establishing the International Military Tribunal in 1945. Since then, crimes

* *North Macedonia, Montenegro, Serbia, Albania and Bosnia and Herzegovina continue to be part of the Stabilisation and Association Process.*

against humanity have been recognized and prosecuted by a number of international tribunals, such as the International Criminal Tribunal for Former Yugoslavia, the International Criminal Tribunal for Rwanda, the Special Court for Sierra Leone, the Extraordinary Chambers in the Courts of Cambodia or the International Criminal Court.

In light of its widespread acceptance and the extensive practice of international tribunals, we believe that the core of its definition is reflective of customary international law.

Nevertheless, for the purpose of discussing the draft Convention, the question of whether or not the definition of crimes against humanity is reflective of customary international law remains ultimately an academic one. As clarified in the ILC commentaries, codification of existing law was not the objective of the draft articles. A codification task would have entailed an in-depth assessment of the customary international law status of each norm, which the ILC did not deem necessary. The objective of the ILC was rather to draft articles that would be both effective and acceptable to States. Our focus - and our challenge at the same time - should therefore be to agree on a definition that is both effective and acceptable, that reflects the normative progress made throughout the years, while at the same time it avoids the fragmentation of law.

Last session we also heard a number of delegations raising concerns with the ‘definitions within the definition’. That was the case, for instance, with the definitions of ‘persecution’, ‘enforced disappearance of persons’ or ‘enslavement’. Should there be broad support in favor of amending the definitions proposed by the ILC, we could further consider them.

We remain of the view that the ‘attack directed against any civilian population’ must be either ‘widespread’ *or* ‘systematic’. These are not cumulative conditions. The practice of international tribunals is clear on this aspect, as illustrated in the ILC commentaries.

Lastly, we welcome the ‘without prejudice’ clause in paragraph 3 of draft article 2 that does not affect broader definitions contained in national law, other international instruments or in customary international law. The definition contained in draft article 2 is thus the floor not the ceiling for national legislators.

Article 3 General obligations and Article 4 Obligation of prevention

Articles 3 and 4 are key as they set out the two-fold obligation of States: to prevent *and* punish crimes against humanity. The ultimate aim of the draft articles is to protect humanity by preventing crimes against humanity to occur. The obligation of prevention is therefore paramount. Whenever humanity fails and crimes against humanity do occur, States are under the obligation to punish them.

Failure to fulfil such obligations may engage the responsibility of State under the rules on the responsibility of States for internationally wrongful acts. This is however without prejudice to the criminal accountability that individuals committing such crimes may incur.

In the last session, some delegations also took the view that crimes against humanity must be linked to an armed conflict and cannot occur during peacetime. Based on the assessment of the State practice and the jurisprudence of international tribunal since Nurnberg, and the dire reality on the ground, we remain of the view that crimes against humanity may occur during an armed conflict *and* in peacetime. The wording ‘whether or not committed in time of armed conflict’ in Article 3(2) is a welcome clarification in that regard. The clarification in Article 3(3) that no exceptional circumstances whatsoever, such as armed conflict, may be invoked as a justification for crimes against humanity is equally very important.

The obligation to prevent is one of conduct, rather than one of result. The language in draft article 4 suggests that States are obliged to take specific actions (conduct) to prevent crimes against humanity rather than guaranteeing a specific outcome (result). Such conduct may include enacting domestic legislation, investigating and prosecuting the responsible individuals or cooperating with the international community. States are expected to exercise due diligence in fulfilling the obligation to prevent crimes against humanity.

I thank you.

