



Towards a New Treaty on Crimes Against Humanity

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The Crimes Against Humanity Initiative

- [*The Crimes Against Humanity Initiative*](#) was founded at Washington University by Prof. Leila Sadat. The project has been guided by a steering committee of eminent international authorities, and developed a model [*Proposed International Convention on the Prevention and Punishment of Crimes Against Humanity*](#) which was published in August 2010



COMPLETING THE ROME SYSTEM

- The Rome Statute defines crimes against humanity, **but gaps remain:**
 - No enforceable duty to prevent
 - No State responsibility
 - No inter-state enforcement
 - No mutual legal assistance
 - No liability for legal entities
 - Not binding on non-State parties
 - Based on a vertical system of international criminal enforcement
 - Will take very few cases, and has limited jurisdiction
 - There is thus a legal gap and an impunity gap



THE PROPOSED CONVENTION

Contains 27 articles, 6 annexes, and its own “Martens Clause”

Adopts the Rome Statute definition of crimes against humanity

Provides a horizontal enforcement mechanism

Builds upon four pillars:

- Normative foundations
- Prevention
- Punishment
- Capacity-building



THE ATROCITY CASCADE

Peacetime

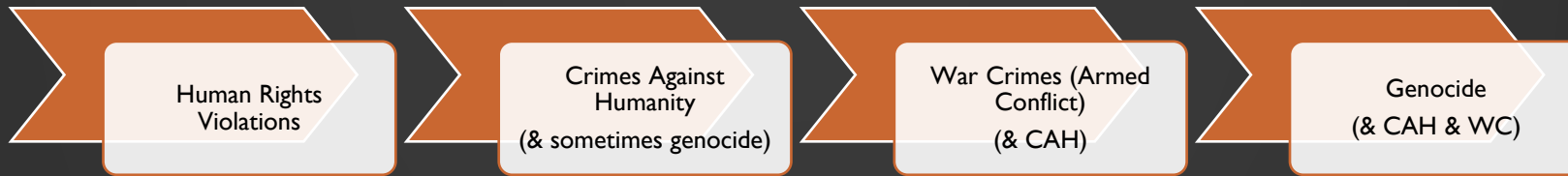
Human Rights
Violations

Crimes Against
Humanity
(& sometimes genocide)

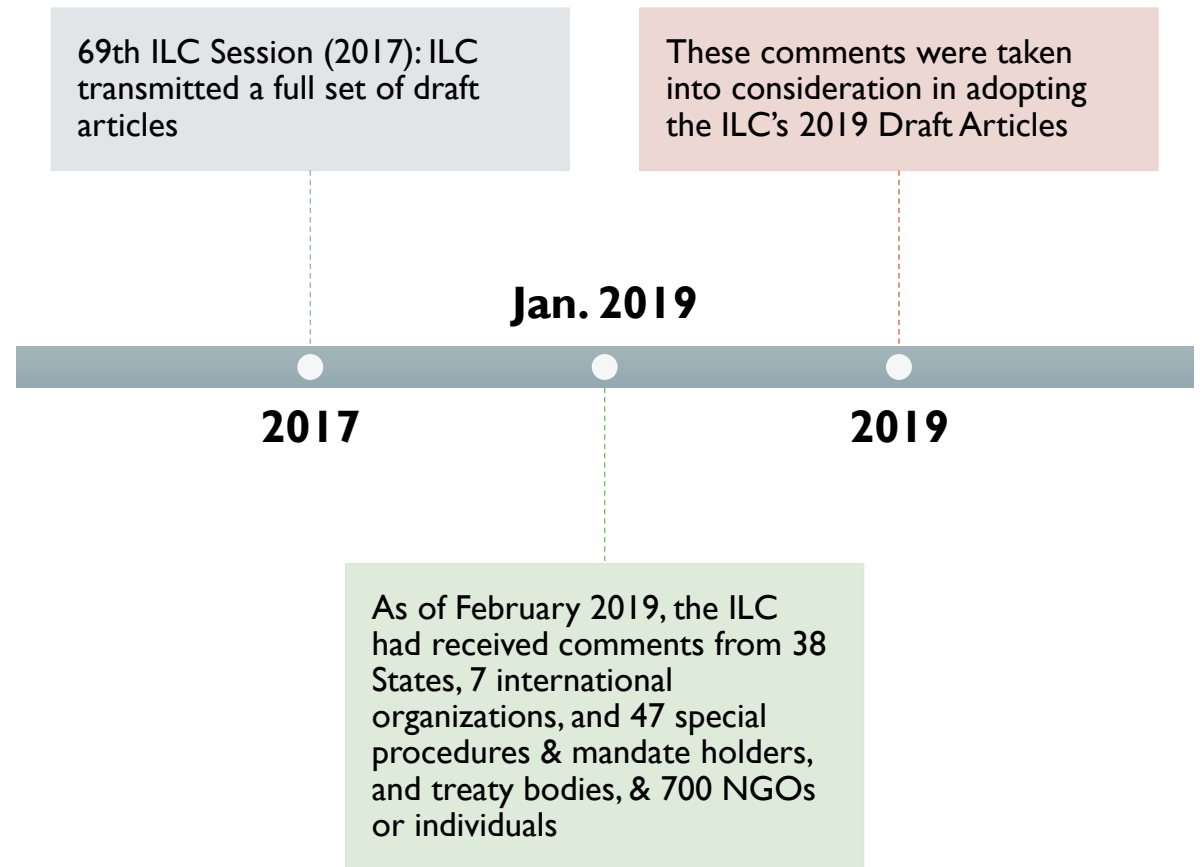
Armed Conflict

War Crimes (Armed
Conflict)
(& CAH)

Genocide
(& CAH & WC)



ILC PROCESS



RECOMMENDATION
OF THE
INTERNATIONAL LAW
COMMISSION

At its 3499th meeting, on August 5, 2019, the Commission decided, in conformity with article 23 of its statute, to recommend “the elaboration of a convention by the General Assembly or by an international conference of plenipotentiaries on the basis of the draft articles.”

Report of the International Law Commission on the Work of its Seventy-first Session, Ch. IV, para. 42. U.N. Doc.A/74/10 (2019),
<https://legal.un.org/ilc/sessions/71/#a3>





From Geneva to New York

It took 6 years for the UN Sixth Committee to adopt a resolution sending the ILC Draft Articles to a Diplomatic Conference for a Treaty Negotiation

2019-2021: Technical Rollovers: problem of consensus, but increasing support; formation of a core group of States committed to moving forward ; absence of civil society and the pandemic were problematic

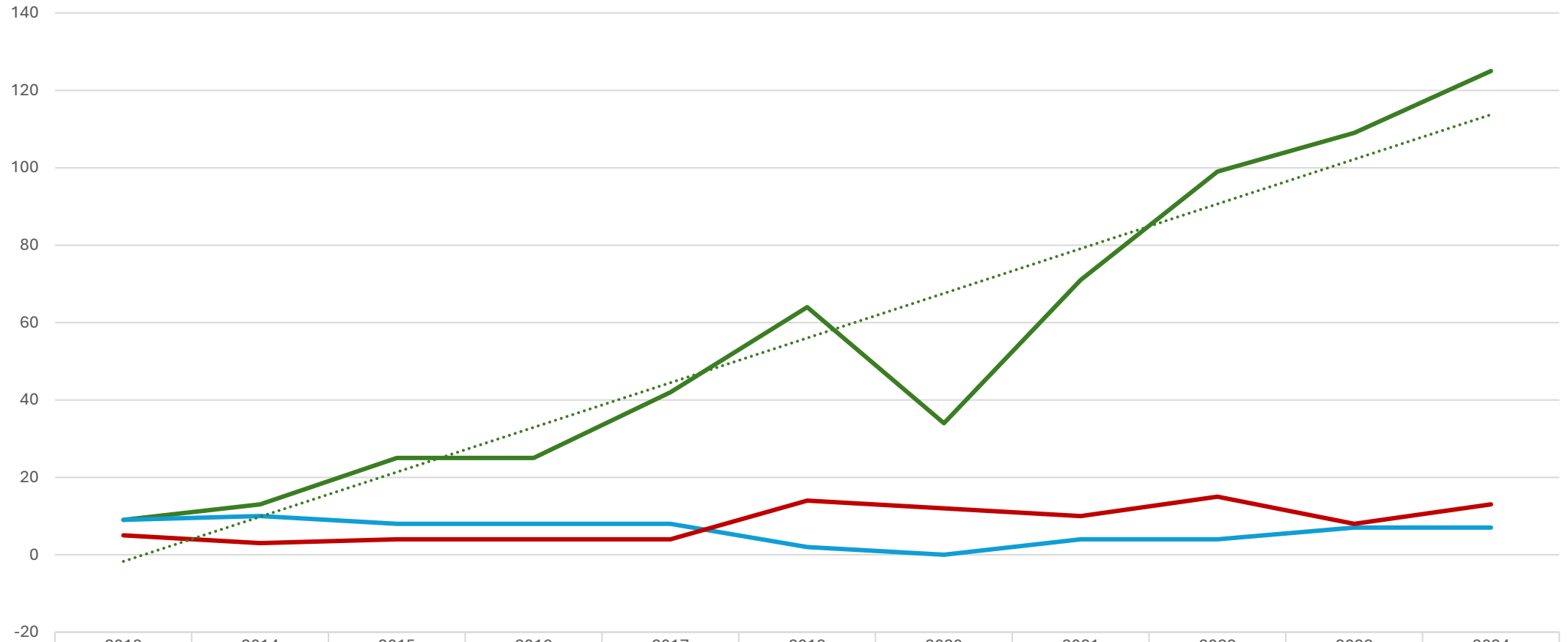
2022: Adoption of Resolution 77/249

2023: First Resumed Session, plus October 6th Committee

2024: Second April Resumed Session



State Support by Number of States

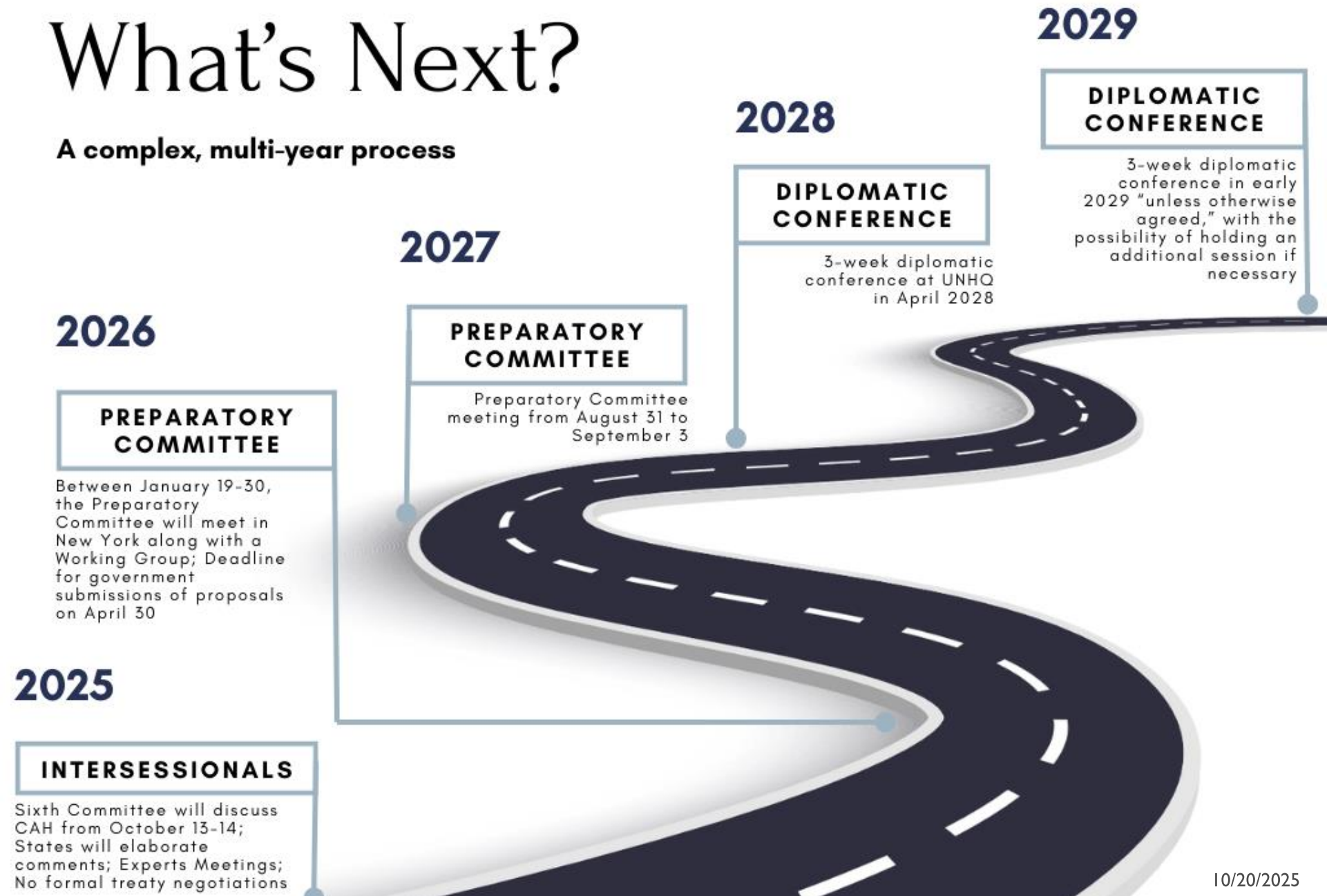


	2013	2014	2015	2016	2017	2019	2020	2021	2022	2023	2024
Positive	9	13	25	25	42	64	34	71	99	109	125
Neutral	9	10	8	8	8	2	0	4	4	7	7
Negative	5	3	4	4	4	14	12	10	15	8	13

— Positive
 — Neutral
 — Negative
 ⋯ Linear (Positive)

What's Next?

A complex, multi-year process



2026

PREPARATORY COMMITTEE

Between January 19-30, the Preparatory Committee will meet in New York along with a Working Group; Deadline for government submissions of proposals on April 30

2025

INTERSESSIONALS

Sixth Committee will discuss CAH from October 13-14; States will elaborate comments; Experts Meetings; No formal treaty negotiations

2027

PREPARATORY COMMITTEE

Preparatory Committee meeting from August 31 to September 3

2028

DIPLOMATIC CONFERENCE

3-week diplomatic conference at UNHQ in April 2028

2029

DIPLOMATIC CONFERENCE

3-week diplomatic conference in early 2029 "unless otherwise agreed," with the possibility of holding an additional session if necessary

Three different kinds of proposals:

1. Additions to the ILC Draft Articles relating to issues not covered in the DA themselves;
2. Additions proposed by States and/or Civil Society based either on the evolution of ICL since the drafting of the Rome Statute or their own preoccupations and concerns;
3. Changes – either deletions or additions – to the DA proposed by way of clarification, expansion, or contraction of State obligations

2019 ILC DRAFT ARTICLES: OPEN QUESTIONS





ABILA CAH Study Group

Proposed Amendments

Preamble (*Martens Clause*)
Definition of the Crime (Article 2)
(Slavery/slave trade, starvation,
environment)
Prevention (Articles 3 & 4)
Irrelevance of Official Position (Article 6)
Jurisdiction (Articles 7 & 13)
Reparations (Article 12 (mostly))
Dispute settlement (Article 15)

Additions

- Human Rights Interpretive Provision
- Monitoring Mechanism

Thematic Papers

- Civil Society
- Children (age)
- Gender

Areas Not Addressed (future work)

- Additional definitions: forced marriage, gender apartheid, persecution, forced pregnancy
- Modes of Liability (incitement, group liability, etc.)
- Interstate cooperation & final clauses



ILC ARTICLE 15

Settlement of disputes

1. States shall endeavour to settle disputes concerning the interpretation or application of the present draft articles through negotiations.
2. Any dispute between two or more States concerning the interpretation or application of the present draft articles that is not settled through negotiation shall, at the request of one of those States, be submitted to the International Court of Justice, unless those States agree to submit the dispute to arbitration.
3. Each State may declare that it does not consider itself bound by paragraph 2 of this draft article. The other States shall not be bound by paragraph 2 of this draft article with respect to any State that has made such a declaration.
4. Any State that has made a declaration in accordance with paragraph 3 of this draft article may at any time withdraw that declaration.

Draft articles on Prevention and Punishment of Crimes Against Humanity, art. 15, ILC Doc. A/74/10 (2019),
https://legal.un.org/ilc/texts/instruments/english/draft_articles/7_7_2019.pdf

ABILA PROPOSED TEXT

Settlement of disputes

1. States shall endeavor to settle disputes concerning the interpretation, application, or fulfilment of the present draft articles through negotiations.
2. Any dispute between two or more States concerning the interpretation, application, or fulfilment of the present draft articles, including those relating to the responsibility of a State for engaging in acts or omissions constituting crimes against humanity or a State's responsibility to prevent and punish crimes against humanity, that is not settled through negotiation shall, at the request of one of those States, be submitted to the International Court of Justice, unless those States agree to submit the dispute to arbitration a different mode of dispute resolution.
3. Any State [Party] may invoke the responsibility of another State [Party] under this Convention in accordance with the procedures set out in this article.
3. Each State may declare that it does not consider itself bound by paragraph 2 of this draft article. The other States shall not be bound by paragraph 2 of this draft article with respect to any State that has made such a declaration.
4. Any State that has made a declaration in accordance with

Settlement of disputes (ABILA draft)

1. States shall endeavor to settle disputes concerning the interpretation, application, or **fulfilment** of the present draft articles through negotiations.

2. Any dispute between two or more States concerning the interpretation, application, or **fulfilment** of the present draft articles, **including those relating to the responsibility of a State for engaging in acts or omissions constituting crimes against humanity or a State's responsibility to prevent and punish crimes against humanity**, that is not settled through negotiation shall, at the request of one of those States, be submitted to the International Court of Justice, unless those States agree to submit the dispute to **arbitration a different mode of dispute resolution.**

Addition of “fulfilment”

- Parallel to Article IX of the Genocide Convention
- Broadens the scope of provision and ensures its applicability in all relevant circumstances

“...including those relating to the responsibility of a State...”

- Draft Articles include explicit obligation for States to refrain from engaging in CAH
- Removes any question that violations of that obligation fall within the scope of the dispute settlement mechanism and the jurisdiction of the ICJ

“...a different mode of dispute resolution.”

- Permits alternative means of dispute resolution, including conciliation and mediation, in addition to arbitration

Settlement of disputes (draft cont.)

3. Any State [Party] may invoke the responsibility of another State [Party] under this Convention in accordance with the procedures set out in this article.

~~3. Each State may declare that it does not consider itself bound by paragraph 2 of this draft article. The other States shall not be bound by paragraph 2 of this draft article with respect to any State that has made such a declaration.~~

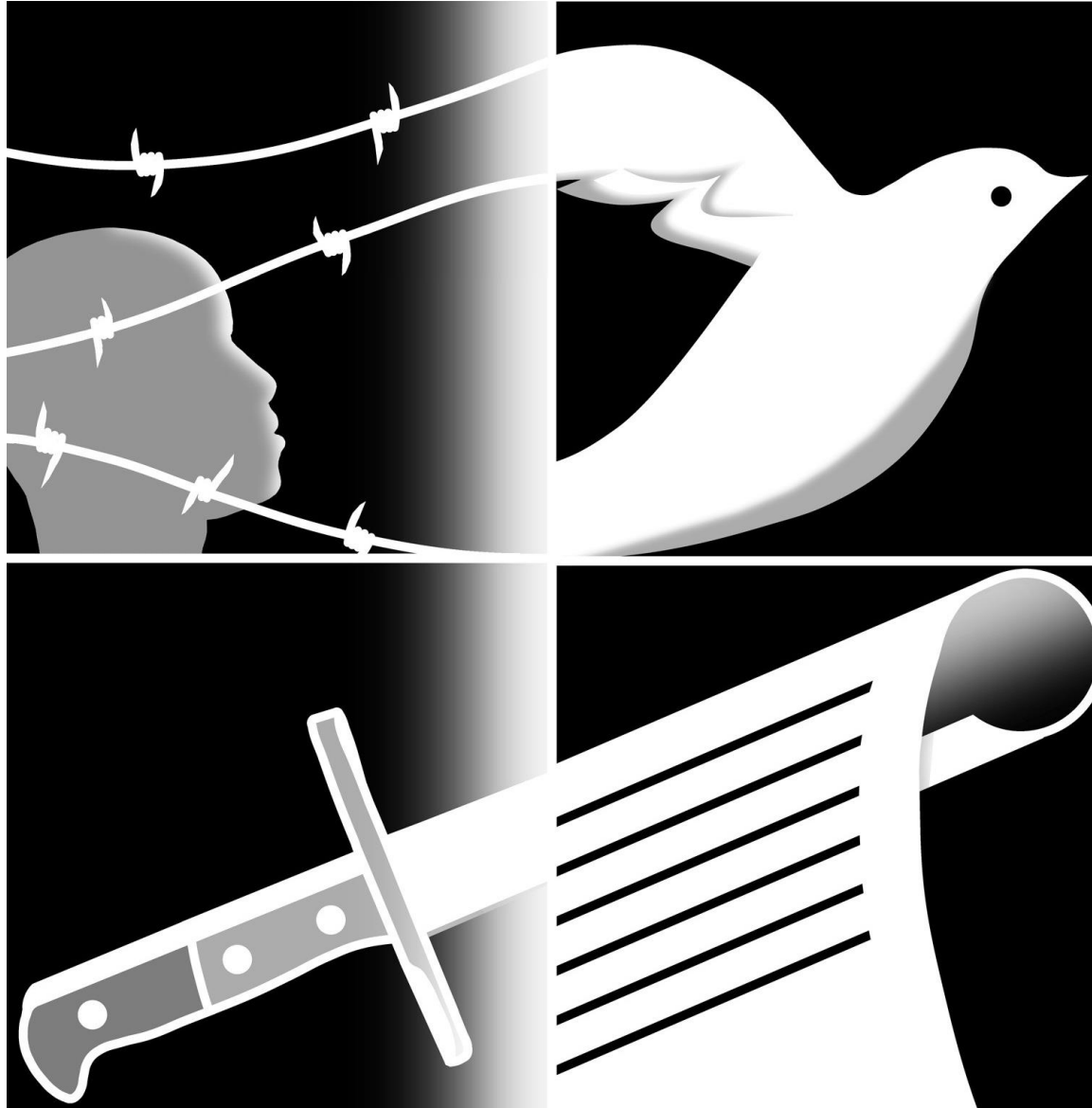
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Rewrite of Paragraph 3

- Express recognition may alleviate any debate that could prolong litigation regarding one State [Party]'s right to bring a claim for violation of *erga omnes partes* obligations

Deletion of Current Paragraphs 3 and 4

- Superfluous paragraphs because 1969 Vienna Convention on the Law of Treaties provides inherent right for reservations (unless reservations are ultimately prohibited; but there have been growing objections to reservations to Article IX under the Genocide Convention)
- Better promotes the object and purpose of CAH Convention given the *jus cogens* nature of the prohibition of CAH



Thank you!