



In August 2019, the U.N. International Law Commission recommended:

“the elaboration of a convention by the General Assembly or by an international conference of plenipotentiaries on the basis of the draft articles.”

(A/74/10, p. 10, para. 42)

Why a New Treaty on Crimes Against Humanity?

An Analysis of the International Law Commission’s 2019 Draft Articles

What are crimes against humanity?

► Crimes against humanity, as defined in the ICC Statute and the ILC Draft, are any of the following acts, when committed as part of a widespread or systematic attack, directed against any civilian population, pursuant to a State or organizational policy:

murder; extermination; enslavement; deportation or forcible transfer of population; imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; torture; rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; persecution; enforced disappearance of persons; the crime of apartheid; and other inhumane acts.

What is the purpose of this new treaty?

► A new treaty on crimes against humanity will remedy an important gap in international law. Crimes against humanity were prosecuted after World War II, but no comprehensive treaty for their prevention and punishment was adopted.

► Because crimes against humanity are international crimes, States require a specialized regime that addresses these crimes’ definition, modes of liability, and statutes of limitation, as well as how to investigate and punish them.

► The new treaty requires States to prevent crimes against humanity.

► The new treaty complements the ICC Statute by providing States with incentives and tools to prevent and punish these crimes at the national level.

How were the International Law Commission’s Draft Articles developed?

► The [Crimes Against Humanity Initiative at Washington University Law School](#) began studying the need for a new convention in 2008 and drafted a model treaty after consulting more than 250 experts worldwide.

► In 2013, the ILC added crimes against humanity to its program of work. It completed a First Reading in 2017; received comments from States, international organizations, and civil society until December 1, 2018; and then finalized the Draft Articles and Commentary in August 2019.

► The Sixth Committee considered the Draft Articles in 2019, however the COVID-19 pandemic and other factors blocked progress for the next two years.

► In 2022, UNGA Resolution 77/249, cosponsored by 86 States, and supported by 100 States, was adopted. It sets out a two-year timeline for the exchange of “substantive views” on “all aspects” of the Draft Articles in an “interactive format.” A first meeting was held in April 2023, and more discussions ensued in October 2023. .

► Under the Resolution, States will meet again from April 1-5 & 11, 2024. They will then “take a decision” on the Draft treaty in October 2024. States submitted written comments and observations in 2023, which are available [here](#).

► **The ILC’s text is a draft. States and civil society are currently considering it and may propose changes or amendments to the text.**



What are the main features of the 2019 Draft Articles?

- ▶ They emphasize the peremptory, *jus cogens*, nature of crimes against humanity (preamble);
- ▶ They establish **prevention** of crimes against humanity as a core international obligation (Article 4);
- ▶ They **define crimes against humanity**, consistent with Article 7 of the ICC Statute (Article 2);
- ▶ They require **criminalization** of crimes against humanity by States (Article 6);
- ▶ They impose **duties on States to investigate** crimes against humanity (Article 8);
- ▶ They establish **State responsibility** for crimes against humanity (Article 3);
- ▶ They create a **strong procedural regime** for extradition and mutual legal assistance (Articles 13 and 14);
- ▶ They establish State **jurisdiction** (Article 7);
- ▶ They codify the obligation of *aut dedere aut judicare* (Article 10);
- ▶ They contain a **dispute resolution** clause to resolve disputes regarding the treaty's interpretation and application (Article 15);
- ▶ They provide victims with a right to **reparations** (Article 12(3));
- ▶ The Draft Articles also clarify many subsidiary legal elements, including:
 - ▶ **Irrelevance of official position** in criminal responsibility (Article 6(5));
 - ▶ **Liability for legal persons** (Article 6(8));
 - ▶ **Non-applicability of statutes of limitation** (Article 6(6));
 - ▶ **Modes of liability**, including command responsibility (Articles 6(2) & 6(3));
 - ▶ **Fair treatment of the alleged offender**, including consular assistance (Article 11);
 - ▶ **Protection for victims and witnesses** (Article 12); and
 - ▶ The principle of **non-refoulement** (Article 5).

How do the ILC's Draft Articles relate to the International Criminal Court Statute?

- ▶ The Draft Articles were written to be compatible with the ICC Statute.
- ▶ The ICC only acts when States are unable or unwilling to do so. National jurisdictions have the primary responsibility of preventing and punishing serious crimes under international law. The proposed treaty promotes positive complementarity with the ICC.



Crimes Against Humanity
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Members

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For more information, go to
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