

# ENSURING THE CRIMES AGAINST HUMANITY CONVENTION ADDRESSES DIRECT AND PUBLIC INCITEMENT

Proposal to Include an Obligation to Criminalise Direct  
and Public Incitement to Crimes Against Humanity

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# Introduction

Over the last decade, the United Nations (UN) International Law Commission (ILC) - the entity charged with the progressive development and codification of international law - and the UN General Assembly, have made progress towards establishing a Convention on Crimes Against Humanity (CAH). In 2019, the ILC published a set of Draft Articles on the Prevention and Punishment of Crimes against Humanity (Draft Articles) and recommended them to the UN General Assembly to develop a Convention on their basis. The Draft Articles have since been the subject of debates in the UN General Assembly's Sixth Committee which culminated in November 2024 with the Sixth Committee approving by consensus a resolution to advance to formal negotiations for an international convention on the prevention and punishment of CAH. Following this, General Assembly Resolution 79/122, adopted in December 2024, mandated a Conference of Plenipotentiaries on Prevention and Punishment of Crimes against Humanity to finalise and open an international convention for state signature and ratification. To that end, Resolution 79/122 also established a Working Group of the Diplomatic Conference and a Preparatory Committee. The first session of the Preparatory Committee took place on 19-30 January 2026 in New York to discuss the organisation and methods of work of the Diplomatic Conference, while the Working Group met in parallel to facilitate consultations on the Draft Articles. States have until **30 April 2026** to submit amendment proposals to the Draft Articles to the UN Secretariat, which will form the basis for the substantive negotiations of the Diplomatic Conference, along with the Draft Articles and State submissions made in December 2023. This is therefore a critical stage at which state delegations must identify and address gaps in the current Draft Articles. As the future Convention is expressly framed as a treaty on the prevention and punishment of CAH, it is essential that its substantive provisions address both completed crimes and those preparatory acts that may catalyse or mobilise such crimes. It is in this context that the question of direct and public incitement to crimes against humanity is being raised.

This note advances a specific and limited proposal: that Draft Article 4 and Draft Article 6 (Criminalization under national law) be amended **to include an obligation to criminalise direct and public incitement to commit CAH as a standalone offence**. The proposal does not seek to reopen the broader architecture of modes of liability already reflected in the Draft Articles. Rather, it asks states to consider whether the treaty should explicitly require the criminalisation of incitement itself, where it is direct and public, even where the incited crimes have not yet occurred. The proposed offence of direct and public incitement would attach to the intentional act of directly and publicly calling on others to commit CAH, regardless of whether the crimes are ultimately carried out, thereby recognising incitement as an inchoate offence distinct from participation in a completed crime. In other words, the proposal addresses a distinct normative and temporal moment: the mobilisation of mass violence through explicit public calls to commit atrocity crimes.

**The absence of such an offence in the current Draft Articles creates both an accountability gap and a prevention gap**, as existing modes of liability generally require a nexus to a completed or attempted underlying crime. From an accountability perspective, where incitement does not meet the threshold for ordering or aiding and abetting a particular crime, it may escape criminalisation altogether, even when it plays a central role in catalysing widespread or systematic attacks against civilian populations. From a prevention perspective, the Draft Articles' silence on incitement to CAH risks undercutting the Convention's preventive ambition. Contemporary situations have demonstrated how direct and dehumanising public rhetoric, amplified at scale including through social media, can precede and enable campaigns of violence. While the legal characterisation of statements is a matter for competent courts, these situations illustrate a broader structural reality: explicit public

calls for the commission of atrocity crimes can normalise, coordinate, and accelerate mass harm in ways not fully addressed by participation-based liability alone.

At the same time, **this proposal is deliberately narrow and grounded in established international criminal law.** It builds on the well-settled model of direct and public incitement to commit genocide reflected in instruments such as the Convention on the Prevention and Punishment of the Crime of Genocide and applied in international jurisprudence. The thresholds of “direct” and “public” are demanding. “Direct” requires an explicit call to commit CAH, not vague, abstract, or coded expressions of hostility. “Public” excludes private conversations and limits the offence to statements made in a public forum. The offence would also require the requisite intent, ensuring that negligent, reckless, or merely offensive speech is not captured. Properly framed, this is not a broad hate speech provision; it is a narrowly tailored prohibition on one of the most extreme forms of speech: intentional, public exhortations to commit CAH.

Therefore, including direct and public incitement to commit CAH as a standalone offence in Draft Article 6 would align the Convention more closely with its preventive purpose while strengthening accountability, in a manner that is both legally coherent and operationally feasible, as this would be consistent with existing international law and state practice.

The Genocide Convention recognises direct and public incitement as a standalone crime precisely because such speech constitutes an early operational stage in the commission of atrocity crimes. A Convention on CAH that seeks to fulfil a comparable preventive function should similarly address this stage of criminality.

## 1. THE CURRENT DRAFT ARTICLES DO NOT ADDRESS INCITEMENT TO CRIMES AGAINST HUMANITY

### A. ABSENCE OF INCITEMENT IN DRAFT ARTICLE 6

The 2019 Draft Articles on the Prevention and Punishment of CAH do not include the offence of “incitement” to commit CAH or a similar prohibition capturing this mode of liability and other extreme forms of “hate speech”.

As explained in the Commentary of the Draft Articles, the ILC did consider whether to refer expressly to incitement to CAH in Draft Article 6(2) containing provisions requiring the domestic criminalisation of CAH and respective modes of liability.<sup>1</sup> It acknowledged the well-established nature of the crime of “direct and public incitement to genocide”, as expressed in the Genocide Convention<sup>2</sup> and the Rome Statute<sup>3</sup> of the International Criminal Court (ICC). The ILC also noted several international instruments directly or indirectly prohibiting incitement to CAH, most notably the 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity.<sup>4</sup>

Nevertheless, the ILC adopted the Rome Statute approach of only including incitement with respect to genocide, citing states’ decision in the negotiations leading to the creation of the ICC “not to

<sup>1</sup> Draft articles on Prevention and Punishment of Crimes Against Humanity, with commentaries, 2019, A/74/10, p. 70, para. 13.

<sup>2</sup> Convention on the Prevention and Punishment of the Crime of Genocide, art. III (b)-(c).

<sup>3</sup> Rome Statute, art. 25, para. 3 (e) (in conjunction with article 6).

<sup>4</sup> The UN Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, art. 2, providing that: “If any of the crimes mentioned in article I is committed, the provisions of this Convention shall apply to representatives of the State authority and private individuals who, as principals or accomplices, participate in or who **directly incite** others to the commission of any of those crimes, or who conspire to commit them, irrespective of the degree of completion, and to representatives of the State authority who tolerate their commission”. The corresponding Council of Europe’s Convention, even though adopted after the UN instrument, does not mention incitement. However, this can be explained by the Convention’s overall much less detailed nature, which does not go into the particularities of commission and modes of liability.

include in the Rome Statute direct and public incitement to commit crimes against humanity.”<sup>5</sup> It is worth noting that the Rome Statute approach was influenced in part by constitutional traditions in certain states that adopt restrictive approaches to speech offences due to strong protections of freedom of expression.<sup>6</sup> The ILC concluded that Draft Article 6(2) does not cover the concept of incitement as an inchoate offence, noting, however, that the various terms encompassing modes of liability under Draft Article 2 (c), such as inducing, aiding, abetting or otherwise contributing to the commission of CAH “do encompass the concept of incitement to a crime against humanity when the crime in fact occurs.”<sup>7</sup> Nevertheless, these forms of participation require that the underlying crime be committed or attempted. They do not clearly capture direct and public exhortations to commit crimes against humanity where such crimes have not yet occurred. This distinguishes them from the inchoate offence of incitement to genocide.

## B. ABSENCE OF INCITEMENT IN DRAFT ARTICLE 4

Draft Article 4 on states’ obligation to prevent CAH, also omits “incitement”. The Draft Articles’ Commentary does not point to any deliberations on whether to include the obligation to criminalise the most extreme forms of hate speech as a prevention measure. However, the Commentary again draws on the 1948 Genocide Convention, citing it as a “significant example of an obligation of prevention” and refers to provisions containing a general duty to prevent and requiring the enactment of domestic measures to give effect to the provisions of the Convention.<sup>8</sup> The Commentary notes that in 2015 the UN Human Rights Council adopted a resolution on the prevention of genocide that provides some insights into the kinds of measures expected to fulfil the overarching obligation to prevent genocide under the Genocide Convention. The resolution reiterates “the responsibility of each individual State to protect its population from genocide, which entails the prevention of such a crime, **including incitement to it**, through appropriate and necessary means” (emphasis added).<sup>9</sup>

**The omission of incitement from the Draft Articles therefore stands in tension with the preventive logic that underpins existing atrocity-prevention frameworks**, which recognise that certain forms of intentional public exhortation to violence may themselves constitute an early stage in the commission of international crimes.

5 Draft articles on Prevention and Punishment of Crimes Against Humanity, with commentaries, 2019, A/74/10, p. 70, para. 13, citing Report of the Preparatory Committee on the Establishment of an International Criminal Court, draft statute and draft final act, A/CONF.183/2/Add.1, p. 50. See also W.K. Timmermann, “Incitement in international criminal law”, *International Review of the Red Cross*, December 2006, vol. 88, p. 843 (“During the Diplomatic Conference in Rome the drafters rejected the suggestion that the incitement provision be extended to apply also to crimes against humanity, war crimes and aggression”).

6 See for example, Reeves, Teresa Young. “A Global Court? U.S. Objections to the International Criminal Court and Obstacles to Ratification.” *Human Rights Brief* 8, no. 1 (2000): 15-16, 18, 30. In [Brandenburg v. Ohio, 395 US 444 \(1969\)](#), the U.S. Supreme Court held that hate speech could be restricted if the speech is directed to inciting or producing imminent lawless action, and it is likely to incite or produce such action.

7 Draft articles on Prevention and Punishment of Crimes Against Humanity, with commentaries, 2019, A/74/10, p. 70, para. 13. The ILC also refers to the constituent instruments for the International Criminal Tribunal for the Former Yugoslavia (Statute, art. 4), the International Criminal Tribunal for Rwanda (Statute, art. 2), and the Panels with Exclusive Jurisdiction over Serious Criminal Offences for East Timor (East Timor Tribunal Charter, sect. 14 (e)) which provided for the crime of direct and public incitement to commit genocide, but only inducement or instigation of crimes against humanity”. *Ibid* at fn 312.

8 Draft articles on Prevention and Punishment of Crimes Against Humanity, with commentaries, 2019, A/74/10, p. 54, para. 2.

9 *Ibid*, p. 58, para. 9 citing Report of the Human Rights Council, Official Records of the General Assembly, Seventieth Session, Supplement No. 53 (A/70/53), chap. II, resolution 28/34 on the prevention of genocide, adopted by the Human Rights Council on 27 March 2015, para. 2.

## 2. PROHIBITING INCITEMENT TO CRIMES AGAINST HUMANITY PROTECTS VICTIMS OF ATROCITIES BY CLOSING A CRITICAL GAP IN INTERNATIONAL CRIMINAL LAW

### A. INCITEMENT AS A DRIVER OF CONTEMPORARY MASS ATROCITIES

Contemporary armed conflicts or other contexts of mass violence – including situations in Myanmar, Palestine, Sudan, Ukraine, Venezuela, or Yemen – demonstrate the significant role that public rhetoric and propaganda can play in shaping environments in which violence against civilians becomes normalised or legitimised. In contemporary information environments characterised by unprecedented range and speed of digital dissemination and amplification – leading some experts to refer to the current age of “spin”<sup>10</sup> and the “death of truth”<sup>11</sup> – political leaders, media actors, armed groups, and other influential figures increasingly employ narratives that dehumanise targeted populations or portray them as existential threats. Such rhetoric, particularly when sustained and widely disseminated, can contribute to hostility, discrimination, and the erosion of civilian protection norms. While the legal assessment of specific statements is a matter for competent judicial bodies, these contexts illustrate how direct and public exhortations to violence may operate as precursors or enabling factors in widespread or systematic attacks against civilian populations.

In the context of the armed conflict in **Ukraine**, public rhetoric by Russia’s senior political figures, state-affiliated media, and other influential actors has outright denied or otherwise portrayed Ukrainian identity and statehood as illegitimate, extremist, or requiring “denazification”, justifying the need to fully invade Ukraine.<sup>12</sup> Such narratives have portrayed segments of the civilian population as posing an existential threat or as enemies requiring removal, re-education or subjugation.<sup>13</sup> International observers and human rights organisations have noted that sustained dehumanising or delegitimising rhetoric in situations of armed conflict may contribute to the normalisation of violence and the erosion of protections afforded to civilians under international law.<sup>14</sup> The situation illustrates how direct or implicit public exhortations, when disseminated widely, may reinforce environments in which widespread or systematic attacks against civilians become more likely.

In the context of hostilities in **Gaza and the broader Israeli-Palestinian conflict**, public discourse by certain political leaders, officials, and non-state actors has included dehumanising language directed at Palestinian civilians, in order to justify violence and exclusion.<sup>15</sup> International judicial proceedings<sup>16</sup> and expert bodies have underscored that such rhetoric may be relevant when assessing the risk of atrocity crimes and the corresponding obligation of states to prevent them. At the same time, armed groups operating in the region have also engaged in public messaging that may call for violence against civilian populations.<sup>17</sup> These dynamics demonstrate how inflammatory and dehumanising narratives, particularly when amplified through traditional and digital media, can heighten the risk

10 Daniel Treisman, Sergei Guriev, “Spin Dictators: The Changing Face of Tyranny in the 21<sup>st</sup> Century”, (Princeton University Press: 2023).

11 Michiko Kakutani, “The Death of Truth” (Harper Collins UK, 2018).

12 FIDH, “[Communication submitted under Article 15 of the Rome Statute of the International Criminal Court on the Situation in Ukraine: Hate Speech as the Crime Against Humanity of Persecution](#)”, June 2024; Atlantic Council, “[Our experts decode the Putin speech that launched Russia’s invasion of Ukraine](#)”, 22 February 2023; Clara Apt & Viola Gienger, “[Russia’s Eliminationist Rhetoric Against Ukraine: A Collection](#)”, Just Security, 24 February 2026.

13 Susanne Sternthal, “[Manifesto published in Russian media reflects Putin regime’s ruthless plans in Ukraine](#)”, The Conversation, 14 April 2022; Parliamentary Assembly of the Council of Europe, “The Russian Federation’s aggression against Ukraine: ensuring accountability for serious violations of international humanitarian law and other international crimes”, [Resolution 2436 \(2022\)](#), para. 5.

14 See for example, FIDH, “[Communication submitted under Article 15 of the Rome Statute of the International Criminal Court on the Situation in Ukraine: Hate Speech as the Crime Against Humanity of Persecution](#)”, June 2024.

15 UNGA, [Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression](#), **A/79/319, 23 August 2024, para. 62**; UN Human Rights Council, [Anatomy of a genocide. Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese](#), **A/HRC/55/73, 1 July 2024, paras. 50-54**.

16 ICJ, Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Request for the Indication of Provisional Measures, Order, 26 January 2024, para. 54; UN Human Rights Council, [Legal analysis of the conduct of Israel in Gaza pursuant to the Convention on the Prevention and Punishment of the Crime of Genocide](#), A/HRC/60/CRP.3, 16 September 2025, paras. 247-249.

17 OHCHR, “[Israel: Violence, hate speech, discrimination against Palestinian minority must stop](#)”, 1 June 2021.

of serious violations and undermine civilian protection frameworks.<sup>18</sup> The broader pattern illustrates the preventive relevance of addressing direct and public incitement.

The situation of **Myanmar** provides a particularly clear illustration of how sustained public rhetoric can contribute to CAH. In the years preceding and during the 2016–2017 “clearance operations” against the Rohingya population, military officials, ultra-nationalist actors, and affiliated networks disseminated dehumanising narratives portraying Rohingya Muslims as existential threats, “terrorists,” or “illegal immigrants.” The UN Independent International Fact-Finding Mission on Myanmar concluded that such rhetoric, widely disseminated through Facebook<sup>19</sup> and other platforms, played a significant role in fomenting hostility and discrimination, and contributed to the CAH of persecution.<sup>20</sup> This example demonstrates how coordinated and amplified public messaging can operate as a precursor and facilitator of widespread or systematic attacks against civilians, particularly in digital environments where content reaches large audiences rapidly and repeatedly.

These diverse regional examples demonstrate a recurring structural dynamic across distinct contexts: **direct and public exhortations to violence**, particularly when sustained, coordinated, and amplified through digital platforms, **contribute to environments in which CAH are committed or facilitated**. Contemporary incitement is frequently systematic rather than incidental, and technologically amplified rather than confined to traditional media or isolated speech acts, enabling harmful narratives to reach large audiences rapidly. A future CAH Convention that does not expressly address direct and public incitement would risk leaving unaddressed one of the significant enabling mechanisms through which modern atrocities may be organised or accelerated.

### B. A GAP IN INTERNATIONAL LAW

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As the rhetoric inciting hatred and violence has increased manifold since the times of Nazi crimes and even later atrocities in Rwanda and the former Yugoslavia, speech acts driving or calling for violence have received greater criminal scrutiny domestically and internationally. These developments have prompted many more states to criminalise extreme forms of hate speech and caused the emergence of international jurisprudence and soft law instruments asserting that hate speech inciting CAH, similar to incitement to genocide, is an international crime.<sup>21</sup>

Despite these technological and legal developments, however, hate speech inciting CAH as part of a contemporaneous attack against civilians does not currently appear as prohibited conduct in the Draft Articles. This reflects and perpetuates a critical gap in international criminal law, as there is currently no international criminal law instrument directly criminalising incitement to mass violence against civilians unless that violence is carried out with the intent to destroy the targeted group as such, in whole or in part. The Rome Statute of the ICC prohibits incitement to genocide, but it does not expressly criminalise any calls for CAH, war crimes or aggression.

<sup>18</sup> The Arab Center for the Advancement of Social Media, [Racism and Incitement, Index 2024](#), March 2025, p. 8.

<sup>19</sup> UN Human Rights Council, [Report of the Independent International Fact-Finding Mission on Myanmar](#), A/HRC/39/64, 12 September 2018, para. 74; see also UN Human Rights Council, Conference Room Paper of the Independent International Fact-Finding Mission on Myanmar, UN Doc. A/HRC/42/CRP.3 (2019), paras. 74–83; Facebook (Meta), [Independent Human Rights Impact Assessment on Myanmar](#), 2018; Amnesty International, “Myanmar: The Social Atrocity”, 2018.

<sup>20</sup> UN Human Rights Council, [Report of the Independent International Fact-Finding Mission on Myanmar](#), A/HRC/39/64, 12 September 2018, paras. 74–76, 86–88.

<sup>21</sup> See for example, Report of the United Nations High Commissioner for Human Rights on the Expert Workshops on the Prohibition of Incitement to National, Racial or Religious Hatred (Rabat Plan of Action), A/HRC/22/17/Add.4, 11 January 2013; Richard A. Wilson and Matthew Gillett, “The Hartford Guidelines On Speech Crimes In International Law”, Peace and Justice Initiative, 14 August 2018; Supreme Court of Canada, *Mugesera v. Canada (Minister of Citizenship and Immigration)*, 2005, 2 S.C.R. 100, 2005 SCC 40, mn. 147, confirming that a Rwandan national could be deported to Rwanda, as he was precluded from obtaining asylum in Canada due to the commission of crimes against humanity in the form of hate speech.

The current treaty framework produces a structural asymmetry: direct and public incitement to genocide is criminalised as a standalone inchoate offence, whereas comparable exhortations to commit CAH are not expressly addressed in binding treaty law. As an illustration: a propagandist calling for the mass deportation of children as part of an ongoing effort to destroy a part of a national or ethnic group could face charges of incitement to genocide, but advocating for the mass torture of a group of civilians as part of an ongoing campaign to subdue a civilian population resisting foreign occupation is not expressly prohibited by international criminal law.<sup>22</sup> This distinction is difficult to reconcile with the equal normative gravity attributed to crimes against humanity under contemporary international law.

**The new CAH Convention should align the prohibition of speech inciting to CAH with that inciting to genocide, as a matter of policy.** This would enable the prosecution of propagandists calling for mass violence against civilians, including in situations that could already be characterised as constituting widespread or systematic attacks against civilians, before such violence, or more violence, actually occurs. **This prohibition would enhance the preventive potential of the new treaty,** enabling the prosecution of propagandists of mass atrocities other than genocide in competent courts, both at the international and domestic levels, including – but not limited to – on the basis of universal jurisdiction, an avenue currently nearly out of reach for hate speech crimes.

### 3. THE FUTURE CAH CONVENTION SHOULD REFLECT THE CURRENT STATE OF INTERNATIONAL LAW

The CAH Convention should reflect the current state of international law, including relevant treaty obligations, established jurisprudence, as well as consistent patterns of domestic criminalisation concerning direct and public incitement to violence, including where such violence may amount to CAH.

#### A. TREATY LAW

With respect to treaties, there is only one instrument that references the direct and public calls for CAH expressly. Article II of the **1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity**, a nearly sixty-year-old UN instrument ratified by 56 states, extends its provisions to “representatives of the State authority and private individuals who, as principals or accomplices, participate in or who directly incite others to the commission of any of those crimes, or who conspire to commit them, irrespective of the degree of completion [...]” This provision confirms that **direct incitement to CAH has been recognised in binding treaty law for decades.** While this Convention has a limited number of ratifications,<sup>23</sup> it demonstrates that states have previously accepted the criminalisation of direct incitement in relation to CAH in binding treaty form.

Additionally, numerous human rights treaties require states to prohibit advocacy of hatred that constitutes incitement to discrimination, hostility or violence. Article 20(2) of the almost universally ratified International Covenant on Civil and Political Rights (ICCPR) obliges states to prohibit “[a]ny

<sup>22</sup> Should such calls result in the commission or attempt at a called-for crime, individual criminal responsibility might be possible, under other modes of liability. However, a gap would still remain for situations when such calls for mass violence have not been followed by physical violence on the ground.

<sup>23</sup> The limited number of ratifications could be explained by the fact that states with a common law system and several other states did not need to ratify this 1968 treaty as statutes of limitations did not pose any obstacle to the investigation, prosecution and adjudication of international crimes as “serious crimes not subjected to any statutes of limitation”.

advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence [...].”<sup>24</sup>

Similarly, Article 4 of the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD) requires criminalisation of certain forms of incitement to racial hatred and violence.<sup>25</sup>

Regional instruments and jurisprudence, including within the European and Inter-American human rights systems, likewise recognise that direct incitement to violence falls outside protected expression.

For example, the European Convention on Human Rights in its Article 10 protects freedom of expression while allowing for restrictions so long as they are prescribed by law and are necessary in a democratic society to pursue a legitimate policy objective, such as to ensure national security, public safety, or for the protection of the reputation or rights of others.<sup>26</sup> The European Court of Human Rights has interpreted this provision to exclude direct and public incitement to hatred<sup>27</sup> or violence<sup>28</sup> from protections of the Convention.<sup>29</sup>

Moreover, Article 1 of the European [Union] Council Framework Decision 2008/913/JHA on combating certain forms and expression of racism and xenophobia by means of criminal law provides that: “1. Each Member State shall take the measures necessary to ensure that the following intentional conduct is punishable: (a) publicly inciting to violence or hatred directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin.”<sup>30</sup> Thus, the Framework Decision requires EU Member States to ensure that public incitement to violence is punishable under their national legislation, a requirement adhered to by all EU Member States.<sup>31</sup> At present, the EU is also engaged in efforts to criminalise “hate speech” as a particularly serious crime with a cross-border dimension under Article 83(1) of the Treaty on the Functioning of the European Union.<sup>32</sup>

Additionally, the Additional Protocol to the Council of Europe Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, defines “racist and xenophobic material” as one that “advocates, promotes or incites hatred, discrimination or violence, against any individual or group of individuals [...]”<sup>33</sup>

## B. SOFT LAW STANDARDS

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These principles have been reinforced in soft law instruments, including the 2012 Rabat Plan of Action<sup>34</sup>, which articulates a high threshold test for incitement, and regional recommendations encouraging states to criminalise public incitement to international crimes. The Council of Europe’s Recommendation of the Committee of Ministers to member states on combating hate speech by means of criminal law, for example, advises states to “specify and clearly define in their national

24 Notably, the UN Human Rights Committee has determined this provision to amount to a peremptory norm of international law. See CCPR General Comment 24, Commissioner for Human Rights, Human Rights Committee, 52<sup>nd</sup> Session, CCPR/C/21/Add.6, 4 November 1994, para. 8.

25 International Convention on the Elimination of Racial Discrimination, art. 4 (a).

26 European Convention on Human Rights, art. 10(2).

27 ECtHR, *Ivanov v. Russia*, App. No. 35222/04 (Decision on Admissibility of 20 February 2007).

28 ECtHR, *Belkacem v. Belgium*, App. No. 34367/14 (Decision on Admissibility of 27 June 2017).

29 See also, ECtHR, *Erbakan v. Turkey*, Judgment of 6 July 2006, paras 56 – 57; *Leroy v. France*, App. No. 36109/03, (Judgment of 2 October 2008).

30 [Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law](#), 2008/913/JHA, 28 November 2008.

31 See European Parliament Briefing, “[Hate Speech: Comparing the US and EU approaches](#)”, 3 June 2025, p. 6.

32 *Ibid.*, See also, [European Parliament resolution of 18 January 2024 on extending the list of EU crimes to hate speech and hate crime](#) (2023/2068(INI)).

33 Council of Europe, [Additional Protocol to the Council of Europe Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems](#), 28 January 2003, art. 2.

34 UN Human Rights Council, Rabat Plan of Action on the Prohibition of Advocacy of National, Racial or Religious Hatred that Constitutes Incitement to Discrimination, Hostility or Violence, A/HRC/22/17/Add.4, 5 October 2012, para. 14.

criminal law which expressions of ‘hate speech’ are subject to criminal liability, such as: a. public incitement to commit genocide, crimes against humanity or war crimes”.<sup>35</sup>

In line with these standards, **no less than 108 states worldwide have adopted laws prohibiting some forms of hate speech.**<sup>36</sup> A common element across many domestic systems is the criminal prohibition of discriminatory incitement to violence – so-called “incitement speech”<sup>37</sup> – but various penal codes also proscribe offences like propaganda of war, incitement to ethnic, religious or racial hatred, and historical revisionism like denial of past international crimes.<sup>38</sup>

Several different international tribunals and domestic courts have found that virulent hate speech of sufficient gravity, particularly where it calls for mass violence against a particular group during contemporaneous atrocities, constitutes a distinct international crime – the crime against humanity of persecution.

At Nuremberg, publisher of the antisemitic tabloid *Der Stürmer*, Julius Streicher, was convicted for persecution based in part on his sustained public incitement against Jewish civilians.<sup>39</sup> The ICTR’s Media Case (*Nahimana et al.*)<sup>40</sup> and subsequent jurisprudence<sup>41</sup> have further demonstrated that public exhortations to violence, when sufficiently direct and connected to ongoing attacks, constitute international crimes. Similarly, international and domestic courts<sup>42</sup> have recognised that extreme forms of hate speech may amount to the crime against humanity of persecution in specific factual contexts.<sup>43</sup>

A more recent report by the Myanmar FFM has reiterated that some of the extreme forms of hate speech, namely the use of rhetoric that incites to violence and discrimination against the Rohingya Muslim community, amounts to the CAH of persecution.<sup>44</sup> Human rights NGOs have come to the same conclusion with respect to Russian propaganda in Ukraine.<sup>45</sup> These developments reinforce the legal plausibility and normative coherence of recognising direct and public incitement to CAH as a distinct inchoate offence, particularly where such speech operates as a precursor to widespread or systematic attacks.

While these developments are significant, existing jurisprudence primarily addresses situations in which rhetoric formed part of an already established widespread or systematic attack. It does not clearly resolve the status of direct and public incitement undertaken prior to the materialisation of such attacks. A standalone offence would address this earlier temporal stage and strengthen preventive capacity.

The future Convention on Crimes Against Humanity must be both legally sound and practically responsive to contemporary atrocity risks. **Recognising direct and public incitement as a standalone offence would align the Convention with existing treaty principles concerning incitement to violence, address a structural asymmetry between genocide and CAH within international criminal law, and enhance its preventive function by targeting a critical enabling mechanism of modern mass atrocities.**

35 Council of Europe, [Recommendation of the Committee of Ministers to member states on combating hate speech](#), CM/Rec(2022)16, 20 May 2022, para. 11.

36 The Global Handbook on Hate Speech Laws, 2020.

37 OSCE ODIHR, [“Hate Crime Prosecution at the Intersection of Hate Crime and Criminalized ‘Hate Speech’: A Practical Guide”](#), 2024, p. 12.

38 Lejla Memcic and Hana Vranac, “Bosnian Court Delivers First Genocide Denial Conviction”, *Balkan Insight*, 23 May 2025.

39 Judgment of the International Military Tribunal (Nuremberg), 1946, (1947) 41 *American Journal of International Law* 172.

40 ICTR, *Prosecutor v. Nahimana et al.*, Trial Chamber (Judgment and Sentence), ICTR-99-52-T, 3 December 2003, paras. 1071-1073.

41 MICT, *Prosecutor v. Šešelj*, Appeals Chamber (Judgment), MICT-16-99-A, 11 April 2018, para. 163.

42 *Mugasera v. Canada* (Minister of Citizenship and Immigration), 2005, 2 S.C.R. 100, 2005 SCC 40, mn. 147.

43 See for example, Gregory S. Gordon, “Hate Speech and Persecution: A Contextual Approach”, *Vanderbilt Journal of Transnational Law* 46, No. 2 (2013), 304, 344; Richard A. Wilson and Matthew Gillett, “The Hartford Guidelines on Speech Crimes in International Law”.

44 UN Human Rights Council, Report of the detailed findings of the Independent International Fact-Finding Mission on Myanmar, A/HRC/39/CRP.2, 17 September 2018, para. 1319.

45 FIDH, [Communication submitted under Article 15 of the Rome Statute of the International Criminal Court](#), June 2024.

# Recommendations

**To ensure the Convention fully reflects its preventive object and purpose and addresses a structural asymmetry in international law, States should amend Draft Articles 4 and 6 to explicitly address direct and public incitement to CAH as a standalone offence.**

The proposed amendment would align the Convention with the established model of direct and public incitement to genocide, while maintaining a high threshold through requirements of intent, directness, and publicity. It addresses a distinct inchoate stage of atrocity criminality and strengthens the Convention's preventive capacity.

## 1. TEXTUAL PROPOSALS

### PROPOSED AMENDMENT TO DRAFT ARTICLE 4 (A):

“Each State undertakes to prevent crimes against humanity, in conformity with international law, through:

(a) effective legislative, administrative, judicial or other appropriate preventive measures in any territory under its jurisdiction, **including measures ensuring that direct and public incitement to commit crimes against humanity is prohibited by law;**”

### PROPOSED ADDITION TO DRAFT ARTICLE 6(2):

2. Each State shall take the necessary measures to ensure that the following acts are offences under its criminal law:

- (a) committing a crime against humanity;
- (b) attempting to commit such a crime; and
- (c) ordering, soliciting, inducing, aiding, abetting or otherwise assisting in or contributing to the commission or attempted commission of such a crime; **and**
- (d) directly and publicly inciting others to commit crimes against humanity, regardless of whether such crimes are ultimately committed.**



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