



NOTE VERBALE

Min - BuZa.
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ILC 'Draft articles on Prevention and Punishment of Crimes Against Humanity

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on the draft articles and on the recommendation of the Commission , and requests
-General of the United Nations to prepare and circulate a compilation of those
observations well in advance of the session of the Sixth Committee to be held in
gdom of the Netherlands shares its comments and observations below.

of the Netherlands refers to the comments and observations submitted to the
eral of the United Nations for the purpose of the 71th session of the International
on (ILC) and reiterates its position that Cri mes against H umanity are among the
imes under international law and their prevention and punishment is of concern to
al community as a whole. Despite being categorically prohibited under international
ulations continue to be victims of such atrocities and perpetrators continue to act

cles on Crimes against Humanity, delivered by the International Law Commission
rs ago, brought us a lot closer to the objectives that w ere identified when the ILC
k in 2013, namely filling a gap in the international legal framework for the
punishment of the most serious

Nevertheless, as to the definition of gender, the Kingdom of the Netherlands supports the removal of this definition from the draft articles. The Kingdom of the Netherlands considers this definition of gender, which is included in the Rome Statute, as too limited and not inclusive. Any further development of the definition of Crimes against Humanity should be based on the jurisprudence from international and national judicial bodies.

The Kingdom of the Netherlands further considers the prohibition of crimes against humanity as a peremptory norm of international law, from which no derogation is permitted and which is applicable to all States. The Kingdom of the Netherlands therefore particularly welcomes the clauses on the *jus cogens* character of the prohibition of crimes against humanity in paragraph 4 of the preamble.

The Kingdom of the Netherlands reiterates that the draft articles and a possible future convention apply to both prevention and punishment of crimes against humanity, which are two separate obligations. With regard to the obligation to prevent, the Kingdom of the Netherlands notes that such an obligation is contained in both article 3(2) and article 4 of the draft articles. These two prevention clauses should, in turn, be seen as two separate obligations, each with their own object and scope. We note that the obligation to prevent under article 3(2) of the draft articles is inspired by, and equivalent to, the obligation under article I of the Genocide Convention. Therefore, the Kingdom of the Netherlands is of the view that international jurisprudence clarifying the scope of Article I of the Genocide Convention, including – under certain circumstances – the responsibility of third states, applies analogously to this draft article. Thus, in line with the ruling of the

