

Statement by the Government of Japan
Resumed Sixth Committee Session on Crimes against Humanity
Cluster 5
United Nations General Assembly, Seventy-Eighth session
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Draft article 5 refers to the prohibition on expelling, returning (refouling), surrendering or extraditing a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to a crime against humanity. Japan notes with concern whether this is identical to or expands the scope of the existing principle of non-refoulement, which prohibits a State from expelling or returning a person within its territory to where his or her life or freedom would be at risk, as defined in the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as the International Convention for the Protection of All Persons from Enforced Disappearance. Japan requests that this point should be clarified.

From a practical point of view, Japan believes that further discussion and clarification are needed on how a government considering an expulsion, return, surrender or extradition should apply the following requirements: “substantial grounds for believing that he or she would be in danger of being subjected to a crime against humanity” in another country, and “as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack”.

Further, as stipulated in Article 102 of the Rome Statute, it is generally understood that surrender means the delivering up of a person by a State to “the Court” while extradition means the delivering up of a person by one State to “another State”. Draft article 10 also makes such distinction. Japan considers that we would need to clarify if it is appropriate to use the word “surrender” in draft article 5 even though the destination is limited to “another State”.