



78<sup>th</sup> Session of the General Assembly

Sixth Committee

Item 80: Crimes against humanity

Thematic Cluster 05 – Safeguards

Draft Articles 05 (Non-refoulement), 11 (Fair treatment of alleged offender) and 12 (Victims, witnesses and others)

Statement by the Permanent Representative of Sri Lanka,

H.E. Ambassador Mohan Pieris

04<sup>th</sup> April 2024

Mr. Chairman,

We focus today on Article five, eleven and twelve which collectively deals with the safeguards as set out in the draft articles. The draft articles focus on the principle of non-refoulement. You will recall that the principle was incorporated in several treaties during the 20th century, including the Fourth Geneva Convention in which common Article Three implicitly includes the obligation on non-refoulement. This principle has been put in place in respect of all aliens and not limited to refugees as popularly thought. The principle of non-refoulement often finds accommodation in extradition treaties. The principle has been recognized in eleven and thirteen that we are considering, suffice to say that this is a salutary safeguard. Then, we have article eleven, which speaks a fair treatment of another defender, including a fair trial and a complete guarantee of its rights under national and international human rights and international humanitarian law.

Mr. Chairman,

It is important to appreciate that the protection of draft article eleven, recognizes the right of such person who is not of the same nationality, who is in custody, and continues to guarantee him that production throughout the proceedings. We might bear in mind that the ICCPR in article fourteen, sets out the standards to be applied to ensure fair treatment and finally we have article twelve, which sets out the all important principle that have not been sufficiently I think, considered until recent times, and that is the protection of victims and witnesses and others to complain of the commission of a crime against humanity that has affected them.

Mr. Chairman,

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 at the matter of the rights of victims and witnesses were addressed effectively. Regrettably, many treaties did not define the term, allowing states to apply the existing law and practice along as it was consistent with international law.

The 2006 International Convention on the Protection of all persons from enforced disappearances, the convention of cluster munitions referred to victims. It is interesting to note that whilst the 1984 Convention against torture, and other cruel, inhuman and degrading treatment, or punishment, did not define the term victim, it did comment threees and set out three guidance notes on who would be treated as a victim. However, the term victim was available to be understood in terms of the guidance that was available in the rules of the tribunal, such as rule 85A of the rules of procedure of the ICC.

Mr. Chairman,

It would appear that what is left to be considered is a post crime scenario is the accept of reparation for materials and moral damage on an individual or collective basis for restitution for compensation, satisfaction, rehabilitation, and finally, a cessation and guarantee that it will never happen again. In other words, simply put a mechanism for restorative justice. We remember that resolution three of February 46 calling on stage to cooperate in the capture, extradition of war criminals was one of the initial steps. Later that year, we had the Charter of the Nuremberg Tribunal, and its judgment in resolution 95, which was later codified. We then, had the Convention on the Prevention and Punishment of the Crime of Genocide followed by a

series of resolutions that culminated with Resolution 3074 in 1973 which set out the principles of international cooperation in the detection, arrest, extradition, and punishment of persons guilty of war crimes and crimes against humanity.

Mr. Chairman,

In 2005 the General Assembly announced a set of basic principles and guidelines on the right to a remedy and reparation for victims of violations of international human rights and a serious violation of international humanitarian law. In 1997, we had resolutions 52/135, we had a group of experts were required to evaluate the existing material, and amongst other things, address the issues of individual accountability. We have thereafter a series of procedures that address this issue in different parts of the world.

This draft, Mr. Chairman, brings home the message that there is no safe houses for those engaging in crimes against humanity, but when apprehended will be afforded the protection of the law.

I thank you, Mr. Chairman.