

Written Comments and Observations of Ireland on the

Draft Articles on Prevention and Punishment of Crimes Against Humanity

1. Ireland welcomes the Draft Articles on the Prevention and Punishment of Crimes Against Humanity ('Draft Articles') and the commentaries thereto, adopted by the International Law Commission (ILC) at its 71st Session in 2019. Ireland continues to support the recommendation of the ILC on the elaboration of a convention by the General Assembly or by an international conference of plenipotentiaries on the basis of the Draft Articles and believes that the Draft Articles provide a solid, comprehensive basis for a future convention on crimes against humanity. Such a convention will close a significant impunity gap in the international treaty law framework.
2. Ireland welcomed the adoption of General Assembly resolution 77/249 of 30 December 2022, which decided that the Sixth Committee would resume its session in April 2023 and April 2024 to exchange substantive views on the Draft Articles and to consider further the ILC's recommendation. Ireland was encouraged by discussions at the April 2023 resumed session, where the majority of states was in favour of the elaboration of a convention on crimes against humanity. Ireland looks forward to the April 2024 resumed session. It is hoped that the remaining issues on which there was divergence can be narrowed at this session. Ireland is confident, however, that such divergences as continue thereafter will be resolved in the negotiations on the elaboration of a new convention.
3. It is in the spirit of continued engagement that Ireland offers the following comments and observations on certain Draft Articles. Ireland also aligns itself with the comprehensive written comments made by the European Union submitted to the Secretariat of the United Nations on 30 November 2023.

Draft Article 4 (Obligation of Prevention)

4. The extent of the obligation to prevent crimes against humanity could be made clearer, in particular with regard to the obligation to cooperate with 'relevant intergovernmental organizations and, as appropriate, other organizations.' Further elaboration of what precisely is envisaged by this obligation to cooperate may be necessary to ensure that states can fully and effectively discharge their duty in this regard, should a convention

be elaborated, and may be necessary to ensure that this provision is retained in any convention drafting process.

Draft Article 7 (Establishment of National Jurisdiction)

5. Ireland considers that this Draft Article provides for the exercise of ‘treaty-based quasi-universal jurisdiction’,¹ or of territorial jurisdiction over persons present in the forum state, albeit in respect of acts committed outside that state.² Ireland notes, however, the flexibility in the last paragraph to exercise other forms of criminal jurisdiction established by a state in accordance with its national law, which may include universal jurisdiction.
6. The establishment of the International Criminal Court has reduced the need for states to assert universal jurisdiction over the most serious crimes of international concern, as that Court may assume jurisdiction where the territorial state is unable or unwilling to do so.
7. Ireland concurs with the comments made by certain states that submitted information for the 71st session of the ILC in 2019, that there is insufficient clarity on concurrent jurisdiction in this Draft Article, and so would welcome further discussion on the prioritisation of jurisdictions here. Jurisdictional priority should be given to those states with the closest nexus to a crime, for example a state exercising its jurisdiction on the basis of one of the grounds set out in paragraph 1 of Draft Article 7, ahead of a state seeking to exercise its jurisdiction on the basis of the grounds in paragraph 2.

Draft Article 13 (Extradition)

8. Ireland is strongly opposed to the use of the death penalty in all cases and in all circumstances. The final and irreversible nature of the death penalty underlines the impropriety of its use as a criminal punishment. Accordingly, we continue to seek its universal abolition. We support an explicit reference to refusing extradition to a state that applies the death penalty without a guarantee by that state that the death penalty would not be used in the case of the person being extradited.

¹ James Crawford, *Brownlie’s Principles of Public International Law* (9th edn, Oxford university Press 2019) 454.

² *ICJ Arrest Warrant (DRC v Belgium)*, Separate Opinion of Judges Higgins, Kooijmans and Buergenthal, para 41.