

Draft Articles on the Prevention and Punishment of Crime Against Humanity

UNGA78 Sixth Committee Resumed Session - Canada Statement

Cluster 2

Madame Chair,

Thank you for giving me the floor.

This cluster contains what is arguably the heart of any future Convention, namely the definition of crimes against humanity.

With respect to the appropriateness of using the definition provided in the Rome Statute as a basis, we wish to acknowledge the plethora of views expressed by States, whether Parties to the Rome Statute or not. For our part, we remain of the view that the definition provided in the Rome Statute should be used as a reference point for the definition to be included in any future Convention, due to the value of legal certainty. We encourage all States to consider the benefits that would emerge from this approach in terms of harmonization between the definitions.

Recognizing, however, that the Rome Statute's definition of crimes against humanity was the result of compromise and was tailored for the specific purpose of the International Criminal Court's jurisdiction, we see value in considering changes to that definition in a future Convention to allow for greater alignment with customary international law.

Canada takes note of the proposals to include additional acts listed as constituting crimes against humanity. Some of these proposals are to list acts which have already been recognized as crimes against humanity under customary international law. Other proposals are to include definitions that may not have achieved such recognition under customary international law in the definition.

Canada reiterates its support for crystallizing acts such as "forced marriage" which have been recognized as crimes against humanity and suggests that its definition could be modelled on the one provided in the ICC's jurisprudence in the Ongwen case. Regarding proposals for other crimes that may not have achieved this standard of recognition, we continue to be interested in hearing from others on the need for their inclusion and what gaps, if any, they seek to address.

I would also like to address the various forms of understanding of the term “gender” described by States, and whether any future Convention on crimes against humanity would be the right instrument to address this issue. Canada maintains its perspective that gender is an important aspect of any future Convention and that avoiding a definition of the term and leaving it to the determination of each State, at the national level, may be, as we have expressed last year, the best way to “bridge the divide”.

Madame Chair,

Turning to some specific elements of the definition.

We wish to address the requirement that crimes against humanity be committed as part of a widespread or systematic attack directed against any civilian population. While there has been discussion about whether the conditions of “widespread” and “systematic” should be including as conjunctive requirements, Canada confirms that retaining the disjunctive nature of these elements corresponds to our view, as it reflects customary international law.

With regard to the crime against humanity of persecution, we remain of the opinion that Draft Subparagraph 1(h) should only refer to the “act” of persecution, consistent with the other listed acts. The remaining relevant elements could then be added to the definition of persecution in Draft Subparagraph 2(g). As we expressed last April, we continue to recommend against implying that only grounds recognized as universally impermissible under international law can constitute persecution.

Finally, we reaffirm our position that the “without prejudice clause” included in Draft Paragraph 3 would provide States comfort that they would retain the flexibility, in their respective national legal frameworks, to apply definitions under customary international law that may be broader than any definition eventually adopted in a Convention, without imposing any additional obligations on others.

Madame Chair,

Turning to Draft Article 3, we reiterate our view that, if not previously specified in the preamble, a reference to the fact that any future Convention would not affect international humanitarian law, which constitutes *lex specialis* applicable in armed conflict, could be included in this provision.

As for Draft Article 4, Canada believes that consideration should be given to bringing its language into closer alignment with that of Article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, given the similarities between the two.

We also noted the questions and concerns regarding cooperation on prevention. Although States should retain flexibility, effective inter-State cooperation, along with other appropriate forms of cooperation, is a key element of any future Convention aiming at preventing crimes against humanity. With this in mind, we continue to see value in including a reference to cooperation with international courts and tribunals “as appropriate.”

Thank you, Madame Chair.

758 Words @ 140WPM: 5 min 25 sec.