

Governmental Responses at the Sixth Committee to ILC Report on a Crimes Against Humanity Treaty

State	68th Session of UNGA (2013) ¹		69th Session of UNGA (2014) ²		70th Session of UNGA (2015) ³	
(* = non-ICC State Party)	Response?	Excerpts / Notes	Response?	Excerpts / Notes	Response?	Excerpts / Notes
Algeria	N/A	<i>[did not make any statement on the ILC Report]</i>	N/A	<i>[did not mention CAH]</i>	N/A	<i>[did not mention CAH]</i>
Argentina	N/A	<i>[did not make any statement on the ILC Report]</i>	N/A	<i>[did not make any statement on the ILC Report]</i>	N/A	<i>[no downloadable document]</i>
Australia	N/A	<i>[did not mention CAH]</i>	neutral	notes "lack of international conventions creating an obligation to extradite or prosecute most CAH" "assumes that in its examination of this important topic the Commission will give consideration to a broader application of the obligation to extradite or prosecute to CAH. In the meantime States should continue to cooperate to ensure the full investigation and prosecution of such crimes under the framework of applicable bilateral mutual legal assistance and extradition agreements and arrangements."	N/A	<i>[did not mention CAH]</i>
Austria	positive	"welcomes" "Rome Statute of ICC cannot be the last step in the endeavor to prosecute such crimes" "primary responsibility of the states to prosecute" "such legislation is still missing in a large number of states." Notes "lack of cooperation among states in this area" and ILC's work should "contribute to close the cooperation gaps"	positive	"expresses its support" "emphasis on the need of cooperation and adequate domestic legislation rather than on the elaboration of new definitions" [universality with ICC] [notes the joint initiative] [notes Austria is passing domestic CAH legislation] [acknowledges gap in current regimes regarding most CAHs]	positive	"... in favour of the proposed extension of the scope of the convention also to the prevention of such crimes... [T]he draft articles avoid any conflict with the obligations of states arising under the constituent instruments of international or hybrid criminal courts or tribunals, in particular the obligations resulting from the Rome Statute of the ICC. ... [T]he text of this draft article does not yet reflect this legal relationship...; Draft Article 2 ... To us it is not clear what is the difference between the term 'international crimes' and the term 'crimes under international law'...; As to draft Article 3 ... supports the definition of these crimes which corresponds, as much as possible, to Article 7 of the Rome Statute...; Draft Article 4 ... should be understood as extending not only to the prevention, but also to the punishment of such crimes ..."
Belarus*	N/A	<i>[did not mention CAH]</i>	N/A	<i>[only Russian text available]</i>	cautious	<i>[only Russian text available; unofficial translation]</i> "... in light of the latest trends in criminal international law and treaty practice, it would be useful, from a practical point of view, to achieve a definite systematization and clarification of the definition 'crimes against humanity' as well as the measures of prevention and prosecution of these crimes. ... [W]e are not confident that the outcome of discussing this topic must be the elaboration of an international treaty, pre-mature adoption of which may have an opposite effect in terms of augmentation of the legal regime of fight against the aforesaid serious crimes and their diverse manifestations covered by existent international treaties."
Belgium	N/A	<i>[did not mention CAH]</i>	N/A	<i>[did not make any statements at the 69th Session]</i>	N/A	<i>[did not make any statement on the ILC Report]</i>
Brazil	N/A	<i>[did not mention CAH]</i>	N/A	<i>[did not make any statement on the ILC Report]</i>	N/A	<i>[did not make any statement on the ILC Report]</i>
Canada	N/A	<i>[did not mention CAH]</i>	N/A	<i>[did not mention CAH]</i>	N/A	<i>[did not mention CAH]</i>

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Chile	neutral	[in regards to the obligation to prosecute or extradite -- is for better inter-state cooperation on CAH] "A este respecto, concordamos con el Grupo de Trabajo, en el sentido de que si bien los Estados son soberanos en la celebración y determinación del contenido de un Tratado sobre el deber de extraditar o juzgar, en la actualidad, el régimen convencional que regula la aludida obligación, presenta importantes vacíos que tal vez sea necesario observar a fin de remediarlos. Al respecto, cabe mencionar la falta de referencia de esta regla en las Convenciones, en relación a los crímenes de lesa humanidad o crímenes de guerra. Además, en el mismo orden de ideas, sería conveniente mejorar la fórmula de las convenciones sobre genocidio, en el sentido de optimizar la cooperación internacional que dota a estos instrumentos internacionales de efectividad. "	positive	"very important" topic, "welcomes these additions" Notes their domestic legislation. Stresses universality with ICC. Work of ILC should consist "particularly of regulating the effects and consequences of categorizing behavior as a CAH" "first consequence should be the obligation either to prosecute or to extradite the perpetrator of a CAH" ILC should "define the possible scope of universal jurisdiction in the case of CAH and the circumstances in which the state where the crime was committed should preferably try the case"	positive	"... the Special Rapporteur has been particularly careful to try to focus his work on the actual prevention and punishment of such crimes... The current draft therefore focuses on the approval of domestic legislation and effective and efficient cooperation between States... Without prejudice to the foregoing, unlike the case of war crimes and genocide, there is no international treaty that specifically obliges States individually to prevent and punish such crimes. Thus the Commission's contribution in this area is essential... so that we do not again have to bemoan the fact that innocent people fall victim to the most abhorrent behavior known to humanity."
China*	neutral	"taking into consideration the complexity and sensitivity of this topic, the Commission should deal with in a prudent manner and avoid any pre-determined results"	N/A	<i>[did not mention CAH]</i>	cautious	"The punishment of CAH and other serious international crimes is a common goal of the international community and is in our common interest. The discussion and codification of the topic by the Commission is therefore of great significance.... First of all, codification of draft articles should be based on a thorough review of the practice of States.... For instance, draft article 2 has removed the traditional qualifier of 'in time of war' for 'CAH'. Such an approach is based primarily on the practice of international judicial institutions and fails to consider whether the practice of States has reflected a general recognition that CAH under international law need not be committed during a war.... the negotiation of the Rome Statute, there were disagreements over the definitions and elements of various crimes... Secondly, with respect to the list of specific crimes, full consideration should be given to differences among national legal systems. ... Thirdly, it warrants further consideration whether the obligation of States to prevent CAH as currently drafted is too broad. ..."
Croatia	N/A	<i>[did not make any statements at the 68th Session]</i>	positive	"fully supports endeavors aimed at developing a global international instrument for the prevention, prosecution and punishment of CAH as well as cooperation between States." Definition should look at ad hocs, ICC jurisprudence and definition, custom, ICRC and the Commission's Draft Code of Crimes Against the Peace & Security of Mankind (1996). For unification of domestic legislations. Supports universal jurisdiction. Treaty should include "a general obligation to cooperate in the investigation and prosecution of the most serious international crimes on the basis of clearly formulated aut dedere aut judicare principle." Should apply to IAC & NIAC. Supports "Multilateral Treaty for Mutual Legal Assistance initiative."	positive	"It is one of the Commission's most important tasks during this project, first of all, to clearly identify and precisely define the legal notion and scope of crimes against humanity. In this undertaking the Commission should, to the greatest extent possible, draw from existing legal framework... This project should also include a drawing of a precise line between core international crimes, and in particular, crimes against humanity and war crimes - still somewhat blurred in theory and practice - as testified, for example, by jurisprudence of the ICTY... Croatia sees no need for the specific reference to armed conflict in provisionally adopted draft Article 2...."
Cuba (CELAC)*	neutral	[On behalf of CELAC] "take note that the subject 'CAH' has been included"	N/A	<i>[did not mention CAH]</i>	N/A	<i>[did not mention CAH; ECUADOR spoke on behalf of CELAC]</i>
Cyprus	N/A	<i>[did not make any statement on the ILC Report]</i>	N/A	<i>[did not mention CAH]</i>	N/A	<i>[did not mention CAH]</i>

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Czech Republic	positive	"welcomes the inclusion of the topic" "recommends that the Commission proceeds" "supports Prof. Sean D. Murphy's view on the proposed key elements and outcome of this topic"	positive	"commends the Commission for the inclusion." Work should build on the Rome Statute and other relevant Conventions, ILC's work on "the obligation to extradite or prosecute," the Draft Code for the Peace and Security of Mankind, the "Multilateral Treaty for Mutual Legal Assistance" and the work of the CAH Initiative of the Whitney R. Harris World Law Institute. "awaits with interest the first report" should consider "the exercise of universal jurisdiction"	positive	"... We consider the draft articles, provisionally adopted at this year's session of the Commission, to be non-controversial, as they reiterate provisions of legal instruments largely adhered to by states and take into account relevant jurisprudence of international courts. "My delegation notes with satisfaction that the definition... mirrors verbatim... the definition of crimes against humanity contained in Article 7 of the Rome Statute of the ICC... "Our delegation also welcomes the provisional adoption of draft article 4 on obligation of prevention of crimes against humanity. This provision addresses one of important missing pieces in global efforts aimed at suppression of crimes against humanity. ... my delegation wonders whether this provision should not be made more robust... "the ongoing work... as well as the CAH Initiative of Whitney R. Harris World Law Institute, offer an important source of inspiration..."
Denmark (Nordics)	N/A	<i>[did not make any statement on the ILC Report; NORWAY spoke on behalf of Nordics]</i>	N/A	<i>[did not mention CAH]</i>	N/A	<i>[did not make any statement on the ILC Report; SWEDEN spoke on behalf of Nordics]</i>
Ecuador (CELAC)	N/A	<i>[did not make any statement on the ILC Report]</i>	N/A	<i>[did not make any statement on the ILC Report]</i>	neutral	[On behalf of CELAC] "the CELAC countries reaffirm the importance of submitting possible comments and observations by 31 January 2016, in particular on the specific issues identified in chapter III, regarding: ... 'Crimes against humanity'; ..."
El Salvador*	N/A	<i>[did not make any statements at the 68th Session]</i>	positive	"we thank the Commission for including" "we shall give special follow-up to support its codification and development" [translated from Spanish]	positive	[only Spanish text available; unofficial translation] "... necessity of leaving clearly stated that the CAH can be committed in any moment. For that, we suggest... 'in time of peace or in time of war.' "...suggest another change in the redaction in the Spanish language, in order to ensure a better understanding of the text in reference to the phrase "under international law". ... my delegation wishes to suggest that, besides the duties of preventing and sanctioning the crimes against humanity, it should also be developed, the obligation of repairing, that has already been widely recognized by diverse tribunals of human rights."
European Union*	N/A		N/A	<i>[did not mention CAH]</i>	N/A	<i>[did not mention CAH]</i>
Finland (Nordics)	N/A	<i>[did not mention CAH; NORWAY spoke on behalf of Nordics]</i>	positive	"commend this decision and are following the progress of work on this topic with great interest." Notes importance of universality with ICC. "robust interstate cooperation for the purposes of investigation, prosecution and punishment of CAH is crucial, as is the obligation to extradite or prosecute alleged offenders, regardless of their nationality" "encourage the Commission to explore and articulate the relevant responsibilities pertaining to prevention....consider innovative measures and mechanisms to ensure effective prevention" - on behalf of Nordics	N/A	<i>[did not mention CAH]</i>

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France	negative	"query the inclusion" "not clear that all the Commission's criteria on the choice of subjects are met" "France wonders whether the States really need to draw up a convention" "seems preferable to encourage universalization of the Rome Statute" "the call on a universal jurisdiction to try the perpetrators of CAH is far from being shared by a majority of States"	negative	S'agissant du sujet relatif aux « Crimes contre l'humanité », le caractère ambitieux de ce projet doit être relevé. Pour autant, ma délégation réitère ses doutes en ce qui concerne la nécessité d'une convention en la matière. Il lui paraît en effet préférable encourager la participation universellement au statut de la Cour pénale internationale et la mise en œuvre effective des normes existantes. Un risque de contradiction entre ces normes et le projet de convention est par ailleurs à craindre. La France s'interroge enfin sur l'utilisation qui pourrait être faite par la Commission du projet de convention international sur la prévention et la répression des crimes contre l'humanité élaboré par l'Université Washington de Saint-Louis, avec pour objectif, je cite, de « consolider le système de la Cour pénale internationale ». En l'état, ce projet soulève des interrogations sérieuses tant au regard du droit interne que du droit international. Ces interrogations portent en particulier sur l'instauration d'une compétence universelle pour juger les auteurs de crimes contre l'humanité. La prudence s'impose également en ce qui concerne le caractère inopposable aux juridictions nationales des immunités des chefs d'Etat ou	positive	<i>[only French text available; unofficial translation]</i> "... should be thanked for his first report and the work accomplished... However, the proposals of the commission raise some questions. "The first concerns the precise scope of the obligation of 'prevention'.... Further, my delegation questioned the usefulness to specify in the commentary that the obligation to punish and prevent CAH implies the existence of a customary obligation for states not to commit such crimes. "... The wording of draft article 2 adopted by the Drafting Committee, according to which crimes against humanity are 'crimes under international law' is not free of a certain ambiguity... That is why the Rome Statute refers to the expression 'most serious crimes of international concern' or 'affecting the entire international community.'..."
Germany	N/A	<i>[did not mention CAH]</i>	N/A	<i>[did not mention CAH]</i>	N/A	<i>[did not mention CAH]</i>
Greece	N/A	<i>[did not mention CAH]</i>	N/A	<i>[did not mention CAH]</i>	negative	"We are not, however, entirely convinced about the desirability and the necessity of a Convention addressing exclusively that category of crimes. ... the Rome Statute of the International Criminal Court provides a sufficient legal basis for the domestic criminalization and prosecution of CAH... "... the risk of reopening during the future negotiation of a Convention the consensus reached on the definition of the CAH, as contained in Article 7 of the Rome Statute, cannot be excluded. Moreover, we share the concerns... that such a convention may hamper efforts to achieve the universality of the Rome Statute..."
Hungary	N/A	<i>[did not mention CAH]</i>	N/A	<i>[did not mention CAH]</i>	positive	"Deeply committed to ending impunity for major international crimes... lent our full support to the work of international judicial bodies, like the ICTY, ICTR and most notably to the ICC... "Hungary believes that CAH are among the most serious crimes that threaten the int'l community as a whole... this legal gap [of no treaty] needs to be addressed... We also have to extend our fight against CAH beyond the community of ICC States Parties."
India*	neutral	"stress for the need of in-depth study and thorough discussion on the need to undertake work on this topic, in view of the existing international instruments including the ICC that have already dealt with CAH"	N/A	<i>[did not mention CAH]</i>	neutral	"In view of the existing international legal regimes and mechanism dealing with the subject matter, we consider that it needed in-depth study and thorough discussion in the Commission. The proposed obligations should not conflict with the existing treaty obligations and it should not duplicate the existing regimes."

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Indonesia*	N/A	<i>[did not mention CAH]</i>	N/A	<i>[did not mention CAH]</i>	positive	"A convention on CAH is essential as part of the effort of the international community to fight impunity. ... The convention could in our view provide regulation on inter-State relations in addressing CAH, focusing on obligation of States to prevent crimes against humanity, promoting national capacity building in the prevention and punishment of such crimes and the obligation of States Parties to exercise jurisdiction over an offender, including non-national present in its territory.... "In addition, my delegation considers that the convention should also contain provisions on the obligation to prevent that would clarify the criteria as to how a failure of preventing the acts of CAH would incur State responsibility. That is why in this connection that we suggest that the question of State responsibility related to the obligation to prevent deserves further elaboration by the Special Rapporteur and discussion by the Commission."
Iran*	negative	"it does not seem that in terms of the definition of the crime and its criminalization at the international and national levels, there is a legal loophole to be filled" "some States do not have yet the relevant legislation...these States have the interest to take the necessary measures to fill this gap." Focus on complementarity. "it is not established that an effective fight against impunity with regard to the [CAH] requires adoption of a new legal instrument" "existing legal arsenal, namely the exercise of the universal jurisdiction by internal tribunals and the jurisdiction of the ICC, are sufficient" "it is mainly legal cooperation between States, bilaterally or regionally, that can fill this gap"	N/A	<i>[did not mention CAH]</i>	neutral	"[T]he idea of drafting a new convention on CAH by the Commission is premature... First of all, CAH as a crime under international law has been defined clearly in numerous international instruments since the World War II, the most important of which being the Statute of the ICC. "Reviewing of the first report of the Special Rapporteur and the proposed draft articles makes it obvious that no new provisions are to be codified or developed by the Commission on this topic.... "Furthermore, one may conclude that consideration of a new convention on a topic of international law parallel to the existing instruments cannot, by itself, contribute to its strengthening, it may rather lead to fragmentation... For this reason we have not yet convinced that drafting a new convention could bring any added value to the existing international legal framework in this regard."
Ireland	N/A	<i>[did not mention CAH]</i>	cautious	"takes note" of the inclusion. Supports the Multilateral Treaty for Mutual Legal Assistance & does not want to see the work of CAH detract from it. Notes their domestic legislation to enact Rome Statute and that they haven't had any cases in relation to it.	N/A	<i>[did not mention CAH]</i>

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Israel*	N/A	<i>[did not mention CAH]</i>	positive	"sincere appreciation" for moving it to active. "absence of a comprehensive, global treaty on CAH should be of concern to the entire international community" "welcomes this process and hopes to contribute to it in a constructive manner" "codification of CAH in a new treaty would be an important achievement for the international community" "urges states to be cautious when considering the establishment of institutional mechanisms for the enforcement of or adherence to such a treaty."	positive	"... Israel welcomes this process... Israel was one of the first nations to join the [Genocide Convention] and to adopt domestic legislation to that effect... Israel is considering the adoption of domestic legislation that would explicitly address crimes against humanity. "A comprehensive, global codification of 'CAH' would benefit the entire international community. It ... should reflect customary international law on the subject and the widest possible consensus amongst states. Israel urges States to guard against any attempt to abuse existing enforcement mechanisms and to ensure that new mechanisms will be properly resilient to such abuse. "We wish to emphasize that the increased involvement of non-State actors in the commission of CAH should receive special attention... Since Israel continues to attach great importance to this topic, the Government of Israel would be honored to contribute to the drafting process of the new proposed treaty."
Italy	positive	"we look forward to the future discussion" "[annex b] represents a solid basis for the future consideration of the topic"	positive	"look forward to the work" "it is important to discuss this topic" "Article 7 of the Rome Statute of the ICC is in no way under discussion." Focus "should be on mechanisms to fill any jurisdictional gaps and on the implementation at the national level of international norms" "should be mindful of initiatives focusing on fostering interstate judicial cooperation on ICC crimes"	positive	"Italy is convinced of the potential benefits of developing a convention on CAH... favours the decision to confine, for the time being, the scope of the draft articles to CAH... Italy favours the decision to confine, for the time being, the scope of the draft articles to crimes against humanity. Most importantly, my delegation wishes to express its satisfaction for the approach clearly undertaken by the Commission to the effect that the draft articles are meant to avoid any conflicts with obligations arising from existing treaties... [S]upports the approach anticipated by the Commission whereby... aim to enhance the principle of complementarity under the [Rome] Statute... The Italian delegation looks forward to discussing in due course the draft articles that will translate operatively the indications just discussed."
Jamaica *	N/A	<i>[did not make any statements at the 68th Session]</i>	neutral	"The Commission has also decided to place the topic of Crimes Against Humanity in its programme of work"	N/A	<i>[did not mention CAH]</i>

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Japan	neutral	Notes status as an ICC member and efforts and financial contributions to the ICC and other international tribunals. "has a particular interest in this topic, and is looking forward to seeing the course of discussion"	positive	"fight against impunity is one of the major goals to be pursued in the modern international society" "expects this topic will greatly contribute to the development of the international criminal law" this topic is greatly related to 'aut dedere aut judicare' and 'immunity of state officials from foreign criminal jurisdiction'	positive	"... acknowledges the importance of the current work initiated by the Special Rapporteur, namely filling the legal gap of obligations of prevention and punishment of crimes against humanity, as Japan puts great importance in fighting against impunity of the most serious crimes of concern to the international community as a whole. Whereas the Rome Statute establishing the International Criminal Court regulates "vertical relationships" between the Court and its States Parties, it does not prescribe any obligations regarding adoption of national laws of crimes against humanity or inter-state cooperation on these crimes. ... "Secondly, the delegation of Japan is of the view that the current work should avoid any legal conflicts with the obligations of states arising under the constituent instruments of international courts or tribunals, including the ICC.... "We also note that the scope of the present draft articles only apply to the prevention and punishment of crimes against humanity. In doing so, the current work addresses the inter-state cooperation on the prevention, investigation, extradition and prosecution...."
Kazakhstan *	N/A	<i>[did not make any statements at the 68th Session]</i>	N/A	<i>[only Russian text available]</i>	N/A	<i>[did not mention CAH]</i>
Korea	N/A	<i>[did not mention CAH]</i>	positive	"welcomes and will do our best to actively contribute" Notes lack of international treaty for CAH as opposed to WC & Genocide. This is a separate issue from ICC because of court's jurisdiction. "the international community needs to send a clear message that perpetrators of CAH will be punished unequivocally, irrespective of one's domestic legal status" "CAH should be based on the Rome Statute" and consider jurisprudence from ICTY and ICTR. Domestic CAH laws should be considered to avoid conflict. ILC should "consider procedural issues" Notes link with the 'obligation to extradite or prosecute' and 'universal jurisdiction'	positive	"My delegation further welcomes the Commission's accomplishment of concrete results even at the initial stage of the process. ... The main purposes of this work are not only to strengthen international cooperation for the prevention and punishment of CAH, but also to create a model for domestic legislation on such crimes. Therefore, if the provisions of the prospective Convention on Crimes against Humanity are significantly different from those in existing domestic laws or impose exceedingly burdensome obligations on States, we could expect considerable hesitation on the part of the States in joining the Convention. In this regard, close consultation between States and the ILC, particularly in the Sixth Committee, will be quite useful. "My delegation supports the Commission's formulation of Draft Article 3, as it is based on the Rome Statute of the ICC..."
Lebanon*	N/A	<i>[did not make any statement on the ILC Report]</i>	N/A	<i>[did not make any statement on the ILC Report]</i>	N/A	<i>[did not mention CAH]</i>

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Malaysia*	neutral	"seek clarification on the urgency to conclude a Convention on the matter particularly as the Rome Statute of the ICC, which is already subscribed by 122 countries, also addresses CAH" "should not undermine the intended universality of the Rome Statute" "should not overlap with existing regimes, but rather to complement"	neutral	"notes" the inclusion. "notes with appreciation on the elaboration of the relationship of the proposed Convention and the ICC" "in relation to the proposed mechanism in which the Convention would adopt to promote general inter-State cooperation on the investigation, apprehension, prosecution and punishment of perpetrators of CAH, such mechanism must take into account the divergence of State legislations and practices in these areas" "in lieu of drafting a new Convention to address the inadequacy of resources for the prosecution of all perpetrators of CAH regardless of his position [Malaysia] augurs well that the ICC be supported by providing additional funds to enhance their resources" "would like to seek clarification on whether a State which accede to the proposed Convention would be obligated in future to also accede to the Rome Statute" "the time is not yet ripe at this juncture to consider an elaboration of a new international instrument on the issue of CAH"	positive	"Malaysia is firmly committed to ending impunity and will continue to support any effort of the ILC towards that end, including the current work in relation to CAH.... Malaysia is of the view that there may be a necessity for States Parties to the Rome Statute to enact legislation for the crimes under the Rome Statute, failure of which, they may be deemed as 'unwilling' or 'unable'. In view that currently there are 123 States Parties of the Rome Statute, as far as the issue of criminalizing the acts of Crimes Against Humanity, Malaysia remains unclear on any value-add of draft Article 3 (1). Perhaps, what needed to be addressed is the reason behind the failure of the States Parties to the Rome Statute, who had not done so, to enact such legislation. In this vein, Malaysia is of the view that the draft Convention should be drafted prudently to ensure that any further work on this should not overlap with existing regimes, but rather to complement it."
Mexico	N/A	<i>[did not mention CAH]</i>	N/A	<i>[did not make any statement on the ILC Report]</i>	positive	[only Spanish text available; unofficial translation] "...acknowledge the work undertaken by the Commission of International law in this area and the Special Rapporteur... unquestionable that the prohibition of CAH is a fundamental rule of int'l law jus cogens character... Mexico agrees with the proposed approach for the project articles, focusing on the obligation of the State to prevent and punish this crime.... definition should be clarified... inadequacies of the definition contained in the Rome Statute... history shows in the world of post-war in 1945, the inclusion of CAH as international crimes obeyed precisely to the Nazi's policies were a State policy and as such, it was unlikely that their authors were prosecuted by the State. This feature, was estimated, merited break the barriers of state sovereignty ... ["State-like organization"] can commit these crimes... 'other inhumane acts'... a large segment of the academy believes that this phrase does not meets with sufficient specificity..."
Micronesia*	N/A	<i>[did not make any statement on the ILC Report]</i>	N/A	<i>[did not mention CAH]</i>	N/A	<i>[did not mention CAH]</i>
Mongolia	neutral	"supports the inclusion of the new topic"	positive	"focus on the importance of a new treaty complementing the Rome Statute" "creation of new definitions that differ from the already existing ones like those contained in the Rome Statute of the ICC could only create problems" "article 7 of the Rome Statute has greatly contributed to specifying and defining the CAH. Thus a specific criminalization of CAH already exists, and is applicable to state parties and non-states parties of the Rome Statute alike." Notes that international treaties in Mongolia have the same force as domestic legislation and they are an ICC state party	N/A	<i>[did not make any statement on the ILC Report]</i>

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Netherlands	neutral	"appreciate that the Commission has been looking into the desirability of formulating a specific instrument with respect to CAH. However, we consider that this issue needs to be addressed in light of the Rome Statute, and the need to ensure its universality in the near future." Notes CAH jurisprudence from ICC and ad hocs and that it is "a well-established part of customary international law" "focus on improving the international capacity to prosecute such crimes at domestic level" "it is not the definition of the crime that is missing, but the operational tools to ensure prosecution" "together with Argentina, Belgium and Slovenia my country has taken the initiative to propose the opening of negotiations [in Vienna]"	negative	"appreciate that the Commission is looking into the desirability of formulating a specific instrument with respect to CAH" "consider that this issue is to a large extent already addressed in the Rome Statute, in a provision reflective of existing customary law" "it is not the definition of the crime that is missing, but rather than operational tools to ensure an effective prosecution at the domestic level." Notes need for strengthened mutual legal assistance and "reinforced focus on improving the international capacity to investigate and prosecute" and co-operation with other states. Thinks "Multilateral Treaty for Mutual Legal Assistance and Extradition in Domestic Prosecution of Atrocity Crimes" would solve current gaps.	positive	"The Netherlands agrees with the Commission that the prevention and punishment of CAH is important... However, we would like to suggest that the problem is perhaps not so much one of definition. ... The issue, rather, is the operationalization of the mechanisms... It is in this context that a treaty would provide a welcome instrument..." "Having said that, a pertinent question in our view is the relation between this draft convention and the Rome Statute... We would like to recall that, together with the governments of Argentina, Belgium and Slovenia, the Netherlands is working towards a new Multilateral treaty on Mutual Legal Assistance and Extradition for domestic prosecution of the most serious international crimes. As of today, 48 countries have expressed support for the opening of negotiations on such a Multilateral Treaty, representing all continents (both ICC and non-ICC countries)..."
New Zealand	N/A	<i>[did not mention CAH]</i>	neutral	"supports the inclusion" "encourage the Special Rapporteur to draw from the definition of CAH contained in the Rome Statute of the ICC rather than elaborate a new definition"	N/A	"...welcome the focus on both prevention and punishment ... use a wide range of tools at their disposal to prevent atrocities from occurring... New Zealand also welcomes the proposed definition of... in draft article three, including the without prejudice provision in paragraph four... We note Article 10 of the Rome Statute of the ICC contains a similar provision... New Zealand has criminalised crimes against humanity in the International Crimes and International Criminal Court Act of 2000. ..."
Norway (Nordics)	positive	[On behalf of Nordics] "commend this decision" "foresee as yet another important step towards the elimination of impunity for serious international crimes" "there is already a rock-solid basis in international customary law for the individual criminal responsibility for CAH" Notes the progression of CAH from Nuremberg to the ad hocs and Rome Statute. "Rome Statute... does not address the duties of states with relation to prevention of such crimes and it does not provide a general framework for inter-State cooperation. These... are crucial" "agreed language within the Rome Statute cannot be opened for reconsideration... the definition of CAH in Article 7 of the Rome Statute must be retained as the material basis" "robust inter-State cooperation for the purposes of investigation, prosecution and punishment of these crimes is crucial, as is the obligation to extradite or prosecute... regardless of their nationality." Important that "sufficient attention is also devoted to prevention of CAH... we encourage the Commission to consider innovative measures and mechanisms to ensure effective prevention"	N/A	<i>[did not mention CAH; FINLAND spoke on behalf of Nordics]</i>	neutral	<i>[SWEDEN spoke on behalf of Nordics]</i> Requested clarification of definition for CAH regarding immunity of state officials (not the CAH report and draft articles)
Pakistan*	N/A	<i>[did not mention CAH]</i>	N/A	<i>[did not make a statement on the ILC Report]</i>	N/A	<i>[did not make any statement on the ILC Report]</i>
Palau*	N/A	<i>[did not make any statements at the 68th Session]</i>	N/A	<i>[did not mention CAH]</i>	N/A	<i>[did not mention CAH]</i>

Governmental Responses at the Sixth Committee to ILC Report on a Crimes Against Humanity Treaty

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(* = non-ICC State Party)	Response?	Excerpts / Notes	Response?	Excerpts / Notes	Response?	Excerpts / Notes
Peru	positive	"we stress the importance of the inclusion, we esteem that its development will compliment other works" [translated from Spanish]	neutral	En primer lugar, el Peru toma nota de las cuestiones concretas respecto de las cuales las observaciones serian de particular interes para la Comision, las que se encuentran descritas en el Capitulo III. En particular, sobre los temas: ... y los "crimenes de lesa humanidad."	neutral	<i>[only Spanish text available; Unofficial translation]</i> "...welcomes the work of the Special Rapporteur... this work is still in progress and, consequently, our Comments are preliminary.... it is important noting that these projects do not seek to replace existing legal framework, but to complement it... "My delegation expects with special interest the second Rapporteur's report, in 2016, it should include:... national legislation; and ...The obligation to adopt the necessary measures to establish the competence of the State..."
Phillipines	N/A		N/A	<i>[did not make any statement on the ILC Report]</i>	N/A	<i>[did not mention CAH]</i>
Poland	neutral	"would like to support shifting focus on the topic "The obligation to extradite or prosecute...toward areas which are still not covered . . . E.g. some of the most crimes against humanity"	positive	"welcomes" "topic is of fundamental character for the international community." ILC "should use definition of CAH as it is defined in Article 7 of the Rome Statute... necessary for ensuring coherence and unity." Key elements are national legislation, <i>aut dedere aut judicare</i> and necessity of international cooperation for the investigation, prosecution and punishment. "take into consideration a victim oriented approach," namely children.	neutral	"... We support the use by the Commission of the definition of crimes against humanity as it is defined in article 7 of the Rome Statute. As we have stated last year, one has to consider introducing to the draft also a victim-oriented approach, with particular regard to the most vulnerable category of victims, notably children. [specific suggestions]"
Portugal	N/A	<i>[did not mention CAH]</i>	N/A	<i>[did not mention CAH]</i>	cautious	"We believe it gave a good overall view of the background on this subject, but we would like to offer some comments on the on-going work of the Commission regarding this topic.... CAH are one of the most serious crimes of international concern and States should make every possible effort to prevent and punish them. ... However, we share the view that the study of this topic should be addressed with some caution and that it must take into account the already existing legal framework dealing with crimes against humanity. The work developed must avoid entering into conflict with the regimes in place, in particular with the Rome Statute, but rather seek to complement them."
Romania	positive	"appreciate the undertaking of the ILC" "more consideration is needed on the proposed outcome . . . In view of other initiatives related to this matter"	positive	"this topic should be treated with great caution" "a definition of the CAH should be avoided, as existing international law already contains sufficient guidance" "purpose of the work with the ILC should be clearly defined" "take carefully into consideration the developments towards universality of the ICC." Notes connection with 'the obligation to extradite or prosecute'.	positive	"... We are particularly cautious of not undermining, even indirectly, the efforts towards the universality of the Rome Statute of the ICC. ... The Romanian delegation welcomes the inclusion of an article dealing with the scope of the draft articles. "As regards article 2, ... 'CAH' should not be conditional upon the existence of an armed conflict, ... With respect to draft article 3, the Romanian delegation fully supports... not departing from the provisions of article 7 of the Rome Statute of the ICC, which enjoy broad consensus. The Romanian side shares the view taken by the Commission and illustrated in the formulation of Article 4 paragraph 1 letter (a), which covers situations in which a state exercises de jure as well as de facto jurisdiction. "We are also favorable to the inclusion of the non-derogation provision, inspired by similar provisions of other multilateral treaties."

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Russia*	neutral	"customary international law gives sufficiently clear understandi	N/A	<i>[only Russian text available]</i>	positive	<i>[only Russian text available; unofficial translation]</i> "The key idea is to help harmonize national laws on crimes against humanity; We support the Commission's approach with regard to the use of the model of the Convention on the prevention of genocide...."
Singapore*	N/A	<i>[did not mention CAH]</i>	N/A	<i>[did not mention CAH]</i>	neutral	"We note that this topic is still in its early stages and would benefit from further reflection and consideration. In this regard, we recall and echo the cautionary note expressed by some delegations at the 68th Session of this Committee to avoid any pre-determined results and that any outcome would require further study. ... Our delegation continues to study the proposed draft articles with a view to providing more in-depth comments at a later stage."
Slovakia	N/A	<i>[did not mention CAH]</i>	N/A	<i>[did not mention CAH]</i>	positive	"... express our overall satisfaction on his approach to the topic and the direction he gave to consideration of the future outcome.... "We note with satisfaction that the ILC was able to provisionally adopt articles 1 to 4 together with extensive commentaries thereto, which are in fact the key provisions... "With regard to the definitions, our delegation is pleased that they fully reflect the definition of CAH contained in Article 7 of the Rome Statute... "We fully support the inclusion of an article on obligation of prevention, as not only is this a long- standing practice in similar multilateral conventions, but primarily the focus on the effective prevention of crimes against humanity is the paramount purpose of a new legal instrument. "In closing my intervention, let me express our full support to the Special Rapporteur in his endeavor and to wish him and the Commission every success in early finalizing the topic."
Slovenia	positive	"note with interest the inclusion" Notes lack of a treaty. "This legal gap...is particularly evident in the field of State cooperation, including mutual legal assistance and extradition. We believe all efforts should be directed at filling this gap" Notes joint initiative for the adoption of a new international instrument on mutual legal assistance and extradition. "In view of the said imitative and the relationship between a potential CAH convention and the ICC's Rome Statute, the ILC decision requires further consideration"	N/A	<i>[did not mention CAH]</i>	positive	"... My delegation welcomes the proposed four draft articles... Slovenia recognizes that the present draft encompasses some jet fundamental notions that are vital for our understanding of CAH, which we would like to see preserved, namely the irrelevance of the criminalisation of conduct under national law... and the irrelevance of the existence of armed conflict... "... commends... follows Article 7 of the Rome State and draws on the Elements of Crimes... appreciates the emphasis placed not only on the aspect of punishment, but also on the obligations of prevention... reiterate[s] the importance of inter-state cooperation."

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(* = non-ICC State Party)	Response?	Excerpts / Notes	Response?	Excerpts / Notes	Response?	Excerpts / Notes
South Africa	negative	"expresses its appreciation for the consideration of [annex b]" "do not consider that the Rome Statute is deficient in creating the possibility for States to criminalize... the real issue as either lack of political will or lack of capacity to draft implementing legislation... A new Convention on CAH would therefore, not necessarily remedy the concern of an insufficient number of states criminalizing CAH" "existence of the Rome Statute and an increasing number of States becoming party... would not make it necessary for there to be a focus on a new parallel Convention... as we believe that the Rome Statute has sufficient legal basis for the criminalization of CAH" "deficiency identified in the Rome Statute to compel cooperation among States, would relate to all the serious crimes and not be peculiar to CAH alone" "be cautious for the ILC pursuing any topic which may undermine the Rome Statute system" [should promote universality of ICC] "invite the [ILC] to re-consider whether this topic, in its current form would be a priority" "have some reservations in accepting that the topic in its current form should be placed onto the current agenda"	negative	"previously expressed some reservations in relation to the topic's inclusion, we remain attentive to this important topic." "Rome Statute system sufficiently ensures that CAH are criminalized" "even in the absence of a stand-alone Convention ... there remains sufficient legal basis for the criminalization of CAH in national law." Describes own domestic legislation implemented as an ICC state party which includes extra-territorial jurisdiction and expressly excludes head of state immunity. Notes connection to the principle of the obligation to extradite or prosecute.	positive	"Prevention is better than [sic] cure... the focus on prevention and cooperation in draft Article 1 [is] especially commendable... must apply in both peacetime and in time of armed conflict... [which] implicitly includes both international and non-international armed conflict... Agree with the approach in draft Article 3... [and] draft Article 4."
Spain	positive	"we deem it appropriate, in principle" "not sure the Committee will be able to adopt at first reading a comprehensive project of article before the end of the current five-year period"	positive	"welcomes" "unlike the other two types of international crimes, CAH are the only ones not subject to an international treaty obliging the states to prevent and punish such acts and to cooperate." "we will have to look carefully at the specific elements which will be part of the Convention and, concretely, its precise relation with the Rome Statute and the role of the ICC, without going beyond its regulation."	positive	"... The quality of the texts adopted up until now foretells a good final result... Clearly the Commission's work has been eased by the existence of previous conventional instruments. In particular, the Statute of the ICC, which provides the definition of crimes against humanity, found in draft article 3. But also the treaties applicable to other international crimes, such as the 1948 Convention on the Prevention and Punishment of the Crime of Genocide... Furthermore, its wording is not entirely satisfactory. It does not seem technically correct to state that the draft articles "apply" to the prevention and punishment of crimes against humanity, but it would rather be more suitable to say the draft articles "concern" the prevention and punishment of CAH. "Regarding draft article 4, the content of paragraph 2 must be moved somewhere else..."
Sri Lanka	N/A	<i>[made no statement on the ILC Report]</i>	N/A	<i>[made no statement on the ILC Report]</i>	N/A	<i>[did not mention CAH]</i>
Sudan*	N/A	<i>[made no statement on the ILC Report]</i>	N/A	<i>[only Arabic text available]</i>	N/A	<i>[did not mention CAH]</i>

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Sweden (Nordics)	N/A	<i>[did not mention CAH]</i>	N/A	<i>[did not make a statement on the ILC Report - but see Finland]</i>	positive	[On behalf of Nordics] "... we endorse the character of the topic as complementary to the Rome Statute system... The focus on robust interstate cooperation is therefore to be welcomed... [S]trongly endorse the focus on the obligation of prevention. ... [W]e would suggest, in line with paragraph (17) of the commentary to draft article 4 that an additional article would lay down the obligation to adopt national laws and policies to establish awareness of the crime against humanity and to promote early detection of any risk of its commission, as well as an obligation to pursue initiatives that educate and inform governmental officials in order specifically to prevent crimes against humanity. We also believe that inspiration may also be drawn from the UN Convention on Enforced Disappearances... Finally... the Nordic countries underline that no such obligations can be construed so as to limit either already existing..."
Switzerland	N/A	<i>[did not mention CAH]</i>	N/A	<i>[did not mention CAH]</i>	positive	"It welcomes that the four existing draft articles are based on the existing international legal framework... My delegation supports and highlights the following elements of the report: Punishment and prevention of crimes against humanity are essential; States must take measures in both fields and cooperate with other States and with relevant organizations; Crimes against humanity can be committed in time of armed conflict and outside; They can be committed by all persons, not only state officials; and No exceptional circumstances may be invoked as a justification of crimes against humanity. ... Key elements that the future draft articles should address, include provisions on mutual legal assistance, requiring states to cooperate while respecting existing constraints in national systems; the irrelevance of the official position; the inapplicability of statutes of limitations and the need to deal with the legacy of crimes against humanity."
Thailand*	positive	"there are existing gaps in the present conventional regime governing the obligation to extradite or prosecute which need to be closed, especially in relation to most CAH..."	N/A	<i>[did not mention CAH]</i>	N/A	<i>[did not mention CAH]</i>
Tonga (PSIDS)*	N/A	<i>[On behalf of PSIDS; did not mention CAH]</i>	N/A	<i>[did not mention CAH]</i>	N/A	<i>[did not make any statement on the ILC Report]</i>
Trinidad & Tobago	N/A	<i>[made no statement on the ILC Report]</i>	positive	"fully support the inclusion of this topic." "all three major international crimes... could benefit from examination by the Commission." "CAH have not been the subject of a special treaty" "interstate cooperation mechanisms from the other crimes could also benefit from strengthening" "the project should not detract from but rather complement what is provided under the Rome Statute"	N/A	<i>[did not make any statement on the ILC Report]</i>

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Turkey*	N/A	<i>[made no statement on the ILC Report]</i>	N/A	<i>[did not mention CAH]</i>	neutral	"... We have examined the report carefully and have questions on parts of the report, for example concerning footnote 44, which we believe does not accurately reflect the content of the document it is referring to. We will seek clarification on this issue and thus reserve our position to make further comments on it. "With regard to the 4 draft articles adopted together with commentaries, we note that the definition of CAH contained in draft article 3, differs from the definition set forth in the Rome Statute on two points on which our delegation would welcome further clarification...."
UK	neutral	"stress that any new conventions in this area must be consistent with and complementary to the ICC Statute"	cautious	"notes" the inclusion. "acknowledges that there is currently no general multilateral framework governing CAH and that there may be benefit in investigating how an extradite or prosecute regime in respect of such crimes would operate." "welcomes the careful consideration... given to the inter-relationship between the work on this topic and the Rome Statute" "it is important that the work of the ICC in this area is not affected, whilst recognizing that ICC prosecutions should be complementary to the exercise of national jurisdiction. The UK would not welcome the expansion of the scope of this investigation into issues such as civil jurisdiction and immunity."	cautious	"We continue to see benefit in exploring how an extradite or prosecute regime in respect of such crimes could operate... [The UK] appreciates the careful consideration that the Special Rapporteur,... to the inter-relationship between their work and the Rome Statute... "[The UK] underlines that we would not welcome the expansion of the scope of this investigation into issues such as civil jurisdiction and immunity..."
USA*	positive	"welcomes"	positive	"looks forward to a thorough discussion of the topic" "we support and very much welcome the appointment of Sean Murphy" "the US believes that careful consideration and discussion of draft articles for a convention on the prevention and punishment of CAH could also be valuable." "The topic's importance is matched by the difficulty of many of the legal issues that it implicates and we urge that these issues be thoroughly discussed and carefully considered"	positive	"The commentary's description of the lineage of the concept of crimes against humanity... is a sober reminder of the importance of this topic.... widespread adoption of certain multilateral treaties regarding serious international crimes - such as the 1948 Convention on the Prevention and Punishment of the Crime of Genocide - has been a valuable contribution to international law. Because CAH have been perpetrated in various places around the world, the United States believes that careful consideration and discussion of draft articles for a convention on the prevention and punishment of crimes against humanity could also be valuable. "As we have previously noted, this topic's importance is matched by the difficulty of some of the legal issues that it implicates... it presents a number of complex issues, on which we are still developing our views."
Venezuela	N/A		N/A	<i>[did not make any statement on the ILC Report]</i>	N/A	<i>[did not mention CAH]</i>
Vietnam*	N/A	<i>[made no statement on the ILC Report]</i>	N/A	<i>[did not mention CAH]</i>	N/A	<i>[did not mention CAH]</i>

1: Full statements by delegates at the 68th meeting can be found at: <https://papersmart.unmeetings.org/en/ga/sixth/68th-session/statements/>

2: Full statements by delegates at the 69th meeting can be found at: <https://papersmart.unmeetings.org/en/ga/sixth/69th-session/statements/>

3: Full statements by delegates at the 70th meeting can be found at: <https://papersmart.unmeetings.org/en/ga/sixth/70th-session/statements/>