



FACTSHEET | APRIL 2023

Moving Towards a Treaty on Crimes Against Humanity

Crimes against humanity have been committed and prosecuted all over the world, including in Cambodia, Rwanda, Colombia, Yugoslavia, and in the context of World War II. Yet to this day, there is no standalone international treaty that codifies crimes against humanity and establishes duties to prevent and punish them. In stark contrast, treaties have existed to prevent and punish genocide and war crimes since the 1940s. This legal gap fosters impunity for serious crimes and creates a false hierarchy between equally egregious atrocities.

A new treaty, based on the International Law Commission's [Draft Articles on the Prevention and Punishment of Crimes against Humanity](#), offers an opportunity to fill this gap.

The treaty would deliver tangible benefits for victims and survivors. It would combat the perception that victims of some crimes are more deserving of justice than others. The treaty would also place obligations on states to prevent crimes against humanity in the first place, and allow for states to be held accountable at the International Court of Justice (ICJ) if they failed to uphold their prevention responsibilities.

1. What are crimes against humanity? How are they different from war crimes and genocide?

Crimes against humanity (CAH) are amongst the most serious violations of human rights. They are defined in existing international law as one or more specific acts committed under certain conditions. Crimes against humanity include:

murder; extermination; enslavement; deportation or forcible transfer of population; illegal imprisonment or other severe deprivation of physical liberty; torture; rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; persecution; enforced disappearance; the crime of apartheid; and other inhumane acts.

In order for any of the above acts to constitute crimes against humanity, they must be committed against a civilian population (as opposed to soldiers or other non-civilian populations), and they must be part of a widespread or systematic attack (not singular violations).

In other words, crimes against humanity are distinguished from “ordinary” crimes by how widespread or systematic the violations are, and by who is targeted (civilians). Crimes against humanity are related to war crimes and genocide — each category of crime is considered a “core” international crime, but there are important differences among them.

War crimes, by definition, can only be committed in the context of an armed conflict. They involve grave breaches of the laws of war, committed against people or entities who are protected under those laws (such as civilians and their property) and/or the use of prohibited methods or means of warfare. The acts that can constitute war crimes range from willful killing to pillaging, sexual violence, and declaring that there will be “no mercy” in a military operation. It is possible for the same act to constitute both a crime against humanity and a war crime, or to be only one or the other.

Genocide differs from both of these categories of crimes because it is motivated by a specific intent to destroy, in whole or in part, a national, racial, ethnical, or religious group. Some of the acts involved in genocide (such as killing or sexual violence) can also constitute war crimes and crimes against humanity, but for these acts to constitute genocide, they must be committed with the intent to destroy.

Although these three categories of crimes are different, there is no hierarchy among them. The distinctions between these crimes reflect legal categories designed to accurately describe the nature of the crimes and to capture the distinct motives and methods of perpetrators.

2. Why do we need a crimes against humanity treaty?

Although crimes against humanity are defined under various treaties including the [Rome Statute](#) of the International Criminal Court (ICC) and prohibited under customary international law, there is no specific treaty indicating states' responsibilities to prevent or punish these crimes. This gap distinguishes crimes against humanity from war crimes and genocide, each of which have their own dedicated treaties (the [Geneva Conventions](#) and the [Genocide Convention](#), respectively).

The Geneva Conventions and the Genocide Convention provide unified definitions of war crimes and genocide. They also indicate the responsibilities of states and clarify who can be charged with these crimes. For example, under both treaties, states have obligations to act to prevent both genocide and war crimes wherever they occur. Acts of genocide and war crimes must also be criminalized in domestic law.

A treaty on crimes against humanity could similarly clarify states' obligations to prevent and punish these crimes. It could also require states to adopt national legislation to outlaw crimes against humanity in their domestic criminal codes, cooperate with other states to extradite or domestically prosecute perpetrators, furnish protections for victims and witnesses, guarantee fair treatment of the accused, and provide mutual legal assistance.

Although codifying these crimes does not stop them from occurring, clear international and domestic legal rules are an important first step to holding perpetrators accountable, which in turn signals to all potential perpetrators that they will face justice if they commit these crimes. In this way, a crimes against humanity treaty can help reduce the number of people who suffer from these crimes in the first place. A treaty could also codify the rights of victims and require states to engage with them to achieve justice. Finally, the negotiation of a new treaty is an opportunity to incorporate progress in international law, including on addressing sexual and gender-based violence, that has been made in the decades since the Rome Statute was written.

3. What is the draft crimes against humanity treaty and how did it come to be?

The United Nations' (UN) [International Law Commission \(ILC\)](#) prepared the Draft Articles on the Prevention and Punishment of Crimes against Humanity to provide a starting point for the discussion and negotiation of an international treaty on the subject. The Draft Articles include provisions:

- defining crimes against humanity, including crimes of sexual and gender-based violence;
- articulating state obligations to prevent, criminalize, investigate, and punish these crimes;
- outlining the rights of victims and witnesses, including to redress and reparations; and
- addressing cooperation between states, including obligations to extradite or prosecute, and mutual legal assistance.

The ILC's final draft is the result of [six years of work](#), including extensive consultation with, and feedback from, states, [experts, and civil society](#). In 2019, the ILC completed their consultations and study of the issue by recommending a text: the Draft Articles on the Prevention and Punishment of Crimes against Humanity. The ILC recommended to the international community that the Draft Articles form the basis of a treaty to be adopted by states, either through the framework of the UN General Assembly (UNGA) or an independent treaty negotiation process.

4. What about the International Criminal Court and International Court of Justice?

The ICC plays a vital role in delivering justice for crimes against humanity and other atrocity crimes. At present, the ICC is the only permanent mechanism for individual criminal accountability at the international level, and is the only standing court equipped to address new or ongoing crimes against humanity.

However, the ICC also has substantive, procedural, and practical limitations, which can constrain justice and accountability for crimes against humanity. The ICC was never intended to be the sole body responsible for seeking judicial remedies for mass atrocities, nor does it have the capacity to investigate every situation or bring every perpetrator to trial. The Draft Articles complement the ICC by strengthening and empowering domestic jurisdictions to prosecute crimes against humanity. Since the ICC can only act when a state is unwilling or unable to prosecute,

the strengthening of national jurisdictional capacity to act is an important complement to the work of the ICC.

It is also important to note that the ICC can only address one side of the accountability picture — individual criminal responsibility — leaving state responsibility for crimes against humanity aside. The Draft Articles account for this by explicitly detailing not only individual states’ obligations to prevent and punish crimes against humanity, but also providing for state-to-state dispute resolution at the ICJ. Without a treaty, states do not have recourse to the ICJ for crimes against humanity.

5. What is the status of the draft treaty? Is this the final text of the treaty?

No, the current text is not final. States have yet to negotiate the substance of the Draft Articles. After the ILC adopted the Draft Articles in 2019, the UNGA took note of them and sent them to the [Sixth Committee](#), the UNGA body where legal questions are considered. For three years, the Sixth Committee had the ILC draft “under consideration.” In November 2022, the Sixth Committee finally passed a [resolution](#) to begin deliberation of the substance of the text, with a view towards discussing the ILC’s recommendation that a treaty be negotiated on the basis of the Draft Articles.

The 2022 resolution established a two-year timeline for states to “exchange substantive views” on “all aspects of the draft articles.” Specifically, the Sixth Committee will meet in a “resumed session” twice from April 10-14, 2023, and April 1-5 and 11, 2024. The [draft programme of work](#) for the April 2023 session specifies that these plenary meetings will be livestreamed and open to the public. At this session, states will consider the Draft Articles in thematic groupings. States will also have the opportunity to submit written comments on the Draft Articles by December 1, 2023, and these comments will help to inform the structure and substance of the April 2024 resumed session. The Sixth Committee will also hold a general debate on the Draft Articles per its normal practice in fall 2023 and 2024, with a view to potential action to move the Draft Articles forward in 2024.

6. How long will this take?

As elaborated above, the current stage of the treaty process is scheduled to take approximately 18 months, ending in fall 2024 when the Sixth Committee meets during the 78th session of the UNGA. At that point it is hoped that the Sixth Committee will follow the ILC’s [recommendation](#) to either “elaborat[e]...a convention by the General Assembly or by an international conference of plenipotentiaries on the basis of the draft articles.”

7. How can civil society engage in the process?

As the Sixth Committee considers the substance of the treaty, now is an important time for civil society to engage. Civil society can encourage and support states to meaningfully participate in the resumed sessions and demonstrate their commitment to the advancement of the Draft Articles, and provide suggestions and options to states to strengthen the ILC’s draft. As the final treaty will be the product of state negotiations, it’s important that states hear from civil society both on what should be protected in the current draft text, as well as what can be improved. These considerations may reflect a range of perspectives and expertise, including how to ensure that the treaty is gender-competent, survivor-centered, and intersectional. Such input has already helped to shape the draft articles; for example, civil society engagement during the ILC process was vital to [removing from the text](#) a regressive definition of gender that was carried over from the Rome Statute. Other civil society proposals to strengthen the draft include bolstering [victims’ rights](#), and adjusting the definitions of crimes such as [forced pregnancy](#), [persecution](#), and [enforced disappearances](#).