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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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Cluster 1 (Introductory Provisions: Preamble and Article 1)

Thank you, Mr. Chair. The United States welcomes this opportunity to exchange substantive views with other States on the International Law Commission's Draft Articles on the Prevention and Punishment of Crimes against Humanity. We were proud to join over eighty other co-sponsors of resolution 77/249, which called for this Resumed Session, and we wish to thank the Commission and Special Rapporteur Sean Murphy, in particular, for their valuable contributions to this important project.

The United States has a long and proud history of supporting accountability for those responsible for crimes against humanity, dating back to the instrumental role the United States played in the first prosecution of such crimes before the International Military Tribunal at Nuremberg. We would like to take a moment here to acknowledge, in particular, the extraordinary life and legacy of Ben Ferencz, who passed away on April 7th. After prosecuting perpetrators of crimes against humanity and other atrocities at the Nuremberg Military Tribunals, Mr. Ferencz dedicated his life to advocating for greater international cooperation in holding accountable those responsible for international crimes. His courage, vision, and commitment to international justice should serve as an inspiration to all of us.

More than 75 years after the Nuremberg trials, there is no general multilateral convention on the prevention and punishment of crimes against humanity. Meanwhile, crimes against humanity continue to be committed – all too often with impunity.

The Draft Articles are an important step in that regard. Accordingly, during the Sixth Committee discussions last year, the United States supported an in-depth discussion of the substance of the Draft Articles in a dedicated time and place apart from the usual busy Sixth Committee regular discussions. This Resumed Session is not the place to engage in negotiations of the Draft Articles and does not prejudge the question of whether to launch a process to negotiate a convention on crimes against humanity. Rather, it is an opportunity to exchange views, including expressions of support, concerns, and any relevant observations about the Draft

Articles. We very much look forward to a robust and fruitful discussion.

Turning now to Cluster 1, the United States notes at the outset the important role that the Preamble and Draft Article 1 play in the overall structure of the Draft Articles. We were pleased, in particular, to see that the Preamble draws inspiration from language used in the Convention on the Prevention and Punishment of the Crime of Genocide in setting out the general context and the main purpose of the Draft Articles. The United States views the Genocide Convention, in many respects, as the primary model for any future convention on the prevention and punishment of crimes against humanity.

Nonetheless, we think Draft Article 1 could be clarified in certain respects. For instance, nothing in the Draft Articles should be construed as authorizing any act of aggression or any other use of force inconsistent with the Charter of the United Nations. The Draft Articles should guard against the possibility that the duty to prevent and punish crimes against humanity could be used as a pretext for unlawful uses of force. Similarly, we believe the language should be clearer that the Draft Articles would not modify international humanitarian law, which is the *lex specialis* applicable to armed conflicts. We would not want the Draft Articles to be interpreted in ways that may purport to alter international humanitarian law or criminalize conduct undertaken in accordance with international humanitarian law.

With those observations in mind, we appreciate the interventions made earlier today and we look forward to hearing from others about the value of this initiative given the need for the international community to do more to work toward the prevention and punishment of crimes against humanity the world over.

Thank you, Mr. Chair.