

Canada

Sixth Committee, 40th Plenary Meeting

“Crimes Against Humanity”

Cluster II – Definition and General Obligations

Statement delivered by Canada

April 11, 2023

Madame Chair,

Let me first express our appreciation for the development of this interactive format for our discussions. We have appreciated hearing the diverse views of our colleagues over the past two days.

In terms of Cluster 2, I would like to reiterate Canada's support for the Commission's decision not to define "gender" in the draft Convention, as this is a concept that has continued to evolve over time. We have heard different views from States on this issue, and it would seem that excluding a definition seems the best way to bridge the divide.

In light of the various positions expressed with respect to the use of the definition of crimes against humanity as provided for in the Rome Statute as a basis for the definition in the draft Convention, we recognize the heritage that derives from its use as well as the harmonization it has created, as previously underlined, while acknowledging the need to build on it and to propose additional elements for consideration.

To this end, we wonder whether the definition of certain crimes against humanity contained in Article 2 should be broadened by including the concept of "omission" where relevant, so as not to be limited to the commission of acts.

We also believe that this article is an opportunity to further clarify the definition of sexual violence and to include certain acts which have since been recognized as constituting crimes against humanity, such as forced marriage, which has also been raised by our UK colleague. In doing so, States would be more adequately supported in their efforts to prevent and punish sexual and gender-based violence that constitutes crimes against humanity.

Madame Chair,

With respect to the crime against humanity of persecution, we share the question raised by others as to whether the definition should retain the requirement that it be committed in connection with any other act that also amounts to a crime against humanity. We would also recommend against implying that only grounds recognized as universally impermissible under international law could constitute persecution, as “international law” does not only refer to customary international law, but also includes treaties, which have varying groups of States Parties subject to differing obligations.

With regard to the definition of an “attack directed against any civilian population,” consideration should be given to whether to retain the requirement that the attack be committed “pursuant to a State or organizational policy,” in light of existing customary international law and the decisions of international tribunals.

Other definitions have also evolved over time or are understood slightly differently in customary international law, such as the definition of torture, which does not require custody or control, or – as highlighted by our colleague from Cuba earlier today – the definition of forced pregnancy, which in our view does not currently protect all potential victims of this crime against humanity, and which contains a reference to the impact on the national law of States, which is arguably not required. Finally, concerning enforced disappearances, we share the same question as others, namely whether it is necessary to include a requirement of an intention to remove a disappeared person from the protection of the law for a prolonged period.

With respect to Article 2, we would like to support the inclusion of the “without prejudice clause”, which clarifies that States retain the flexibility to include broader elements within their national jurisdictions, and in additional binding treaty obligations, without imposing any additional obligations on potential parties to the draft Convention.

Madame Chair,

With respect to the general obligations under this draft Convention, Canada reiterates our appreciation for the inclusion, in Article 3(1), of the International Court of Justice’s interpretation, which confirmed that the duty to prevent atrocity crimes includes a duty not to commit them.

However, and as raised by our US colleague yesterday, Canada would equally favour clarifying – perhaps here, within the general provisions section of the draft Convention – that this Convention would not operate to modify international humanitarian law, which constitutes *lex specialis* applicable in armed conflict.

As for Article 4, we take a positive view that it can enhance international cooperation, in particular inter-State cooperation, but also consider that it could be broadened to encourage States to cooperate with international courts and tribunals.

Thank you, Madame Chair.