



## Resumed Session of the Sixth Committee

Agenda item 80 'Crimes against humanity'

Cluster II - Definition and general obligations (Articles 2, 3 and 4)

Mister Chair,

Romania fully aligns with the statement delivered on behalf of the European Union and its Member States and would like to add the following remarks in its national capacity.

As agreed for the purposes of our substantive discussions, we will tackle the questions falling under Cluster II, namely the definition of crimes against humanity and general obligations (Articles 2, 3 and 4).

#### Draft article 2

We continue to support the approach taken by the Commission not to depart from the similar provision of the Rome Statute of the International Criminal Court defining crimes against humanity.

Besides ensuring consistency and preventing normative fragmentation, for the 124 States Parties to the Rome Statute, including Romania, the current drafting ensures respect for and consistency with existing obligations.

Despite some concerns expressed during the previous resumed session, we are of the firm view that the inclusion of this definition in a future treaty does not affect the status or the obligations or lack thereof for the States that are not Parties to the Rome Statute.

The drafting reflects a solid contemporary definition of crimes against humanity, which is widely endorsed and accepted.

We are cognizant that there might be other elements that will need to be updated to reflect the evolutions since the negotiations of the Rome Statute. We have listened with interest to some proposals in this direction made during the first resumed session. They are relevant and can be expanded during a future negotiation stage. At the same time, it is critical to minimize any risks to the stability of the definition and to avoid undermining critical elements of established international criminal law.

Considering the explanations provided in the commentaries, we continue to endorse the decision of the Commission to leave out the definition of gender in the present draft articles. We also welcome the without prejudice clause in paragraph 3 of draft article 2.

#### Draft article 3

We share the Commission's view on the general obligation "not to engage in acts that constitute crimes against humanity" entailing two aspects: an obligation for the State not to commit the acts through its own organs or persons within its control and an obligation not to aid or assist another State in the commission of an internationally wrongful act.

In our view, the clarification in paragraph 2, according to which crimes against humanity are offences under international law, irrespective of being committed in an armed conflict or during peacetime, is crucial. The conduct constituting that type of crime does occur in times of peace as well.

We also support the inclusion of a clause stating that no exceptional circumstances whatsoever may be invoked as a justification of crimes against humanity.

#### Draft article 4

Draft Article 4 is an important pillar of the text and we endorse the Commission's approach to strive for a robust provision on the obligation to prevent the commission of crimes against humanity.

The ILC's approach is consistent with existing treaty practice.

We also take note of the fact that the Commission avoided being overly prescriptive in the drafting of this provision, leaving a significant margin of appreciation to States on the precise measures to effectively prevent crimes against humanity.

While the extend and nature of the obligations in this article were seen by some delegations as lacking clarity, we favour the view that a certain degree of flexibility is ultimately meant to ensure better implementation through adaptation to specific contexts. National authorities will be able to build on existing national preventative measures.

Thank you!