

## **INTRODUCTION TO THE WORK OF THE ABILA STUDY GROUP ON THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF CRIMES AGAINST HUMANITY**

By Leila Nadya Sadat, Chair

On January 19, 2026, States will launch a four-year process of preparing and negotiating a new global treaty on the prevention and punishment of crimes against humanity. The task before them is immense and of historic importance: to craft an instrument that is well-grounded in treaty and customary international law principles that have been established and developed ever since the Nuremberg and Tokyo trials of 1945 and 1946, and at the same time elaborate a text that will stand the test of time and be both relevant and responsive thirty, fifty, or even one hundred years from now. The papers and proposals in this compilation are intended as a modest contribution to that effort, and have been prepared to assist States in this important and difficult work.

The treaty discussions that will begin in January with the convening of a Preparatory Committee and a Working Group will be based on two important United Nations documents. First, the International Law Commission's 2019 Draft Articles, with Commentaries, on the Prevention and Punishment of Crimes against Humanity (ILC Draft Articles). Second, General Assembly Resolution 79/122, adopted on December 4, 2024, which took the decision to "convene the United Nations Conference of Plenipotentiaries on Prevention and Punishment of Crimes against Humanity."

Resolution 79/122 is a complex text resulting from many compromises and six years of effort by treaty proponents in the Sixth (Legal) Committee of the General Assembly. The Resolution sets out a pathway for the negotiation of a global treaty on the prevention and punishment of crimes against humanity over a four-year period (with the possibility of an additional session, if necessary). In addition to setting out a timeline in operative paragraph 4, paragraph 5 of the Resolution specifies that the text that will "serve as the basis for negotiations" will be *both* the ILC Draft Articles *and* "a compilation of proposals for amendments to the draft articles submitted by Governments".

Why a compiled text? The 6<sup>th</sup> preambular paragraph of Resolution 79/122 notes that during the elaboration of the text by the Commission, as well as the many years of discussion in the Sixth Committee, the ILC Draft Articles had been the subject of extensive comments from Governments, many of which had advanced "a number of suggestions for changes to the draft articles".

The proposals advanced by States (and civil society) over the past six years, as well as during the period from 2013 to 2019, when the ILC elaborated its draft, can be roughly grouped into three categories:

- (i) additions to the Draft Articles that address aspects that the ILC had opted to omit (such as the establishment of a treaty monitoring mechanism or the inclusion of direct and public incitement as a mode of liability, for example);
- (ii) additions to the Draft Articles that were never addressed by the ILC (such as a non-discrimination provision, adding certain new offenses to the enumerated list of crimes against humanity, and the question of reservations and other final clauses); and finally
- (iii) modifications of the Draft Articles to ensure clarity and/or advance elements of importance (such as elaborating further upon the prevention requirements of Draft Articles 3 and 4, including a definition of “victims”, modifying the dispute settlement provision in Draft Article 15, or improving the preamble by adding a *Martens Clause*, for example).

These three categories overlap to some degree: the Commission adopted the Rome Statute’s definition of crimes against humanity (with three changes) to promote uniformity, implicitly suggesting a rejection of additional crimes. However, the Commission never considered *on the merits* Government or civil society proposals for the inclusion of additional crimes, or changes to the Rome Statute definition. The one exception was the deletion of the definition of gender (Rome Statute Article 7(3)), which the Commission proposed in response to comments received on the first reading of the Draft Articles in 2017.

Operative paragraph 9 of Resolution 79/122 “invites” Governments to submit “proposals for amendments to the draft articles for inclusion in the compiled text” no later than April 30, 2026. Of course, the text can be subject to amendments proposed by Governments at any time during the negotiations, but the April 30 deadline provides a helpful benchmark. Thus, as the negotiations advance, first through the Preparatory Committee and Working Group, then at the level of the Diplomatic Conference itself, it is clearly contemplated by Resolution 79/122 that the ILC Draft Articles are the starting point of the negotiations, not the endpoint.

For this reason, in Spring 2025, the International Law Association (American Branch) established a Study Group to (1) study the Draft Articles and proposals of States and civil society for amendments and modification of the Draft Articles; and (2) based upon that examination, prepare a series of short proposals, as well as papers addressing a handful of thematic concerns, that could be drafted and submitted to Governments for their

consideration. The proposed Study Group's mandate was accepted by the President of the Branch, Professor Michael P. Scharf, and by ABILA's Co-Directors of Study, Professor Mortimer Sellers and Professor Milena Sterio. The Study Group held its first meeting on May 29, 2026, and adopted a tentative program of work and timeline. I am honored to serve as the Chair.

Comprised of thirty-eight members and two advisors, including experts from both the United States and abroad, the Study Group organized its work into sixteen separate proposals: (i) eleven proposals for specific amendments to the Draft Articles; (ii) two proposals for new additions to the Convention's text; and (iii) three thematic papers. The Study Group was divided into subgroups for each topic, with each subgroup having a chair or co-chairs, and as papers were finalized, they were then discussed by a meeting of the entire Study Group (on zoom), with oral and written comments provided to the subgroup which then prepared a revised text for the entire Study Group, as well as for the Drafting Committee. The Drafting Committee, chaired by Professor Olympia Bekou, was responsible for editing, cite-checking, and formatting as well as overseeing the coherence and consistency of the papers. Each of the finalized papers has been posted on the ABILA website, and some were distributed to States as early as October 2025. We completed fourteen of the initially proposed papers during this phase of our work. The next phase contemplates the establishment of a Study Group or Committee at the ILA level, with broader international participation, and an expanded mandate.

As the Chair of this effort, I have been overwhelmed by the extraordinary work undertaken by the members of the Study Group, each one of whom has volunteered their time and expertise while participating in their personal capacities. In particular, the other members of the Drafting Committee – Professor Bekou, Sara Ciucci, and Christopher Lentz – have served with special distinction and commitment, and it has been an honor to serve alongside them.

The proposals offered by the Study Group track the discussions of the Draft Articles by States and have been purposefully kept short to enhance their practical usefulness. The explanatory notes following each proposal offer both legal and historical analysis that support the proposed text. The three thematic papers – on Civil Society Participation, Children, and Gender Competency, Inclusivity and Non-Discrimination – advance perspectives that are critically important to the elaboration of a crimes against humanity treaty that can meet 21<sup>st</sup> century concerns. Likewise, the proposals proposing new enumerated crimes against humanity – environmental destruction, slave trade, and starvation, for example – address 21<sup>st</sup> century atrocities of increasing gravity. The fourteen papers included in this compilation represent a concrete contribution of distinguished academics, civil society experts, and experienced practitioners, many of whom have

spent long years, even decades, grappling with the application and interpretation of atrocity law and policy.

It is our sincere hope that these proposals will inform the work of States as they undertake the elaboration of a Convention on the Prevention and Punishment of Crimes against Humanity. This treaty is not meant to be just a piece of paper; it is a promise to humanity that the words “never again”, uttered in the wake of the devastation wrought by the Second World War, should and will have real meaning.

*Respectfully submitted,*



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