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Pursuant to resolution 77/249 of 30 December 2022, by which the General Assembly invited States to submit, by the end of 2023, written comments and observations on the draft articles on prevention and punishment of crimes against humanity of the International Law Commission and on the recommendation of the Commission, the Republic of Colombia hereby submits the following observations:

Given its unwavering commitment to combating impunity for the most serious crimes that shock the conscience of humanity, Colombia believes that an international legally binding instrument on the prevention and punishment of crimes against humanity will serve to consolidate and strengthen international criminal law.

Colombia considers that the focus of the Commission's draft articles on prevention and punishment of crimes against humanity, namely, the effective prosecution of such crimes through the implementation of measures at the national level and the enhancement of international cooperation, is appropriate. Colombia believes that these are, in fact, the areas where gaps still exist, and that States would benefit from an instrument of positive law that addresses those areas.

In this regard, the comments of Colombia concerning specific ar-1 (ia)1 (o)1 (c)-1 )3.1 ( r)-2 (e)

In this regard, Colombia agrees that there is a need to prohibit the commission of crimes against humanity, in accordance with international law, and to ensure that such crimes do not go unpunished.

Colombia also welcomes the emphasis in the draft preamble on the victims of crimes that deeply shock the conscience of humanity and on the fight against impunity for such crimes.

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In the view of Colombia, it is clear that the objective of the draft articles is to ensure that States prevent the commission of crimes against humanity, exercise their criminal jurisdiction to prosecute such crimes and enhance international cooperation measures.

This article is inspired by and follows closely article 1 of the Convention on the Prevention and Punishment of the Crime of Genocide and is thus a clear continuation of the international norms

While it is clearly useful to have definitions, in an international criminal law instrument, of the crimes covered by that instrument, such definitions are also required from the standpoint of national law. When a State complies with this obligation, undoubtedly, the substantive definition of the punishable conduct enshrined in national law must be fully compatible with the generic definition provided in article 2.

The core of the definition is contained in paragraph 1, where it is clarified that the crime must be committed (i) as part of a widespread or systematic attack, (ii) against any civilian population and (iii) with knowledge of the attack.

Colombia appreciates that the Commission used galgahe

At the same time, Colombia would like to note that, given the contents of paragraph 1 (k), it is aware that the list of acts is not exhaustive. This provision is useful, as it allows for additional offences to be covered under national law, and, as international criminal law continues to develop, new categories of crimes against humanity could in future be covered by the draft article.

However, Colombia also wishes to note the possibility that this provision could lend itself to an overly broad interpretation. Therefore, in order to guarantee legal certainty and the principle that there can be no crime without law, it may be appropriate to refer to the adoption of a restrictive approach to interpretation and to the principles of ~~tn~~ ~~and~~ perhaps in the preamble.

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Draft article 3 expressly prohibits States from engaging in these acts. Colombia considers this prohibition to be appropriate and it welcomes the fact that this article not only addresses crimes against humanity from a punitive perspective but also refers to the obligation of every State not to engage in such acts.

The wording of article 3, paragraph 2, should be improved. Indeed, the key phrase that establishes that crimes against humanity are international crimes, whether or not they are criminalized in national law, should be placed in a separate sentence to make clear its significance. With respect to the general obligation of prevention, Colombia believes that the fact that this obligation is one of means and not of result and that it is measured by a standard of due diligence should be made clearer in the text of the provision itself.

All aspects of the draft articles concerning State responsibility with regard to prevention in relation to peremptory norms of general international law should be clearly reflected in the draft article.

Colombia understands that paragraph 3 of the draft article, which provides that no exceptional circumstances may be invoked as a justification of crimes against humanity, refers to the conduct of both States and non-State actors, and welcomes this provision.

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Draft article 4 elaborates further on the obligation to prevent crimes against humanity set forth in draft article 3, paragraph 2. The obligation of prevention also extends to the prevention of acts that could constitute crimes against humanity and is a feature of

Colombia believes that the obligation of prevention should never be used to justify aggression. However,





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With regard to draft article 8, Colombia considers it highly relevant to include the obligation of the State to carry out a prompt, thorough and impartial investigation of acts that may be considered crimes against humanity when such acts are committed in its territory. This obligation concerns the State's role as guarantor of the observance of human rights in its territory. It also relates to the ad (o)2n-1 ( gua)4 (r)-2 (a)tun itsle



a legal investigation, and entitlement to communicate and to be visited by representatives of the State or States of which such a person is a national, in the view of Colombia, the text should include stronger guarantees, covering both the judicial process and the investigation phase, such as (i) the obligation of States to investigate and punish crimes within a reasonable period of time, (ii) the presumption of innocence, (iii) the right of accused persons to a defence, (iv) the right not to testify against oneself or one's family members, (v) the right to appeal, (vi) the right to public proceedings and to contest evidence, (vii) the application of the principle of the non-retroactivity of criminal law and (viii) the right to consular assistance, among many other guarantees enshrined in various treaties and in customary international law and recognized by international and regional courts.

In Latin America, the Inter-American Court of Human Rights has recognized a broad array of criminal procedural safeguards and general human rights protection guarantees. Such guarantees should be included in this provision to complement those indicated above.

Alternatively, instead of a more detailed list, the article could at least include a general reference to the fact that these guarantees are just the minimum required, and that additional guarantees might be required pursuant to customary law or State obligations under other instruments or regional or national law.

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Colombia notes that draft article 12, which refers to victims, witnesses and others, enshrines both the protection of persons who report crimes against humanity and witnesses and their relatives and representatives agiTjiw (c)Tj-0(.). )5 ( 6 ( 5 (s a(e)1 (l o l t)4 (i)-DC e18461 (h(mb

which it is appropriate to make reparations to victims. This offers States the flexibility to approve,



be relevant to the investigation and prosecution of a crime against humanity. Given that such crimes may involve situations where assets are stolen and that mutual legal assistance in relation to those assets may be valuable, the draft article includes a reference to “bank secrecy”. The draft article also makes provision for a State to transmit information it considers important to another State, even without receiving a formal request.

The provisions of draft article 14 are not aimed at ensuring the cooperation of States with international criminal courts or tribunals, which have the mandate t

respect of requests for mutual legal assistance related to crimes against humanity. Colombia considers that the annex contains generally accepted language used in rules of this type, and it sees value in including it in the future treaty, especially insofar as it concerns the designation of a central authority, which is a mechanism that works very well for this type of mutual legal assistance request.

With respect to the recommendation of the International Law Commission, Colombia believes that having an international convention on the prevention and punishment of crimes against humanity is a matter of the utmost importance to the international legal community, and, in particular, for those who are currently victims of these atrocity crimes in various areas of the world.

Colombia believes that a legally binding international instrument on crimes against humanity will serve to consolidate and strengthen international criminal law and enable States to take additional measures to facilitate the prevention, investigation, punishment, prosecution and cooperation in respect of the commission of these crimes.

Colombia also considers that the draft articles are not incompatible with, but rather complementary to, the Rome Statute, and their scope of application is very different. The obligations arising from the future convention would allow for a separation between, on the one hand, a State's consent to accept the jurisdiction of the International Criminal Court, and, on the other hand, the expression of a State's consent to be bound by international obligations in the context of international cooperation and legal assistance for the prevention and punishment of the commission of these crimes.

For Colombia, it is clear that, in the event that they become a convention, these articles could contribute to ensuring accountability and combating impunity in a variety of ways.

Colombia will continue to participate actively in the process devised by the Sixth Committee to continue analysing this product of the Commission and to begin to initiate a negotiation process that will lead to the adoption of a convention on this matter.

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