



United Kingdom Mission
to the United Nations

Articles including tackling impunity, prevention of such crimes, the rights of victims and witnesses as well as offenders, and the need for effective prosecution.

6. The UK is cognisant of the significant impact that crimes against humanity have had on people across the world, regardless of their age or gender. Accordingly, the UK would support changing paragraph one of the preamble so that it refers to people

7. In April 2023, the UK noted that it would be interested to hear the views of the other Committee members on including language in the preamble around the importance of a survivor-centred approach to punishing crimes against humanity.

8. The UK notes what other states have said in that regard and has the following suggestions to strengthen the language of the preamble:

(1)

safeguards and care, including appropriate legal protection, before as well as after

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Draft Articles 3 and 4 General Obligations and Obligation of Prevention

Undertaking to prevent

18. The UK considers Articles 3 and 4 to be of vital importance to tackling the scourge of crimes against humanity as the aim of all States should be to prevent these crimes from occurring in the first place.

19. In particular, the UK welcomes the fact that draft Article 3(1) specifies that each State has an obligation not to engage in acts that constitute crimes against humanity. This clarifies the content of the first general obligation and that such acts may be attributable to the State under the rules on the responsibility of States for internationally wrongful acts.

The UK has already criminalized crimes against humanity under its national law. It is right therefore that draft Article 6(7) requires offences to be punishable by appropriate penalties that take into account their grave nature.

23. Further, given the complexity of crimes against humanity, it is appropriate that draft Article 6(2) has various modes of responsibility, which also reflect the practice of to allow national legal systems to approach such accessorial responsibility in a manner consistent with their criminal law ² However, we can see that there may be arguments to include other

Draft Article 7 Establishment of national jurisdiction

26. Article 7 provides for extraterritorial jurisdiction over crimes against humanity, in similar terms to the Torture Convention. This reflects the gravity of the crimes and the interest of the international community of States in bringing an end to impunity for them, and ensuring that perpetrators cannot escape justice by moving between States. It is also an important signal to victims and survivors that the international community treats these crimes with appropriate gravity. When Article 7 is taken alongside the extradite or prosecute provision in Article 10, the draft articles provide wide jurisdiction based on the presence of a suspect on the territory of a relevant State.

27.

prosecuted in the State in which they occurred. This reflects the reality that the authorities of the State in whose territory an offence is committed are generally best placed to prosecute that offence, not least because of the obvious advantages in securing the evidence and witnesses necessary for a successful prosecution.

28. Further, the UK notes that if this approach was agreed to in any Convention, it would be required to make changes to its domestic legislation in order to implement the Convention.

Jurisdiction under Article 7(1)(a)

29. Separately, on draft Article 7(1)(a)

37. However, when crimes against humanity do occur, we must listen and respond appropriately

(3) The UK would add a new 12(1)(c) that would provide for the following of international best practice::

collection are established, with the objective of avoiding the re-traumatisation of victims

40. In draft Article 12(2), the UK would balance the need to protect victims and offenders by adding a cross reference to draft Article 12(1)(b) as follows:

57. Moving onto some of the specific subparagraphs of draft Article 13:

Draft Article 13(2) and (3)

58. In relation to draft Articles 13(2) and (3) the UK would support an amendment of the draft Article to more closely reflect the UNCAC upon which they are based by including a

59. Draft Article 13(2) would then read:

*included as an extraditable offence in any extradition treaty existing between States **subject to their domestic law provisions.***

60. Draft 13(3) would then read:

*For the purposes of extradition between States **and based on their domestic law provisions**, an offence covered by the present draft articles shall not be regarded as a political offence or as an offence connected with a political offence or as an offence*

Draft Article 13(9) Deeming the offence to have occurred in the requesting state

61. As with regards to draft Article 7, the UK notes here that signing up to such an obligation would require the UK to amend its domestic law on crimes against humanity, as currently, UK law has limitations on extra-territorial jurisdiction for particular offences.

Draft Article 13(11) Extradition requests based on impermissible grounds

62. The UK notes that the list of impermissible grounds has been expanded to reflect the list of factors found in draft Article 2(1)(h) and appears to be wider than those found in the treaties upon which these draft Articles are based such as UNTOC and UNCAC. We question whether this broader scope is necessary given that the

Commentaries are clear that there is no obligation on the requested State to extradite if it is believed that the request is being pursued on grounds that are impermissible under international law.

Draft Article 14 Mutual Legal Assistance

63. With regards to the MLA provisions set out in the draft Articles, the UK notes that these are based on similar provisions in the United Nations Convention against Transnational Organized Crime (UNTOC) and UNCAC and we are generally supportive of the drafting. There are many instances where States cooperation is important. For survivors of crimes against humanity, including conflict-related sexual violence, the UK notes the importance of putting survivors at the heart of the evidence gathering process to avoid the need for multiple testimonies and thereby reducing the risk of re-traumatisation.

Draft Article 14(2)a BC q052 12 Tf1 0e]TJET601 95TJE 12 Tf1 01 72.04 465Tm6g(G)]TJET60 Sp

TAnnex

Paragraph 14 Use of information by the requesting state

66. The UK notes that the current paragraph on confidentiality is based upon article 46, paragraph 20 of UNCAC. However, the UK would prefer slightly more detailed language in this instance, along the following lines:

The requested Party shall keep the fact and substance of the request confidential, except to the extent necessary to execute the request or where the requesting Party specifies confidentiality is not required. The requested Party shall promptly inform the requesting Party in cases where confidentiality cannot be ensured.

Paragraph 16 Video links

67. Paragraph 16 concerns the use of the video links. The UK wonders if the *if it is not possible or desirable for the individual in question to appear in person in territory under the jurisdiction of* . The rationale for this proposed change is that in the view of the UK, the use of video links is an equally valid option rather than a secondary less attractive option, than appearing in person. Indeed, the importance of such options has become clearer in light of the global pandemic.

Paragraph 22 Fiscal matters

68. Lastly, the UK notes that while most of the text has been taken from UNCAC, *States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters* language was included in the Annex to the draft Articles.