



## UNITED STATES MISSION TO THE UNITED NATIONS

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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 5 (Safeguards: Arts. 5, 11, and 12)**  
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**United States Department of State**  
**April 13, 2023**

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

With respect to Draft Article 5, the United States recognizes the important role that the principle of non-refoulement plays in protecting individuals from certain acts prohibited under international law. The non-refoulement provisions of the Convention Relating to the Status of Refugees and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, for example, are critical 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. At the same time, we are cognizant of the fact that some States have faced challenges in implementing their non-refoulement obligations and note that Draft Article 5, in contrast to Article 33 of the Refugee Convention, provides for no exceptions. In that regard, we think the non-refoulement obligation contemplated by Draft Article 5, and its potential scope, would be important topics for States to further consider in connection with any future convention on the prevention and punishment of crimes against humanity.

Turning to Draft Article 11, the United States notes that it reflects an important principle recognized by the International Military Tribunal at Nuremberg: that any person charged with a crime under international law must be treated fairly during all stages of the proceedings. This principle is reflected in other instruments, such as the International Covenant on Civil and Political Rights and the Convention against Torture. In our view, references to fair trial guarantees would be an important element of any future convention on 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 12, the United States welcomes its focus 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 they are 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. Draft Article 12 is 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—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, Madam Chair.