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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
Cluster 3 (National Measures: Arts. 6, 7, 8, 9, and 10)
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Thank you, Madame Chair. The United States welcomes the opportunity to address the provisions of the Draft Articles relating to national measures.

Turning to Draft Article 6, we note that the obligation contemplated by 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. In that regard, we note that, although crimes against humanity are not criminalized as such under U.S. law, many existing U.S. laws could be used to punish conduct that constitutes crimes against humanity, such as the domestic crimes of murder, sexual violence, and human trafficking. The Biden Administration has expressed its support for a proposed statute that would make crimes against humanity offenses under U.S. criminal law. This proposal remains a topic of discussion in the United States Congress.

Moving to the other paragraphs of Draft Article 6, we note that they reflect, in many respects, important principles recognized by the International Military Tribunal at Nuremberg that would be critical to the effectiveness of any future convention on the prevention and punishment of crimes against humanity. These include the principle that any person who commits, orders, or otherwise is complicit in crimes against humanity is liable to punishment and the principle that acting pursuant to an order of a government or superior does not relieve a perpetrator of a crime against humanity from responsibility.

With respect to the modes of liability encompassed by Draft Article 6, paragraph 2(c), we note that it would be vital for any future convention on crimes against humanity to address both direct and indirect modes of liability. However, we recognize that States' domestic criminal systems vary, and States may take different approaches to questions of complicity, whether they view it primarily through the lens of accomplice liability, conspiracy, participation in a joint criminal enterprise, common purpose, or another mode of responsibility. Accordingly, we think it would be important for any future convention to allow for flexibility in how States implement

their obligations in that regard.

With respect to Draft Article 6, paragraph 3, we recognize the importance of the doctrine of command responsibility to holding accountable those superiors who are responsible for serious international crimes. 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. To that end, we are particularly interested in hearing the views of other States on this issue.

With respect to Draft Article 6, paragraph 8, which addresses the liability of “legal persons,” we note that there is no universally recognized concept of criminal responsibility for legal persons in international criminal law. We appreciate that paragraph 8 acknowledges as much by expressly providing that national laws and “appropriateness” may dictate whether and how States establish liability for “legal persons.” Nonetheless, we think there could be value in further discussion of this concept.

With regards to Draft Article 8, we support a provision requiring States to conduct investigations of crimes against humanity. The duty of States to undertake such investigations 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.

The United States believes that Draft Article 9 seeks to address important practical issues in securing custody of alleged offenders. However, in the United States’ view, the Draft Article warrants further consideration in light of other obligations States may have. For example, a State may have obligations under a status of forces agreement with regard to an alleged offender in its territory.

With respect to Draft Article 10, the United States welcomes the inclusion of a provision in the Draft Articles that would require States, if they do not extradite or surrender an offender in their territory, to submit the case to competent authorities for the purpose of prosecution. Similar provisions in other instruments have played an important role in helping States prevent and punish other acts prohibited under international law, such as torture. For any future convention on crimes against humanity to be effective, such a provision, in our view, would be critical.

With regard to Draft Articles 8, 9, and 10, the United States believes it would be useful to clarify the situation of alleged offenders who already have been the subject of genuine investigation or other proceedings by their State of nationality. 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 their State were the subject of duplicative or conflicting proceedings in another State.

Thank you, Madam Chair.