

This paragraph could also be worded in a more inclusive manner, such as by referring to people more generally.

PP3: Canada reiterates its position expressed during the April 2023 resumed session of the 6C of keeping a general reference to the principles of international law embodied in the Charter of the United Nations, rather than highlighting any specific principles.

PP4: Canada emphasizes the importance of recognizing that the prohibition of CAH is a peremptory norm of general international law (**jus cogens**)

PP7: As a State Party to the Rome Statute of the ICC, Canada appreciates the specific reference to this instrument with respect to the definition of CAH. This allows for a certain degree of consistency and avoids fragmentation of international law. Canada equally recognizes that the Rome Statute only applies to those States that are Parties to it, unlike customary international law to which all States are bound.

Canada is therefore **u** to the definition of CAH. As the primary source and definition for CAH, a reference to c

Article 3. General obligations

With regard to the general obligations to prevent and punish CAH, Canada notes that this draft paragraph draws on and largely reproduces Article 1 of the Genocide Convention. However, we believe that the language used could be better aligned with the format in the Genocide Convention and could further indicate that these obligations must be taken in accordance with the provisions set out in any eventual Convention.

Canada also suggests, in addition to including a reference to IHL in the preamble of these Draft Articles, adding a clarification that this Convention, should it be adopted, would not operate to modify IHL, which constitutes *lex specialis* applicable in armed conflict. Such clarification could also be added in draft article 11, for which Canada has made a suggestion.

Article 4. Obligation of prevention

It is our perception that this draft article is inspired by and mostly replicates Article 2 of the Convention against torture and other cruel, inhuman or degrading treatment or punishment (CAT). We suggest that consideration be given to bringing its wording into better alignment with the CAT. It is our perception that a reference to CAT could also be included, despite having noted the contrary suggestion to that effect by the ILC. By adding such reference after the words "in accordance with international law" and "in accordance with international law", the draft article should be encouraged, and would apply to any States Parties, should the draft Convention be adopted, including those who are not party to treaties mandating

perpetration of CAH in additional ways. Therefore, we reiterate our proposal made during the April 2023

Article 11. Fair treatment of the alleged offender

Recognizing the significance this draft article places on the legitimacy of the law by enshrining the rights

persons and de if there is no broader clarification included earlier in these Draft Articles that it does not modify existing IHL (*lex specialis* in armed conflict), Canada recommends including such clarification here. A query can also be raised as to whether the guarantee of With regard to draft paragraph (2), Article 36 of the Vienna Convention on Consular Relations (VCCR) provides that it is the right of States to visit their nationals, and not the right of individuals per se. Bearing this in mind, Canada suggests adding a new draft paragraph (3), drawn from the VCCR, to replace the current subparagraph (b). Separately, Canada is also of the opinion that a stateless person would be captured by the use of the term

international law; States can therefore hold other states to account under the principle of state responsibility outside of an international legal proceeding. Canada therefore suggests removing this draft paragraph. In accordance with our preference for removing draft paragraph (3),

