

**ILC DRAFT ARTICLES ON CRIMES AGAINST HUMANITY
UK POSITION FOR SIXTH COMMITTEE SESSION 10-14 APRIL**

Thank you Madam/Mr Chair.

1. The UK will now comment on draft Articles 13, 14 and the Annex in turn.
2. As the UK noted with regards to draft Article 7 in Cluster 3, it is preferable for crimes to be prosecuted in the State in which they occurred but that given the seriousness of the crimes addressed by the draft Articles, it is right that the draft Articles include provisions covering extradition and mutual legal assistance (MLA) so that there is no safe haven for perpetrators.
3. It is important that the provisions of the draft Articles covering extradition and MLA are well understood and provide a predictable set of rules by which states can cooperate effectively to deal with alleged crimes against humanity.

Draft Article 13 – Extradition

4. With regards to the extradition provisions provided in the draft Articles the UK notes that these are based on similar provisions in the UN Convention Against Corruption (UNCAC) and we are generally supportive of the drafting.
5. Moving onto some of the specific subparagraphs of draft Article 13:

Draft Article 13(2) and (3) – future extradition treaties and “political offence”

6. In relation to draft Article 13(2) and (3) the UK would support an amendment of the draft Article to more closely reflect the UNCAC upon which they are based by including a reference to ‘domestic law provisions’ in both subparagraphs.

Draft Article 13(11) – Extradition Requests based on impermissible grounds

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7. The UK notes that the list of impermissible grounds has been expanded to reflect the list of factors found in draft Article 2(1)(h) and appears to be wider than those found in the treaties upon which these draft Articles are based such as UNTOC and UNCAC. We question whether this broader scope is necessary given that the commentary is clear that there is no obligation on the requested State to extradite if it is believed that the request is being pursued on grounds that are impermissible under international law.

Draft Article 14 – Mutual Legal Assistance

8. With regards to the MLA provisions set out in the draft Articles the UK notes that these are based on similar provisions in the United Nations Convention against Transnational Organized Crime (UNTOC) and UNCAC and we are generally supportive of the drafting. There are many instances where States cooperation is important. For survivors of crimes against humanity, including conflict-related sexual violence, the UK notes the importance of putting survivors at the heart of the evidence gathering process to avoid the need for multiple testimonies and thereby reducing the risk of retraumatisation.

9. We have further minor comments on drafts Articles 14(2) and (3), which will provide in writing later this year.

The Annex

10. We also have some minor comments on the Annex.

Paragraph 14 – Use of information by the requesting state

11. The UK notes that the current paragraph on confidentiality is based upon article 46, paragraph 20 of UNCAC. However, the UK would prefer slightly more detailed language in this instance.

Paragraph 16 – Video links

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12. Paragraph 16 concerns the use of the video links. In the view of the UK, the use of video links is an equally valid option rather than a secondary less attractive option, than appearing in person. Indeed, the importance of such options has become clearer in light of the global pandemic.

Paragraph 22 – Fiscal matters

13. Lastly, the UK notes that while most of the text has been taken from UNCAC, there is no text reflecting UNCAC Article 22 on Fiscal Matters which states that “*States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters*”. The UK would prefer if that language was included in the Annex to the draft Articles.

Possible treaty body monitoring mechanism

14. Lastly, in addition, the Special Rapporteur considered the issue of a monitoring mechanism in both his Third and Fourth Reports on crimes against humanity. Furthermore, the commentary to draft Article 8 highlights the effective role that treaty body monitoring mechanisms can have in ensuring oversight of states and their obligations in this area. There is often a divergence between practice and reality in the implementation of conventions. If a Convention was agreed, it would be imperative for future States Parties to effectively implement this convention. A monitoring mechanism could assist with prevention through consideration of ‘early warning signs’ of crimes against humanity and offer an opportunity to share States’ best practice including ways of strengthening implementation, for example domestic legislation to address issues such as conflict-related-sexual violence.

15. The UK would therefore be supportive of a monitoring mechanism in principle and agrees with the view of the Special Rapporteur that: “*such mechanisms might help ensure that States parties fulfil their commitments under the convention, such as with respect to adoption of national laws, pursuing appropriate preventive measures,*

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engaging in prompt and impartial investigations of alleged offenders and complying with their aut dedere aut judicare obligation.”¹

Thank you Mr/Madam Chair.

¹ Sean D. Murphy ‘Third report on crimes against humanity.’ 23 January 2017. A/CN.4/704 Available [here](#), at para 238.