

**International Law Commission study on “Crimes against humanity”, as adopted on  
first reading by the International Law Commission at its 69<sup>th</sup> session**

**Comments by UNODC**

- Article 3(2)(c), page 11: “enslavement” means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children”.

Comment: For the purpose of clarifying the definition of trafficking in persons, the International Law Commission may consider including in its commentary the definition provided by the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

- Article 3, commentary, point (31), page 41: “[...] the Commission...stated “that the draft article does not rule out the possibility that private individuals with *de facto* power or organized in criminal gangs or groups might also commit the kind of systematic or mass violations of human rights covered by the article; in that case, their acts would come under the draft Code”.

Comment: The Commission may consider adding a footnote to the words “organized in criminal [...] or groups” referring to article 2 of the United Nations Convention against Transnational Organized Crime, which provides definition of organized criminal group.

- Article 4, commentary, point (3), pages 46 and 47

Comment: the Commission may consider to include the following other treaties containing provisions on prevention: Protocol against the Smuggling of Migrants by Land, Sea and Air (Section III) and Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition (Section II), both supplementing the United Nations Convention against Transnational Organized Crime.

- Article 4, commentary, point (4), page 47

Comment: The Commission may consider including the United Nations Convention against Corruption among the treaties cited in point (4). In a footnote, reference could be made to Chapter II of this treaty, entirely devoted to the prevention of corruption.

- Article 6, commentary, point (36), page 71: “Many treaties addressing crimes in national law other than crimes against humanity have not contained a prohibition on a statute of limitations”.

Comment: In this context, it may be relevant to note that other treaties have required especially long statutory periods. Article 3, paragraph 8, of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances stipulates that “each Party shall, where appropriate, establish under its domestic law a

long statute of limitations period in which to commence proceedings for any offence established in accordance with paragraph 1 of this article, and a longer period where the alleged offender has evaded the administration of justice”. Similar provisions are contained in article 11, paragraph 5, of the United Nations Convention against Transnational Organized Crime and article 29 of the United Nations Convention against Corruption.

- Article 6, commentary, “Appropriate penalties”, page 71

Comment: To reinforce the point, the Commission may consider the following additional references: article 3 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances; article 11, paragraph 1 of the United Nations Convention against Transnational Organized Crime; as well as article 30, paragraphs 1, 5 and 7 of the United Nations Convention against Corruption; article 2 of the International Convention against the Taking of Hostages; article 5 of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation; articles 4(b) and 5 (*in fine*), of the International Convention for the Suppression of Terrorist Bombings; article 4(b) of the International Convention for the Suppression of the Financing of Terrorism; and articles 5(b) and 6 (*in fine*) of the International Convention for the Suppression of Acts of Nuclear Terrorism.

- Article 7, commentary, point (5), page 78: “Provisions comparable to those appearing in draft article 7 exist in many treaties addressing crimes.<sup>381</sup>”

Comment: To reinforce the point, the Commission may consider the following additional references in footnote 381: article 42 ‘Jurisdiction’ of the United Nations Convention against Corruption and article 4 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

- Article 7, commentary, point (10), page 79: Footnote 383 refers to document A/AC.254/4/Rev.4, containing the revised draft of the United Nations Convention against Transnational Organized Crime for consideration by the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime at its fifth session.

Comment: For a more comprehensive overview of the matter, the Commission may also want to reference, in footnote 383, the “Travaux préparatoires of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto” (2006). The Travaux préparatoires (pages 129 - 139) offers an account of the evolving iterations of article 15 (Jurisdiction) of the Convention against Transnational Organized Crime and of the positions of the negotiating delegations.

- Article 8, commentary, point (4), page 81: “The requirement of impartiality means that States must proceed with their investigations in a serious, effective and unbiased manner. [...]”

Comment: In relation to the requirement of impartiality mentioned in the commentary to draft article 8, the Commission may wish to refer to the Bangalore Principles of Judicial Conduct, Value 2 (Economic and Social Council resolution 2006/23, annex).

- Article 9, commentary, point (1), page 82: refers to national measures to take a person into custody or ensure presence of an alleged offender as necessary to enable criminal, extradition or surrender proceedings, including to avoid further criminal acts and risk of flight.

Comment: The Commission may wish to add to the sentence “in particular to avoid further criminal acts and a risk of flight by the alleged offender” the following instance: “and to prevent tampering of evidence by the alleged offender”. In relation to custody, including at the pre-trial stage, the Commission may also consider referring to the non-binding United Nations Standard Minimum Rules for Non-custodial Measures (also known as the “Tokyo Rules”; General Assembly resolution 45/110, annex) as well as the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (also known as the “Bangkok Rules”; General Assembly resolution 65/229, annex).

- Article 11, commentary, page 89

Comment: In relation to the fair treatment of alleged offenders in prison, custody or detention, the International Law Commission may also consider referring to the non-binding Standard Minimum Rules for the Treatment of Prisoners (also known as the “Nelson Mandela Rules”, General Assembly resolution 70/175, annex), including its Rule 62, and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (also known as the “Bangkok Rules”; General Assembly resolution 65/229, annex), including its Rule 2.1. The Commission may also consider referring to the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, (General Assembly resolution 67/187, annex), in particular Principles 3 and 6. The Commission may consider indicating in its commentary on Article 11 that access to legal aid should not be conditioned on the severity of the offense.

- Article 11, commentary, points (7 and 8), page 90

Comment: The Commission may also consider referring to ECOSOC resolution 1998/22 of 28 July 1998 on the status of foreign citizens in criminal proceedings.

- Article 12, commentary, page 92

Comment: In the commentary, the Commission may wish to take into account the special measures for child victims or witnesses of crime. In doing so, the Commission may wish to refer to the non-binding Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (ECOSOC resolution 2005/20, annex), and the United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice (General

Assembly resolution 69/194, annex). The Commission may also wish to refer to Principles 4 and 5 of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, (General Assembly resolution 67/187, annex).

– Article 13, commentary, point (22), page 106

Comment: When referring to United Nations Convention against Transnational Organized Crime, the Commission may wish to cite the interpretative note approved by the Ad Hoc Committee (see A/55/383/Add.1, paras. 28-35), which reads as follows: “States parties should also take into consideration the need to eliminate safe havens for offenders who commit heinous crimes in circumstances not covered by paragraph 10. Several States indicated that such cases should be reduced and several States stated that the principle of *aut dedere aut judicare* should be followed” (Travaux Préparatoires of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto, p. 162-163).

- Article 14, commentary, point (5), page 111

Comment: At the time of generating the present set of comments, the parties to United Nations Convention against Transnational Organized Crime were 189, and the parties to United Nations Convention against Corruption were 186.

26 September 2018