

**Response of New Zealand to the request of the General Assembly of resolution
77/249 for Comments and Observations on the International Law Commission's
Draft Articles on Crimes against Humanity**

Preliminary comments and observations

1. Crimes against humanity, alongside genocide and war crimes, represent the most serious crimes of concern to the international community as a whole. Unlike genocide and war crimes, there is no dedicated multilateral treaty addressing the prevention and punishment of crimes against humanity, leaving a gap in the international treaty law framework. New Zealand reaffirms its position that the International Law Commission's ("ILC") Draft Articles on the Prevention and Punishment of Crimes against Humanity ("Draft Articles") present an important opportunity to close this gap.
2. Crimes against humanity are well-founded in customary international law, and addressed in some treaties including the Rome Statute of the International Criminal Court ("ICC"). While the Rome Statute significantly progressed the work of defining crimes against humanity and addressing impunity in respect of such crimes, it does not resolve the legal gap that remains in respect of their prevention and punishment.
3. A future convention will strengthen inter-State cooperation and build national capacities to prevent, investigate and prosecute crimes against humanity by clearly defining a minimum standard framework for doing so. New Zealand considers that the Draft Articles constitute a strong basis on which to develop this future convention.
4. In addition to codifying existing customary international law, New Zealand sees a dedicated convention on crimes against humanity based on the Draft Articles as complementing and supplementing existing international law. We highlight the following two strengths of the Draft Articles in this regard:
 - a. The Draft Articles are grounded in existing international law. The language of the Draft Articles draws from and replicates existing provisions on prevention and punishment in other treaties, including Genocide Convention of 1948 and the Convention against Torture of 1984, which establish obligations agreed to by States.
 - b. The Draft Articles complement, rather than contradict, existing international legal regimes. The Draft Articles conceptualise States as the primary bearers of responsibility for investigating and strengthening State cooperation regarding the prevention, investigation and prosecution of such crimes. We consider that the Draft Articles enhance the ICC's complementarity regime, and help fill a gap in the existing treaty regimes relevant to crimes against humanity without conflicting with those regimes.

Specific comments

Fourth preambular paragraph

5. The fourth preambular paragraph recalls that the prohibition of crimes against humanity is not only a rule of customary international law, but also a peremptory norm of general international law (*jus cogens*). This language reflects the ILC's view and

accords with New Zealand's understanding of the peremptory character of the prohibition.

future convention to similarly take account of the reality that, unlike war crimes, crimes against humanity can occur at any time including outside of armed conflict.

Draft article 6: Criminalization under national law

10. Article 6 is central to the effectiveness of any future convention. National laws and prosecutions are indispensable facets of the international criminal justice framework. By establishing a harmonized minimum standard framework for criminalization under national law, article 6 will help address the risk of impunity with respect to crimes against humanity. This approach will mitigate potential loopholes that may result from diverging definitions under States' national laws.

11. New Zealand welcomes the approach taken by the ILC in article 6(3) to address the different modes of criminal responsibility for crimes against humanity while maintaining flexibility for the operation of national laws in the context of different legal systems, which we consider will facilitate effective domestic implementation.

12. New Zealand notes that it has criminalized crimes against humanity under its national laws under the [International Crimes and Criminal Court Act 2000](#).

Draft article 11: Fair treatment of the alleged offender

13. New Zealand welcomes the inclusion of the safeguards set out in article 11 which reference rights and guarantees under international law. We note the importance of due process considerations in the context of criminal law for safeguarding the rule of law. We observe that the approach taken by article 11 accords with other treaties addressing crimes.⁴

Draft article 12: Victims, witnesses and others

14. New Zealand welcomes the inclusion of article 12 addressing the t-12.1.1(o)h2.1.1(o)atb()0.7()