



## 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 5 (Safeguards: Arts. 5, 11, and 12)**  
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**(as prepared)**

Thank you, [Mr./Madame Chair]. The United States welcomes the opportunity to address the provisions of the Draft Articles relating to safeguards.

Addressing Draft Article 5, the United States recognizes the critical role that the principle of non-refoulement has in protecting individuals from certain acts prohibited under international law. Specifically, the non-refoulement provisions of the 1951 Convention Relating to the Status of Refugees and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment are essential to ensuring that individuals around the world are protected from return to countries where they face persecution or torture. We note that many of these individuals would receive complementary protection under Draft Article 5. That said, we acknowledge that some States have faced challenges in implementing their non-refoulement obligations and recognize the concerns that other delegations have previously raised. Accordingly, we think the non-refoulement obligation contemplated by Draft Article 5, and its potential scope, would be important topics for States to further consider during any future negotiation of a draft convention on crimes against humanity.

With respect to Draft Article 11, the United States notes that it reflects an important principle recognized by the International Military Tribunal at Nuremberg, and subsequent conventions, such as, the 1949 Geneva Conventions, the International Covenant on Civil and Political Rights and the Convention against Torture: that any person charged with a crime under international law must be treated fairly during all stages of the proceedings. It is the view of the United States that references to fair trial guarantees would be an important element of any future convention on the prevention and punishment of crimes against humanity. Nevertheless, we note that Draft Article 11 could be clearer and more effective by specifying which rights under applicable national or international law, including international human rights law and international humanitarian law, are included.

With respect to Draft Article 11(2), we also share the concerns expressed by several other delegations in the April 2023 resumed session that it does not precisely follow the language used in Article 36 of the Vienna Convention on Consular Relations, and instead alters the formulation in ways that deviate from Article 36. Furthermore, we reiterate that the “rights” of consular

notification and access described in Article 36 belong to States, not individuals and, as such, they are not enforceable by private individuals. We would also welcome further discussion by others with respect to the novel language on stateless persons in Draft Article 11(2)(e).

Turning to Draft Article 12, the United States welcomes the focus placed on the rights of victims, their relatives and representatives, and witnesses, who play a key role in proceedings relating to crimes against humanity. Ensuring that such individuals have the opportunity to be heard, not subjected to retaliation, and able to obtain redress, as appropriate, is critical to holding those responsible for crimes against humanity accountable and providing victims and their families with some measure of justice. Accordingly, we view Draft Article 12 as an important step in that regard.

Nonetheless, we do have questions about the “right to obtain reparation.” Recognizing that States may address issues relating to remedies in their domestic legal systems in a range of different ways—that the context of armed conflict may give rise to important differences and that provisions of widely ratified treaties, such as the Convention against Torture, provide useful models—the United States believes there would be value in further discussion of this concept and is interested in hearing the views of other States.

Thank you, [Mr./Madam Chair].