



UNITED STATES MISSION TO THE UNITED NATIONS

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United States Statement
April 2024 Resumed Session of the Sixth Committee:
ILC's Draft Articles on the Prevention and Punishment of Crimes Against Humanity
Cluster 3 (National Measures: Arts. 6, 7, 8, 9, and 10)
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(as delivered on April 2, 2024)

Thank you, Madam Chair. The United States welcomes the opportunity to address the provisions of the Draft Articles relating to national measures. For a more detailed account of our thoughts on these articles, we refer you to our written comments submitted in December. At this time, we wish to highlight a few key items.

First, we note that the obligation contemplated by Draft Article 6, paragraph 1—to take necessary measures to ensure crimes against humanity constitute offenses under each State's criminal law—would be key to efforts to more effectively prevent and punish crimes against humanity and combat impunity through national efforts. We recognize there have been questions about whether criminalizing acts that constitute crimes against humanity would satisfy the requirements of this article. In doing so, we also note that, although crimes against humanity are not currently criminalized as such under U.S. law, existing U.S. laws could be used to punish constituent acts of crimes against humanity, such as the domestic crimes of murder, sexual violence, and human trafficking. However, the Biden Administration also supports draft legislation in the U.S. Congress to make crimes against humanity a specific offense in U.S. criminal law and, to that end, is engaging with members of Congress on this issue.

With regards to paragraph 3 of Draft Article 6, we recognize the importance of the doctrine of command responsibility to holding superiors who are responsible for serious international crimes accountable. Since World War II, this doctrine has played an integral role in holding military commanders and other superiors accountable for offenses committed by their subordinates when they have the requisite culpability. However, we recognize that States also may approach the concept of command responsibility—including its precise elements and its applicability to both military commanders and other superiors—in different ways. Accordingly, it is important that any future convention permit flexibility in how States implement their obligations with regard to indirect modes of liability and we welcome the views of other States on this issue.

Turning to Draft Article 8, we support a provision requiring States to conduct investigations of crimes against humanity. Such a duty is critical if crimes against humanity are to be effectively prevented and punished. However, aspects of Draft Article 8 may warrant further discussion. For example, it is important for States to investigate allegations that their officials have committed crimes against humanity abroad.

Finally, with respect to Draft Articles 8, 9, and 10, the United States believes further clarification regarding the situation of alleged offenders who have already been the subject of genuine investigation or other proceedings by their State of nationality should be considered. It could be a source of international tension if persons who already were genuinely investigated or even prosecuted for allegations of crimes against humanity by a State were the subject of duplicative or conflicting proceedings in another State.

Thank you, Madam Chair.