

United States Statement
April 2023 Resumed Session of the Sixth Committee
ILC's Draft Articles on the Prevention and Punishment of Crimes against Humanity
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Nonetheless, we think there is value in States giving further consideration to the definition of crimes against humanity in the Draft Articles. As noted in the United States' previous written observations, some of the terms used in Draft Article 2, in our view, lack clarity, which could create challenges for prosecutions under any future convention based on this definition. We note, in this regard, the important role that the ICC Elements of Crimes have played in clarifying the definition of crimes against humanity in the Rome Statute. We think further consideration should be given to whether aspects of the ICC Elements of Crimes could be drawn on here, where appropriate, to help clarify the definition in Draft Article 2.

We also note that Draft Article 2 differs in certain respects from Article 7 of the Rome Statute. Notably, Draft Article 2 does not include the definition of "gender" found in Article 7 of the Rome Statute, which we view as a positive change.

Turning to Draft Article 3, the United States welcomes the fact that the Draft Article draws inspiration from Article I of the Genocide Convention in providing that States undertake to prevent and punish crimes against humanity and clarifying that crimes against humanity are crimes under international law, whether or not committed in time of armed conflict. The United States also appreciates the clear statement, inspired by Article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, that no exceptional circumstances may be invoked as a justification for crimes against humanity. These principles are, in our view, of critical importance if States are to effectively prevent and punish crimes against humanity.

With respect to Draft Article 4, we welcome the clarification that efforts to prevent crimes against humanity must be undertaken in conformity with applicable international law. In our view, it would be useful to clarify that efforts to punish crimes against humanity also must be undertaken in conformity with applicable international law, including fair trial guarantees.

With regard to sub-paragraph (a), we note that States should take effective legislative, administrative, and judicial measures to prevent crimes against humanity, including crimes against humanity committed by their personnel outside their territory. With respect to sub-paragraph (b), we appreciate that Draft Article 4 draws attention to the significant role that international cooperation plays in efforts to prevent crimes against humanity. However, as reflected in the United States' previous written observations, we have questions and concerns about its scope, including with respect to the obligation to cooperate with other States and relevant international organizations, recognizing there may be circumstances where such cooperation might not be warranted.

Thank you, Madame Chair