CRIMES AGAINST HUMANITY INITIATIVE

INITIATIVE SUR LES CRIMES CONTRE L'HUMANITÉ

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MONITORING MECHANISM

ABILA STUDY GROUP

CRIMES AGAINST HUMANITY

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MONITORING MECHANISM

Proposed Article(s) XX of the Draft Articles on Prevention and Punishment of Crimes Against Humanity [ILC Draft]

Article(s) XX

There shall be established XX (hereinafter referred to as XX) which shall carry out the following functions to give effect to States Parties' obligations under the Convention to:

(a) provide consistent interpretation and guidance on the terms of the Convention and their application;
(b) coordinate capacity-building and technical assistance;
(c) facilitate international cooperation and mutual assistance; and
(d) monitor and promote treaty compliance across States Parties to the Convention.

[…]

Explanatory Notes

INTRODUCTION

1. This text proposes new Article(s) that would establish a mechanism for monitoring the Convention on the Prevention and Punishment of Crimes against Humanity. A treaty-based monitoring mechanism is necessary for implementing the Convention's object and purpose. The proposed mechanism would focus on States' responsibilities to do everything within their power to prevent and punish these international crimes. Such crimes deeply shock the conscience of humanity, are prohibited as peremptory norms, and constitute a threat to international peace and security.[1]

[1] UNGA, 'Report of the International Law Commission (71st Session), Text of the Draft Articles on Prevention and Punishment of Crimes Against Humanity and Commentaries Thereto' (20 August 2019) UN Doc A/74/10 [hereinafter "ILC Draft Articles"], preamble. See also Sierra Leone's comments on the ILC Draft Articles, stating that "such a [monitoring] body should reflect the lessons learned and best practices developed by such bodies to lessen reporting burdens on states. It should, of course, be comprised of independent experts serving in their personal capacities. That might better assist in the proper monitoring and implementation of a future crimes against humanity convention." International Law Commission, 'Crimes against Humanity: Comments and Observations Received from Governments, International Organizations and Others' (21 January 2019) UN Doc A/CN.4/726, 19.

2. This proposal envisages three separate mechanisms: (1) a Conference of States Parties; (2) a Committee; and (3) a Secretariat. It also envisages the establishment of a Voluntary Trust Fund to assist States with capacity-building and implementation of the Convention.

3. A treaty-based monitoring mechanism is required to facilitate States Parties' implementation of the obligations enumerated in the Convention, nationally and internationally. Such a mechanism is needed to: (1) provide consistent interpretation and guidance on the terms of the Convention and its application; (2) coordinate capacity-building and technical assistance; (3) facilitate international cooperation and mutual assistance; and (4) monitor and promote treaty compliance across States Parties to the Convention.

4. While a number of existing mechanisms are able to monitor certain situations of crimes against humanity—including organs, subsidiary bodies, or offices of the UN system, treaty bodies established by human rights instruments, and international and regional tribunals[2]—these are individually and collectively insufficient as monitoring mechanisms for the Convention for a number of reasons.

5. First, the mandate or scope of jurisdiction for these bodies is either too broad or too narrow substantively and geographically for comprehensive monitoring of the full scope of obligations under the Convention.[3] Second, a number of these bodies do not have the expertise or the authority to address State compliance with *legal* obligations to prevent and to punish crimes against humanity, particularly with respect to prevention. Such bodies focus more on reporting or facilitating diplomatic negotiations to address a particular *factual* situation. Finally, international and regional criminal courts and tribunals that hear cases involving crimes against humanity are focused on individual criminal responsibility, not State responsibility. Thus, existing mechanisms are only able to serve as supplementary means for monitoring certain aspects of the Convention.

6. Likewise, recourse to the International Court of Justice is insufficient to serve as the sole implementation and monitoring mechanism for the Convention.[4] Under Draft Article 15, the International Court of Justice could provide authoritative interpretation and guidance on the terms of the treaty and its application while also promoting treaty compliance by States—but only where there is a "dispute between two or more States".[5] The requirement of a dispute to trigger the Court's jurisdiction

[2] Sean D Murphy, Special Rapporteur 'Third Report on Crimes against Humanity' (23 January 2017) UN Doc A/CN.4/704, para 214.
[3] Ibid paras 214-221.
[4] While proceedings at the International Court of Justice are not sufficient as the sole means for monitoring the treaty, it is a critical complementary mechanism for State-to-State dispute resolution and treaty interpretation. For observations and recommendations on the Draft Articles' Dispute Resolution Clause, see the ABILA Study Group Proposal on Settlement of Disputes (16 October 2025) <https://www.ila-americanbranch.org/wp-content/uploads/2025/10/ABILA-CAH-Settlement-of-Disputes-Final-with-cover.pdf>.
[5] ILC Draft Articles, art 15(2).

forecloses many instances when treaty compliance and implementation are of critical concern but: (1) may not fit the characterization of a dispute between States Parties; or (2) may qualify as such a dispute but may not animate States to take the affirmative step of bringing a case before the Court. Moreover, the Court's jurisdiction does not include—or is not well-suited for—coordinating capacity-building and technical assistance or facilitating international cooperation among States, international organizations, and other relevant actors. Further, the ILC Draft Articles include an opt-out clause whereby the Court would be foreclosed from any monitoring role.[6] Finally, the International Court of Justice is a court of general jurisdiction with limited capacity for hearing cases. Consequently, it cannot be relied upon to respond efficiently or comprehensively in all instances, for effective monitoring of States Parties' implementation of the Convention.

7. As such, this text proposes establishing a dedicated mechanism to engage in most, if not all, of the important functions listed below for comprehensive monitoring of States' implementation of their obligations under the Convention.

PROPOSED FUNCTIONS, MECHANISMS, AND PROCEDURES[7]

Provide Consistent Interpretation and Guidance on the Terms of the Convention and Their Application

8. As seen from a number of existing human rights conventions and humanitarian law treaties, a treaty-based monitoring mechanism comprised of international legal experts can promote consistent understanding and application of treaty obligations for States.[8] It could foster interpretive coherence not only with respect to the text of the Convention, but also in light of evolving international law and practice. Without such guidance, there is a risk of fragmented implementation of treaty obligations by States and their national courts, undermining the realization of the Convention's object and purpose. Such interpretive guidance fosters norm development, clarifies ambiguities, and prevents contradictory approaches to State compliance and cooperation under the Convention. A treaty-based monitoring mechanism will complement the important jurisprudence of the International Court of Justice on this matter.

9. The United Nations Office of the High Commissioner for Human Rights and the United Nations Office on Genocide Prevention and the Responsibility to Protect support the idea that treaty-based monitoring mechanisms enhance prevention by

[6] Ibid art 15(3). This Study Group recommends the removal of such an opt-out clause as superfluous and in order to better promote the Convention's object and purpose. ABILA Study Group Proposal on Settlement of Disputes (n 4) para 7.

[7] For definitions and descriptions of the mechanisms and procedures listed below, see Memorandum by the Secretariat, 'Crimes against Humanity: Information on Existing Treaty-Based Monitoring Mechanisms Which May Be of Relevance to the Future Work of the International Law Commission' (18 March 2016) UN Doc A/CN.4/698.

[8] For example, the Human Rights Committee, Committee against Torture, and Committee on Enforced Disappearances.

institutionalizing reporting and creating space for policy exchange on risk reduction strategies.[9]

- ***Proposed Mechanisms and Procedures***

  - **Committee:**
    - General Comments on Convention Articles;[10]
    - Concluding Observations and Recommendations on State Reports, Communications, and Applications, including Requests for Interim Measures;[11]
    - Concluding Observations and Recommendations on Individual Communications and Applications, including Requests for Interim Measures;[12]

[9] See International Law Commission, 'Crimes against Humanity: Comments and Observations Received from Governments, International Organizations and Others' (n 1) 131-133.

[10] See e.g. International Convention on the Elimination of All Forms of Racial Discrimination (adopted 7 March 1966, entered into force 4 January 1969) 660 UNTS 195 (ICERD) art 9(2); International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 40(4); Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (CEDAW) art 21(1); Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC) art 45(d); Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3 (CRPD) art 36(1).

[11] See e.g. ICCPR (n 10) arts 40(1), 40(4); International Convention on the Suppression and Punishment of the Crime of Apartheid (adopted 30 November 1973, entered into force 18 July 1976) 1015 UNTS 243, arts 7, 9; CEDAW (n 10) arts 18(1), 21(1); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85 (Torture Convention) arts 19(1), 19(3); CRC (n 10) arts 44(1), 44(4); International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (adopted 18 December 1990, entered into force 1 July 2003) 2220 UNTS 3 (Migrant Workers Convention) arts 73(1), 74(1); Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (adopted 18 September 1997, entered into force 1 March 1999) 2056 UNTS 211 (Anti-Personnel Mine Ban Convention) arts 7, 11-12; Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict (adopted 26 March 1999, entered into force 9 March 2004) 2253 UNTS 172 (1954 Hague Convention Second Protocol) art 27(1)(d); United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 29 September 2003) 2225 UNTS 209 (UNTOC) arts 32(3)(d)-(e), 32(5); CRPD (n 10) arts 35(1)-(2), 36(1); International Convention for the Protection of All Persons from Enforced Disappearance (adopted 20 December 2006, entered into force 23 December 2010) 2716 UNTS 3 (Enforced Disappearance Convention) arts 29(1), 29(3); Convention on Cluster Munitions (adopted 30 May 2008, entered into force 1 August 2010) 2688 UNTS 39, art 11; UNGA, United Nations Convention against Cybercrime (adopted 24 December 2024), UN Doc A/Res/79/243 annex (Cybercrime Convention) arts 57(5)(e)-(f), 57(6).

[12] See e.g. ICERD (n 10) art 14; Optional Protocol to the International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 arts 1-5; Torture Convention (n 11) art 22; Migrant Workers Convention (n 11) art 77; Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (adopted 6 October 1999, entered into force 22 December 2000) 2131 UNTS 83 (CEDAW Optional Protocol) arts 1-7; Enforced Disappearance Convention (n 11) art 31.

- Reports and Statements based upon Fact-Finding Investigations,[13] Inquiries, Visits, and Requests for Inputs from civil society, victims, and other stakeholders.

Coordinate Capacity-Building and Technical Assistance

10. A treaty-based mechanism could provide a platform for regular meetings of States Parties to share best practices on legal, institutional, and policy frameworks for implementing the Convention. Such meetings could provide regular guidance, technical support, and peer learning to build and enhance States' institutional and administrative capacity for implementing complex obligations related to the prevention and punishment of crimes against humanity. Further, it could facilitate technical assistance and trainings to help States understand how to align national laws with Convention standards, improve investigative and prosecutorial practices, and engage in effective international cooperation.

- ***Proposed Mechanisms and Procedures***

  - **Conference of States Parties; Secretariat**[14] focused on capacity-building and technical assistance.

Facilitate International Cooperation and Mutual Assistance

11. A dedicated treaty-based mechanism could provide a centralized institutional anchor for international cooperation by States Parties with other States, UN bodies, regional organizations, and other international organizations. It could facilitate the sharing of information by States Parties while providing regular reports to the UN Security Council and General Assembly; promote mutual assistance while avoiding duplication of efforts; and enhance coherence across mechanisms involved in activities such as prevention, documentation, accountability, and technical assistance.[15]

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[13] See e.g. Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (adopted 10 December 1976, entered into force 5 October 1978) 1108 UNTS 151 (ENMOD Convention) art V(2), annex; Torture Convention (n 11) art 20; 1954 Hague Convention Second Protocol (n 11) arts 24, 27; CEDAW Optional Protocol (n 12) art 8; Enforced Disappearance Convention (n 11) art 33.

[14] See e.g. Anti-Personnel Mine Ban Convention (n 11) arts 11-12; UNTOC (n 11) art 32(3)(a)-(b); Convention on Cluster Munitions (n 11) arts 11-12; Arms Trade Treaty (adopted 2 April 2013, entered into force 24 December 2014) 3031 UNTS 269, art 17; Treaty on the Prohibition of Nuclear Weapons (adopted 7 July 2017, entered into force 22 January 2021) (TPNW) <https://treaties.un.org/doc/Treaties/2017/07/20170707%2003-42%20PM/Ch_XXVI_9.pdf> arts 7-8; Cybercrime Convention (n 11) arts 54(1), 57. See also Washington University School of Law, Whitney R Harris World Law Institute, Crimes Against Humanity Initiative, 'Proposed International Convention on the Prevention and Punishment of Crimes Against Humanity' (August 2010) <https://bpb-us-e2.wpmucdn.com/sites.wustl.edu/dist/b/2004/files/2019/02/EnglishTreatyFinal.pdf> art 19.

[15] See Sierra Leone's comments to the ILC Draft Articles (n 1) 59 (referring to the 2005 World Summit Outcome, adopted by the General Assembly in Resolution 60/1, recognizing that all States have the responsibility to protect their populations from genocide, war crimes, ethnic cleansing, and crimes against

- ***Proposed Mechanisms and Procedures***

  - **Conference of States Parties; Secretariat; Voluntary Trust Fund that would:**

    - ***Create a means for States Parties to exchange technical, financial, and legal support,***[16] thereby encouraging collective responsibility for prevention and punishment obligations while providing support for capacity-building and reparations for victims.

    - ***Facilitate States Parties' coordination with UN bodies, regional mechanisms, international organizations, and civil*** **society**[17] for supporting the implementation of treaty obligations by States, especially in resource-constrained settings. Engagement with entities and actors across the atrocity prevention and accountability ecosystem will increase responsiveness, broaden evidence bases, and strengthen compliance pressure.

    - ***Take urgent or extraordinary action in response to serious risks of, or ongoing, violations*** by convening extraordinary sessions or referring the situation to the competent UN or regional organs[18] in the face of situations of grave concern to the international community. Such a platform provides crucial flexibility for coordinating timely collective action in crisis contexts, which can save lives.

<u>Monitor and Promote Treaty Compliance of States Parties to the Convention</u>

- ***Proposed Mechanisms and Procedures***

  - **Conference of States Parties; Committee; Secretariat**

12. A treaty-based mechanism could provide for regular reporting and review procedures for promoting and monitoring States Parties' implementation of their treaty obligations, encouraging States to adopt all necessary legislative, judicial, administrative, and other measures for fulfilling their duties to prevent and punish under the Convention.

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humanity, and that "the international community should assist States in exercising that responsibility and in building their protection capacities"). See also UNGA Res 60/1 (16 September 2005) UN Doc A/Res/60/1, paras 138-139.

[16] See e.g. Anti-Personnel Mine Ban Convention (n 11) art 6; 1954 Hague Convention Second Protocol (n 11) art 29; UNTOC (n 11) art 32(3)(a)-(b); Convention on Cluster Munitions (n 11) art 6; Arms Trade Treaty (n 14) art 16(3); TPNW (n 14) art 7; Cybercrime Convention (n 11) arts 54(5)-(9), 56.

[17] See e.g. CEDAW (n 10) art 22; CRC (n 10) art 45; Migrant Workers Convention (n 11) art 74(2)-(6); UNTOC (n 11) art 32(3)(c); CRPD (n 10) art 38; Cybercrime Convention (n 11) art 55.

[18] See e.g. Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948, entered into force 12 January 1951) 78 UNTS 277, art VIII; ENMOD Convention (n 13) art V(3); Enforced Disappearance Convention (n 11) arts 30, 34; Arms Trade Treaty (n 14) art 17(5); TPNW (n 14) art 8(3).

13. Regular reporting and review processes for States Parties by peers and independent experts—common in treaty-based monitoring mechanisms—identify risks and gaps as well as patterns of concern before atrocities occur. They also create reputational incentives for compliance and offer a platform for constructive dialogue. Further, they signal ongoing political attention to the obligations States assume under the convention, ensuring that it remains a living instrument.

14. A treaty-based monitoring mechanism can also serve as an important conduit for centering the concerns and requests of victims, survivors, and civil society, ensuring that States Parties are responsive to those most impacted by crimes against humanity.