



Resumed 78th session of the United Nations General Assembly Sixth Committee: Agenda item 80 crimes against humanity – Recommendation of the International Law Commission

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**Statement by Ms Alexandra Hutchison, Legal Adviser and First Secretary,
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Canada, Australia and New Zealand (CANZ)**

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Thank you Chair,

I have the honour to deliver this statement today on behalf of Canada,
New Zealand and my own country, Australia (CANZ).

CANZ warmly welcomes the progress we have made this week in exchanging
further views on the International Law Commission's (ILC) draft articles on
prevention and punishment of crimes against humanity.



The impressive breadth and depth of engagement each day has delivered an encouraging manifestation of member States' shared commitment to combatting impunity for these abhorrent crimes.

We wish to thank everyone who was able to take part in this session, as well as the Bureau, co-facilitators and the Secretariat – including the Codification Division, Conference Services and interpreters – for helping to reinvigorate the Sixth Committee and bring us closer to consensus on the way forward.

We also extend our deep thanks to the ILC and its Special Rapporteur, Professor Sean D. Murphy, for providing such a valuable set of draft articles upon which to base our discussions, as well as all our observers from civil society, international organisations and elsewhere that enrich States' deliberations with their insights and expertise.

Chair,



The General Assembly has decided that the Sixth Committee will take a decision on this matter at its upcoming 79th session, without prejudice to what that decision will be.

As momentum builds towards this decision, CANZ has carefully reviewed and listened to others' views throughout this process. We take the opportunity now to address some questions that have arisen regarding the ILC's recommendation to elaborate a convention on the basis of the draft articles.

First, some delegations have sought clarity on what we mean when we say there are **gaps in the current international legal framework** that a convention on crimes against humanity would close.

At the highest level, the gap is simply that there is no comprehensive international convention that requires States to prevent and punish crimes against humanity as there is for genocide and war crimes.



It is true that existing treaties and customary international law regulate crimes against humanity. But this is limited.

The closest treaty-level codification of crimes against humanity – the Rome Statute of the International Criminal Court (ICC) – significantly progressed the work of defining crimes against humanity and addressing impunity in respect of them. However, it does not resolve the legal gap as it does not impose obligations of prevention or criminalisation at the domestic level, nor does it establish a direct obligation or framework for international cooperation in relation to national investigations and prosecutions.

It is also true that many States, but far from all, have national legislative frameworks in place to regulate such crimes within their jurisdiction.

A treaty-level instrument that comprehensively defines crimes against humanity would provide the foundation for harmonising national definitions of these crimes. This strengthens the basis for international cooperation in their prevention and punishment, as well as for the consistent application of the law, and for the principle of complementarity.



In the absence of a comprehensive international treaty, gaps and ambiguity in the international law regulating these heinous crimes – and frameworks to support international cooperation in that regard – will remain.

And those gaps lead to opportunities for impunity.

There is an especially compelling need to fill these gaps with treaty-level legal certainty for crimes against humanity.

Experience has demonstrated – and the principle of legality requires – that when it comes to suppressing and punishing international crimes, it is critical to have a clear definition and a standard minimum framework for States' obligations.

This is because, unlike most other areas of international law, international criminal law applies on an individual level, as well as at the State level, requiring close observance of due process of the law.



Second, we note some States have argued that combatting impunity for the commission of crimes against humanity does not require a new convention, but rather greater **capacity at the national level**.

CANZ acknowledges the need to strengthen national capabilities to prevent, investigate, prosecute and punish crimes against humanity, and the calls from many delegations for assistance in doing so.

In our view, assessing and addressing gaps at the national level is by no means mutually exclusive to the elaboration of an international convention. In fact, the two are necessary complements to one another.

A convention – which is designed precisely to empower States to fulfil their primary responsibility to prevent and punish crimes against humanity that occur within their jurisdiction – could provide a new, catalytic basis to strengthen international cooperation and build States' investigative, prosecutorial and judicial capacity in that regard.



Third, we note some States have suggested that **on the basis of the draft articles**, a convention would impose inappropriate obligations on States that infringe upon their sovereignty.

In CANZ's view, this misconstrues the phrase 'on the basis of' in the ILC's recommendation. 'On the basis of' does not mean the draft articles would be cut and paste into a legally binding instrument then imposed upon States without their consent.

Rather, it means that the draft articles would provide a starting point for negotiation by States, which would exercise their sovereign prerogative in deciding whether and how to participate in those negotiations, what positions to take and whether to ratify the final convention.

Finally, CANZ has heard some States assert that the Sixth Committee needs **more time** to continue these discussions and resolve any divergences before being able to contemplate the commencement of treaty negotiations.



We acknowledge there are differences of view on some parts of the draft articles. CANZ, too, is of the view that some aspects could benefit from our collective efforts to refine and improve them.

However, we caution against construing any disagreement over the substance of a particular draft article as a justification for not proceeding with, or delaying progress towards, elaborating a convention based on them.

The healthy engagement in these resumed sessions has served only to renew our confidence that differences of position can and will be resolved through constructive engagement in diplomatic negotiations.

We also note that some delegations have argued that a comprehensive survey of State practice is required before being able to commence negotiations for the codification of crimes against humanity.



CANZ is firmly of the view that this is not necessary. States are never bound, in any treaty negotiations, to remain within the confines of existing customary international law.

As outlined in the ILC commentaries, the objective of the draft articles was not to codify existing law and State practice. It was to draft provisions that would be both effective and likely acceptable to States, based on provisions often used in widely adhered-to treaties addressing international crimes, as a basis for a possible future convention.

CANZ considers that the ILC has achieved this very objective.

In conclusion, CANZ remains convinced that there is a **pressing and compelling need** to close the impunity gap in the international treaty framework by commencing negotiations on a convention on prevention and punishment of crimes against humanity.



We are convinced that such a convention is a necessary addition to States' toolkit for our fight against impunity for crimes that are universally recognised as being amongst the most egregious crimes of international concern.

Crimes that, by the widespread, systematic and violent manner of their commission, undermine and threaten all three pillars of the United Nations Charter.

Crimes that require collective will and international cooperation to prevent and punish.

The ILC draft articles provide a strong, balanced and effective foundation for the development of this convention by States.



The Sixth Committee's robust engagement on the draft articles demonstrates that States are ready to proceed to negotiations on the basis of them, which would provide the opportunity and forum for the resolution of any remaining divergences in views on the text.

CANZ therefore strongly supports the ILC's recommendation.

Our delegations continue to stand ready to engage constructively with all member States to come together at the upcoming 79th session on a path forward to advance this important goal.

Thank you.