

Translated from Spanish

**Comments and observations of the Argentine Republic on the draft articles
of the International Law Commission on crimes against humanity**

4 December 2023

I. Preliminary comments

1. In line with its commitment to international criminal law and the international criminal justice system, international human rights law and international humanitarian law, and in view of

II. Articles by cluster

1. Cluster 1 (preamble and article 1)

The Argentine Republic believes that the principles included in the draft preamble are appropriate and valuable as they offer a conceptual framework for the draft articles. At the same time, they are consistent and ensure complementarity with the various existing treaty regimes that are applicable, to a certain extent, to crimes against humanity (such as the Rome Statute, the International Convention on the Suppression and Punishment of the Crime of Apartheid, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the International Convention for the Protection of All Persons from Enforced Disappearance).

With regard to the fourth preambular paragraph, the Argentine Republic agrees that the prohibition of crimes against humanity is a peremptory norm of general international law (

included in article 3, paragraph 3, which relied on a binary gender system based on biological classification, without taking into account the broad concept of gender identity.

Article 3 sets out the general obligations on States not to engage in crimes against humanity and to prevent and punish such crimes, even under exceptional circumstances, such as armed conflict, internal political instability or any other public emergency. In other words, States have the obligation to prevent crimes against humanity under all circumstances, including in the aforementioned exceptional situations. Article 4 contains a specific obligation for States to adopt effective legislative, administrative, judicial or other appropriate and effective preventive measures, and to cooperate with other States and with relevant international organizations and other organizations, as appropriate, to prevent such crimes.

In the commentary to draft article 3, the Commission notes that, in *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, the International Court of Justice decided that the substantive obligation under article I of the Genocide Convention, whereby the parties undertake to prevent and not to commit the crime of genocide, was not, on its face, limited by territory, but, rather applied “to a State wherever it may be acting or may be able to act in ways appropriate to meeting the obligations ... in question”. Argentina understands this clarification to be applicable to both draft articles 3 and 4, since the Commission explains in the commentary to draft article 4 that that provision elaborates upon the obligation to prevent crimes against humanity that is set forth, in general terms, in draft article 3.

3. Cluster 3 (articles 6, 7, 8, 9 and 10)

The Argentine Republic reiterates that, in order to prevent potential impunity and guarantee the right to a fair trial and due process, article 6, on criminalization under domestic law, should include a provision establishing an obligation for States to take the neces (uaj (a)6 (tio)7r (ep)1 (u)1 fh (tio)6a)6 (tiu S)3 s

With regard to article 10, which sets forth the obligation to extradite or prosecute (*aut dedere aut judicare*), the Argentine Republic considers that this is a relevant provision to prevent crimes from going unpunished when the requested State does not grant extradition when the suspect is in its territory.

4. Cluster 4 (articles 13, 14, 15 and annex)

With a view to making a substantive contribution in respect of the concept of extradition (article 13), the Argentine Republic reiterates the following suggestions, which it put forth during the first substantive discussion of the draft articles:

- Include a reference to the channels for the transmission of extradition requests, namely, the diplomatic channel and the central authorities, as was done in the annex on requests for assistance;
- Refer to the concept of pretrial detention with a view to extradition and the possibility of pretrial detention based on a Red Notice of the International Criminal Police Organization (INTERPOL) or by means of the diplomatic channel;
- Incorporate the concept of extradition *facta*, which is a useful tool when extradition for purposes of enforcing a sentence is refused owing to the nationality of the person (article 13, paragraph 10);
- Include the concept of simplified extradition for cases in which the extraditable person gave his or her consent (article 13, paragraph 8);
- Provide for the possibility that the scope of the draft articles may go beyond legal qualification;
- Include in the annex a section on pretrial detention in cases of extradition and on extradition that sets out the requirements of these international legal cooperation tools;
- Include the principle of speciality, which establishes that an extradited person cannot be prosecuted by the requesting State for acts committed prior to and that are different from those constituting the crime for which extradition was granted.

With regard to article 14, Argentina reiterates that it would be useful to provide for the taking of statements by videoconference (article 14, paragraph 3 (b)). It is suggested that a reference to obtaining digital evidence should be included (article 14, paragraph 3). The reference to the

such agreements are different in nature from the traditional mechanisms for international legal cooperation, which regulate cooperation between national jurisdictions of different States, and it is therefore suggested that details on the structure and implementation of such agreements or arrangements should be included (article 14, paragraph 9).

With respect to the annex, in principle, Argentina considers relevant the designation of the central authority as a transmission channel. While the diplomatic channel is an available alternative, INTERPOL is generally foreseen as the conduit for pretrial detention for extradition purposes.

persons reside shall collaborate with the State that requires the testimony so that they have travel documents that can be stamped with the appropriate visas. The cooperation of third States through which the witnesses may need to transit should also be requested.
