

Towards A Convention on the Prevention and Punishment of Crimes Against Humanity: From Negotiation To Effective Enforcement

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ABSTRACT

This contribution traces the pathway to negotiation of the Convention on Crimes Against Humanity following the adoption of U.N. General Assembly Resolution 79/122 of 2024. It highlights several cross-cutting issues that require further attention during the negotiating process; namely, the principle of universal jurisdiction, the obligation to extradite or prosecute (“*aut dedere aut judicare*”), and the treatment of amnesties. Moreover, it explores the critical role of national implementation and discusses possible enforcement and oversight mechanisms, both of which will help give meaning to the treaty’s aims and objectives and ensure that it becomes an effective instrument for the prevention and punishment of crimes against humanity.

INTRODUCTION

As recent world events show, crimes against humanity occur both commonly and persistently around the globe. Having a dedicated international convention on the prevention and punishment of crimes against humanity would fill a significant gap in international law.

Unlike genocide or war crimes, there are well-established and widely ratified international law instruments that address those crimes. Examples include the 1948 Genocide Convention¹ and the four Geneva Conventions of 1949.² However, when it comes to crimes against humanity, there is no standalone or comprehensive treaty that outlines international obligations for states. The absence of a convention undermines the ability and effectiveness of global efforts to prevent and punish crimes against humanity.³

This gap in international legal regulation has profound implications for victims and survivors of crimes against humanity who are unable to access any form of justice that would hold perpetrators accountable. Without a clear and comprehensive legal framework, many states lack national legislation enabling them to investigate and prosecute these crimes effectively. Moreover, the absence of a treaty establishing clear international legal standards hinders states from extraditing or prosecuting alleged perpetrators and limits meaningful cooperation with other states or authorities involved in investigating or prosecuting crimes against humanity. This is particularly relevant given the frequency and severity with which crimes against humanity continue to be committed in various parts of the world. The urgency for adopting a dedicated convention on the matter cannot, therefore, be overstated.

The paper seeks to explore the pathway to the adoption of a convention on crimes against humanity and to highlight some of the areas that require further attention. Whereas the paper by Professor Sadat earlier in this issue helpfully and comprehensively traces the background to the draft Convention and the steps leading up to the adoption of Resolution 79/122

1 G.A. Res. 260 A (III), Convention on the Prevention and Punishment of the Crime of Genocide (Dec. 9, 1948)

2 Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Aug. 12, 1949, 75 U.N.T.S. 85; Geneva Convention relative to the Treatment of Prisoners of War, Aug. 12, 1949, 118 L.N.T.S. 343, 75 U.N.T.S. 135; Geneva Convention relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 75 U.N.T.S. 287.

3 M. Cherif Bassiouni, *Crimes Against Humanity: The Need for a Specialized Convention*, 31 COLUM. J. TRANSNAT'L L. 457 (1994); LEILA NADYA SADAT, FORGING A CONVENTION FOR CRIMES AGAINST HUMANITY (Cambridge Univ. Press 2011); MORTEN BERGSMO & SONG TIANYING, ON THE PROPOSED CRIMES AGAINST HUMANITY CONVENTION (Torkel Opsahl Academic EPublisher 2014).

of 2024,⁴ the present paper has at its starting point some of the (more formal) progress achieved thus far on this path, particularly in light of the recent developments within the United Nations (U.N.) General Assembly. Attention is given to specific cross-cutting issues that, in this author's view, need to be considered during the negotiating process. These issues will pave the way to ensuring the treaty's success; namely, the principle of universal jurisdiction, the obligation to extradite or prosecute ("*aut dedere aut judicare*"), and the treatment of amnesties. The discussion then shifts to the road that lies ahead: examining the challenges and opportunities awaiting the negotiation and adoption phases, and the critical role that implementation will be called to play to give effect to the treaty. Finally, the paper considers possible enforcement and oversight mechanisms that could play a key role in translating the treaty's commitments into tangible outcomes and support capacity-building efforts.

PROGRESS TO DATE

The recent advancement towards a draft Convention on Crimes Against Humanity represents an essential milestone on the path towards enhancing the existing framework of international criminal law. This progress reflects a growing consensus on the urgent need to strengthen legal obligations around the prevention, investigation, and prosecution of these grave crimes.

By way of a short summary of key milestones to help frame what lies ahead, efforts toward a dedicated treaty began under the stewardship of Professor Sadat in 2007.⁵ It was then, in 2010, when the Crimes Against Humanity Initiative, led by the Whitney R. Harris World Law Institute, published a Proposed Convention on the Prevention and Punishment of Crimes Against Humanity.⁶ By 2013, the International Law Commission (ILC) formally added the topic of crimes against humanity to its long-term program of work,⁷ signaling recognition of the need for codification in this area. Building on these foundational steps, in 2019, the ILC finalized the second final text of the Draft Articles on Crimes Against Humanity,⁸ whose

4 G.A. Res. 79/122, United Nations Conference of Plenipotentiaries on Prevention and Punishment of Crimes against Humanity (Dec. 4, 2024); see also Leila Nadya Sadat, *The Long Arc of Justice: Forging a Convention for Crimes Against Humanity*, 25 WASH. U. GLOB. STUD. L. REV. 302 (2025).

5 See Sadat, *supra* note 4.

6 *Proposed Convention on the Prevention and Punishment of Crimes Against Humanity*, WASH. U. SCH. OF L. WHITNEY R. HARRIS WORLD LAW INSTITUTE CRIMES AGAINST HUMANITY INITIATIVE (Aug. 2010), <https://sites.law.wustl.edu/docs/harris/cah/EnglishTreatyFinal.pdf> [<https://perma.cc/B9PP-JYCY>] [hereinafter *Proposed Convention*].

7 Int'l L. Comm'n, Rep. on the Work of Its Sixty-Fifth Session, ¶ 169, U.N. Doc. A/68/10 (2013), reprinted in [2013] 2 Y.B. Int'l L. Comm'n 1, U.N. Doc. A/CN.4/SER.A/2013/Add.1.

8 See Int'l Law Comm'n, Rep. on the Work of Its Seventy-First Session, at Ch. IV, U.N. Doc. A/74/10 (2019) [hereinafter ILC Draft Articles 2019]. At its seventy-first session in 2019, the International Law Commission adopted, on second reading, the Draft Articles on the prevention and

report recommended “the elaboration of a convention by the General Assembly or by an international conference of plenipotentiaries on the basis of the Draft Articles.”⁹ This marked a key milestone, as the draft provided a solid legal foundation for the development of a dedicated treaty.

Since then, the ILC’s draft has been the subject of extensive comments and observations from numerous states and civil society organizations.¹⁰ Although the process experienced periods of stagnation for a few years,¹¹ recent engagement and discussion within the U.N. General Assembly Sixth Committee¹² (which has served as the primary forum for consideration of the treaty)¹³ have contributed to renewed and significant momentum in advancing the draft.

The draft treaty has now received the support of a U.N. General Assembly Resolution calling for the commencement of formal negotiations.¹⁴ In late 2024, the Sixth Committee, under an initiative and skillful coordination led by Mexico and the Gambia, and co-sponsored by around 100 other states, adopted by consensus a resolution outlining a five-year roadmap to advance the treaty.¹⁵ Notably, the Resolution calls for the convening of a diplomatic Conference of Plenipotentiaries in New York, to be held over three consecutive weeks in early 2028, followed by a second session in 2029.¹⁶

Importantly, the Resolution emphasizes that the ILC’s Draft Articles will serve as the core basis for substantive discussions. This will be complemented by the accompanying commentaries, written submissions by states, statements expressed during the General Assembly sessions, summaries of Sixth Committee meetings, and the ILC’s own recommendations.¹⁷ The process has been designed to be inclusive, transparent, and interactive, encouraging constructive engagement among states and other stakeholders.

To support the next phase of the process and prepare for negotiations, the Resolution also calls for the establishment of a preparatory committee,

punishment of crimes against humanity, along with the accompanying commentaries. A first set of Draft Articles had already been approved, in first reading, by the ILC in 2017. *See id.*

9 *Id.* ¶ 42.

10 Over 100 states and numerous civil society organizations have commented extensively on the Commission’s work concerning the development of the Draft Articles.

11 Leila Nadya Sadat, *Little Progress in the Sixth Committee on Crimes Against Humanity*, 54 CASE W. RES. J. INT’L L. 89 (2022).

12 The resumed sessions of the UN General Assembly Sixth Committee pursuant to Resolution A/RES/77/249 occurred from April 10 - 14, 2023 and from April 1 - 5, 2024 and April 11, 2024.

13 For the role of the UN General Assembly in International Law-Making, *see* ALAN BOYLE & CHRISTINE CHINKIN, *THE MAKING OF INTERNATIONAL LAW* 116–118 (Oxford Univ. Press 2007).

14 G.A. Res. 79/122, *supra* note 4.

15 *Id.*

16 *Id.* ¶ 4.

17 *Id.* ¶ 5.

scheduled to meet in New York for two weeks in January 2026 and for an additional session in 2027.¹⁸ Additionally, the Resolution recommends the creation of a working group “to facilitate consultations on the draft articles, and to enable Governments to prepare formal proposals for amendments to the draft articles.”¹⁹

This development represents a historic achievement. It reflects a significant evolution in the international community’s response to mass atrocities. This achievement is not merely procedural or symbolic. Rather, it reflects a broader and increasingly urgent recognition by the global community of the need to address crimes against humanity with the seriousness they deserve.²⁰

The ILC’s contribution in producing a draft of the treaty text, along with all those states that have constructively engaged with it throughout the consultation process,²¹ deserves particular acknowledgement. Their commitment has laid a strong foundation for the next phase of the process and reinforced the shared responsibility to ensure the eventual adoption of a meaningful and effective treaty. The adoption of the Resolution and the launch of treaty negotiations are the culmination of years of dedicated and effective advocacy, relentless effort, and unrivalled commitment from a broad range of actors—from the pioneers of this process to visionary states and very vocal civil society organizations. The progress achieved to date must serve as both the motivation and momentum to maintain an undeterred course of action and to remain focused on the challenges that lie ahead.

THE ROAD AHEAD

Having a concrete draft to hand represents an important milestone; it serves as a solid foundation upon which the next and perhaps most complex phase begins: the negotiation among states. This stage will be critical as the negotiations will play a decisive role in shaping the final form and outcome of the treaty. However, as states enter the negotiation phase, where the draft treaty text will be debated and refined, the road ahead remains long and strewn with obstacles.

18 *Id.* ¶ 6.

19 *Id.* ¶ 7.

20 See Payam Akhavan, *The Universal Repression of Crimes Against Humanity before National Jurisdictions: The Need for a Treaty-Based Obligation to Prosecute*, in *FORGING A CONVENTION FOR CRIMES AGAINST HUMANITY* 28 (Leila Nadya Sadat ed., 2013); M. Cherif Bassiouni, *Crimes Against Humanity: The Case for a Specialized Convention*, 9 *WASH. U. GLOBAL STUD. L. REV.* 575, 582–83 (2010).

21 For the compilation and analysis of states’ positions on the ILC Draft Articles 2019 compiled by Washington University in St. Louis, Crimes Against Humanity Initiative, *see Reports*, *CRIMES AGAINST HUMANITY INITIATIVE* (Oct. 4, 2024), <https://sites.wustl.edu/crimesagainsthumanity/reports/> [<https://perma.cc/M2MK-WDB9>].

Negotiations will inevitably require a delicate balancing act between legal precision and political compromise.²² Core areas such as the definition of crimes against humanity,²³ the scope of jurisdiction,²⁴ the extent of obligations imposed on states parties, and the mechanisms for enforcement and compliance²⁵ are likely to generate divergent views. This piece will seek to raise some of these outstanding issues in the sections that follow.

To successfully navigate these complexities, it is essential to reflect on the obstacles encountered so far, anticipate possible challenges, and actively consider the best strategies to mitigate and address them as they arise. Building consensus while preserving the integrity of key provisions demands a diplomatic approach, as well as clear willingness from states to engage in open and constructive dialogue, while maintaining a firm commitment to upholding the treaty's intended objectives.

Importantly, during this process, engagement must not be limited to states alone—expertise should be harnessed, where available. The involvement and contributions of legal experts, practitioners, academics, and civil society will be essential to ensuring the treaty is not only comprehensive in scope but also effective and meaningful in its application.²⁶ These actors can offer crucial insights into the practical implications of the treaty's provisions and identify potential gaps or ambiguities in the draft provisions.

Moreover, although the momentum created by the adoption of Resolution 79/122 offers hope for, and might lead to, the successful adoption of the treaty (potentially by 2029), that adoption alone should be viewed as the beginning of a broader process rather than its conclusion. While the successful conclusion of the negotiations would carry significant symbolic and legal importance, it must be followed by sustained efforts to secure widespread ratification, ensure domestic implementation, and facilitate the practical operationalization of the treaty.²⁷ Ultimately, the treaty's success will be measured by the number of ratifications achieved and, ultimately, by how the treaty functions in practice.

At its core, the treaty is far more than just a legal instrument; it represents a promise to victims and survivors of such serious crimes. It represents the collective commitment of states to ensure that perpetrators are held

²² See Katerina Linos & Tom Pegram, *The Language of Compromise in International Agreements*, 70 INT'L ORG. 587 (2016).

²³ That is, whether Article 2 of the ILC Draft Articles 2019, which currently reflects the wording of Article 7 of the Rome Statute, should be revisited and amended. See Rome Statute of the International Criminal Court art. 7, July 17, 1998, 2187 U.N.T.S. 90.

²⁴ See *id.* art. 5.

²⁵ See *id.* pt. 3.

²⁶ See Sadat, *supra* note 4, at 339-40.

²⁷ For a full account of the making of a treaty, see ANTHONY AUST, *MODERN TREATY L. & PRACTICE* (3d ed. 2013).

accountable and justice for the victims of mass atrocities is delivered. As states begin negotiations, it is imperative to ensure the treaty does not fall short of these expectations. The treaty must not become a merely symbolic document²⁸ but emerge as a robust and enforceable instrument capable of making a tangible difference. Consequently, the collective focus must now shift towards ensuring that the treaty is not only legally sound but also impactful, workable, and capable of effective implementation, with a meaningful impact in both preventing and prosecuting crimes against humanity.

KEY PROVISIONS TO CONSIDER DURING THE NEGOTIATIONS

As states move through the negotiations phase of the treaty on crimes against humanity, this should be seen as an opportunity to refine and strengthen the text. Whilst others in this edited volume will address some of these areas, the following sections focus on some of the aspects that, albeit seemingly unconnected, in the view of the present author, merit additional attention. These include, but are not limited to, safeguarding the principle of universal jurisdiction, preserving the principle of *'aut dedere aut judicare'* (the obligation to either prosecute or extradite), and carefully considering the issue of amnesties. These provisions are vital to the success of the treaty and to ensuring that justice is delivered for the victims of crimes against humanity. Without these principles, the treaty risks being undermined by jurisdictional gaps and a failure to hold perpetrators accountable.

Universal Jurisdiction

A central feature of a comprehensive treaty on crimes against humanity must be a robust jurisdictional framework that provides a solid basis for domestic investigations and prosecutions. Draft Article 7 concerns the duty of states to “take the necessary measures” to establish national jurisdiction over crimes against humanity.²⁹ To ensure accountability effectively, states are encouraged to provide for a broad range of heads of jurisdiction under their national law. These include jurisdiction based on the territory of a state where the crime was committed, the nationality of the perpetrator, and, where appropriate, the nationality of the victim.³⁰

28 For an example of a treaty that is more symbolic than effective in practice, see the prevention mandate of the Genocide Convention. G.A. Res. 260 A (III), *supra* note 1.

29 Draft Articles on Prevention and Punishment of Crimes Against Humanity arts. 6-7, Int'l L. Comm'n, U.N. Doc. A/74/10 (2019), https://legal.un.org/ilc/texts/instruments/english/draft_articles/7_7_2019.pdf [<https://perma.cc/J2EW-CXYC>] [hereinafter Draft Articles].

30 *Id.* at art. 7(1)(a)-(c).

However, while the principles of territoriality and active and passive nationality remain important bases of jurisdiction,³¹ they are not, on their own, sufficient to guarantee accountability for crimes of such grave nature and international concern. The use of additional jurisdictional bases could assist in that effect. In particular, providing for jurisdiction over crimes against humanity based on the principle of universal jurisdiction should actively be encouraged.

Draft Article 7, paragraph 2, requires states to establish their jurisdiction when the alleged offender is present on their territory and the state does not extradite or surrender the person to another state or a competent international criminal court or tribunal.³² Such a language recalls the principle of (conditional) universal jurisdiction, and would enable states to prosecute crimes against humanity regardless of where the crime occurred or the nationality of the perpetrator or victim, even in the absence of any direct link between the crime and the prosecuting state, except for the presence of the alleged accused on the territory.³³

This can help reduce impunity and enhance the capacity of national criminal justice systems to address crimes against humanity on behalf of the international community as a whole. The principle of universal jurisdiction in the Convention on crimes against humanity would act as a safety net when other bases of jurisdiction are unavailable or ineffective.³⁴ It provides a mechanism for pursuing justice when the territorial or national state is unwilling or unable to prosecute. In addition, jurisdiction based on the principle of universality is essential to ensure the effective implementation of other provisions within the draft articles.

Aut Dedere Aut Judicare

Having a robust jurisdictional regime in place is also a prerequisite for fulfilling the obligation of *aut dedere aut judicare*.³⁵ The principle of *aut dedere aut judicare* obliges a state, on whose territory an alleged offender is present, to either submit the case to national authorities for prosecution within its jurisdiction or extradite or surrender the individual to a

31 For an account of the jurisdictional principles, see JAMES CRAWFORD, *BROWNIE'S PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 441–46 (9th ed. 2019); CHRISTOPHER STAKER, *INTERNATIONAL LAW* 307 (Malcolm Evans ed., 2024).

32 Draft Articles, *supra* note 29, at art. 7(2); see also Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 5(2), Dec. 10, 1984, 1465 U.N.T.S. 85; International Convention for the Protection of All Persons from Enforced Disappearance art. 9(2), Dec. 20, 2006, 2716 U.N.T.S. 3.

33 For a distinction between “conditional” and “absolute” or “pure” universal jurisdiction, see ANTONIO CASSESE, *INTERNATIONAL CRIMINAL LAW* 289–91 (Oxford University Press 2003).

34 Antonio Coco, *The Universal Duty to Establish Jurisdiction Over, and Investigate, Crimes Against Humanity: Preliminary Remarks on Draft Articles 7, 8, 9 and 11 by the International Law Commission*, 16 J. INT'L CRIM. JUST. 751, 760–61 (2018).

35 See Draft Articles, *supra* note 29, at art. 7 cmt. 11.

jurisdiction that is willing and capable of carrying out the prosecution.³⁶ However, as established by the International Court of Justice in the *Belgium v. Senegal* case, states require the legal foundation provided by universal jurisdiction to effectively meet their obligations. Without it, they would be unable to initiate preliminary investigations, refer cases to their judicial authorities for prosecution, or extradite alleged offenders to a competent authority elsewhere.³⁷

The inclusion of the principle of *aut dedere aut judicare*, as set out in Draft Article 10³⁸, is indispensable, as it constitutes a necessary element for bringing perpetrators of the most serious international crimes, such as crimes against humanity, to account.³⁹ At the same time, such a provision preserves prosecutorial discretion, enabling states to determine whether to initiate prosecution themselves rather than extradite, provided that the case is submitted to their competent national authorities.

Amnesties

Another critical issue to be addressed during negotiations is amnesty. Amnesties are legal measures that have the effect of barring the prosecution of certain individuals or categories of individuals. At the moment, the Draft Articles do not specifically address amnesties for crimes against humanity. However, the obligation to *aut dedere aut judicare* contained in Draft Article 10 may conflict with the state's ability to implement an amnesty.⁴⁰ Indeed, according to the ILC in its draft commentary, "the obligation upon a State to submit the case to the competent authorities may have implications for a State's effort to implement an amnesty."⁴¹ Still, the

36 For a full account of the principle of *aut dedere aut judicare*, see M. CHERIF BASSIOUNI & EDWARD M. WISE, *AUT DEDERE AUT JUDICARE: THE DUTY TO EXTRADITE OR PROSECUTE IN INT'L L.* (1995); Int'l L. Comm'n, Final Rep. of the Int'l L. Comm'n on the Obligation to Extradite or Prosecute (Aut Dedere Aut Judicare), U.N. Doc. A/69/10 (2014), reprinted in [2014] 2 Y.B. Int'l L. Comm'n 65, U.N. Doc. A/CN.4/SER.A/2014/Add.1.

37 See Questions Relating to the Obligation to Prosecute or Extradite (*Belg. v. Sen.*), Judgment, 2012 I.C.J. 422, 451, ¶ 74 (July 20) with regard to the link between universal jurisdiction and the principle of *aut dedere aut judicare* in relation to the Torture Convention; see also *id.* at 578, ¶ 26 (Xue, J., dissenting).

38 This approach aligns with other treaties that address crimes of comparable seriousness. For a survey of multilateral instruments which may be of relevance for the work of the International Law Commission on the topic, see U.N. Secretariat, *Survey of Multilateral Conventions Which May Be of Relevance for the Work of the ILC on the Topic "The Obligation to Extradite or Prosecute (Aut Dedere Aut Judicare)"*, U.N. Doc. A/CN.4/630 (June 18, 2010).

39 For the importance of the principle of *aut dedere aut judicare* in the Convention on Crimes against Humanity, see Laura M. Olson, *Re-enforcing Enforcement in a Specialised Convention on Crimes Against Humanity: Inter-State Cooperation, Mutual Legal Assistance, and the Aut Dedere Aut Judicare Obligation*, in *FORGING A CONVENTION FOR CRIMES AGAINST HUMANITY* 323 (Leila Nadya Sadat ed., 2013).

40 The same conclusion has, for instance, been reached with regard to the Convention against Torture. See ANDREAS O'SHEA, *AMNESTY FOR CRIME IN INT'L L. AND PRAC.* 186 (2002).

41 See Draft Articles, *supra* note 29, at art. 10 cmt. 10.

question of whether an amnesty can be compatible with the obligation to submit a case for prosecution remains outstanding.

Allowing states to grant amnesties would severely undermine the treaty's aim to put an end to impunity for crimes against humanity and commitment to bring justice to victims. To safeguard the treaty's effectiveness, it might be useful to consider including a provision prohibiting state parties to the Convention from granting amnesties that would prevent the prosecution of crimes against humanity.⁴² Such a provision would ensure that states cannot shield perpetrators from accountability under any circumstances, reinforcing the treaty's commitment to delivering justice.⁴³

THE ROLE OF IMPLEMENTATION

To give meaning to any international treaty, signature and ratification alone do not suffice. Treaties also need to be effectively implemented by states at the national level. The success of any treaty will be determined by how states take responsibility for implementing its provisions within their own domestic legal frameworks. This means that both its substantive and procedural provisions need to be fully integrated into national legal systems.

At present, while a number of states have already incorporated crimes against humanity provisions into their national laws, often as part of implementing the Rome Statute, many still lack legislation criminalizing such crimes.⁴⁴ Furthermore, even where such national laws exist, they are often fragmented, inconsistent, or inadequately aligned with international standards. This results in significant gaps in accountability.

Enacting comprehensive national legislation is therefore essential to ensuring the effective implementation of the treaty's provisions. Such legislation provides the necessary foundation for holding perpetrators accountable within domestic jurisdictions. In doing so, it not only facilitates the prosecution and punishment of those responsible for crimes against humanity but also serves as a deterrent against future violations. Moreover, it strengthens states' capacity to enforce international criminal law effectively and consistently.

Therefore, to ensure that perpetrators are held accountable within national jurisdictions, states should adopt legislation that clearly defines and criminalizes crimes against humanity, along with establishing appropriate

⁴² Several states have national laws in place that prohibit amnesties or similar measures with regard to crimes against humanity. *See id.* at 97 n. 482.

⁴³ On the incompatibility of amnesties with Human Rights and International Criminal Law Treaties, *see* O'Shea, *supra* note 40; *see also* MARK FREEMAN, NECESSARY EVILS: AMNESTIES AND THE SEARCH FOR JUSTICE pt. I (Cambridge Univ. Press 2009).

⁴⁴ *See Nat'l Implementing Legislation Database*, LEGAL TOOLS DATABASE, <https://www.legal-tools.org/national-implementing-legislation-database> [<https://perma.cc/NCP5-BBES>].

modes of liability.⁴⁵ To facilitate smooth national implementation, precise and comprehensive definitions of crimes against humanity must be provided during the treaty negotiation. This will help prevent ambiguity in the interpretation and enforcement of these provisions. However, it is equally crucial that the treaty strikes the right balance, providing sufficient clarity while avoiding excessive ambiguity and remaining non-overscriptive. Such an approach would enable states to retain significant flexibility in determining how to best implement their international obligations regarding crimes against humanity, while also taking into account their existing national laws and practices. At the same time, this approach would not prevent states from adopting a more detailed and expansive standard in their domestic legislation, should they choose to do so.⁴⁶

MECHANISMS FOR ENFORCEMENT AND OVERSIGHT

The effectiveness of an international treaty depends on the functionality of its enforcement and oversight mechanisms. The enforcement of the treaty on crimes against humanity will ultimately rely on the International Court of Justice (ICJ) to deal with state breaches. Therefore, it is imperative to ensure the ICJ is given jurisdiction and authority to effectively handle cases during the negotiations. A strong ICJ jurisdiction clause will facilitate impartial Resolution of conflicts between states regarding the treaty's interpretation or application, reinforcing accountability and compliance. Therefore, the ICJ must have a strong and clear mandate within the treaty framework.

To strengthen this aspect, valuable lessons can be drawn from past international cases brought before the ICJ under comparable frameworks, such as those we have seen under the Genocide Convention.⁴⁷ By analyzing how the ICJ has interpreted treaty obligations, addressed jurisdictional challenges, and issued provisional measures or judgements, it is possible to identify the strengths and shortcomings in existing enforcement models. These lessons can improve the design of mechanisms for enforcing this treaty.

45 For examples of how states have implemented crimes against humanity in domestic laws, see *Implementing the Rome Statute of the International Criminal Court*, CASE MATRIX NETWORK 34-39 (Sep. 2017), <https://www.legal-tools.org/doc/e05157/pdf/> [<https://perma.cc/C4BZ-WKVR>]; see also Sean D. Murphy (Special Rapporteur for Crimes Against Humanity), *First Rep. on Crimes Against Humanity*, ¶¶ 52–64, U.N. Doc. A/CN.4/680, (Feb. 17, 2015), https://legal.un.org/ilc/documentation/english/a_cn4_680.pdf [<https://perma.cc/E2HS-QH5B>].

46 Draft Articles, *supra* note 29, at art. 2(3). The draft articles includes a “without prejudice” clause, allowing states the flexibility to adopt or retain broader definitions of crimes against humanity.

47 For some recent cases, see *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukr. v. Russ.)*, Judgment, 2024 I.C.J. 361 (Feb. 2); *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (S. Afr. v. Isr.)*.

In addition to judicial enforcement by the ICJ, the treaty should include a dedicated, robust monitoring mechanism to track compliance. While the ILC Draft Articles currently do not include such a monitoring mechanism, the idea of an institutional mechanism first appeared in the model Proposed Convention on the Prevention and Punishment of Crimes Against Humanity produced by the Crimes Against Humanity Initiative in 2010.⁴⁸ Sierra Leone has repeatedly suggested the importance of a monitoring mechanism.⁴⁹

In terms of form, the mechanism could take various shapes, such as a fact-finding commission or a committee of independent experts similar to those established under various human rights treaties, like the Human Rights Committee,⁵⁰ the Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,⁵¹ or the Committee on Enforced Disappearance.⁵² However, it might also be important to consider whether existing institutions and mechanisms could be leveraged to perform these functions effectively, to avoid duplication of effort and save resources.⁵³

While monitoring mechanisms are often non-binding, they can still be useful and offer valuable insights. A robust monitoring system would be essential for assessing compliance, ensuring transparency, and identifying areas for improvement by recommending corrective actions that help guarantee the effective enforcement of the treaty's provisions. Specifically, the monitoring mechanism could include measures such as early warning systems to detect potential risks of non-compliance at an early stage.⁵⁴ Without such a mechanism, the treaty risks remaining weak, depending solely on states' willingness to comply.

Beyond oversight, a monitoring mechanism could be tasked with providing technical assistance to states in ratifying the Convention and supporting them in capacity-building to meet their commitments under the

48 *Proposed Convention*, *supra* note 6, at 35 art. 19.

49 Statement by H. E. Mr. Amara S. Sowa (Ambassador, Permanent Mission of the Republic of Sierra Leone to the U.N.), *Agenda Item 80: "Crimes Against Humanity"*, ¶ 12, 78th Sess., 6th Comm. (Oct. 12, 2023), https://www.un.org/en/ga/sixth/78/pdfs/statements/cah/11mtg_sierraleone.pdf [<https://perma.cc/B264-MKVF>].

50 G.A. Res. 2200A (XXI), International Covenant on Civil and Political Rights (ICCPR) arts. 28-45 (Dec. 16, 1966).

51 G.A. Res. 39/46, annex, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, arts. 17-24 (Dec. 10, 1984).

52 G.A. Res. 61/177, annex, International Convention for the Protection of All Persons from Enforced Disappearance, arts. 26-36 (Dec. 20, 2006).

53 Charles C. Jalloh, *The International Law Commission's First Draft Convention on Crimes Against Humanity: Codification, Progressive Development, or Both?*, 52 CASE W. RES. J. INT'L L. 401 (2020).

54 Comments and Observation of Australia of Supplement No. 10 of the Draft Articles, at 3 (Dec. 2023), https://www.un.org/en/ga/sixth/78/cah/australia_e.pdf [<https://perma.cc/XJ9Y-4YSF>] [hereinafter Comments and Observations]; *see also* U.N. GAOR, 71st Sess., Supplement No. 10, U.N. Doc. A/74/10 (Aug. 20, 2019), https://legal.un.org/ilc/reports/2019/english/a_74_10_advance.pdf [<https://perma.cc/2TLG-PUM2>].

treaty.⁵⁵ Specifically, the monitoring mechanism could coordinate targeted capacity-building initiatives, including legislative and investigative approaches.⁵⁶ The mechanism could promote initiatives to equip states with the necessary knowledge, experience, and skills by developing training guides, toolkits, and practical manuals, as well as training programs for law enforcement officials and judges, to enhance the capacity of national institutions. It could also facilitate the exchange of successful practices among states and recommendations for improving implementation. By doing so, a monitoring mechanism would not only serve an oversight function but also actively support states in fulfilling their obligations and strengthening their capacity.

CONCLUSION

In conclusion, the proposed treaty on crimes against humanity has the potential to reshape the landscape of international criminal justice. It represents a significant opportunity to close a longstanding gap in the legal framework by providing a robust, comprehensive, and coherent instrument for the prevention and punishment of crimes against humanity. By doing so, the treaty will strengthen the international community's ability to prevent such atrocities, ensure accountability for perpetrators, and advance justice for victims and survivors.

In light of the ongoing and emerging global crises, which have been marred by severe human rights violations and atrocities, the need for such a treaty is both timely and compelling. The draft prepared by the International Law Commission provides a solid foundation for states to build on. However, the treaty's success ultimately depends on how it is negotiated, implemented, and effectively enforced. The path forward requires a collective commitment to ensuring that the treaty becomes an effective instrument for the prevention and punishment of Crimes against Humanity. Only then can the treaty fulfil its full purpose and live up to its promise to victims and survivors.

⁵⁵ Statement by H. E. Mr. Amara S. Sowa, *supra* note 49, at 7 ¶ 13 (A monitoring body or mechanism “may best assist with the proper monitoring and implementation of a future crimes against humanity treaty, particularly if such a mechanism is also given a capacity building and technical assistance mandate”).

⁵⁶ Comments and Observations, *supra* note 54.