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Chair: Mr. Afonso (Mozambique)

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The meeting was called to order at 10.10 a.m.

Tribute to the memory of Benjamin Ferencz

1. **The Chair** paid tribute to the memory of Benjamin Ferencz, who had served as a prosecutor in the Nuremberg trials and had been a passionate advocate for international justice for the rest of his life. His work had had a far-reaching impact, including on the work of the Committee.

2. *At the invitation of the Chair, the members of the Committee observed a minute of silence.*

Organization of work

3. **The Chair** said that the resumed session had been convened in accordance with General Assembly resolution 77/249, in order for delegates to exchange substantive views, including in an interactive format, on all aspects of the draft articles on prevention and punishment of crimes against humanity and to consider further the recommendation of the International Law Commission contained in paragraph 42 of its report on the work of its seventy-first session (A/74/10) for the elaboration of a convention on the basis of the draft articles.

4. Drawing attention to the provisional programme of work for the resumed seventy-seventh and seventy-eighth sessions, he said that the Committee would hold its first exchange of views on the entire set of draft articles at the present resumed session and would engage in a second exchange of views at the resumed seventy-eighth session. The consideration of the Commission's recommendation at the present resumed session would be based on a briefing by the Secretariat. A fuller debate was planned for the resumed seventy-eighth session. To ensure that the deliberations were undertaken in an interactive format, the "mini-debate" practice of the Commission would be used, meaning that delegations could request the floor in connection with a statement made during the regular debate.

5. The Bureau had appointed three of its members – Ms. Ruhana (Malaysia), Mr. Leal Matta (Guatemala) and Ms. Sverrisdóttir (Iceland) – to serve as co-facilitators for the resumed sessions. Their role would be to guide the deliberations, in particular with regard to the interactive aspects; facilitate the intersessional dialogue provided for in paragraph 8 of resolution 77/249; and prepare oral reports on the deliberations of the two resumed sessions, which would serve as a basis for the summary of the sessions to be prepared under the responsibility of the Chair at the end of the resumed seventy-eighth session.

6. **Ms. Ruhana** (Malaysia), co-facilitator, said that in preparing the oral report of the resumed session, the co-facilitators would seek to reflect the views expressed at both the formal and informal meetings. It was a priority of the co-facilitators to ensure that the discussions were inclusive and that all delegations felt welcome to share their views.

7. **Ms. Sverrisdóttir** (Iceland), co-facilitator, encouraged delegations to bear in mind that the resumed session provided an opportunity to exchange views on the substance of the draft articles. The deliberations should not be seen as negotiations.

8. **Mr. Leal Matta** (Guatemala), co-facilitator, said that the co-facilitators would endeavour to ensure that the process of considering the draft articles was inclusive and transparent.

9. **The Chair** said that he took it that the Committee wished to approve the provisional programme of work for the resumed seventy-seventh and seventy-eighth sessions and the proposed working arrangements.

10. *It was so decided.*

Agenda item 78: Crimes against humanity (continued)

11. **The Chair** invited the Committee to begin its exchange of views on the draft articles on prevention and punishment of crimes against humanity adopted by the International Law Commission.

Draft preamble and draft article 1

12. **Ms. Popan** (Representative of the European Union, in its capacity as observer), speaking also on behalf of the candidate countries Albania, Bosnia and Herzegovina, North Macedonia, the Republic of Moldova and Ukraine; the potential candidate country Georgia; and, in addition, Liechtenstein, said that a convention on crimes against humanity was needed in order to fill a normative gap in international treaty law. While crimes against humanity were one of the core international crimes and no less serious than genocide or war crimes, they were not yet the subject of an international convention. A convention would undoubtedly strengthen prevention and punishment at the national level and promote cooperation between States in the investigation and punishment of crimes against humanity.

13. The draft articles on prevention and punishment of crimes against humanity developed by the International Law Commission provided an important and solid basis for a future convention. The Commission had taken inspiration from, and in some cases replicated, provisions on prevention, punishment and cooperation

found in widely ratified international conventions, such as the Convention on the Prevention and Punishment of the Crime of Genocide, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the United Nations Convention against Corruption. Thus, the draft articles did not give rise to entirely novel issues, since a large majority of States had ratified international treaties containing similar provisions on similar crimes. Moreover, the draft articles were the result of five years of intensive work by the Commission, a respected body of legal experts established to implement the mandate of the General Assembly under Article 13, paragraph 1, of the Charter of the United Nations, concerning the progressive development and codification of international law.

14. As reflected in the draft preamble, crimes against humanity had affected millions of innocent civilians around the world and had devastating consequences that deeply shocked the conscience of humanity. Such unspeakable atrocities could not go unpunished. As established in the draft preamble and by the Commission's work on *jus cogens*, the prohibition of crimes against humanity was a peremptory norm of general international law. In accordance with the well-established principle that each State bore the primary responsibility for the protection of its population, it was the duty of every State to exercise its domestic criminal jurisdiction over those responsible for international crimes, including crimes against humanity.

15. While the definition of crimes against humanity set forth in article 7 of the Rome Statute of the International Criminal Court was a useful model for the definition contained in the draft articles, being a State party to the Rome Statute was not a pre-condition for becoming a State party to a convention on crimes against humanity.

16. With regard to draft article 1 (Scope), it should be noted that matters not regulated by a convention on crimes against humanity would continue to be governed by other rules of international law, including customary international law. As stated in the general commentary to the draft articles, the objective behind the draft articles was not to codify existing law but rather to produce draft articles that would be both effective and acceptable to States. Her delegation considered that the Commission had achieved that objective.

17. **Ms. Soerensen** (Denmark), speaking on behalf of the Nordic countries (Denmark, Finland, Iceland, Norway and Sweden), said that crimes against humanity were among the most serious international crimes. Civilians around the world continued to suffer, while perpetrators enjoyed impunity. The elaboration of a

convention on the prevention and punishment of such crimes would be a long-overdue step in the right direction. The draft articles on prevention and punishment of crimes against humanity provided a solid basis for a future convention that would fill a gap in the international treaty framework; strengthen the international criminal justice system; enhance the ability of States to prevent and punish, at the national level, crimes that concerned the international community as a whole; and enhance the effectiveness and efficiency of investigations and the punishment of perpetrators by promoting cooperation between States.

18. The draft preamble fulfilled its purpose of providing a balanced and well-written conceptual framework for the draft articles. In the draft preamble, the Commission had set out the historical and legal context of the draft articles, highlighted their relevance for the maintenance of peace and security, affirmed that crimes against humanity must be prevented, underlined that ending impunity would contribute to the prevention of such crimes and, crucially, recalled that the prohibition of crimes against humanity was a peremptory norm of international law.

19. Turning to draft article 1 (Scope), she said that prevention and punishment were both vital, and the obligations to prevent and punish crimes against humanity went hand in hand. The future convention should reflect that twofold purpose in order to be effective in putting an end to such atrocities.

20. Like many other States, the Nordic countries supported the elaboration of a convention on the basis of the draft articles, as recommended by the Commission after five years of intense work. Those countries stood ready to ensure that progress was made in that regard, as part of common efforts to prevent and strengthen accountability in respect of international crimes.

21. **Ms. Cupika-Mavrina** (Latvia), speaking also on behalf of Estonia and Lithuania, said that those States had always been committed to promoting respect for international law and the rules-based international order, which was of paramount importance in safeguarding international peace and security. The draft articles on prevention and punishment of crimes against humanity provided a solid basis for an international convention that would have far-reaching implications with regard to accountability and to justice for victims of crimes against humanity, and that would help to deter the commission of such crimes in the future.

22. The draft preamble provided context and background concerning the nature and scope of crimes against humanity and emphasized the gravity and

heinousness of such crimes. It was regrettable that crimes that deeply shocked the conscience of humanity continued to be committed in the present day. The Independent International Commission of Inquiry on Ukraine had identified numerous violations of international human rights law and international humanitarian law committed by Russia in the context of its aggression against Ukraine, including the transfer and deportation of children within Ukraine and from Ukraine to Russia. Moreover, the International Criminal Court had issued arrest warrants in connection with alleged war crimes. The Independent International Commission considered that the attacks by Russian armed forces against energy-related infrastructure during freezing temperatures and a pattern of widespread unlawful confinement, accompanied by torture, in areas controlled by Russian armed forces, targeting broad categories of men, women and children, might amount to crimes against humanity.

23. Too many generations had suffered from crimes against humanity and many more would suffer unless a legal framework addressing such heinous acts of violence were to be adopted. Convinced that crimes against humanity must not go unpunished, the three delegations welcomed all the draft preambular paragraphs in their current form.

24. Those delegations also welcomed draft article 1 (Scope), as currently worded, as it would help to ensure that those who committed crimes against humanity – which were grave international crimes – could not escape justice. They supported the clear indications that the draft articles were applicable to both the prevention and punishment of crimes against humanity and that crimes against humanity were the sole focus of the text.

25. **Mr. Elgharib** (Egypt) said that since the submission of the draft articles on prevention and punishment of crimes against humanity to the General Assembly at its seventy-fourth session, the wide divergences of views on many aspects of the draft articles had prevented the Assembly from doing anything beyond continuing to examine the recommendation of the International Law Commission concerning the elaboration of a convention. General Assembly resolution 77/249, which set out a clear process for the consideration of the draft articles with a view to enabling the Assembly to take a decision regarding the Commission's recommendation at its seventy-ninth session, had been carefully designed to avoid any predetermined outcome. Delegations should keep an open mind; engage in meaningful substantive discussions; and seek to find areas of convergence and overcome differences on the basis of consensus, guided by relevant universally accepted international

instruments. His delegation stood ready to engage constructively in the deliberations, in keeping with its commitment to ensuring accountability for atrocity crimes and enhancing international cooperation on the prevention and punishment of crimes against humanity.

26. With regard to the draft preamble, the reference to the Rome Statute should be removed, since the Statute was not a universal instrument. Furthermore, the reference to the duty of every State to exercise its criminal jurisdiction with respect to crimes against humanity should be amended to refer only to cases where a clear nexus had been established between the crime and the State exercising jurisdiction.

27. **Mr. Peñaranda** (Philippines) said that his delegation continued to consider the draft articles on prevention and punishment of crimes against humanity to be an important contribution to the international community's collective efforts to deter and curtail atrocity crimes. Under the law of his country, the most serious crimes of concern to the international community as a whole must not go unpunished and their effective prosecution must be ensured by taking measures at the national level, in order to put an end to impunity for the perpetrators and thus contribute to the prevention of such crimes, it being the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes. Nevertheless, in the light of concerns relating to the sovereignty of States, overly broad assertions of jurisdiction and the politicization of human rights, his delegation considered that the question of the potential elaboration of a convention based on the draft articles required further examination at the national level and within the Sixth Committee. The present resumed session should provide a useful opportunity for such consideration.

28. Turning to the draft preamble, and recalling that the Vienna Convention on the Law of Treaties provided that the context for the purpose of the interpretation of a treaty included its preamble, he said that, if the draft preamble were to be adopted, it should be made clear that it provided specific context for the draft articles and had not simply been appropriated from the Rome Statute, with whose wording it was closely aligned.

29. With regard to the fourth preambular paragraph, the Commission was not the first entity to have drawn the conclusion that the prohibition of crimes against humanity was a *jus cogens* norm. The criteria identified by the Commission for the identification of such norms in its work on the topic "Peremptory norms of general international law (*jus cogens*)" were that a *jus cogens* norm was a norm of general international law accepted and recognized by the international community of States

as a whole as a norm from which no derogation was permitted and which could be modified only by a subsequent norm of general international law having the same character. To the extent that crimes against humanity met those criteria, his delegation supported the inclusion of the fourth preambular paragraph.

30. Concerning the tenth preambular paragraph, his delegation would support stronger language on international cooperation, including wording based on that in the Genocide Convention, wherein it was stated explicitly that international cooperation was required.

31. His delegation supported the current formulation of draft article 1 (Scope), with the understanding that the draft articles were meant to apply to both prevention and punishment.

32. His Government was already in compliance with the fundamental obligation set out in draft article 6 (Criminalization under national law) to ensure that crimes against humanity were offences under national law. His country's 2009 law on crimes against international humanitarian law, genocide and other crimes against humanity defined crimes against humanity as certain acts – including, *inter alia*, wilful killing, extermination and torture – when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack. The law also included provisions on the protection of victims and witnesses, reparations and the applicability of international law, including relevant instruments ratified or acceded to by the Philippines.

33. **Mr. Hasenau** (Germany) said that, as a firm supporter of international criminal law, Germany attached great importance to the elaboration of a convention on crimes against humanity based on the draft articles on prevention and punishment of crimes against humanity prepared by the International Law Commission. Crimes against humanity were among the most serious crimes known to humankind and were being witnessed too often. Since the concept of crimes against humanity was widely accepted, the lack of a convention was a gap in the international legal framework. The elaboration of a convention on the prevention and punishment of such crimes would close that gap and complement treaty law on the other most serious crimes, such as genocide and war crimes. By fostering cooperation among States in the areas of prevention, investigation, prosecution and punishment, and by promoting prevention and punishment at the national level, such a convention would strengthen accountability and ensure that perpetrators were brought to justice.

34. His delegation welcomed the recommendations of the Commission concerning the draft articles, which enjoyed wide support within the international community. The concerns and suggestions of various partners had already been thoroughly discussed and evaluated, and the time had now come to move forward with the elaboration of a convention. The present resumed session should lead to a structured treaty negotiation process, on the basis of the draft articles.

35. **Ms. Jimenez de la Hoz** (Spain) said that the novel format of the resumed session should enable a large number of delegations to share their views and concerns about the potential elaboration of a convention on the prevention and punishment of crimes against humanity. Her delegation considered that the draft articles constituted a good basis for the discussions, as they covered important aspects such as the definition of crimes against humanity, the criminalization of such crimes under national law and international cooperation. The purpose of the resumed sessions was not to negotiate, but rather to establish a common understanding.

36. Her delegation was pleased that the definition of crimes against humanity in the draft articles was consistent with the one in the Rome Statute, as that would help to avoid the fragmentation of international law. The Rome Statute represented significant progress that should be preserved and built upon. The focus of the process regarding crimes against humanity should be on both accountability and prevention.

37. **Mr. Ruffer** (Czechia) said that the draft articles on prevention and punishment of crimes against humanity provided an excellent basis for negotiations and the elaboration of a future convention. Many provisions had been modelled on provisions from multilateral conventions that were already widely supported by States. Moreover, since the draft articles were not overly prescriptive, States would be able to implement them in accordance with their own legal systems and practices. The reliance on existing legal regimes and the absence of undue complexity in the draft articles should encourage wide ratification and acceptance of a future convention based on them. The discussions at the resumed session would facilitate the negotiation and adoption of such a convention.

38. The draft preamble properly encapsulated the basic principles on which the future convention should be based. It reflected the seriousness of crimes against humanity, which were of concern to the international community as a whole. His delegation noted with satisfaction that the draft preamble reflected the clearly accepted and recognized fact that the prohibition of

crimes against humanity was a peremptory norm of general international law (*jus cogens*). It was also very satisfied with the wording inspired by the Rome Statute but noted the concerns expressed by some delegations and was willing to engage in further discussions on the matter.

39. Draft article 1, which reiterated the scope of the draft articles, served to emphasize their importance and highlighted their two primary purposes, namely, the prevention and punishment of crimes against humanity, as well as providing a general orientation for the text. While instruments such as the Convention against Torture and the International Convention for the Protection of All Persons from Enforced Disappearance did not contain such a provision, it should be noted that the Genocide Convention did include a similar article.

40. **Ms. Siman** (Malta) said that the adoption of General Assembly resolution 77/249 constituted a significant step towards acknowledging and advancing essential products of the International Law Commission aimed at enhancing legal relations between States. For many years, the Commission's work on important issues of public international law in need of codification had become stalled when it came under consideration in the Sixth Committee, which had implications for the implementation of the mandates of the Commission and the General Assembly with respect to the progressive development of international law. Her delegation therefore welcomed the opportunity to participate in an exchange of substantive views on the draft articles on prevention and punishment of crimes against humanity, which were an important addition to the existing framework of international law, in particular international humanitarian law, international criminal law and international human rights law.

41. The preamble to a treaty set out the context and objectives of the instrument and was important for its interpretation and application, in particular in the event of a dispute. The preamble to the draft articles under consideration was generally reflective of the conceptual framework of the text. It had been inspired by wording used in the preambles to international treaties relating to the most serious crimes of concern to the international community as a whole, such as the Genocide Convention, which had 153 States parties, and the Rome Statute, which had 123. As a result, it was built upon widely accepted political and legal concepts, such as the principles that the most serious crimes of concern to the international community as a whole must not go unpunished, that international cooperation was required to liberate humankind from the odious scourge of such crimes, and that it was the duty of every State to exercise

its criminal jurisdiction with respect to those international crimes.

42. Her delegation applauded the Commission's decision to recognize the prohibition of crimes against humanity as a *jus cogens* norm, from which no derogation could be permitted. Treaties and unilateral declarations in conflict with that understanding must be void; furthermore, States and international organizations must cooperate to put an end to any serious breach of the norm and must not recognize as lawful a situation created by such a breach nor render aid or assistance in maintaining that situation.

43. Malta fully supported the wording of draft article 1 (Scope). The draft articles concerned the prevention and punishment of specific grave international crimes, which could be committed during peacetime as well as in times of war. They thus served the very precise purpose of filling a specific normative gap.

44. **Mr. Liu Yang** (China) said that it was generally recognized that crimes against humanity were serious international crimes. During the Second World War, the people of China had suffered tremendously as a result of crimes against humanity committed against them. His delegation supported the prevention and punishment of such crimes, in accordance with the law, in order to achieve justice and promote peace and security.

45. His delegation stood ready to engage in a frank and in-depth exchange of views on the legal issues related to the draft articles on prevention and punishment of crimes against humanity, with a view to enhancing mutual understanding and building consensus. However, as stated in General Assembly resolution 77/249, the purpose of the resumed session was to exchange substantive views, including in an interactive format, on all aspects of the draft articles, and to consider further the recommendation of the Commission regarding the elaboration of a convention on the basis of the draft articles. Thus, the draft articles should not be considered a zero draft of a future convention, and the purpose of the resumed session was not to negotiate a convention. In accordance with the letter and the spirit of resolution 77/249, the questions of whether, when and how to conclude a convention must be settled, by consensus, after the resumed seventy-eighth session.

46. **Ms. Zhao Yanrui** (China) said that, while her delegation understood the intention behind the third preambular paragraph of the draft articles on prevention and punishment of crimes against humanity, the reference to "the principles of international law embodied in the Charter of the United Nations" was not sufficiently clear or specific. The principles of sovereign equality and non-interference in the internal affairs of

States should be explicitly mentioned in the draft preamble and the body of the draft articles and must be guiding elements in any future convention on crimes against humanity, in order to ensure that the legislative and judicial independence of States was respected in the context of the practical cooperation required to prevent and punish international crimes.

47. In recent years, some countries had made arbitrary, politically motivated accusations of crimes against humanity against other States, in an attempt to interfere in their internal affairs and exert political pressure on them. Against that backdrop, it was crucial to keep the principle of non-interference in mind throughout the present discussions and in any future treaty-making process. Any discussions and convention negotiations conducted within the General Assembly should be conducive to the maintenance of an international order based on international law and the preservation of the basic norms governing international relations. They should be underpinned by the purposes and principles of the United Nations, as set out in the Charter, and serve to promote the rule of law at the international level and to ensure justice and fairness. Her delegation firmly opposed the practice of using the fight against impunity as a pretext for engaging in political manipulation, hegemonism and power politics, interference in the internal affairs of States and the application of double standards.

48. Turning to the fourth preambular paragraph of the draft articles, in which it was stated that the prohibition of crimes against humanity was a peremptory norm of general international law (*jus cogens*), she recalled that such norms were defined in the Vienna Convention on the Law of Treaties as norms accepted and recognized by the international community of States as a whole as norms from which no derogation was permitted and which could be modified only by a subsequent norm of general international law having the same character. The commentary to the draft preamble referred to the relevant part of the commentary to the articles on responsibility of States for internationally wrongful acts, and also to decisions of the International Court of Justice, the International Criminal Court and some national courts. However, it lacked a careful examination of State practice and *opinio juris*, even though it was clear from discussions within the Sixth Committee and from the Commission's own work on the topic of *jus cogens* that there were diverging views and practices. The question of whether the prohibition of crimes against humanity should be recognized as a *jus cogens* norm should therefore be further explored by the international community.

49. The reference in the seventh preambular paragraph to the definition of crimes against humanity set forth in article 7 of the Rome Statute was inappropriate. The Rome Statute was far from being a universal instrument, and there had been major disagreements about the definition of crimes against humanity during the negotiation of the Statute. Such differences had also emerged in the discussions within the Committee. Therefore, for the purposes of potential future convention negotiations, it would not be appropriate to simply replicate a provision of the Rome Statute or attempt to impose that provision on States that were not parties to the Statute.

50. **Ms. Solano Ramírez** (Colombia) said that the issue of crimes against humanity was of the utmost importance to her country, the international legal community and people around the world who were victims of such heinous crimes. Her delegation welcomed the opportunity to discuss the question in depth at the present resumed session. The elaboration of a legally binding international instrument on crimes against humanity would consolidate and strengthen international criminal law. Her country had suffered the ravages of armed conflict, but it had also gained valuable experience in the implementation of cooperation, prevention and prosecution processes. The draft articles on prevention and punishment of crimes against humanity correctly focused on effective prosecution through national-level measures and international cooperation. States would benefit from the elaboration of an instrument of positive law that addressed the current gaps in that regard.

51. As reflected in the draft preamble, crimes against humanity were defined in the Rome Statute, and the International Criminal Court had jurisdiction over such crimes. However, the draft articles provided a legal framework for international cooperation and legal assistance between States and for the adoption of prevention policies at the national level. Her delegation agreed that crimes against humanity threatened the peace, security and well-being of the world and, therefore, that the prohibition of such crimes was a *jus cogens* norm. Colombia welcomed the emphasis in the draft preamble on victims and on the need to put an end to impunity.

52. Turning to draft article 1 (Scope), she said that the objective of the draft articles was clearly to ensure that States would prevent the commission of crimes against humanity, exercise their criminal jurisdiction to prosecute such crimes when they did occur, and promote international cooperation. Draft article 1 was based on article 1 of the Genocide Convention and was thus a clear continuation of international norms accepted by

the international community. The draft articles were not incompatible with, but rather complementary to, the Rome Statute. A future convention would make it possible for States to express their consent to undertake international obligations relating to international cooperation and legal assistance for the prevention and punishment of crimes against humanity without accepting the jurisdiction of the International Criminal Court. Draft article 1 (Scope) made it clear that the purpose of such a convention would be to prevent and ensure the judicial punishment of crimes against humanity. The particular focus would be on measures that could be taken by States at the national level, in accordance with their domestic law. For her delegation, that would be a very positive step forward.

53. On the basis of its experience, Colombia was convinced that a convention based on the draft articles could contribute to ensuring accountability and combating impunity in respect of crimes against humanity. It also welcomed the format of the present discussions and encouraged its use for the consideration of other agenda items allocated to the Sixth Committee.

54. **Mr. Wickremasinghe** (United Kingdom) said that his delegation remained strongly supportive of the Commission's work on the topic. Since the Nuremberg trials, crimes against humanity had occurred in almost all regions of the world. They included the most inhumane acts known to humanity, such as sexual violence, apartheid, enslavement and enforced disappearances. There was no general multilateral convention establishing a framework for the national prosecution of such crimes. That gap was indefensible in view of the existing frameworks for other serious crimes such as genocide, war crimes and torture. It undermined the prevention and prosecution of crimes against humanity, and failed to give victims and survivors the recognition they deserved. His delegation therefore remained in favour of developing a convention on the obligation to extradite or prosecute in respect of crimes against humanity.

55. The preamble to the draft articles on prevention and punishment of crimes against humanity rightly began with a recognition of the horror caused by crimes against humanity and the threat that such crimes posed to humanity as a whole. That point was the critical context from which the draft articles arose. Reference was then made to some essential aspects of the draft articles, including the tackling of impunity; the prevention of crimes against humanity; the rights of victims, witnesses and offenders; and the need for effective prosecution. In view of the significant impact of crimes against humanity on people across the world, regardless of their age or gender, it would be appropriate

to amend the first preambular paragraph to refer to "people" as a whole, rather than "children, women and men".

56. It would be interesting to hear the views of other delegations concerning the importance of a survivor-centred approach to the punishment of crimes against humanity, and concerning the inclusion of a reference to reparations for material and moral damages, considered in greater detail in draft article 12, paragraph 3.

57. In the seventh preambular paragraph, reference was made to article 7 of the Rome Statute. It would be useful to expand that paragraph to indicate that article 7 of the Rome Statute was itself based on the work of the International Law Commission and on State practice at the time when it had been negotiated.

58. The eighth preambular paragraph provided that every State had a duty to exercise its criminal jurisdiction with respect to crimes against humanity. In paragraph (9) of the commentary to the draft preamble, it was stated that that provision foreshadowed draft articles 8 (Investigation), 9 (Preliminary measures when an alleged offender is present) and 10 (*Aut dedere aut judicare*). Given that the formulations of the duties of States in draft articles 8 to 10 were more precise, the provision in the draft preamble could be reformulated to recall "the primary importance" of States exercising their criminal jurisdiction with respect to crimes against humanity.

59. His delegation was content with draft article 1, which simply highlighted the two core aims of the draft articles, namely, prevention and punishment.

60. **Mr. Ghorbanpour Najafabadi** (Islamic Republic of Iran) said that the preambular section of any international instrument was one of the most important parts and should be streamlined, concise and comprehensive. In the preamble to the draft articles on prevention and punishment of crimes against humanity, reference should be made to the purposes and principles of the Charter of the United Nations, including the principle of non-intervention in the internal affairs of States. That was the principle of the Charter most relevant to the draft articles and was, moreover, mentioned in article 3 of the Draft Declaration on Rights and Duties of States and in paragraph 1 of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations annexed to General Assembly resolution [2625 \(XXV\)](#). The principles of international law relevant to the draft articles, including the immunity of State officials and the immunity of States and their property, had not adequately been incorporated into the Charter.

It would therefore be appropriate to delete the last part of the third preambular paragraph and reformulate the remainder of the paragraph to read “Recalling the relevant principles of international law”.

61. His delegation had consistently held that, in view of the existence of such instruments as the Rome Statute, there was no legal loophole with regard to the criminalization of crimes against humanity in international law. If Member States did wish to elaborate an instrument specifically addressing crimes against humanity, its wording should not be taken verbatim from the Rome Statute. Either the reference to article 7 of the Rome Statute in the seventh preambular paragraph should be deleted, or the word “considering” should be replaced with the word “noting”.

62. **Ms. Theuwen** (Kingdom of the Netherlands) said that, while the focus of the current meetings should be on finding areas of convergence, the aim of elaborating an international convention was especially important given that the prohibition of crimes against humanity, like the prohibition of the crime of genocide, was a peremptory norm of international law. Her delegation therefore particularly welcomed the reference, in the fourth preambular paragraph, to the *jus cogens* character of the prohibition of crimes against humanity.

63. As to the seventh preambular paragraph, her delegation supported the approach of the Commission in largely retaining the definition of crimes against humanity set out in the Rome Statute, which provided a good model for that purpose.

64. With regard to draft article 1 (Scope), her delegation continued to believe that any future convention should apply to both the prevention and the punishment of crimes against humanity.

65. **Mr. Silveira Braoios** (Brazil) said that the draft articles on prevention and punishment of crimes against humanity were a good basis for further deliberations, and a convention elaborated on that basis would make an important contribution to the international legal framework. Such a convention would not overlap with the Rome Statute but would instead complement the work of the International Criminal Court by ensuring accountability at the national level. His delegation would approach the current discussions with an open mind, and the views that it would express in no way prejudged its approach to any future negotiations on the text of an international convention. His delegation reserved the right to reconsider or complement its views in the future.

66. It would be useful to incorporate into the draft preamble some provisions, in the spirit of the preamble

of the Rome Statute, referring to the principles of the Charter of the United Nations related to non-intervention in the internal affairs of States and the general prohibition of the use of force. Such wording would facilitate universal accession to a future convention by dispelling fears that allegations of crime against humanity could be misused as a pretext for aggression. His delegation welcomed the recognition that the prohibition of crimes against humanity was a peremptory norm of general international law, as had been asserted in the jurisprudence of several international and national courts, and such regional courts as the Inter-American Court of Human Rights. Any caveat or reservation in that regard would be inconsistent with the serious nature of crimes against humanity under international law.

67. His delegation commended the Commission for taking into consideration the definition of crimes against humanity set forth in the Rome Statute. That definition was of paramount importance in order to ensure coherence in the prosecution of the perpetrators of such crimes at the national and international levels, and in view of the principles of complementarity and *non bis in idem*.

68. **Ms. Sverrisdóttir** (Iceland), co-facilitator, said that delegations should indeed feel free to express their views without prejudice to any future negotiations, and had every right to change those views as the discussion developed.

69. **Mr. Magyar** (Hungary) said that, unlike war crimes and genocide, crimes against humanity still fell largely outside the treaty framework. An international convention on the topic was long overdue and, by virtue of its very existence, would reflect the determination of the international community to combat impunity. His delegation commended the efforts of the Commission and of the Special Rapporteur on the topic, and looked forward to negotiating and adopting a binding international instrument based on the draft articles on prevention and punishment of crimes against humanity.

70. **Ms. Carral Castelo** (Cuba) said that the draft articles on prevention and punishment of crimes against humanity would make a significant contribution to international efforts to prevent and punish such crimes and to efforts to strengthen the international criminal justice system. They would also provide useful guidance to States that had not yet adopted national laws criminalizing such crimes. Any convention on the subject should reflect the fundamental principle that primary responsibility for preventing and punishing serious international crimes rested with the State in whose jurisdiction the crimes had occurred. States had

the sovereign prerogative to exercise, in their national courts, jurisdiction over crimes against humanity committed on their territory or by their nationals. No one was better placed to prosecute the perpetrators of such crimes than the State that had jurisdiction, whether on the basis of territoriality or of the nationality of the defendant or the victims. Moreover, the binding force of international instruments derived from the consent of States to the process of formation of international law. The Commission was not a legislative entity responsible for establishing norms of international law.

71. Extradition and mutual legal assistance should be handled through bilateral treaties taking into consideration the domestic law of the two States in question. Cuba had concluded 11 such treaties on extradition and 24 on mutual legal assistance, 16 of which included provisions for extradition.

72. The definition of crimes against humanity set out in the draft articles was related to that set forth in the Rome Statute, to which many States, including Cuba, were not parties. In order to ensure that a future convention gained broad acceptance, those States should not be compelled to negotiate wording taken directly from the Statute. The drafting of the convention should take into consideration the range of domestic legal systems, including those of States not parties to the Rome Statute.

73. Some existing legal instruments, such as the 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, already included provisions for extradition. However, that Convention had only 56 States parties. Cuba had been a party for more than 50 years; but many of the States pressing for a convention on crimes against humanity were not. Her delegation therefore called on States that had not acceded to the 1968 Convention to do so. Moreover, more than 80 States were currently negotiating in the context of the mutual legal assistance initiative, which should lead to the elaboration of a convention on international cooperation in the investigation and prosecution of genocide, crimes against humanity and war crimes. Such an outcome would fulfil the same function as an instrument on mutual legal assistance in criminal matters and extradition, and would complement the 1968 Convention.

74. In view of the current uncertainty, her delegation would prefer not to embark on new and complex negotiations. It failed to see the urgency of an accelerated adoption of the draft articles without a prior exhaustive study of their contents using the methods traditionally employed by the Committee.

75. **Mr. Amaral Alves De Carvalho** (Portugal) said that his delegation saw the current exchange of views as providing an opportunity for delegations to better understand each other's positions, clarify and address any concerns that might exist and identify possible ways to make progress in accordance with the road map set out in General Assembly resolution 77/249. Without prejudice to what it might decide at the seventy-eighth session, his delegation considered the current discussions as informing and supporting a future decision to act on the Commission's recommendation and move towards negotiating a convention on the basis of the draft articles on prevention and punishment of crimes against humanity. Such a convention was necessary and urgent, as it would fill an important gap in international law and help combat the most serious crimes of international concern.

76. The draft preamble set out a conceptual framework for the draft articles, defining their main objectives and the general context in which they had been developed. It was in part inspired by the wording used in the preambles of international instruments relating to the most serious crimes, including the Genocide Convention and the Rome Statute. Of particular note were the references to victims and to the *jus cogens* nature of the prohibition of crimes against humanity. His delegation would be open to the suggestion made by the representative of the United Kingdom to include a reference to a survivor-centred approach.

77. The mention of article 7 of the Rome Statute in the seventh preambular paragraph merely referred to a definition contained in a relevant international treaty. Irrespective of the conclusions that the Sixth Committee might reach, it made sense for the existence of that definition to be acknowledged in the preamble. His delegation supported the suggestion made by the representative of the United Kingdom that reference be made to the origins of article 7 of the Statute.

78. With regard to the suggestion that reference should be made to specific principles enshrined in the Charter of the United Nations, his delegation believed that, in order to avoid politicization and selectivity, it would be preferable to retain the current general reference to the principles of international law.

79. As to draft article 1 (Scope), it was important to highlight that the draft articles applied to both the prevention and the punishment of crimes against humanity, as those elements were mutually supportive.

80. **Mr. Košuth** (Slovakia) said that his delegation believed that the Commission's approach to the topic had been correct and sensible from the outset. The Special Rapporteur had consistently given due regard to

the comments made by Member States, and the draft articles on prevention and punishment of crimes against humanity were carefully drafted and well balanced, forming a solid basis for negotiations and codification.

81. References to crimes against humanity had been incorporated into the Charter of the International Military Tribunal at Nuremberg and could be traced back as far as the first and second Conventions for the Pacific Settlement of Disputes, concluded in 1899 and 1907, respectively; however, there remained a stark contrast between the international legal framework with respect to crimes against humanity and that which existed for other crimes, such as genocide and war crimes. The lack of a dedicated treaty instrument on crimes against humanity had serious repercussions for the practice of international law and, more importantly, for the lives of millions of victims. Alongside criminalization, which was essential for ensuring accountability, the draft articles included a focus on prevention, inter-State cooperation and the interests of the victims. Their adoption would not only strengthen the primary responsibility of States for prosecuting the perpetrators of crimes against humanity but would also send a strong message to victims and their families that such atrocities would not be ignored.

82. The first four preambular paragraphs were consistent with the standard wording of treaties and other outputs of the Commission. They set out the overall context of the draft articles and, taken in connection with the remaining preambular paragraphs, made it clear that both the prevention and the punishment of crimes against humanity must be undertaken in accordance with international law and the principles of the Charter of the United Nations. The remaining preambular paragraphs provided a good balance: they captured the object and purpose of the draft articles, and eloquently wove in other key elements, such as international cooperation and the rights of victims, witnesses and other individuals.

83. With regard to draft article 1, his delegation considered the scope of the draft articles to be consistent with that of similar instruments, such as the Genocide Convention and the Convention against Torture. The reference to the preventive dimension of the draft articles was crucial; if the obligation to prevent was effectively implemented, the obligation to punish would become less urgent.

84. **Mr. Milano** (Italy) said that his delegation continued to support the recommendation that the draft articles on prevention and punishment of crimes against humanity should become a binding international instrument. Their purpose was to address a concern of

the international community as a whole, namely, the need to end impunity and ensure accountability for the most heinous crimes. The draft articles were comprehensive and prescriptive in nature, and generally reflective of treaty practice and existing customary international law. They addressed an important normative gap with regard to horizontal judicial cooperation for the prosecution of crimes against humanity, and were consistent with the Rome Statute and the code of international crimes recently approved by the Italian cabinet. A future universal convention on judicial cooperation with regard to crimes against humanity would strengthen both the primary responsibility of States in prosecuting and punishing those responsible for such crimes, and the principle of complementarity in international criminal law.

85. Unlike the 1948 Genocide Convention, the Geneva Conventions of 12 August 1949 and the 1984 Convention against Torture, the draft articles had not been formulated in a vacuum. Since the 1990s, several international courts and tribunals, including the International Criminal Court, had been established to prosecute and punish international crimes, including crimes against humanity. It would therefore be useful to include in the draft preamble a paragraph acknowledging the important contribution of international courts and tribunals in tackling impunity and protecting the rights of victims. In all other respects, his delegation supported the draft preamble prepared by the Commission.

86. With regard to draft article 1 (Scope), for the sake of legal precision his delegation would prefer to add the words “by States” after “prevention and punishment”, in order to avoid conflation with existing instruments. That change would make it clear that the draft articles addressed horizontal cooperation between and among States, as opposed to vertical cooperation with competent international courts and tribunals. It would also reflect the fact that the draft articles set out the obligations of States under international law.

87. **Mr. Nyanid** (Cameroon) said that there was consensus regarding the need to combat impunity in general and to prevent and punish crimes against humanity in particular. At the same time, his delegation continued to believe that the draft articles on prevention and punishment of crimes against humanity required caution and deliberation, and that Member States’ sensitivities and concerns should be taken into consideration. His delegation’s participation in the current discussions should be taken not as a change of position, but as a contribution to the process of deliberation for which it had always called.

88. In several places, the draft preamble drew on the Rome Statute, most notably by referring to the definition of crimes against humanity set forth in article 7 thereof. That wording would complicate the process of garnering consensus, as fewer than two thirds of States Members of the United Nations had acceded to the Statute. Given that there existed no binding international instrument specifically aimed at defining crimes against humanity, the draft articles ought rather to set out a consensus-based and universally acceptable definition of such crimes. It should be recalled, moreover, that article 10 of the Rome Statute provided that nothing in that Part of the Statute should be interpreted as limiting or prejudicing in any way existing or developing rules of international law for purposes other than the Statute. States therefore should not be straitjacketed by the Statute when formulating a new legal instrument on crimes against humanity.

89. The fourth preambular paragraph provided that the prohibition of crimes against humanity was a *jus cogens* norm. However, the mechanism for recognizing such norms was unclear; the *jus cogens* nature of a norm was based not on any kind of treaty to which States had consented to be bound, but on a sort of collective conscience. Moreover, because the constitutive elements of crimes against humanity were defined very broadly, the categorization of such crimes could be malleable. There was no exhaustive list of *jus cogens* norms, and the Commission's attempt to compile such a list had been criticized by delegations as unhelpful, restrictive and too concise.

90. The eighth preambular paragraph provided that every State had an obligation to submit to the jurisdiction of the International Criminal Court. However, according to article 12, paragraph 1, of the Rome Statute, acceptance of the Court's jurisdiction derived expressly from the act of becoming a party to the Statute. It was an established principle of international law that no State could be subjected to the jurisdiction of an international court without having formally consented to be subject thereto. Indeed, article 1 of the Rome Statute provided that the International Criminal Court was complementary to national criminal jurisdictions. The draft articles therefore could not extend the jurisdiction of the International Criminal Court beyond the scope defined in the Statute. It should also be noted that no reference was made in the draft articles to regional conventions on the prevention and punishment of crimes against humanity.

91. The text of any future convention should be formulated in such a way as to avoid a divisive and Sisyphean codification process that encroached on the sovereignty of Member States. Crimes against humanity

were primarily a matter for domestic law, which, as stated in numerous judgments of the International Court of Justice, was the expression of national sovereignty and independence. Many States had integrated relevant mechanisms into their domestic law. States should be trusted with that process, as they were both the authors and subjects of international law, which was the expression of their willingness to limit some of their own powers. If the principle of sovereignty were to be forfeited, anarchy and tyranny would ensue, and international society in its current form would come to an end. International cooperation was indeed necessary in order to combat crimes against humanity; but it should eschew politicization and manipulation. Extradition and mutual legal assistance should take place primarily on a bilateral basis.

92. His delegation had an alternative proposal for the text of the draft preamble, and it believed that draft article 1 (Scope) should be reformulated to read as follows: "The present draft articles apply to the prevention and punishment of crimes against humanity, the strengthening of the capacities of States for that purpose and, in the event of a duly expressed lack of national capacity, transfer of capacity to an international court determined by express agreement".

93. **Mr. Kanu** (Sierra Leone) said that his delegation supported the Commission's recommendation that a convention be elaborated by the General Assembly or by an international conference of plenipotentiaries on the basis of the draft articles on prevention and punishment of crimes against humanity. Doing so would place such crimes on a par with war crimes and genocide, each of which was the subject of a dedicated instrument. His delegation recalled the written comments that it had submitted following the Commission's adoption of the draft articles on first reading (see [A/CN.4/726](#)). Its participation in the current deliberations was guided by the need to ensure effectiveness and accountability in addressing impunity in relation to crimes against humanity. Accordingly, and because a future convention on crimes against humanity would be intended to fill gaps, such a convention should primarily codify existing customary international law and, to the extent possible, reflect aspects of progressive development in such areas as the incorporation of extradition and mutual legal assistance into domestic law.

94. The Rome Statute should be the starting point for the proposed convention. Any proposed text must fully respect the integrity of the Statute, which was the result of a necessary negotiated compromise among States. That point was particularly important given that the future convention would apply at the horizontal level. The elaboration of a universal convention would be

consistent with the complementarity principle, which underpinned the Statute and entailed the primacy of national prosecutions. The future convention should complement existing obligations and be implementable for States.

95. His delegation welcomed the recognition, in the second preambular paragraph, that crimes against humanity threatened the peace, security and well-being of the world. It followed that the nexus between peace and justice should feature prominently in the deliberations of the Sixth Committee. His delegation also supported the wording of the fourth preambular paragraph, which recognized that the prohibition of crimes against humanity was a peremptory norm of general international law (*jus cogens*). That provision was consistent with the non-exhaustive list of peremptory norms set out in draft conclusion 23 of the draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*) adopted by the Commission at its seventy-third session (see [A/77/10](#), paragraph 43). The definition of crimes against humanity set forth in the seventh preambular paragraph largely reflected the codification of customary law, and his delegation noted that the draft articles were without prejudice to existing customary international law. It was appropriate to give due consideration to the definition of crimes against humanity set forth in article 7 of the Rome Statute, which had been based on a necessary compromise.

96. As to draft article 1 (Scope), his delegation agreed with the Commission's decision to take a narrow approach, focusing solely on crimes against humanity. That approach was consistent with the Commission's intent when it had begun its consideration of the topic. His delegation welcomed the dual focus on prevention and punishment, which was strengthened in draft articles 3, 4 and 5 and in the commentary. It was therefore pleased that the Commission had, on first reading, amended the title of the draft articles to "draft articles on prevention and punishment of crimes against humanity". It welcomed the provisions set out in paragraph (3) of the commentary to draft article 1, concerning the temporal scope of the draft articles.

97. **Mr. Erkan** (Türkiye) said that it was clear from the extensive discussions of the Sixth Committee that the topic was complex and multidimensional in nature, as broadly reflected in the preamble to the draft articles on prevention and punishment of crimes against humanity and in draft article 1 thereof. Nevertheless, compared with other categories of international crimes, crimes against humanity were particularly susceptible to exploitation for political purposes and therefore

required special care. It was essential to preserve the integrity of international law and avoid politicization. The topic should be addressed in a diligent and inclusive manner and at a reasonable pace that would enable the international community to move forward in unison towards its shared goal. In order to ensure the broadest possible acceptance, any proposed convention should reflect widely accepted principles and include safeguards against potential abuse for political purposes. In the absence of such safeguards, the convention could give rise to inter-State tension and be counterproductive. However, certain provisions in the draft articles appeared to expand the principle of universal jurisdiction, on which the international community was divided. The reference to *jus cogens* in the fourth preambular paragraph was a case in point. It was therefore important to examine State practice and uphold such recognized principles of international law as immunity and sovereign equality. Expanding the scope of the draft articles to include such areas as civil jurisdiction, amnesty and immunity would make it more difficult to reach consensus.

98. **Mr. Nyamid** (Cameroon) said that his delegation noted the tendency of the representatives of Portugal and Sierra Leone to put the Rome Statute at the centre of the debate. However, as the representative of Türkiye had said, the question of crimes against humanity was complex, and international law in that area had evolved. If the Sixth Committee continued to be straitjacketed by the Rome Statute, it risked not only embarking on an interminable task, but also failing to understand the issue at hand. It ought instead to develop its own definition of crimes against humanity. In so doing, it should broaden the terms of the debate: crimes against humanity might include deforestation, the theft of resources and other acts that deprived future generations of something vital.

99. **Mr. Kanu** (Sierra Leone) said that the Rome Statute was at the core of the discussion because the Commission's work consisted primarily of codifying customary international law with a view to ensuring effective national implementation. For States parties to the Statute, there was no need to reinvent the wheel; the future convention would complement the obligations set forth in the Statute and the jurisdiction of States, and safeguard the integrity of customary international law.

100. His delegation would be open to discussing an expanded definition of crimes against humanity.

101. **Ms. Solano Ramirez** (Colombia) said that, for States parties to the Rome Statute, it was important to mention the Statute as an example of a relevant

instrument It was, of course, also possible to enrich the draft preamble with other terms of reference.

102. **Mr. Amaral Alves De Carvalho** (Portugal) said that, as the representatives of Sierra Leone and Colombia had argued, the Rome Statute should be taken into account as an existing instrument, for the sake of consistency. It should not be taken as a straitjacket but was, instead, an important reference that should be acknowledged, considered and built on. It would be unusual not to recognize the existence of an instrument that already contained a definition of crimes against humanity, that had taken time to develop and that, as the representative of the United Kingdom had pointed out, was itself based on customary international law. Instead of reinventing the wheel, the Committee should consider the definition set forth in the Statute and decide whether and how it could be improved upon.

103. **Mr. Nyanid** (Cameroon) said that the task at hand was, in fact, to reinvent the wheel; the work of the Commission involved not only codification but also progressive development.

The meeting rose at 1 p.m.