

Translated from Spanish

Comments of Mexico on the draft articles on prevention and punishment of crimes against humanity and the recommendation of the International Law Commission

The following comments and observations of Mexico are submitted pursuant to paragraph 6 of General Assembly resolution 77/249, in response to the invitation to States contained therein. Mexico will first provide specific comments and observations on the draft articles, grouped under the same thematic clusters as served as the basis for the delegation's participation in the exchange of views at the resumed session. It will then comment on the recommendation of the International Law Commission contained in chapter IV of the report on the work of its seventy-first session (A/74/10).

By way of introduction, Mexico expresses its satisfaction at the resumed session from 10 to 14 April 2023. The substantive debate during that session demonstrated a broad interest of delegations in the draft articles. Mexico therefore hopes that this process of constructive exchanges will continue at the second resumed session to be held in the spring of 2024.

As it has already indicated on many occasions, Mexico recognizes the quality and legal rigour of the draft articles. It also reiterates that they reflect a balance between codification and progressive development, and are the result of an inclusive and iterative process. Mexico makes the following specific comments on certain draft articles with the aim of enhancing the analysis thereof and sharing its national position.

I. Specific comments by thematic cluster

Cluster 1

Preamble and draft article 1

- " The preamble provides a conceptual framework that sets the general context and the main purposes of the draft articles. Given that the Commission has drawn inspiration from language used in the preambles of international treaties relating to the most serious crimes of concern to the international community such as the 1948 Convention on the Prevention and Punishment of the Crime of Genocide and the Rome Statute, it would be valuable to consider other relevant instruments relating to the core elements of crimes against humanity, such as 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, among others.
- " It is relevant that, in the fourth preambular paragraph, the prohibition of crimes against humanity is considered to be a peremptory norm of general international law (jus cogens).

Cluster 2

Cluster 3

Draft article 6

Draft article 6 sets out the various general obligations States to take measures at the national level to criminalize, prosecute and punish crimes against humanity.

Crimes against humanity are not specifically criminalized in Mexico; however, like various other States it does criminalize the majority of the acts when committed on an isolated basis. Mexican law covers offences such as murder, slavery, illegal deprivation of liberty, torture, injury, offences against liberty and normal psychosocial development, discrimination, enforced disappearance and kidnapping.² It is important to recognize normative advances of this nature

Mexico recognizes two innovative aspects of draft article 6. In particular, it notes the inclusion, in paragraph 8, of the liability of legal persons for the commission of crimes against humanity.

Draft article 7

Mexico acknowledges the bases for the establishment of jurisdiction by States set out in draft article 7. Paragraph 1 is in line with the bases for jurisdiction generally recognized in both the domestic law of States and numerous international treaties.

Mexico considers it relevant to review the question of active personality jurisdiction in the case of stateless persons habitually resident in a State territory, and also the possibility of including that category of person in relation to passive personality jurisdiction.

Draft article 10

The inclusion of the principle of aut dedere aut iudicare in a dedicated draft article is considered appropriate, bearing in mind that, in order to prevent and punish crimes against humanity, judicial

Cluster 4

Draft article 13

This draft article covers in greater detail the cases where a State decides to extradite. Under draft article 10, the obligation to extradite or prosecute is met when a State submits the case to its competent authorities. The State may also extradite the individual in question. For Mexico, these clarifications are important as a basis for any future negotiations on judicial cooperation.

Draft article 14

This draft article provides a solid legal basis for the development of mutual legal assistance. It will be important to establish as clearly as possible the terms under which States are required to cooperate, and their obligations and powers in that regard.

Meanwhile, the draft annex to the draft articles may serve as the legal basis for any judicial cooperation and extradition processes between two or more States not bound by a treaty of mutual legal assistance.

Draft article 15

For Mexico, it is appropriate that there be a mechanism granting the International Court of Justice jurisdiction to hear disputes between States concerning the interpretation and application of obligations arising from the draft articles.

Such a mechanism should be mandatory and, for that reason, paragraphs 3 and 4 of the current draft article should be deleted.

Cluster 5

Draft article 5

" The inclusion and formulation of the principle of *non-refoulement* is consistent with various international treaties in force. Mexico also considers that the principle is an essential component of efforts to prevent crimes against humanity. For that reason, Mexico agrees with the relevance and content of this draft article.

Draft article 11

" Due process is a fundamental component of the administration of justice. Paragraph 1 of the draft article must therefore be interpreted in the broadest sense to encompass all stages of criminal proceedings.

