

**Draft Articles on the Prevention and Punishment of Crime Against Humanity**

**UNGA78 Sixth Committee Resumed Session - Canada Statement**

**Cluster 3**

Good morning Mr. Chair,

Distinguished colleagues,

Canada welcomes the opportunity to express its views on Cluster 3 of the Draft Articles.

My delegation has emphasized, in our statement on cluster 1, the contribution that elaborating these Draft Articles into a Convention could have in the global fight against impunity for crimes against humanity. We have further noted that the definition of crimes against humanity will form the heart of any future Convention. We would be remiss, however, not to equally stress the significance of Draft Article 6 in the implementation of any future Convention's object and purpose.

Adding an obligation to criminalize crimes against humanity in domestic legislation would be key both in terms of prevention and punishment. Creating such an obligation based on common definitions of the constitutive acts would be indispensable in avoiding potential divergences between national legislation and international law, thus strengthening the international accountability system.

As drafted, article 6 criminalizes the commission of crimes against humanity, in addition to attempting, ordering, soliciting, inducing, aiding, abetting or otherwise assisting in the commission of such crimes. Regarding this Draft Article as providing the minimum framework of a general understanding between States on criminalization, Canada reiterates that including a “without prejudice clause” may be desirable. This would afford States the appropriate flexibility to criminalize additional forms of liability related to the commission of crimes against humanity under their domestic law. Such an approach would be in line with adequately addressing the wide range of potential crimes against humanity.

Mindful of some States' concern regarding the need to preserve the application of conventional or customary international law on immunities, we wish to recall the distinct nature of "criminal responsibility" for persons holding an official position, as included in Paragraph 5 of Draft Article 6. In our view, the wording of this draft paragraph is sufficiently clear in that it does not prejudice the existing immunities of State officials under customary international law.

As a final point with respect to Draft Article 6, we also take the opportunity to welcome the proposal by other States to include a provision on the prohibition of amnesty for perpetrators of crimes against humanity.

Mr. Chair,

At this stage, Canada continues to see Draft Articles 7 and 8 as fit for purpose. On Draft Article 9, we reiterate the necessity to better reflect that there are differences in proceedings as between legal systems. We also remain of the view that, even reading Draft Articles 9 and 11 together,

adding a general reference to internationally recognized standards of due process could further clarify the alleged offender's rights at this stage of the proceedings.

Concluding with the *aut dedere aut judicare* principle, we take this opportunity to share our view that we do not see Draft Article 10 as being limited to criminal proceedings, but as including administrative and civil remedies, in view of the prosecutor's independence whether to pursue a case.

Thank you, Mr. Chair.