

Draft Articles on the Prevention and Punishment of Crime Against Humanity

UNGA78 Sixth Committee Resumed Session - Canada Statement

Cluster 4

Chair,

The provisions relating to international measures are an integral part of the operationalization of any future Convention on crimes against humanity. They contribute to achieving the objectives of these Draft Articles by laying the foundations for effective international cooperation.

Canada appreciates the comprehensive normative framework set by these Draft Articles, although certain elements require further clarification.

Beginning with Draft Article 13, Canada wishes to reiterate its view that greater clarity on the intended application of Draft Paragraph 9 in practice is necessary to determine its viability in any future Convention. This would help ensure that both the Requesting and Requested States share the same interpretation of the scope of the applicable jurisdiction in an extradition context.

With regard to Draft Paragraph 11, Canada reiterates its recommendation of last year – also expressed in relation to Draft Article 2 – that grounds recognized as “universally” impermissible under international law should not be the only grounds that lead to a refusal of extradition. International law does not only refer to customary international law, but also includes treaties, for which varying groups of States Parties may be subject to differing obligations. This would also ensure consistency between Draft Articles 2 and 11.

Having conveyed our appreciation earlier this week for the written submissions of States, we wish to emphasize our interest in exploring Argentina’s written suggestions under this cluster, particularly with respect to simplified extradition proceedings where consent is provided by the extraditable person, as well as with regard to the application of the principle of specialty, which precludes prosecution for offences other than those for which extradition was granted, subject to specified exceptions.

Chair,

Turning to Draft Article 14, Canada supports the inclusion of mutual legal assistance provisions in any future Convention to provide competent authorities with all the necessary tools to effectively investigate and prosecute crimes against humanity. Nonetheless, we would encourage language that provides flexibility in the implementation of these provisions.

With regard to the express reference to mutual legal assistance relating to investigations, prosecutions, and both judicial “and other” proceedings involving legal persons, included in Draft Paragraph 2, this appears to go beyond the traditional understanding of mutual legal assistance. Canada would welcome views from others regarding the added value of Paragraph 2 of Draft Article 14, in light of the obligations already included in Draft Paragraph 1.

Regarding the Annex, Canada would support exploring the idea of using it as a model law for mutual legal assistance between States Parties that do not have an existing agreement covering crimes against humanity. Should a decision be made to negotiate a Convention on the basis of these

Draft Articles, we would have a number of suggestions, but for the purpose of the current discussions, we will limit our observation to Draft Paragraph 2. Indeed, Canada would support a regime which provides for direct transmittal of requests between Central Authorities, and which allows for the use of electronic means to communicate requests and additional materials, in order to avoid inefficiencies that could arise by resorting to diplomatic channels.

Finally, Canada has provided views on Draft Article 15 through its written comments, observing that this Draft Article should provide for timelines on the consideration of terms of arbitration and recourse to the International Court of Justice, similar to what is provided in Article 30(1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Also, as the obligation not to commit crimes against humanity exists under customary international law, States can already hold other States to account under the principle of state responsibility outside of an international legal proceeding. As such, we indicated that, in our opinion, settlement of disputes for crimes against humanity should not be subject to reservations, even if this comes at the

cost of fewer ratifications. Our preference would therefore be to limit Draft Article 15 to its First and Second Paragraphs.

We have also taken note of varying views expressed regarding the establishment of a treaty monitoring mechanism, and would like to note that our reflection on this subject continues.

Thank you, Chair.