

**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

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

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

. That was the case

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

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

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.

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.

