

Draft Crimes Against Humanity Convention

Canada Statement

Cluster 3

Mr. Chair,

In light of the limited time available to discuss the remaining clusters, Canada will restrict its intervention under this cluster to some aspects of draft articles 6 and 9, as we have not identified any concerns with the language used in draft articles 7, 8 and 10 worth raising at this point.

In general terms, however, we wish to underscore our appreciation of the flexibility presented by the draft provisions contained in this cluster.

At the outset, we would like to highlight the importance of draft Article 6 in terms of the obligation it creates for States to include crimes against humanity as criminal offenses in their domestic law and hope that doing so will help ensure a harmonized approach in our fight against impunity for these crimes, and limit potential shortcomings that may arise at the national level.

We are of the view that similar language to that provided for in the “without prejudice” clause of Article 2(3) should be added to draft Article 6, so as not to limit the possibility for States to either include additional acts that may

constitute offences under their national laws, or to define the crimes in accordance with specific elements of criminal responsibility under their domestic laws.

To further flesh out the accountability framework of this draft Convention, we also propose broadening the scope of the responsibility of commanders and superiors, as provided for in draft Article 6(3), to include the criminal responsibility of persons that may effectively be acting as superiors or commanders.

Mr. Chair,

With respect to draft Article 6(5), we note that recognition of “criminal responsibility” for persons holding an official position is distinct from the application of procedural immunity in foreign jurisdictions. Others have noted that the paragraph raises the question of whether this distinction is sufficiently clear. We are of the view that the article does not affect the application of conventional or customary international law with respect to the application of immunities.

We note the inclusion of the liability of legal persons pursuant to draft Article 6(8), as well as the flexibility granted to States in this regard. We wonder whether it might be appropriate to separate this paragraph into its

own article, as the concept of liability extends beyond that of criminalization.

Turning to draft Article 9, we agree with the conclusion set out in the commentaries to the effect that Article 9 should be read in conjunction with Article 11 on fair treatment of the alleged offender. However, we are of the view that reference to the human rights of detainees could be more apparent, and we would thus suggest including a reference to a person's right to liberty and security in Article 11 of the present draft.

In conclusion, and notwithstanding that the language mirrors that of other conventions, the current draft Article 9 seems more appropriate for an inquisitorial system of criminal justice than what it is typically in place in common law systems. Therefore, we suggest that consideration be given to reframing this provision to more simply note the obligations of States when conducting a preliminary inquiry.

Thank you, Mr. Chair.