



## UNITED STATES MISSION TO THE UNITED NATIONS

799 UNITED NATIONS PLAZA  
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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 2 (Definition and General Obligations: Arts. 2, 3, and 4)**  
**Interventions by Hawa Ghaus, Senior Advisor**  
**Office of Global Criminal Justice, US Department of State**  
**(as delivered on April 2, 2024)**

Thank you, Madame Chair. The United States is pleased to address the provisions of the Draft Articles relating to the definition of crimes against humanity, the general obligations of States, and the obligation of prevention.

The United States notes that Draft Article 2 is, in many respects, the most important provision of the Draft Articles, as the definition of crimes against humanity has implications for all of the obligations and rights set forth in the other provisions of the Draft Articles. We note the critical role that the chapeau element plays in the definition of crimes against humanity—this element makes the constituent acts of crimes against humanity that would not already be violations of international law matters of international concern. The chapeau element is fundamentally consistent with international humanitarian law, under which making the civilian population the object of attack is prohibited and punishable as a war crime. This element also distinguishes crimes against humanity from other international crimes, such as genocide.

The United States recognizes that Draft Article 2 is drawn nearly verbatim from the definition of crimes against humanity in Article 7 of the Rome Statute of the International Criminal Court (ICC). We appreciate that State Parties to the Rome Statute may have an interest in ensuring that the definition of crimes against humanity in the Draft Articles is consistent with the definition of crimes against humanity in the Rome Statute. Some delegations have raised concerns about references in the Draft Articles to the Rome Statute, including in the preamble to the Draft Articles, and object to its inclusion on the basis of not being a party to the Rome Statute.

The United States is not a party to the Rome Statute. Yet, the United States considers the definition of crimes against humanity in the Rome Statute to largely reflect customary international law. Accepting the definition used in the Rome Statute or, as we are doing here, using that definition as a basis for further work, does not constitute acceptance or endorsement of the Rome Statute or of the jurisdiction of the ICC. The question should be whether the definition itself is a good basis for future deliberations. As a non-State party to the Rome Statute, the

United States supports using this definition, as the ILC has done, as the basis for potential negotiations.

In doing so, we also note that Article 7 of the Rome Statute provides the most comprehensive list of constituent acts of crimes against humanity in any multilateral instrument, including with respect to rape and other forms of sexual violence, which are far too often overlooked in efforts to hold accountable those responsible for atrocities.

That being said, we think there is value in States giving further consideration to the definition of crimes against humanity. As noted in the United States' previous written comments, some of the terms used in Draft Article 2, in our view, lack clarity. We note the important role that the ICC Elements of Crimes have played in clarifying the definition of crimes against humanity in the Rome Statute. We think further consideration should be given to whether aspects of the ICC Elements of Crimes could be drawn on here, where appropriate, to help clarify the definition in Draft Article 2.

We also note that Draft Article 2 differs in certain respects from Article 7 of the Rome Statute. For example, Draft Article 2 does not include the definition of "gender" found in Article 7 of the Rome Statute, which we view as a positive change. We also acknowledge efforts by civil society to encourage States to consider gender within the framework of the "crime of apartheid" in any future convention relating to crimes against humanity and welcome thoughts from other States on this issue.

Moving to Draft Article 3, the United States welcomes the fact that the Draft Article draws inspiration from Article I of the Genocide Convention. However, as a point of clarification, we believe Article 3(2) might be expanded slightly to confirm that crimes against humanity can be committed by both state and non-state actors.

Turning to Draft Article 4, we welcome the clarification that efforts to prevent crimes against humanity must be undertaken in conformity with applicable international law. In our view, it would be useful to specify that the Draft Articles should not be construed as authorizing any use of force inconsistent with the Charter of the United Nations and to clarify that efforts to punish crimes against humanity also must be undertaken in conformity with applicable international law, including fair trial guarantees.

With respect to sub-paragraph (a), we note that States should take effective legislative, administrative, and judicial measures to prevent crimes against humanity, including crimes against humanity committed by their personnel outside their territory. We appreciate that Draft sub-paragraph (b) draws attention to the significant role that international cooperation plays in efforts to prevent crimes against humanity. However, as reflected in the United States' previous written comments, we have concerns about its scope, including with respect to the obligation to cooperate with other States and relevant international organizations, recognizing there may be circumstances where such cooperation is not appropriate.

Thank you, Madam Chair.