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## Little Progress in the Sixth Committee on Crimes Against Humanity

Leila Nadya Sadat

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# LITTLE PROGRESS IN THE SIXTH COMMITTEE ON CRIMES AGAINST HUMANITY

*Leila Nadya Sadat\**

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## I. INTRODUCTION

Is the world ready for a new global treaty on crimes against humanity? Ever since the Crimes Against Humanity Initiative<sup>1</sup> published a Proposed Convention on the Prevention and Punishment of Crimes Against Humanity in 2010,<sup>2</sup> there has been a robust conversation about the possibility of negotiating and adopting such a treaty, along the lines of the Genocide and Geneva Conventions. Attention increased in 2013 after the International Law Commission

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1. *About the Initiative*, CRIMES AGAINST HUMAN. INITIATIVE, <https://sites.wustl.edu/crimesagainsthumanity/about/> [<https://perma.cc/V56F-N7GU>].

2. *See generally* PROPOSED INTERNATIONAL CONVENTION ON THE PREVENTION AND PUNISHMENT OF CRIMES AGAINST HUMANITY (Leila Nadya Sadat, Whitney R. Harris World L. Instit. ed., 2010).

(“ILC”) added “crimes against humanity”<sup>3</sup> to its long-term program of work.<sup>4</sup> Support for the idea grew among States over time,<sup>5</sup> as well as among NGOs,<sup>6</sup> and the ILC received a record number of comments (approximately 750), including from thirty-nine States,<sup>7</sup> on the initial set of draft articles authored in 2017.<sup>8</sup> In October 2019, the ILC’s second (final) set of draft articles<sup>9</sup> was taken up by the United Nations General Assembly’s Sixth Committee, which considers legal issues. Yet despite the overwhelming enthusiasm for the ILC project expressed during the meeting (more than eighty percent of all States taking the floor supported a process that would move the work toward the adoption of a new treaty),<sup>10</sup> and a concrete offer from Austria to host a diplomatic

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3. *Analytical Guide to the Work of the International Law Commission: Crimes Against Humanity*, INT’L L. COMM’N (Apr. 6, 2021), [https://legal.un.org/ilc/guide/7\\_7.shtml](https://legal.un.org/ilc/guide/7_7.shtml) [<https://perma.cc/M2L8-SHDX>]. See also Leila Nadya Sadat, *Towards a New Treaty on Crimes Against Humanity: Next Steps* (Sept. 13, 2021), <https://www.justsecurity.org/78063/towards-a-new-treaty-on-crimes-against-humanity-next-steps/> [<https://perma.cc/FKH6-8UB7>].
  4. See generally Leila Nadya Sadat, *A Contextual and Historical Analysis of the International Law Commission’s 2017 Draft Articles for a New Global Treaty on Crimes Against Humanity*, 16 J. INT’L CRIM. JUST. 683 (2018).
  5. Leila Nadya Sadat & Madaline George, *An Analysis of State Reactions to the ILC’s Work on Crimes Against Humanity: A Pattern of Growing Support*, 6 AFR. J. INT’L CRIM. JUST. 162 (2020). The author began this analysis in 2013 as Director of the Whitney R. Harris World Law Institute at the Washington University School of Law. Students at the Lowenstein Human Rights Project at Yale Law School, under her direction, completed the analysis in 2021. The compilation has been broken down into two documents: one covering the years 2013–2020 [hereinafter cited 2013–2020 Compilation of Government Reactions] and one covering the years 2019–2021 [hereinafter cited 2021 Compilation of Government Reactions] (on file with author, and available on the Harris Institute Website).
  6. Public Statement, Amnesty Int’l, *Time Has Come to Turn the Draft Articles on Prevention and Punishment of Crimes Against Humanity, Duly Amended, into a UN Convention* (Sept. 30, 2020).
  7. Charles C. Jalloh & Leila N. Sadat, *Introduction to the Symposium on a Way Forward: Academic and Practitioner Perspectives on the ILC Draft Articles on Prevention and Punishment of Crimes Against Humanity as Adopted on Second Reading*, 6 AFR. J. INT’L CRIM. JUST. 79, 87 n.27 (2020) (and sources cited).
  8. The comments are summarized at Sean D. Murphy (Special Rapporteur on Crimes Against Humanity), *Fourth Rep. on Crimes Against Humanity*, ¶¶ 5–7, 15–29, U.N. Doc. A/CN.4/725 (Feb. 18, 2019), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N19/046/19/PDF/N1904619.pdf?OpenElement> (last visited Sept. 28, 2021).
  9. Rep. of the Int’l Law Comm’n on the Work of Its Seventy-First Session, ¶ 44, U.N. Doc. A/74/10 (2019) [hereinafter cited as ILC 2019 Draft Articles on Crimes Against Humanity].
  10. See generally *id.*

conference for the negotiations,<sup>11</sup> the treaty did not advance. Instead, the Sixth Committee drafted and subsequently adopted, a resolution limited to “taking note” of the articles and including the agenda item in the next session of the General Assembly in 2020.<sup>12</sup> The next attempt to move the project forward, in 2020, proved equally unfruitful as the COVID-19 pandemic made discussion of the ILC draft very challenging. Thus, once again, the project was postponed until the following year.<sup>13</sup> Expectations were high in 2021, as States considered the ILC’s 2019 draft articles for the third time.<sup>14</sup> Unfortunately, in 2021, the working methods of the Sixth Committee prevented it from arriving at a consensus on the process that would be established to bring the Commission’s work to fruition, although once again, as Part III *infra* outlines, an overwhelming majority of States believed that would be the right result.

Why the renewed focus on crimes against humanity? First, as a practical matter, despite the promise of “never again,” these crimes continue to be perpetrated around the globe. Second, because crimes against humanity occur in peacetime, as well as during armed conflict, addressing them through prevention and punishment can play a key role in staunching what I have called an “atrocities cascade” before it descends into unstoppable conflict and overwhelming criminality.<sup>15</sup> As the judgment of the International Court of Justice in *Bosnia v. Serbia*<sup>16</sup> makes clear, the obligation of “prevention” is different than the notion of “deterrence.” The latter refers to the possible specific or general effect of criminal prosecutions on would-be perpetrators of crimes against humanity.<sup>17</sup> The former is a broader concept, requiring States that are on notice of atrocities to take all possible measures of prevention if there is a serious risk that atrocities may occur.<sup>18</sup> Presumably an obligation to “prevent” crimes against humanity would entail a similar duty. By placing the jurisdictional nexus—the point at which human rights abuses become criminal—prior to the onset of war, crimes against

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11. *Id.* at 11.

12. *See infra* Part III.

13. *Id.*

14. Sadat, *supra* note 3.

15. Leila Nadya Sadat, *Putting Peacetime First: Crimes Against Humanity and the Civilian Population Requirement*, 31 EMORY INT’L L. REV. 197, 199–200 (2017); Leila Nadya Sadat, *Genocide in Syria: International Legal Options, International Legal Limits, and the Serious Problem of Political Will*, 5 IMPUNITY WATCH L.J. 1, 17 (2015).

16. Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosn. & Herz. v. Serb. & Montenegro*), Judgment, 2007 I.C.J. 43 (Feb. 26, 2007).

17. *Id.* ¶ 159.

18. *Id.* ¶ 431.

humanity can assume a preventive, as well as a punitive function. This is evident from the developing practice of the International Criminal Court (“ICC”), where crimes against humanity have assumed a pivotal role.<sup>19</sup> Each of the seventeen Situations currently open include crimes against humanity charges (in addition to war crimes)<sup>20</sup> and four alleged *only* crimes against humanity charges—Bangladesh/Myanmar, Kenya, the Philippines, and Venezuela.<sup>21</sup> In each Situation, crimes against humanity are or have been critically important in capturing certain harms not encompassed by the laws of war, including persecution and sexual and gender-based violence. Finally, it has become increasingly clear that proving genocide—in either civil or criminal cases—is extraordinarily difficult. It is also difficult to prove crimes against humanity, but one need not prove that the attacks on civilians were motivated by the specific intent of destroying the racial, ethnic, religious, or national group to which they belong.

## II. HISTORICAL BACKGROUND AND DEVELOPMENT OF THE ILC DRAFT

Crimes against humanity emerged as positive law in the Charters of the Nuremberg<sup>22</sup> and Tokyo Tribunals established after World War II,<sup>23</sup> but the concept has an ancient pedigree. It was used by American and European jurists during the first half of the nineteenth century to describe slavery and the slave trade and later to describe King Leopold’s atrocities in the Congo;<sup>24</sup> in European trials conducted at the end of the

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19. Leila Nadya Sadat, *Crimes Against Humanity in the Modern Age*, 107 AM. J. INT’L L. 334 (2013).
  20. See *Situations Under Investigation*, INT’L CRIM. CT., <https://www.icc-cpi.int/pages/situation.aspx> [<https://perma.cc/F7HN-78YZ>].
  21. *ICC Judges Authorise Opening of an Investigation into the Situation in Bangladesh/Myanmar*, INT’L CRIM. CT. (Nov. 14, 2019), <https://www.icc-cpi.int/Pages/item.aspx?name=pr1495> [<https://perma.cc/7A7N-LV6Z>]; *Kenya*, INT’L CRIM. CT., <https://www.icc-cpi.int/kenya> [<https://perma.cc/3GU2-KDAS>]; *Republic of the Philippines*, INT’L CRIM. CT., <https://www.icc-cpi.int/philippines> [<https://perma.cc/CFU4-83FL>]; *Venezuela I*, INT’L CRIM. CT., <https://www.icc-cpi.int/venezuela> [<https://perma.cc/T4RW-K9Z6>].
  22. Charter of the International Military Tribunal art. 6(c).
  23. Charter of the International Military Tribunal for the Far East art. 5.
  24. Beth Van Schaack, *Crimes Against Humanity in the “Western European & Other” Group of States: A Continuing Tradition*, 6 AFR. J. INT’L CRIM. JUST. 136, 137–38 (2020) (describing the use by Henry Wheaton, George Washington Williams, and others in the nineteenth century). For a discussion of atrocities committed against African societies by European colonizers, see Alhagi B.M. Marong, *The ILC Draft Articles on Crimes Against Humanity, An African Perspective*, 6 AFR. J. INT’L CRIM. JUST. 93,

nineteenth century;<sup>25</sup> and in official declarations regarding the massacre of the Armenians in the early twentieth century.<sup>26</sup> The concept was also given voice in the Martens Clause inserted in the preambles of the 1899 and 1907 Hague Treaties:

Until a more complete code of the laws of war has been issued, the High Contracting Parties deem it expedient to declare that, in cases not included in the Regulations . . . the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, *from the laws of humanity, and the dictates of the public conscience.*<sup>27</sup>

The International Military Tribunal at Nuremberg interpreted Article 6(c) of the Charter (on crimes against humanity) relatively narrowly.<sup>28</sup> Nonetheless, some key ideas emerged from the text of the Charter and the Judgment of the Tribunal, and later national and international case law: (1) crimes against humanity protect all civilians—including a State’s own nationals—from widespread or systematic attacks on their fundamental human rights;<sup>29</sup> (2) although the crime of persecution addresses attacks undertaken on a

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100–103 (2021). *See also* Christopher Gevers, *African and International Criminal Law*, in THE OXFORD HANDBOOK OF INTERNATIONAL CRIMINAL LAW (Keven Jon Heller et al. eds., 2020).

25. Van Schaack, *supra* note 24, at 138.
26. On May 28, 1915, France, Great Britain, and Russia declared that the Turkish massacres of the Armenians were “crimes . . . against humanity and civilization.” Joint Declaration of France, Great Britain, and Russia, Triple Entente Declaration (May 28, 1915). *See also* Roger S. Clark, *History of Efforts to Codify Crimes Against Humanity*, in FORGING A CONVENTION FOR CRIMES AGAINST HUMANITY 8, 9 (Leila Nadya Sadat ed., 2013) (“The declaration makes the novelty of the complaint clear.”).
27. Convention Respecting the Laws and Customs of War on Land, Oct. 18, 1907, 36 Stat. 2277, 1 Bevans 631 [hereinafter Fourth Hague Convention]; Annex to Fourth Hague Convention: Regulations Concerning Customs of War on Land, pmbl., cl.8, Oct. 18, 1907 (emphasis added).
28. *The Influence of the Nuremberg Trial on International Criminal Law*, ROBERT H. JACKSON CTR., <https://www.roberthjackson.org/speech-and-writing/the-influence-of-the-nuremberg-trial-on-international-criminal-law/> [<https://perma.cc/2D7Z-EAP9>].
29. Charter of the International Military Tribunal, Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis art 6(c), Aug. 8, 1945, 82 U.N.T.S. 279 [hereinafter IMT Charter] (defining crimes against humanity as crimes “whether or not in violation of the domestic law of the country where perpetrated.”). For information on crimes against humanity as crimes against individuals, see PHILIPPE SANDS, EAST WEST STREET: ON THE ORIGINS OF GENOCIDE AND CRIMES AGAINST HUMANITY 10 (2017).

discriminatory basis, persecution or discrimination is not a necessary element of a crime against humanity, although it is often present;<sup>30</sup> (3) the perpetrators of crimes against humanity may be States or may be non-State actors, including organized armed groups;<sup>31</sup> (4) crimes against humanity may be committed in wartime or in peacetime;<sup>32</sup> and (5) at least at the ICC, the entity committing crimes against humanity must be doing so pursuant to a policy, although that policy need not be formal or in writing.<sup>33</sup> In other words, by their nature they are mass crimes that may take many forms: a State policy of torture or disappearance; a campaign of rape or sexual violence; arbitrary arrest and detention (typically accompanied by inhumane conditions); mass expulsions or deportations; or mass murder of individuals by a government or non-State actors in war or peace.

In 1994, Professor M. Cherif Bassiouni, who would later chair the Drafting Committee of the Rome Diplomatic Conference that adopted the ICC Statute, wrote an essay<sup>34</sup> underscoring the need for a new convention on crimes against humanity to fill a gap “in the international normative proscriptive scheme.”<sup>35</sup> The project was set aside as work on the ICC Statute began to advance. In 2007, along with Cherif and other colleagues who then formed the Steering Committee of the Crimes Against Humanity Initiative,<sup>36</sup> we resurrected the idea of a new global treaty on crimes against humanity as it became clear that the normative gap persisted as well as the problem of political complacency in the face of repeated atrocities.<sup>37</sup> The task at hand was both easier and more difficult than it might otherwise have been in 1994. It was *simpler* because the Rome Statute adopted a definition

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30. See *Crimes Against Humanity*, UN OFF. ON GENOCIDE PREVENTION & THE RESP. TO PROTECT, <https://www.un.org/en/genocideprevention/crimes-against-humanity.shtml> [<https://perma.cc/ST65-3FLB>].
  31. See, e.g., William A. Schabas, *Punishment of Non-State Actors in Non-International Armed Conflict*, 26 FORDHAM INT’L L.J. 907, 919 (2003).
  32. Matthew Lippman, *Crimes Against Humanity*, 17 B.C. THIRD WORLD L.J. 171, 269 (1997).
  33. Rome Statute of the International Criminal Court art. 7, July 17, 1998, 2187 U.N.T.S. 90; Sadat, *supra* note 19, at *passim*.
  34. M. Cherif Bassiouni, “*Crimes Against Humanity: The Need for a Specialized Convention*,” 31 COLUM. J. TRANSNAT’L L. 457, 493 (1994).
  35. *Id.* at 457.
  36. The Initiative’s Steering Committee is composed of Professor M. Cherif Bassiouni (*In Memoriam*); Ambassador Hans Corell; Justice Richard Goldstone; Professor Juan Méndez; Professor William A. Schabas; Judge Christine Van Den Wyngaert; and Professor Leila Nadya Sadat, Chair and Director. *Steering Committee*, CRIMES AGAINST HUMANITY INITIATIVE, <https://sites.wustl.edu/crimesagainsthumanity/about/steering-committee-membership/> [<https://perma.cc/3DYJ-5ANQ>].
  37. Bassiouni, *supra* note 34, at 457–58.

that had been negotiated by 165 States and approved by 120 of them; and, for the first time since Nuremberg, a definition of crimes against humanity was thereby incorporated into a major multilateral treaty.<sup>38</sup> Yet it was also *more difficult*, because, paradoxically, many saw the Rome Statute's adoption as an obstacle to a stand-alone interstate convention on crimes against humanity. Some worried that the convention would be superfluous; others thought that its adoption could somehow undermine the ICC itself.<sup>39</sup>

Over the past fourteen years, these doubts and debates have been addressed, initially during the first three years of intensive work conducted by the Crimes Against Humanity Initiative,<sup>40</sup> and subsequently in regional conferences and meetings as well as scholarly writings<sup>41</sup> (including symposia in the *Journal of International Criminal Justice*<sup>42</sup> and the *African Journal of International Criminal Justice*<sup>43</sup>). Likewise, when the International Law Commission embarked upon its discussions in 2013, the reports of U.N. Special Rapporteur for Crimes Against Humanity Sean Murphy took up many of the concerns raised, as did the plenary sessions and discussions of the Commission.<sup>44</sup>

Eventually, most experts and governments commenting on the ILC's work concluded that although the ICC Statute considerably advanced the normative work of defining crimes against humanity, it did not fill the legal gap regarding their prevention and punishment.<sup>45</sup> A limited number of crimes against humanity are partially codified in

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38. *Crimes Against Humanity*, INT'L CRIMES DATABASE, <https://www.internationalcrimesdatabase.org/Crimes/CrimesAgainstHumanity> [<https://perma.cc/M538-EE8C>].
  39. For a response to these concerns, see Richard Goldstone, *As the Draft Crimes Against Humanity Treaty Moves Forward, a View on How It Relates to the Rome Statute of the ICC*, JUST. SEC. (Sept. 15, 2021), <https://www.justsecurity.org/78188/as-the-draft-crimes-against-humanity-treaty-moves-forward-a-view-on-how-it-relates-to-the-rome-statute-for-the-icc/> [<https://perma.cc/4W4X-53VP>].
  40. See, e.g., Leila Nadya Sadat, *Preface and Acknowledgements*, in *FORGING A CONVENTION FOR CRIMES AGAINST HUMANITY* (Leila Nadya Sadat ed., 2011).
  41. See, e.g., *ON THE PROPOSED CRIMES AGAINST HUMANITY CONVENTION* (Morten Bergsmo & Tia Song eds., 2014).
  42. Symposium, *Special Issue: Laying the Foundations for a Convention on Crimes Against Humanity*, 16 J. INT'L CRIM. JUST. 679 (2018).
  43. Symposium, *Special Issue on the ILC Draft Articles on Prevention and Punishment of Crimes Against Humanity* 6 AFR. J. INT'L CRIM. JUST. 75 (2020).
  44. Charles C. Jalloh, *The International Law Commission's First Draft Convention on Crimes Against Humanity*, 5 AFR. J. INT'L CRIM. JUST. 119 *passim* (2019).
  45. Sadat, *supra* note 3.



international treaties, such as apartheid,<sup>46</sup> enforced disappearance,<sup>47</sup> and torture,<sup>48</sup> but most are not. The crimes not covered by any existing treaty include mass murder or campaigns of extermination undertaken without genocidal intent, or against political, social, or other groups not covered by the genocide convention during peacetime; crimes of sexual and gender-based violence; the crime of persecution; and deportation or forced displacement outside of armed conflict.<sup>49</sup> (Because crimes against humanity can occur in peacetime, prior to the onset of armed conflict, treaties and conventions on the laws of war do not adequately address them.)

In 2019, the ILC revised its draft, transmitting a final set of Draft Articles on Prevention and Punishment of Crimes Against Humanity, with Commentaries, to the United Nations General Assembly.<sup>50</sup> Paragraph 42 of the ILC's August 2019 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."<sup>51</sup> Given the historic role of the ILC in the codification of international law, including its codification of the Nuremberg Principles<sup>52</sup> and its 1994 Draft Statute for the International Criminal Court,<sup>53</sup> it was a natural forum for work on a new global treaty on crimes against humanity. It had both the expertise and jurists from all regions that could contribute, and did contribute, to the project during the several years of its elaboration.<sup>54</sup>

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46. G.A. Res. 3068 (XXVIII) (July 18, 1976).
  47. International Convention for the Protection of All Persons from Enforced Disappearance, Dec. 20, 2006, 2716 U.N.T.S. 3.
  48. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85.
  49. See *Crimes Against Humanity*, *supra* note 30.
  50. ILC 2019 Draft Articles on Crimes Against Humanity, *supra* note 9.
  51. *Id.* ¶ 42.
  52. See Int'l Law Comm'n, Principles of International Law Recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal (1950).
  53. See Int'l Law Comm'n, Draft Statute for an International Criminal Court with Commentaries (1994).
  54. The International Law Commission recently celebrated its seventieth anniversary, prompting many examinations of its purpose and functioning. See, e.g., Laurence Boisson de Chazournes, *The International Law Commission in a Mirror—Forms, Impact and Authority, in SEVENTY YEARS OF THE INTERNATIONAL LAW COMMISSION: DRAWING A BALANCE FOR THE FUTURE* 133 (2020).

### III. DISCUSSIONS IN THE SIXTH COMMITTEE (2019–2021)

In October and November 2019, the General Assembly's Sixth Committee, which addresses legal matters, debated the ILC's 2019 Draft Articles.<sup>55</sup> More than eighty States and entities commented or joined a statement on the revised text, and Austria offered to host a diplomatic conference for the new treaty.<sup>56</sup> Although this was a positive development, the Sixth Committee did not take up the ILC's invitation to proceed directly to the negotiation of a new convention.<sup>57</sup> Many States hesitated, contending that they had not yet had time to really study the ILC's work, and the Sixth Committee works based on consensus.<sup>58</sup> Thus, the adopted draft resolution "took note" of the ILC's work,<sup>59</sup> and suggested that the topic should be included in the provisional agenda of its next session (to be held in 2020).<sup>60</sup> Disappointed in the outcome, forty-two States joined a statement from Austria<sup>61</sup> regretting "that the Sixth Committee was not able to agree on an ambitious and structured approach for . . . future deliberations on the recommendation of the ILC to elaborate a convention on the basis of its draft articles."<sup>62</sup>

Having thus postponed concrete action on the Draft Articles in 2019, the Sixth Committee again considered the topic in October 2020. In large part due to the COVID-19 pandemic's limitations on working methods at the United Nations, the Sixth Committee opted for a

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55. Sixth Committee (Legal) (74th Session), Rep. of the Int'l Law Comm'n on the Work of Its Seventy-First Session (Agenda Item 79), Background, <https://www.un.org/en/ga/sixth/74/ilc.shtml/> [<https://perma.cc/52MC-TD7L>].

56. *Id.*

57. See Marik A. String, Acting Legal Adviser, *Sixth Committee Debate Agenda Item 79: Report of the International Law Commission on the Work of Its 71st Session* (Oct. 29, 2019), <https://usun.usmission.gov/sixth-committee-debate-agenda-item-79-report-of-the-international-law-commission-on-the-work-of-its-71st-session/> [<https://perma.cc/QJ3E-FEQV>].

58. See generally *Sixth Committee Speakers Argue Whether to Codify Crimes Against Humanity Draft Articles into Convention or Have States Exercise National Jurisdiction*, U.N. Doc. GA/L/3638 (Oct. 13, 2021) (unofficial record), <https://www.un.org/press/en/2021/gal3638.doc.htm/> [<https://perma.cc/YP4C-C6DL>].

59. ILC 2019 Draft Articles on Crimes Against Humanity, *supra* note 9.

60. *Id.*

61. See Permanent Mission of Austria, *Adoption of the Draft Resolution Entitled "Crimes Against Humanity": Explanation of Position After Adoption (Before 74th Session of the U.N. General Assembly/Sixth Committee)*, <http://statements.unmeetings.org/media2/23557769/-e-austria-statement-item-79-eop.pdf> [<https://perma.cc/VVR4-AZPV>].

62. *Id.*

technical rollover, adopting a draft resolution<sup>63</sup> on November 12, 2020, that again “took note” of the Draft Articles and decided “to . . . continue to examine the recommendation of the Commission” with a view to take it up the following year.<sup>64</sup> (The U.N. General Assembly later adopted this text on December 15, 2020.)<sup>65</sup>

Again disappointed by the outcome, Mexico delivered a statement on behalf of itself and thirteen additional countries warning that this resolution “run[s] the risk—as it has been the case with other ILC products in the past—of getting caught in a cycle of consideration and postponement of the articles without concrete action, which in our view may undermine the relationship between the General Assembly and the ILC.”<sup>66</sup> The statement continued:

We trust, however, that we will be able to revisit this agenda item [in 2021] with a constructive and flexible approach in order to break this inertia and to take collective decisions that would allow us to move forward into the definition of a process to consider the recommendations of the ILC, under terms that will be agreeable to all delegations.<sup>67</sup>

This is where things stood in fall 2021. On October 13 and 15, 2021, the Sixth Committee again took up the ILC 2019 draft.<sup>68</sup> Progress over the past year was made difficult by the pandemic, as in-person meetings were largely impossible, but some efforts to organize a “like-minded” group emerged. In June 2021, the U.K. government, joined by the governments of Kenya and Sierra Leone, hosted an important discussion on the Commission’s work to prepare for the October

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63. See Int’l Law Comm’n, Draft Resolution: Crimes Against Humanity, U.N. Doc. A/C.6/75/L.20 (2020).

64. *Id.*

65. G.A. Res. 75/136 (Dec. 22, 2020).

66. Mexico, *Explanation of Position—Crimes Against Humanity* (Nov. 19, 2020), [https://www.un.org/en/ga/sixth/75/pdfs/statements/cah/19mtg\\_mexico.pdf](https://www.un.org/en/ga/sixth/75/pdfs/statements/cah/19mtg_mexico.pdf) [<https://perma.cc/7J4A-PBEJ>].

67. *Id.*

68. See Press Release, General Assembly, Sixth Committee Speakers Argue Whether to Codify Crimes Against Humanity Draft Articles into Convention or Have States Exercise National Jurisdiction, U.N. Press Release GA/L/3638 (Oct. 13, 2021) (discussing the Committee’s debates on October 13); Press Release, General Assembly, Concluding Heated Debate on Crimes Against Humanity, Sixth Committee Speakers Urge Further Dialogue in Ad Hoc Committee to Determine Best Way Forward, U.N. Press Release GA/L/3639 (Oct. 15, 2021) (describing the debate concluding on October 15) [hereinafter Concluding Heated Debate].

session.<sup>69</sup> There were also discussions among experts, civil society organizations, and States regarding the best way forward.<sup>70</sup> Once more, States' interventions at the Sixth Committee were overwhelmingly positive,<sup>71</sup> although the debate was characterized as "heated."<sup>72</sup> Of the ninety States and entities intervening, seventy-six were ultimately positive, explicitly supporting a process to advance discussion of the ILC draft.<sup>73</sup> Emblematic of this perspective was the position of the European Union, joined by seven other countries, which proposed the establishment of an Ad Hoc Committee that would allow States to address any concerns they had in an "effective and inclusive manner," and that would have a "clear mandate and clear timeline" for the completion of its work.<sup>74</sup> This group of States also expressed support for the establishment of a Convention.<sup>75</sup> Four States appeared to take no explicit position either on the convention or the process: Azerbaijan,

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69. UK Mission Press Office, *Crimes Against Humanity: The Legal Framework & the Work of the ILC*, YOUTUBE (2021), <https://www.youtube.com/watch?v=Fad5hPH4WY4> [<https://perma.cc/G8WF-9FUT>].
70. Just Security published an eight-part series on the work of the ILC on the proposed new treaty. *See, e.g.*, Sadat, *supra* note 3 and subsequent articles in the series.
71. *See generally* 2021 Compilation of Government Reactions, *supra* note 5.
72. Concluding Heated Debate, *supra* note 68.
73. Leila Sadat & Akila Radhakrishnan, *Crimes Against Humanity: Little Progress on Treaty as UN Legal Committee Concludes Its Work*, JUST. SEC. (Dec. 7, 2021), <https://www.justsecurity.org/79415/crimes-against-humanity-little-progress-on-treaty-as-un-legal-committee-concludes-its-work/> [<https://perma.cc/VWD9-L2UZ>].
74. Simona Popan, Counsellor, Delegation of the European Union to the United Nations, *Statement on Behalf of European Union and Its Member States* (Oct. 13, 2021), [https://www.un.org/en/ga/sixth/76/pdfs/statements/cah/08mtg\\_eu.pdf](https://www.un.org/en/ga/sixth/76/pdfs/statements/cah/08mtg_eu.pdf) [<https://perma.cc/DS5W-PHUL>].
75. The figure of 76 was arrived at as follows: **28 countries** (EU Member States and the EU as an entity) + **7 countries** aligning with the EU Statement (Albania, Bosnia & Herzegovina, Georgia, Moldova, Montenegro, North Macedonia, and Ukraine) + **4 countries** (Nordic countries minus EU countries and the Nordic Group as an entity) + **35 countries** (Argentina, Armenia, Bangladesh, Brazil, Colombia, Costa Rica, Cuba, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Iceland, Indonesia, Israel, Jordan, Kenya, Lebanon, Liechtenstein, Malaysia, Mexico, Myanmar, New Zealand, Nigeria, Norway, Paraguay, Peru, the Republic of Korea, Senegal, Sierra Leone, South Africa, Switzerland, Turkey, the UK, and the United States) + **2 countries** that did not speak on October 13 or 15 but aligned with the Slovenian Statement offered on behalf of the EU and 22 other countries (Chile and Canada), for a total of **76**. Thirteen EU Member States also intervened; those are recorded in our data set as the content of the Statements is interesting and important, but those thirteen were excluded from the totals so that no country was counted twice.

Singapore, Sri Lanka, and Vietnam.<sup>76</sup> Five States appeared to offer a weak version of a “working group” that did not explicitly create a process to develop a convention but would have allowed for some continued debates: Egypt, Iran, the Philippines, Pakistan, and Saudi Arabia.<sup>77</sup> Finally, five States—Cameroon, China, India, the Russian Federation, and the Syrian Arab Republic—seemed clearly opposed to the establishment of a new treaty on Crimes Against Humanity, and to any process that might result in one, as shown by the summary table below.<sup>78</sup>

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76. Concluding Heated Debate, *supra* note 68 (evidencing the countries’ representatives pointing out “ambiguities in distinguishing such core crimes” and “divergence views” worth addressing).

77. See Ahmed Abdelaziz, Legal Advisor, Permanent Mission of Egypt to the United Nations, *Statement on Agenda Item 83: “Crimes Against Humanity”* (Oct. 13, 2021), [https://www.un.org/en/ga/sixth/76/pdfs/statements/cah/08mtg\\_egypt.pdf](https://www.un.org/en/ga/sixth/76/pdfs/statements/cah/08mtg_egypt.pdf) [<https://perma.cc/E37Q-BYRY>]; Naser Asiabipour, Legal Advisor, Ministry of Foreign Affairs of the Islamic Republic of Iran, *Statement Before the Sixth Committee of the 76th Session of the United Nations General Assembly on “Prevention and Punishment of Crimes Against Humanity”* (Oct. 13, 2021), [https://www.un.org/en/ga/sixth/76/pdfs/statements/cah/08mtg\\_iran.pdf](https://www.un.org/en/ga/sixth/76/pdfs/statements/cah/08mtg_iran.pdf) [<https://perma.cc/Z9TS-724F>]; Permanent Mission of the Republic of the Philippines to the United Nations, *Agenda Item 83: Crimes Against Humanity: Statement* (Oct. 13, 2021), [https://www.un.org/en/ga/sixth/76/pdfs/statements/cah/08mtg\\_philippines.pdf](https://www.un.org/en/ga/sixth/76/pdfs/statements/cah/08mtg_philippines.pdf) [[perma.cc/M9S4-UG5G](https://perma.cc/M9S4-UG5G)]; Permanent Mission of Pakistan to the United Nations, *Statement by Pakistan on Agenda Item 81, “Crimes Against Humanity”* (Oct. 13, 2021), [https://www.un.org/en/ga/sixth/76/pdfs/statements/cah/08mtg\\_pakistan.pdf](https://www.un.org/en/ga/sixth/76/pdfs/statements/cah/08mtg_pakistan.pdf) [<https://perma.cc/2QAT-B9CG>]; Nidaa Abu-Ali, Permanent Mission of the Kingdom of Saudi Arabia to the United Nations, *Preventing and Punishing Crimes Against Humanity* (Oct. 13, 2021), [https://www.un.org/en/ga/sixth/76/pdfs/statements/cah/09mtg\\_saudiArabia.pdf](https://www.un.org/en/ga/sixth/76/pdfs/statements/cah/09mtg_saudiArabia.pdf) [<https://perma.cc/J47P-N3FG>].

78. All Statements are available on the website of the Sixth Committee. *Sixth Committee (Legal)—76th Session, Crimes Against Humanity (Agenda Item 83)*, UNITED NATIONS, <https://www.un.org/en/ga/sixth/76/cah.shtml> [<https://perma.cc/7GD2-UH3R>]. In addition to reading the Statements published, the students from Yale Law School’s Lowenstein Project and this author listened to the debates as they were taking place through UN Web TV. We subsequently coded the Statements, considering our initial impression, after rereading the Statements. Close cases warranted further discussion and consideration. See 2021 Compilation of Government Reactions, *supra* note 5.

SUMMARY TABLE 2021 U.N. SIXTH COMMITTEE	
Position	States & Entities
Explicitly favors a process to develop a convention	76 (≈84%)
Takes no explicit view on a process (positive and/or constructive comments on the text)	0
Takes no explicit view on a process (neutral)	4 (≈5%)
Opposes a process to develop a convention at this time	5 (≈6%)
Opposes a convention	5 (≈6%)
Total	90

The key then, during the negotiations, was to convince the ten States opposed to the convention to at least allow a process to be established in which their concerns could be advanced, as well as the views of States favoring the work of the ILC. As informal consultations proceeded, more than eighty-five prominent international judges, lawyers, practitioners and human rights organizations adopted a declaration urging States to “realiz[e] the recommendation of the International Law Commission that the draft articles on the Prevention and Punishment of Crimes Against Humanity be elaborated into a treaty.”<sup>79</sup> Yet the negotiations faltered. According to accounts from several close observers, although many States were willing to make progress on the negotiations, two States in particular—China and the Russian Federation—remained adamantly opposed to the development of a robust *process* that could allow for discussion of the ILC’s draft articles. This, it should be noted, contrasted with their views that on other agenda items, such as the Commission’s recommendation that a new treaty on the protection of persons in the event of disasters should be elaborated, a working group should be convened over the next two years to consider the Commission’s recommendation and report back to the Sixth Committee.<sup>80</sup>

After what was characterized as a “fierce” and “difficult” negotiation by those involved,<sup>81</sup> in which only a very few States (China

79. *Statement Urging Sixth Committee Action on The International Law Commission’s Draft Articles on Prevention and Punishment of Crimes Against Humanity*, GLOB. JUST. CTR. (Nov. 11, 2021), [https://law.wustl.edu/wp-content/uploads/2021/11/CrimesAgainstHumanityTreaty\\_JointLetter\\_Updated2.pdf](https://law.wustl.edu/wp-content/uploads/2021/11/CrimesAgainstHumanityTreaty_JointLetter_Updated2.pdf) [<https://perma.cc/9DXQ-P83G>].

80. See G.A. Draft Res. Protection of Persons in the Event of Disasters, U.N. Doc. A/C.6/76/L.20, ¶ 4, 6–7 (Nov. 12, 2021).

81. Leila Nadya Sadat, Sixth Committee (Legal) Summary Notes (Nov. 2021) (unpublished notes) (on file with author).

and the Russian Federation in particular) appeared to oppose *any* formal establishment of a clear *process* for taking up the Commission's work, the disappointing result was another draft Resolution simply "taking note" of the ILC's work, and proposing a technical rollover to the Sixth Committee's seventy-seventh session.<sup>82</sup> During the 29th Plenary Meeting of the Sixth Committee on November 18, 2021, following the introduction of the draft resolution by Singapore,<sup>83</sup> several States took the floor to provide an explanation of their positions. Mexico dissociated from the Resolution, lamenting the failure of the Sixth Committee to arrive at a process for a serious and full discussion of the ILC draft articles, and noting that it had proposed a deferral to keep the agenda item open, which had been rejected.<sup>84</sup> Mexico's Statement was strongly worded, as follows:

For my delegation, the pattern reflected in resolutions 74/187 and 75/136 and now in draft resolution A/C.6/76/L.17, is unacceptable; as it sends a negative message about the absence of a serious discussion by the Committee. Moreover, this succession of texts contributes once again to the paralysis of the Sixth Committee's consideration of ILC products and generates a new vicious circle of inaction that adds to the list of nearly a dozen topics that are trapped in cyclical considerations from which there seems to be no way out . . . .

Despite having, again, a considerable number of delegations showing flexibility during our consultations to recommend deferring the issue, the cofacilitators opted to submit a draft resolution with a technical update under silence.

Taking into account these circumstances . . . Mexico has decided to dissociate itself from draft resolution A/C.6/76/L.17.

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82. G.A. Draft Res. Crimes Against Humanity, U.N. Doc. A/C.6/76/L.17 (Nov. 12, 2021). This resolution was subsequently adopted by the General Assembly on December 9, 2021. Mexico again disassociated itself from the resolution, referring to its Explanation of Position in the Sixth Committee. Meeting Coverage, General Assembly Plenary, General Assembly Adopts 51 Resolutions, 13 Decisions Forwarded by Fourth, Sixth Committees, U.N. Press Release GA/12394 (Dec. 9, 2021).
83. Nathaniel Khng, Counsellor (Legal), Permanent Mission of Singapore to the United Nations, *To Introduce on Behalf of the Bureau of the Sixth Committee the Draft Resolution Under Agenda Item 83 on Crimes Against Humanity* (Nov. 18, 2021), [https://www.un.org/en/ga/sixth/76/pdfs/statements/cah/29mtg\\_singapore\\_intro.pdf](https://www.un.org/en/ga/sixth/76/pdfs/statements/cah/29mtg_singapore_intro.pdf) [<https://perma.cc/N4QE-QQD7>].
84. Pablo Arrocha Olabuenaga, Legal Advisor, Permanent Mission of Mexico to the United Nations, *Explanation of Mexico's Position on Item 83: "Crimes Against Humanity"* (Nov. 18, 2021), <https://mision.sre.gob.mx/onu/index.php/eventos/1518-18-november-2021-explanation-of-mexico-s-position-on-item-83-crimes-against-humanity-sixth-committee-of-the-76th-general-assembly> [<https://perma.cc/F2YU-ETUV>] (courtesy translation).

My delegation will continue to work for an agreement that will allow us to define a roadmap for action that will lead us to an inclusive negotiation process for a convention, based on the articles adopted by the ILC.<sup>85</sup>

Likewise, the European Union, representing its Member States as well as an additional twenty-two countries (for a total of fifty) delivered an explanation of position, stating that “there is a gap in the current international treaty framework on the prevention and criminalization of [crimes against humanity] . . . a gap that the international community must address without delay,” and expressing “regret” that the Sixth Committee “failed once again, to seize this vital opportunity to make tangible progress on this critical matter.”<sup>86</sup> More to the point, the European Union statement opined:

It is truly incomprehensible that consensus is being used to prevent the opening of a formal, structured, inclusive dialogue, which is meant to further the understanding of the Member States’ position and iron out differences. As the world watches us, the resolution we are adopting today—which signals inaction and unwillingness to move beyond taking note of the draft articles for the third consecutive year—not only falls short of capturing the view of the majority of those represented here today, but also falls short of the responsibility this Committee has under the UN Charter.<sup>87</sup>

The United States and the United Kingdom also delivered statements explaining their positions: the United Kingdom reiterating its willingness to continue discussions and regretting the lack of progress in 2021;<sup>88</sup> the United States emphasizing the absence of a treaty on crimes against humanity as a “hole in the international legal framework,” that “should be addressed.”<sup>89</sup> Finally, following the

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85. *Id.* Mexico also made important points about the working methods of the Sixth Committee raising concerns about particular details, such as the unusual decision by the Bureau to involve three rather than two co-facilitators, and asking that this be reevaluated at the next session, “also taking into account the regional balance.”

86. Popan, *supra* note 74.

87. *Id.*

88. Chanaka Wickremasinghe, Legal Adviser, United Kingdom Mission to the United Nations, *United Nations General Assembly, Sixth Committee, UNGA76, Agenda Item 83: Crimes Against Humanity* (Oct. 15, 2021), [https://www.un.org/en/ga/sixth/76/pdfs/statements/cah/09mtg\\_uk.pdf](https://www.un.org/en/ga/sixth/76/pdfs/statements/cah/09mtg_uk.pdf) [<https://perma.cc/HZK4-H6ZZ>].

89. The United States Mission to the United Nations, *Explanation of Position—Agenda Item 83: Crimes Against Humanity* (Nov. 18, 2021),



adoption of the draft resolution, the government of Israel also weighed in expressing its discomfiture with the result.<sup>90</sup>

Thus, for the third time, despite overwhelming support for continuing debate on the ILC's draft text, and significant support for a new treaty on crimes against humanity, the consensus rule of the Sixth Committee allowed a very small number of States (particularly Russia and China) to, in effect, carry over their veto power from the Security Council to the General Assembly to block all discussion of the possibility of a new global treaty on crimes against humanity.<sup>91</sup> This calls into question both the effectiveness of the General Assembly, and the difficulty of implementing the work of the International Law Commission. It also, as Jennifer Trahan has argued in *Existing Legal Limits to Security Council Veto Power in the Face of Atrocity Crimes*, undermines the *jus cogens* character of these crimes by making their proper codification, implementation, and enforcement extraordinarily difficult.<sup>92</sup> Just as Russian and Chinese vetoes have blocked efforts to refer the Syrian Situation to the International Criminal Court, even as hundreds of thousands have perished,<sup>93</sup> it seems they can now block all *discussion* in the Sixth Committee of a possible new treaty on crimes against humanity. Unless the working methods of the Sixth Committee are ameliorated, as the fifty-four States expressing their disagreement with the outcome of the Sixth Committee's resolution noted in their recent statements,<sup>94</sup> this may "freeze" the crimes against humanity project in the same way that proposals for the International Criminal Court remained frozen during the Cold War.<sup>95</sup> This "shocking

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[https://www.un.org/en/ga/sixth/76/pdfs/statements/cah/29mtg\\_us.pdf](https://www.un.org/en/ga/sixth/76/pdfs/statements/cah/29mtg_us.pdf)  
[<https://perma.cc/Y762-6JP9>].

90. Sarah Weiss Ma'udi, Legal Advisor, Permanent Mission of Israel to the United Nations, *Crimes Against Humanity* (Oct. 13, 2021), [https://www.un.org/en/ga/sixth/76/pdfs/statements/cah/08mtg\\_israel.pdf](https://www.un.org/en/ga/sixth/76/pdfs/statements/cah/08mtg_israel.pdf) [<https://perma.cc/Q72B-6WRB>].
91. *See generally Sixth Committee (Legal)—76th Session: Crimes Against Humanity (Agenda Item 83)*, UNITED NATIONS, <https://www.un.org/en/ga/sixth/76/cah.shtml> [<https://perma.cc/7ZDB-AJZD>].
92. JENNIFER TRAHAN, *EXISTING LEGAL LIMITS TO SECURITY COUNCIL VETO POWER IN THE FACE OF ATROCITY CRIMES* 203 (2020).
93. *See* BETH VAN SCHAACK, *IMAGINING JUSTICE FOR SYRIA* 118–19 (2020).
94. *See Sixth Committee (Legal)—76th Session: The Scope and Application of the Principle of Universal Jurisdiction*, UNITED NATIONS, [https://www.un.org/en/ga/sixth/76/universal\\_jurisdiction.shtml](https://www.un.org/en/ga/sixth/76/universal_jurisdiction.shtml) [<https://perma.cc/4E BT-MRK3>].
95. LEILA NADYA SADAT, *THE INTERNATIONAL CRIMINAL COURT AND THE TRANSFORMATION OF INTERNATIONAL LAW* 36–37 (2002). On December 9, 2021, the General Assembly adopted the Sixth Committee's draft resolution by consensus, and, once again decided to include the topic next year's provisional agenda. Press Release, General Assembly, General Assembly

complacency,”<sup>96</sup> at the presence of atrocity crimes in the world leaves mass exterminations such as the killing fields of Cambodia largely beyond the reach of international law. Hopefully States will work assiduously between now and the seventy-seventh session of the Sixth Committee to resolve this vexing impasse.<sup>97</sup>

#### IV. CONCLUSION: TOWARDS A NEW TREATY ON CRIMES AGAINST HUMANITY?

A new treaty on crimes against humanity could dispel the notion that it is only genocides that deserve international sanction and attention, and could shift the normative conversation away from the crime of genocide—which is very difficult to prosecute and prove—to crimes against humanity. It would also be a game changer for situations involving sexual or gender-based violence, which has yet to be comprehensively addressed in an interstate convention.<sup>98</sup> A case like

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Adopts 51 Resolutions, 13 Decisions Forwarded by Fourth, Sixth Committees, U.N. Press Release GA/12394 (Dec. 9, 2021).

96. Bassiouni, *supra* note 34, at 457.

97. During the work of the Crimes Against Humanity Initiative, a question was raised about the utility of a new multilateral assistance treaty on cooperation and mutual legal assistance (“MLA”) for all core crimes. Two options were debated at that time: such provisions could be included in a new protocol to the ICC Statute but open to all States, or as a freestanding convention. Leila Nadya Sadat, *A Comprehensive History of the Proposed International Convention on the Prevention and Punishment of Crimes Against Humanity*, in *FORGING A CONVENTION FOR CRIMES AGAINST HUMANITY* 449 (Leila Nadya Sadat ed., 2011). A group of States, led at first by the Dutch and Belgian governments, took up this possibility independently, outside the U.N. system, and have now elaborated a text. *MLA Initiative*, MINISTERIE VAN BUITENLANDSE ZAKEN, <https://www.centruminternationaalrecht.nl/mla-initiative> [<https://perma.cc/U6BE-MHW6>]. Much of the text is modeled after the Initiative’s Proposed International Convention on the Prevention and Punishment of Crimes Against Humanity, and the ILC draft articles, meaning that the projects are compatible with and complementary to each other. The MLA Initiative has avoided the consensus and the veto problem by simply taking their project outside the U.N. system, and the most recent draft text of their text permits the MLA treaty to enter into force with only two ratifications. This will make adoption much simpler; but may compromise universality and inclusivity.

98. Akila Radhakrishnan & Danielle Hites, *Expanding Justice for Gender-Based Crimes with a Treaty on Crimes Against Humanity*, JUST. SEC. (Sept. 29, 2021), <https://www.justsecurity.org/78395/expanding-justice-for-gender-based-crimes-with-a-treaty-on-crimes-against-humanity/> [<https://perma.cc/9A52-6PWR>].

*The Gambia v. Myanmar*<sup>99</sup> would thus potentially turn not on whether officials in Myanmar could be shown by clear and convincing evidence to have had “genocidal” intent, but on the suffering and displacement of more than 900,000 Rohingyas brutalized by the commission of atrocity crimes,<sup>100</sup> particularly since August 2017. Given the enhanced role of national systems in the enforcement of international criminal law in increasing numbers of cases brought under universal jurisdiction and through transitional justice mechanisms, this could be a real step forward in the fight against impunity and a powerful symbolic completion of the legacy of the Nuremberg trials, where crimes against humanity first materialized in positive international law.<sup>101</sup>

The fact that the ILC draft articles have now been presented to the U.N. General Assembly’s Sixth Committee three years running and have not been transferred to an Ad Hoc Committee or Working Group for further debate and discussion is an ominous sign. As Slovenia’s Representative noted in the explanation of position offered by the European Union and joined by twenty-two other States from around the globe, “there [were] no winners with this outcome,” which was a “missed opportunity” that “cost time and effort,” and imposed a “cost in real-life human suffering and in the international community’s ability to act and put in place the necessary measures to address it.”<sup>102</sup> Likewise, during the plenary debates, only Myanmar and Haiti actively brought the voices of victims into the conversation, a perspective that was otherwise absent from the conversations held in the comfortable rooms of U.N. Headquarters in New York.<sup>103</sup> Civil society voices were

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99. *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, INT’L CT. OF JUST., <https://www.icj-cij.org/en/case/178> [https://perma.cc/9YDT-DYS9]. See also Payam Akhavan, *Crimes of Omission: Why a UN Treaty on Genocide but Not Crimes Against Humanity*, JUST. SEC. (Sept. 21, 2021), <https://www.justsecurity.org/78286/crimes-of-omission-why-a-un-treaty-on-genocide-but-not-on-crimes-against-humanity/> [https://perma.cc/W42V-6UML].
100. *Rohingya Refugee Crisis*, UNITED NATIONS OFF. FOR THE COORDINATION OF HUMANITARIAN AFF., <https://www.unocha.org/rohingya-refugee-crisis> [https://perma.cc/4XWT-H4MF].
101. Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, and Charter of the International Military Tribunal, Aug. 8, 1945, 82 U.N.T.S. 279.
102. Popan, *supra* note 74.
103. See Kyaw Moe Tun, Ambassador, Permanent Representative of the Republic of the Union of Myanmar to United Nations, *Agenda Item 83: Crimes Against Humanity, at the Sixth Committee of the Seventy-Sixth Session of UN General Assembly* (Oct. 15, 2021), [https://www.un.org/en/ga/sixth/76/pdfs/statements/cah/09mtg\\_myanmar.pdf](https://www.un.org/en/ga/sixth/76/pdfs/statements/cah/09mtg_myanmar.pdf) [https://perma.cc/H833-FX8E]; Wisnique Panier, Ministre Conseiller, *Déclaration de la Délégation Haïtienne: 9ème Séance Plénière de la Sixième Commission de l’Assemblée Générale des Nations Unies (76e Session Ordinaire), Point 83 de l’Ordre du Jour: “Crime*

also excluded by pandemic rules that allowed States and the media to be physically present, but not others, meaning that what should have been a powerful conversation about real atrocities taking place in the world was reduced to technical and procedural discussions held behind closed doors.<sup>104</sup>

Let us hope that this year States and civil society can work together to make real progress on this important new global treaty. While all States are entitled to be heard, and substantive discussions regarding particular articles of the ILC's draft text are welcome and expected, the exercise of a pocket veto blocking all conversations taking place on matters of this importance is, as Mexico pointed out in its dissociation from the result,<sup>105</sup> simply unacceptable.

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*Contre l'Humanité*" [Declaration of the Haitian Delegation: 9th Plenary Session of the Sixth Committee of the United Nations General Assembly (76th General Assembly), Agenda Item 83: Crimes Against Humanity] (Oct. 15, 2021), [https://www.un.org/en/ga/sixth/76/pdfs/statements/cah/09mt\\_g\\_haiti.pdf](https://www.un.org/en/ga/sixth/76/pdfs/statements/cah/09mt_g_haiti.pdf) [<https://perma.cc/N8YD-JL4Q>].

104. See General Assembly, Arrangements for the High-Level Meetings and the General Debate of the Seventy-Sixth Session of the General Assembly, ¶¶ 5–8, U.N. Doc. A/INF/76/4/Rev.1 (Aug. 30, 2021).
105. *At the UN General Assembly, Mexico Calls for Strengthening the Multilateral System*, GOBIERNO DE MÉXICO (Sept. 24, 2021), <https://www.gob.mx/sre/en/articulos/at-the-un-general-assembly-mexico-calls-for-strengthening-the-multilateral-system-283598?idiom=en> [<https://perma.cc/Y25H-NS9G>].