



## UNITED STATES MISSION TO THE UNITED NATIONS

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**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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United States Department of State  
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**Cluster 2 (Definition and General Obligations: Arts. 2, 3, and 4)**

Thank you, Madame Chair. The United States is pleased to address the provisions of the Draft Articles relating to the definition of crimes against humanity, the general obligations of States, and the obligation of prevention.

Turning to Draft Article 2, the United States notes that this is, in many respects, the most important provision of the Draft Articles, as the definition of crimes against humanity has implications for all of the obligations and rights set forth in the other provisions of the Draft Articles. We note, in particular, the critical role that the chapeau element plays in the definition of crimes against humanity—certain acts are crimes against humanity only when they are committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack. This element makes the constituent acts of crimes against humanity that would not already be violations of international law matters of international concern. The chapeau element is fundamentally consistent with international humanitarian law, under which making the civilian population the object of attack is prohibited and punishable as a war crime. This element also distinguishes crimes against humanity from other international crimes, such as genocide.

The United States recognizes at the outset that Draft Article 2 is drawn nearly verbatim from the definition of crimes against humanity in Article 7 of the Rome Statute of the International Criminal Court. We appreciate that State Parties to the Rome Statute may have an interest in ensuring that the definition of crimes against humanity in the Draft Articles is consistent with the definition of crimes against humanity in the Rome Statute. While the United States is not a party to the Rome Statute, we recognize that Article 7 of the Rome Statute provides the most comprehensive list of constituent acts of crimes against humanity in any multilateral instrument, including with respect to rape and other forms of sexual violence, which are far too often overlooked in efforts to hold accountable those responsible for atrocities.

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