
Proposals by the ABILA Study Group

1. Preamble

Add the following paragraph to the Preamble:

...

Declaring that in cases not covered by the Convention or by other international agreements, the human person remains under the protection and authority of principles of international law derived from established customs, from the laws of humanity, and from the dictates of the public conscience, and continues to enjoy the fundamental rights that are recognized by international law,

...

2. Article 1 Scope

Propose the following changes to Article 1:

The Convention applies ~~The present draft articles apply~~ to the prevention and punishment of crimes against humanity, **which are crimes under international law whether or not committed in times of armed conflict.**

3. Article 2 Definition of crimes against humanity

Propose the following changes and additions to Article 2:

1. For the purpose of the ~~Convention~~ ~~present draft articles~~, “crime against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

...

(c) enslavement **and/or the slave trade;**

...

(h) persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, **age, [disability,] [Indigenous,]** or other grounds that are universally recognized as impermissible under international law, ~~in connection with any act referred to in this paragraph;~~

...

(k) **starvation;**

(l) widespread, long-lasting, or severe destruction of the environment, including biodiversity, natural resources, agricultural production, or landscape, as a means of harming any civilian population; and

(m) other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

2. For the purpose of paragraph 1:

...

(c) “enslavement” means the exercise of any or all of the powers attaching to the right of

ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children, and “the slave trade” means all acts involved in the capture, acquisition or disposal of a person with intent or knowledge to reduce that person to slavery, all acts involved in the acquisition of an enslaved person with a view to selling or exchanging that person, all acts of disposal by sale or exchange of a person acquired with a view to being sold or exchanged, and, in general, every act of trade or transport of an enslaved person by whatever means of conveyance;

...

(j) “starvation” means depriving persons of objects indispensable to survival, in particular food, safe water, and the systems by which they are produced, maintained, or distributed, in a way calculated to deny those objects’ sustenance value or in a way that would be expected to cause or exacerbate acute malnutrition within the population;

4. Article 3 General obligations

Propose the following changes to Article 3:

1. **No State shall** ~~Each State has the obligation not to~~ engage in acts **or omissions** that constitute crimes against humanity, **whether directly or indirectly.**
2. Each State **shall undertake to** prevent and ~~to~~ punish crimes against humanity, ~~which are crimes under international law, whether or not committed in time of armed conflict.~~
3. No exceptional circumstances whatsoever, such as **the existence or threat of** armed conflict, internal political instability, or other public emergency, may be invoked as a justification **for the commission of crimes against humanity or for a State’s failure to discharge its obligations under this Article.**

5. Article 4 Obligation of prevention

Propose the following changes to Article 4:

Each State **shall undertake to** prevent and suppress **crimes against humanity, in conformity with international law, through:**

- (a) **effective legislative, administrative, judicial, diplomatic, or other appropriate preventative measures** with respect to any person or group under its jurisdiction, control, direction, or influence ~~in any territory under its jurisdiction; and~~
- (b) **cooperation with other States, relevant intergovernmental organizations, and as appropriate, other organizations.**

6. Article 6 Criminalization under national law

Propose the following changes to Article 6:

1. Each State shall take the necessary measures to ensure that crimes against humanity constitute offences under its criminal law.
2. Each State shall take the necessary measures to ensure that the following acts **or omissions** are offences under its criminal law:
 - (a) committing a crime against humanity **or contributing to the commission or attempted commission of such a crime by a group of persons acting with a common purpose;**
 - (b) attempting to commit ~~such a crime against humanity; and~~

(c) ordering, soliciting, inducing, **instigating, planning**, aiding, abetting or otherwise assisting in or contributing to the commission or attempted commission of ~~such~~ a crime **against humanity**;

(d) **directly and publicly inciting the commission of a crime against humanity; and**

(e) **conspiring to commit a crime against humanity.**

3. Each State shall also take the necessary measures to ensure that commanders and other superiors are criminally responsible for crimes against humanity committed by their subordinates if they knew, or had reason to know, that the subordinates were about to commit or were committing such crimes and did not take all necessary and reasonable measures in their power to prevent their commission, or if such crimes had been committed, to punish the persons responsible.

...

7. Each State shall take the necessary measures to ensure that, under its criminal law, the offences referred to in this **Article** ~~draft article~~ shall be punishable by appropriate penalties that take into account their grave nature.

7 bis. No person who was under the age of 18 at the time alleged conduct occurred shall be criminally punished for an offence enumerated in Article 2 of the Convention.

...

7. Article 12 Victims, witnesses and others

Propose the following changes and additions to Article 12:

1. Each State shall ~~take the necessary measures to~~ ensure that:

(a) any person who alleges that acts **or omissions** constituting crimes against humanity have been or are being committed has the right to complain to the competent authorities, **with a view to obtaining urgent measures of protection in the case of ongoing acts or omissions, as well as redress for all such acts as elaborated in paragraph 3 of this Article**; and

(b) complainants, victims, witnesses, and their relatives and representatives, as well as other persons participating in any investigation, prosecution, extradition or other proceeding within the scope of the present draft articles, **and, where appropriate, others at risk on account of any complaint, information, testimony or other evidence given by witnesses**, shall be protected against ill-treatment or intimidation as a consequence of any complaint, information, testimony or other evidence given. Protective measures shall be without prejudice to the rights of the alleged offender referred to in **Article** ~~draft article~~ **11 of the Convention.**

2. Each State shall, in accordance with its national law, enable the views and concerns of victims of a crime against humanity to be presented and considered at appropriate stages of criminal proceedings against alleged offenders in a manner not prejudicial to the rights referred to in **Article** ~~draft article~~ **11 of the Convention.**

3. Each State shall ~~take the necessary measures to~~ ensure in its legal system that ~~the~~ victims of a crime against humanity, committed through acts **or omissions** attributable to the State under international law or committed ~~in any territory under its jurisdiction~~ **by any person or group under its jurisdiction, control, direction, or influence**, ~~have the right to~~ obtain **redress and have an enforceable right to full and effective** reparation for material and moral damages, on an individual or collective basis, consisting, as appropriate **and proportional to the gravity of the violations and circumstances of each case**, of ~~one or more of the following or other forms~~: restitution; compensation; ~~satisfaction~~; rehabilitation; **satisfaction**; cessation and guarantees of non-repetition. **Each State shall take the necessary measures to preclude any statute of limitations on civil claims related to reparations.**

4. **In designing and implementing programs of reparations for crimes against humanity, States should ensure the meaningful participation of victims and their representatives, as well as other members of the public.**

5. For purposes of the Convention, victims are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss, or substantial impairment of their fundamental rights, through acts or omissions that constitute crimes against humanity. A person should be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted, or convicted. Where appropriate, and in accordance with domestic law, the term “victim” also includes the immediate family or dependants of the direct victim, persons who have suffered harm in intervening to assist victims in distress or to prevent victimization, and any other indirect victim.

8. Article 15 Settlement of disputes

Propose the following changes to Article 15:

1. States Parties shall endeavour to settle disputes concerning the interpretation~~or~~, application, or fulfilment of the ~~present draft articles~~ Convention through negotiation.

2. Any dispute between two or more States Parties concerning the interpretation~~or~~, application, or fulfilment of the ~~present draft articles~~ Convention, **including those relating to the responsibility of a State Party for engaging in acts or omissions constituting crimes against humanity or a State Party’s responsibility to prevent and punish crimes against humanity**, that is not settled through negotiation shall, at the request of one of those States Parties, be submitted to the International Court of Justice, unless those States Parties agree to ~~submit the dispute to arbitration~~ a different mode of dispute settlement.

3. Any State Party may invoke the responsibility of another State Party under the Convention in accordance with the procedures set out in this Article.

~~3. Each State may declare that it does not consider itself bound by paragraph 2 of this draft article. The other States shall not be bound by paragraph 2 of this draft article with respect to any State that has made such a declaration.~~

~~4. Any State that has made a declaration in accordance with paragraph 3 of this draft article may at any time withdraw that declaration.~~

7. *Add the following Articles:*

Article X Application and interpretation

The Convention shall be interpreted and applied in a manner consistent with international law, including international human rights law, international humanitarian law, and international criminal law, without any adverse distinction founded on grounds such as race, colour, language, gender, age, disability, religion or belief, political or other opinion, national, ethnic or social origin, wealth, birth or other status.

Article XX Monitoring mechanism

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.