

**STATEMENT ON INTERNATIONAL LAW COMMISSION AND CRIMES  
AGAINST HUMANITY**

**Thursday, 31 October 2019**

Mr. Chairman,

I am pleased to participate in this first segment of discussion on the Report of the International Law Commission.

Canada notes the serious and important work produced by the ILC over the years, and remains committed to working closely with the Commission. Indeed, as the makers of international law, *all* States should engage and work with the ILC to shape and influence its work. Whether or not it aligns with our respective positions, it is nevertheless worthy of consideration by all States.

States cannot simply leave it to the academic world to develop the thinking on the various issues taken up in the programme of work of the ILC, however; States must give these issues the attention they deserve, by evaluating the work of the ILC, commenting on it, and – when appropriate – using it as a starting point in negotiations.

Even if we don't always agree on the commentary or draft articles issued by the Commission, by playing a more active role, States can make better use of the ILC's efforts to codify international law.

Mr. Chairman,

I would also like to take this opportunity to once again encourage the Commission to consider the utility of producing a variety of outcomes other than draft articles in the topics that it addresses. A range of outcomes, such as the production of guidelines and principles, will provide States with the fullest set of options and the broadest opportunity to take full advantage of the expertise of the Commission.

Mr. Chairman,

Turning to the specific content of the Report, I would like to address briefly the draft articles on the Proposed Convention on Crimes Against Humanity. Canada welcomes the Commission's work on this topic, and appreciates the leadership demonstrated by Special Rapporteur Sean Murphy.

We note that this topic has been on the Commission's agenda for many years now, and that States have been engaged in several different rounds of consultation on the topic.

After the Special Rapporteur's third report, containing the first reading of the draft articles, Canada submitted comments to the ILC in November 2018. These comments served to highlight Canada's concerns with the definition of "gender" in the first version of the draft Convention. The definition stated that "For the purpose of the present draft articles, it is understood that the term 'gender' refers to the two sexes, male and female, within the context of society. The term 'gender' does not indicate any meaning different from the above."

While we acknowledged that the definition was taken directly from the Rome Statute, we also noted that the international community's understanding of what constitutes "gender" has evolved since then. While the term "sex" is used to refer to biological attributes, "gender" is now more expansively used in recognition of the variety of gender identities and expressions – man or woman, both or neither – , which may or may not align with the gender typically or socially associated with a person's sex. We were thus pleased to see the definition removed in the second version of the draft articles.

Mr. Chairman,

As noted in our previous written submission, the Convention raises a number of other issues that would require more detailed consideration from the Government of Canada should the decision be taken to move forward with the negotiation of a Convention on Crimes Against Humanity.

Some of these issues stem from the same overarching concern with the treatment of gender. For instance, the current definition of "forced pregnancy" would need to be re-examined to ensure that transgender persons are included within the definition. In addition, Canada would view negotiations of a convention as an opportunity to clarify the definition of "sexual violence" to reflect recent discussions within the international community.

If negotiations proceed, Canada would also want to ensure that the ILC's concerted – and welcome – efforts to draw from existing international obligations in a wide variety of conventions in the drafting of the articles has not inadvertently created inconsistencies with any of those texts.

In conclusion, Mr. Chairman, Canada looks forward to continued discussions on whether to proceed with the negotiation of such a Convention, and would like to underscore our appreciation for the ILC's important work in this regard.

Thank you.