

**Permanent Mission of India to the UN
New York

Resumed Session of the Sixth Committee

**CRIME AGAINST HUMANITY
1 to 5 April 2024**

Wednesday, 4th April, 2024

India's Preliminary Comments with regard to CLUSTER – 5

Thematic Debate on Draft Articles 5, 11 and 12 of ILC Draft Articles on the Prevention and Punishment of Crimes against Humanity

Regarding Draft Article 5 (Non-refoulement)

My delegation considers that the use of word “shall” in paragraph 1 of Draft Article 5, makes it obligatory on a State not to expel/return persons within its territory to the requesting State. However, by incorporating the word “believing” in the same paragraph coupled with the formulation of paragraph 2 of draft Article 5, puts forward such a criterion for refusal to extradite which may be abused due to politically motivated considerations. This may lead to impunity or arbitrary implementation of justice.

Besides, this Article has the effect of overriding the existing bilateral treaties between States concerning extradition and/or mutual legal assistance.

Draft Article 12 (Reparation)

We are of the considered opinion that because of the differences between national legal systems, it should be left to the discretion of each State to determine the form and scope of reparation for victims, such as whether or not to include “moral damages” within the scope of reparation.
