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## Sixth Committee

**Summary record of the 24th meeting**
Held at Headquarters, New York, on Tuesday, 29 October 2019, at 10 a.m.

*Chair*: Mr. Mlynár . . . . . (Slovakia)

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19-18672 (E)

*The meeting was called to order at 10 a.m.*

**Agenda item 171: Observer status for the Group of Seven Plus in the General Assembly** (*continued*) (A/74/214, A/C.6/74/L.2)

*Draft resolution A/C.6/74/L.2: Observer status for the Group of Seven Plus in the General Assembly*

1. **Mr. Kanu** (Sierra Leone) said that Angola, Finland, Norway and the Sudan had joined the list of sponsors of the draft resolution.

2. *Draft resolution A/C.6/74/L.2 was adopted*.

**Agenda item 79: Report of the International Law Commission on the work of its seventy-first session** (*continued*) (A/74/10)

3. **Mr. Lefeber** (Netherlands) said that his Government welcomed the draft articles on prevention and punishment of crimes against humanity adopted by the Commission and strongly supported the recommendation for the elaboration of a convention by the General Assembly or by an international conference of plenipotentiaries on the basis of the draft articles. As one of the initiators of the initiative for a new multilateral treaty on mutual legal assistance and extradition for domestic prosecution of the most serious international crimes, the Netherlands was pleased to note that the draft articles had much in common with the initiative. However, both instruments also differed considerably in terms of scope of application *ratione materiae* and approach. While the draft articles focused exclusively on crimes against humanity, the initiative sought to offer a mutual legal assistance and extradition framework for all three groups of the most serious crimes under international law, including a mechanism that allowed for the optional broadening of the scope to other international crimes, such as torture and enforced disappearance.

4. While the approach to the draft articles was holistic in nature, covering a wide range of rules and concepts, including mutual legal assistance, extradition, prevention, responsibility of States and reparations for crimes against humanity, the initiative was aimed at creating a modern framework for mutual legal assistance and extradition only. The scope of the provisions on mutual legal assistance and extradition covered by the initiative was likely to be wider and more extensive than the procedural provisions of the draft articles. Other differences concerned the framework and likely timeline for negotiations for both instruments. Based on their respective qualities and characteristics, the two initiatives were mutually supportive, as they aimed to achieve the same goal of filling a gap in the legal framework underpinning the fight against impunity for the worst international crimes. They could therefore be seen as complementary and could coexist and continue to develop side by side.

5. Turning to the topic "Peremptory norms of general international law (*jus cogens*)", he said that while his Government recognized the added value of the Commission's consideration of the topic, it found it regrettable that the concerns it had raised over the years had not convinced the Commission to make corresponding changes to its conclusions or, at least, to explain why those concerns were not convincing. In his fourth report on the topic (A/CN.4/727), the Special Rapporteur had indicated that a comment by the Netherlands in respect of his third report (A/CN.4/714 and A/CN.4/714/Corr.1) had contained a proposal for the inclusion of a list of *jus cogens* norms. His delegation believed, however, that the Special Rapporteur had misunderstood its proposal. At the seventy-third session of the Committee, his delegation had stated, as it had done in the past, that the inclusion of a list of *jus cogens* norms was not desirable. If the inclusion of such a list was nevertheless considered necessary, a reference should be made to the commentaries to articles 26 and 40 of the articles on responsibility of States for internationally wrongful acts, which included tentative and non-limitative lists of *jus cogens* norms. In so stating, his delegation had not wished to indicate that the examples given in those commentaries could be used as a basis for a list, but that a list of *jus cogens* norms could be replaced by a mere reference to the commentaries to those articles. Indeed, his Government remained of the view that the authoritative nature of a list, illustrative or otherwise, of *jus cogens* norms would likely prevent the emergence of State practice and *opinio juris* in support of other norms. It had forwarded the draft conclusions and corresponding commentaries to its advisory committee on issues of public international law for an independent advisory opinion, and would provide its written comments and observations on the topic in due course, together with the opinion of the advisory committee.

6. In view of the adoption by the General Assembly of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, his delegation saw no need for or added value of the topic "Reparation to individuals for gross violations of international human rights law and serious violations of international humanitarian law". It did, however, see some relevance for limited work on the topic "Prevention and repression of piracy and armed robbery

at sea", since there was already an extensive amount of international, regional and national law regarding piracy at sea, as the Commission acknowledged in annex C of its report (A/74/10). Furthermore, the number of incidents of piracy at sea had dropped in recent years owing to successful preventive efforts, with most of the current incidents seemingly occurring within territorial seas. In that respect, it would seem more useful to focus on armed robbery at sea and to provide guidance for the development of relevant domestic criminal law. The Netherlands therefore saw no need at the current juncture for further guidance or clarification regarding the existing international obligations concerning piracy at sea.

7. **Mr. Oyarzábal** (Argentina), speaking on the topic of peremptory norms of general international law (*jus cogens*), said that his delegation was pleased to see that the Commission had cited in its commentary a case of the Supreme Court of Argentina as illustrative of the assertion that a *jus cogens* norm was a norm of general international law. For the identification of a *jus cogens* norm in customary international law, it was important to bear in mind the Commission's work on the topic "Identification of customary international law". With regard to the criterion of acceptance and recognition of a *jus cogens* norm by the international community of States as a whole, his delegation agreed with the stipulation in draft conclusion 7 that such acceptance and recognition must be by a very large majority of States. As for the evidence required to demonstrate acceptance and recognition by States, his delegation believed that the status of ratification of certain international treaties was an additional element that revealed the positions and perspectives of States.

8. It was worth noting, however, that the identification of *jus cogens* norms could have a major impact on, inter alia, the causes of refusal of extradition, requests for international legal assistance in cases brought in exercise of universal jurisdiction, and the existence of a principle of *aut dedere aut judicare* in cases concerning international crimes. The identification of *jus cogens* norms in such cases might have consequences for the practices of States, which might deny a request for extradition on the basis of a peremptory norm of international law. The topic should therefore be considered with caution, with preference given to an analysis that ensured legal certainty in relations between States. It was the understanding of his delegation that such topics were addressed in part three of the draft conclusions (Legal consequences of peremptory norms of general international law (*jus cogens*). In that connection, his delegation was pleased that the Commission had addressed in more detail the provisions of articles 44, 64, 65, 66 and 71 of the Vienna Convention on the Law of Treaties. It believed that the draft conclusions adopted by the Commission were a valid and necessary tool for the consolidation and progressive development of international law.

9. With regard to the topic "Crimes against humanity", his delegation was pleased to see that the comments submitted by several States, international organizations and other entities had been taken into account in the second reading of the draft articles on prevention and punishment of crimes against humanity adopted by the Commission, in particular with the removal of the definition of the word "gender" from the draft articles, to reflect the evolution of international criminal law in the light of contemporary international human rights law. Argentina also supported the Commission's decision to recommend the elaboration of a convention on the basis of the draft articles, since a legally binding international instrument on the topic would help to consolidate the legal framework of international criminal law.

10. Lastly, for Argentina, and for the other core member countries participating in the mutual legal assistance initiative, the draft articles and the initiative were complementary and not mutually exclusive.

11. **Ms. Weiss Ma'udi** (Israel), speaking on the topic "Crimes against humanity", said that although many of the concerns raised by Israel and other States throughout the process leading to the provisional adoption of the draft articles on prevention and punishment of crimes against humanity had not been sufficiently addressed by the Drafting Committee, her delegation sincerely commended the Special Rapporteur for a transparent work process and for the methodology he had employed, with emphasis on the importance of relying on State practice. In general, Israel believed that a comprehensive treatment of the prohibition of crimes against humanity would benefit the international community, and that to secure the broadest acceptance of such a project and ensure its utility, the Commission should ensure that the draft articles accurately reflected customary law and widely accepted principles on the subject and contained effective safeguards against potential abuse. Her delegation therefore reiterated the need for specific and articulated safeguards on mechanisms for the enforcement of or adherence to the draft articles.

12. One of the most fundamental principles of international criminal law was that States had the primary sovereign prerogative to exercise jurisdiction in their national courts over crimes committed in their territory or by their nationals. That principle was

consistent with the notion that the State with territorial or national jurisdiction was usually best suited to prosecute crimes effectively, and that it was in the interests of justice – giving due consideration to the interests of victims and the rights of the accused – for local jurisdictions with clear jurisdictional links to be given primacy. Only when such States were unable or unwilling to exercise jurisdiction might alternative mechanisms be considered. Hence, the assertion of jurisdiction by a State that lacked clear and established territorial or national links to an alleged crime should be the rare exception – not the rule – and resorting to such jurisdiction should be carefully and cautiously circumscribed.

13. Israel continued to be concerned that enforcement and jurisdiction mechanisms under the draft articles could potentially be abused by States and other actors in order to advance their political goals or to gain publicity, rather than be used in the appropriate circumstances as a genuine legal tool to protect the rights of victims and to put an end to impunity for serious international crimes. The result would not just be abuse in a specific case, but the politicization of the prosecution of crimes against humanity in general and the undermining of the legal authority of the instruments pursuant to which such prosecutions took place. Safeguards that ensured the appropriate use of such mechanisms and prevented their abuse were thus of primary importance. Israel therefore welcomed the Commission's clarification in its commentary to paragraph 2 of draft article 7 that when taking the necessary measures to establish universal jurisdiction, States should adopt procedural safeguards to ensure its proper existence. Nevertheless, Israel was of the view that, due to the risk of abuse and the importance of its prevention, the draft articles still did not sufficiently address that issue. In order to attract wide acceptance and to prevent unwarranted and politically motivated attempts to initiate proceedings, the safeguard mechanisms should be an integral part of the draft articles themselves.

14. Israel had also continued to insist that the draft articles accurately reflect well-established principles of international law. For example, paragraph 5 of draft article 6, which dealt with the issue of immunity of foreign State officials, had no effect on any procedural immunity that both current and former foreign State officials might enjoy, because the issue of immunity continued to be governed by conventional and customary international law and obligations between States. Similarly, paragraph 8 of draft article 6, which dealt with measures to establish criminal, civil or administrative liability of legal persons, did not reflect existing customary international law. The Commission itself had acknowledged as much in its report (A/74/10), when it stated that "criminal liability of legal persons has not featured significantly to date in international criminal courts and tribunals", and that "liability of legal persons also has not been included in many treaties addressing crimes at the national level". In that vein, Israel also took note of the change made in paragraph 3 of draft article 6, in order for it to reflect more accurately customary international law regarding command responsibility, by adopting the standard of "knew or had reason to know", as opposed to the standard "knew or, owing to the circumstances at the time, should have known", which had been proposed in previous versions of the paragraph. Israel valued the attention given in the commentary to crimes against humanity committed by non-State actors, given the increased involvement of non-State actors in the commission of such crimes.

15. As for the Committee's decision to recommend the elaboration of a convention on the basis of the draft articles, her delegation believed that, prior to any agreement on the desired forum for the negotiation and elaboration of any such convention, further deliberation was required on several critical and outstanding issues raised by many States, including Israel. For example, there were still substantial differences concerning, inter alia, the definition of crimes against humanity, the limits to the establishment and exercise of jurisdiction, safeguards against unwarranted or politicized prosecution, and the application of the convention to nationals of non-party States. Accordingly, it seemed inadvisable to regard the current draft articles automatically as a zero draft for any future process. At the same time, it seemed appropriate that States be given adequate time to review and consolidate their positions and effectively address all outstanding issues in a process informed by the Commission's work on the topic. Her delegation would thus support the proposal to establish a forum at the seventy-sixth session of the Committee, where States would attempt to clarify the outstanding issues and resolve their differences with a view to the potential elaboration of a convention. Indeed, recent experience had shown that it was generally unwise to convene an international conference before broad consensus was reached on key issues.

16. Turning to the topic of peremptory norms of general international law (*jus cogens*), she said that the methodology employed thus far by the Special Rapporteur had been a matter of concern not only for States, but also for the Commission members themselves. In particular, the Special Rapporteur relied greatly on theory and doctrine, rather than on relevant State practice, which should be the primary focus in his work. In addition, his analysis as to the existence and

content of *jus cogens* was largely based on the decisions of international courts and tribunals, even though article 53 of the 1969 Vienna Convention on the Law of Treaties referred to the acceptance and recognition of "the international community of States as a whole". The lack of rigorous analysis of State practice risked undermining the legal authority and accuracy of important elements of such a sensitive project.

17. Another concern was that the draft conclusions adopted by the Commission on first reading did not always accurately reflect the exceptional character of *jus cogens* norms and the very high threshold for their identification, as set out in article 53. For example, under the article, acceptance – alone, which might suffice for the formation and identification of customary international law – was not sufficient; unequivocal and affirmative recognition of a norm as one having a *jus cogens* character was also required. However, that cumulative requirement of acceptance and recognition did not appear to have been underlined or even explained in draft conclusion 8. Similarly, the requirement in article 53 that a norm be "accepted and recognized by the international community of States as a whole" set an additional higher standard that was not met by the current wording of draft conclusion 7, which referred simply to "a very large majority of States". Indeed, in line with article 53, virtual universal acceptance and recognition of the norm was required – a notion that had been regrettably lost in the current draft conclusions.

18. The threshold and process for the identification of *jus cogens* norms under international law must be particularly demanding and rigorous. To preserve the effectiveness and acceptance of a hierarchy of norms in international law, the boundary that divided peremptory norms from other norms must be identified clearly and monitored vigilantly. A less thorough and less legally meticulous approach might seem appealing to some, but was a recipe for politicization, confusion, disagreement and, ultimately, the undermining of the authority and force of the legal norms themselves. It followed, therefore, that the draft conclusions, and the work of the Commission on the topic more generally, should strictly reflect customary international law and widely accepted principles. If the Commission nevertheless decided to engage in proposals regarding the progressive development of the law, it should at the very least be transparent when doing so. In that light, Israel opposed the incorporation of elements in the draft conclusions that failed to reflect existing law adequately. In particular, it viewed with concern the attempts to attach consequences to the violation of *jus cogens* norms that went beyond the function of *jus cogens* envisioned in article 53 of the Vienna Convention.

19. Her delegation also doubted whether the "particular consequences" referred to in draft conclusion 19 (Particular consequences of serious breaches of peremptory norms of general international law (*jus cogens*)) reflected existing customary law, including the asserted duty of States to cooperate to bring to an end a breach of *jus cogens* and prohibition against recognizing as lawful, or rendering assistance in maintaining, a situation created by a breach of *jus cogens*. The draft conclusion appeared to be based, to a great extent, on the articles on responsibility of States for internationally wrongful acts and on some advisory opinions of the International Court of Justice. Yet, not all the articles on State responsibility reflected customary international law and, in the two advisory opinions that were related to the draft conclusion, the Court had not explicitly identified a norm of *jus cogens*, but rather had noted the *erga omnes* character of the right in question. The two advisory opinions could therefore not serve as a relevant source for establishing a duty of States to cooperate to bring to an end a breach of *jus cogens*. Indeed, more generally, the Special Rapporteur had a tendency to conflate the term "*erga omnes*" and the term "*jus cogens*", thus giving a misleading impression of the existing State of the law. Moreover, even if, *arguendo*, it was to be accepted that the advisory opinions were relevant to a *jus cogens* analysis, it was highly doubtful whether two single non-binding opinions were sufficient to establish the existence of a duty of States to cooperate to bring to an end a breach of a *jus cogens* norm.

20. Similarly, draft conclusion 21, which concerned the procedure for the invocation of, and the reliance on, the invalidity of rules of international law, including treaties, by reason of being in conflict with peremptory norms of general international law (*jus cogens*), also did not reflect existing international law. The procedure offered in the draft conclusion was novel. Indeed, the Commission itself acknowledged explicitly in its commentary to the draft conclusion that "not every aspect of the detailed procedure set forth in draft conclusion 21 constitutes customary international law." The Commission should identify those innovative aspects of the draft conclusions in a more transparent manner. In the same vein, Israel continued to support the Commission's decision not to include draft conclusions that concerned the exercise of domestic jurisdiction over offences that might be prohibited by *jus cogens* norms, as well not to address the question of immunity in the current context.

21. In explaining the stipulation in draft conclusion 14 that the persistent objector rule did not apply to *jus cogens* norms, the Commission indicated in its commentary to the draft article that a *jus cogens* norm might develop notwithstanding a persistent objector, as the acceptance and recognition required for the identification of such norms were of "a very large majority of States". That analysis appeared to be too broadly articulated and potentially confusing, in light of the high threshold actually set in article 53 of the Vienna Convention for identifying a *jus cogens* norm. Given that virtually universal acceptance and recognition were legally required, it was doubtful whether a *jus cogens* norm could indeed develop and crystallize in the face of significant persistent objection.

22. Israel still had significant misgivings about the inclusion of a non-exhaustive list of norms which the Commission had previously referred to as having *jus cogens* status in the annex to the draft conclusions, for many reasons. Firstly, it did not agree that all of the norms listed in the annex had *jus cogens* character; indeed, the list was likely to generate significant disagreement among States and dilute the concept of *jus cogens* norms and its legal authority. For instance, the right of self-determination was included in the list. While that was undoubtedly a significant right under international law, it was highly questionable whether it met the standard codified in article 53 of the Vienna Convention. Indeed, in a recent case brought before the International Court of Justice, the Court itself appeared to have deliberately refrained from referring to the right of self-determination as a *jus cogens* norm.

23. Secondly, even if such a list was described as non-exhaustive and merely reflecting the prior work of the Commission, it would most likely be perceived by others as practically complete, or as a claim by the Commission that the norms included therein were more significant than those that were not. Indeed, it was unclear how the norms included in the list were selected, opening it further to the charge that it lacked internal coherence. The inclusion of any list of substantive norms of *jus cogens* in a project dedicated solely to the methodology of identifying such norms might seem forced and unwarranted. A similar path had not been taken, for example, in the context of the Commission's work on the topic "Identification of customary international law".

24. Thirdly, the fact that the Commission had arguably recognized certain norms in the past as *jus cogens* did not, in itself, guarantee that those norms would be recognized as *jus cogens* based on the methodology currently suggested by the draft conclusions, or more specifically based on the requirements of article 53 of the Vienna Convention. In fact, most references by the Commission to *jus cogens* in the past had not been substantiated by the kind of inquiry mandated by the draft conclusions themselves. Had the Commission been in fact interested in using its own past work to demonstrate that certain norms had a peremptory character, it should have, at the very least, shown that its past work had been well-founded and that it had been based on a coherent methodology, in accordance with the principles described above. Otherwise, the establishment of the list was akin to an unseemly and arguably unreliable act of self-referencing to conclusions made without any details as to how they had been reached or as to why the legal threshold for *jus cogens* had been considered satisfied in such cases.

25. There was also no evidence that the Commission had been particularly thorough in its identification of *jus cogens* norms. For instance, when addressing the right of self-determination in paragraph (12) of its commentary to draft conclusion 23, the Commission gave several examples where it had already supposedly "recognized" that right as a *jus cogens* norm. Yet, in some of the examples mentioned, the Commission had examined the possibility of referring to the right of self-determination as an example of *jus cogens* norms without reaching a definitive conclusion. In other examples, it had stated specifically that it was better not to identify specific *jus cogens* norms, but rather to leave the full content of the rule of *jus cogens* to be worked out in State practice and in the jurisprudence of international tribunals. In yet other examples, the Commission had conflated the term "*jus cogens*" and the term "*erga omnes*", relying in its analysis on sources where the right of self-determination had been characterized as *erga omnes* rather than *jus cogens*. In none of the examples cited had the Commission conducted a thorough methodological examination to justify the conclusion that the right of self-determination satisfied the *jus cogens* threshold.

26. Fourthly, the norms listed in the annex were referred to in unspecific terms and had indeed been interpreted in different ways in various international law instruments. The absence of a clear definition for each of them created ambiguity and confusion and made their assessment or application extremely difficult. For instance, in paragraph (8) of its commentary to draft conclusion 23, the Commission made reference to basic rules of international humanitarian law, but without specifying what they were. In sum, in line with its more general stance that work on the topic of *jus cogens* should be confined to stating and clarifying international law as it currently stood, on the basis of rigorous methodology grounded in State practice, Israel

shared the view that the draft conclusions should not include a list of substantive norms, whether illustrative or otherwise. It hoped that the changes it had suggested would be taken into consideration at the second-reading stage.

27. On the topic of sea-level rise in relation to international law, she said that Israel recognized the concrete threat that sea-level rise posed, especially to coastal areas and low-lying coastal countries, and the need to prepare for its potential implications. It therefore welcomed work on the topic and would be following the deliberations of the relevant Study Group closely. Nonetheless, any product of the Study Group should be based on the application of existing principles of customary international law, rather than on developing new legal principles. Moreover, it was critical that the work of the Commission and the Study Group on the topic not upset or undermine the delicate balance achieved by existing maritime border agreements, which meaningfully and significantly contributed to increased regional and international stability and positive cooperation.

28. **Ms. Fong** (Singapore) said that her delegation was among those that had submitted written comments to the Commission on the topic of crimes against humanity. It believed that the draft articles on prevention and punishment of crimes against humanity adopted by the Commission should be further improved or clarified. For example, it was its understanding that draft article 7, paragraph 2, was intended to provide an additional treaty-based jurisdiction in respect of an alleged offender on the basis of presence alone when none of the other connecting factors were present. Therefore, jurisdiction under that paragraph could only be exercised in respect of nationals of States parties. That position should therefore be expressly reflected in the text of the draft article. Nonetheless, her delegation welcomed the draft articles, which could help to strengthen accountability by providing useful practical guidance to States on the topic of crimes against humanity.

29. Referring to the topic "Peremptory norms of general international law (*jus cogens*)" and the draft conclusions adopted by the Commission on first reading, she said that her delegation's comments were preliminary in nature, pending the submission of its written comments by the end of 2020. Singapore continued to doubt the value of draft conclusion 21. In its commentary to the draft conclusion, the Commission acknowledged a point that her delegation had made in the past, namely that the equivalent provisions in the 1969 Vienna Convention on the Law of Treaties did not reflect customary international law. Her delegation recognized that it was natural for the Commission to refer the International Court of Justice in the dispute settlement provision, since that was the principal judicial organ of the United Nations. However, it was concerned that the text might inadvertently narrow the options for Member States, especially in view of other possible avenues for peaceful settlement, such as mediation, conciliation, or even ad hoc arbitration. Those were all means indicated in Article 33 of the Charter of the United Nations, which was referenced in article 65 of the Vienna Convention, as well as in paragraph 3 of draft conclusion 21 itself.

30. Her delegation was appreciative of the Commission's efforts to find a compromise solution for the question of the non-exhaustive list, with the inclusion of draft conclusion 23 and the draft annex. It was concerned, however, that in practice users of the text might consider the list to be closed or at least semi-closed. It was therefore important that the list properly reflect the methodology that the Commission itself had laid out for the identification of norms having a *jus cogens* character. It was doubtful that draft conclusion 23 and the draft annex did so.

31. Her delegation would be interested in the outcome of the Commission's discussion on its methods of work, particularly in the light of the debate, at its seventy-first session, on the methods of work adopted for the topics "Identification of customary international law" and "Peremptory norms of general international law (*jus cogens*)". Her delegation would also be interested in the outcome of the Commission's discussion on the nomenclature of its outputs, particularly since the proposed output for at least one the topics added to the long-term programme of work was "draft guidelines" or "draft principles".

32. **Ms. Telalian** (Greece), speaking on the topic "Crimes against humanity", said that her delegation welcomed the significant improvements made to the text of the draft articles on prevention and punishment of crimes against humanity adopted by the Commission. It welcomed in particular the clarification provided in draft article 12, paragraph 3, that the obligation to take the necessary measures to ensure the right of victims of crimes against humanity to obtain reparation lay with the State to which the acts constituting those crimes were attributable under international law or with the State that exercised jurisdiction over the territory where the crimes were committed. It also welcomed the alignment of the wording of draft article 10 with the "Hague formula", and the deletion in paragraph 7 of draft article 14 of the phrase "except that the provisions of this draft article shall apply to the extent that they provide for greater mutual legal assistance" from the

version of the draft articles. That deletion brought more clarity to the relationship between the draft articles and other bilateral or multilateral treaties governing mutual legal assistance.

33. Her delegation also welcomed the Commission's decision not to further overburden the text of the draft articles by including a draft article 13 bis entitled "Transfer of sentenced persons", as suggested by the Special Rapporteur in his fourth report (A/CN.4/725), which was of a purely hortatory character. The Special Rapporteur had said that it was his understanding that jurisdiction under draft article 7, paragraph 2, could only be exercised in respect of nationals of States parties. However, that understanding considerably affected the scope of States' obligation, under a future convention, to establish jurisdiction in case of the presence of the alleged offender in their territory. For reasons of clarity and legal certainty, that should have been reflected in the draft article itself, or, at the very least, in the relevant commentary.

34. Regarding the Commission's recommendation on the outcome of its work, and more specifically the elaboration of a convention, Greece supported the opening of a negotiation process and was ready to actively participate therein. It was of the view, however, that a solution had to be found in relation to the mutual legal assistance initiative to which the Special Rapporteur devoted chapter III of his report. In that respect, her delegation fully concurred with him that, as far as crimes against humanity were concerned, there was considerable overlap between the draft articles and the first draft of the convention discussed between the supporters of the initiative. Her delegation also agreed with the Special Rapporteur's assessment that the pursuit by States of both initiatives simultaneously might be inefficient and confusing, and risked the possibility that neither initiative succeeded. It believed that the risk could be avoided and that the two projects could indeed become mutually complementary only if their respective scopes and objectives became clearly distinct: a pure criminal convention, on the one hand, devoid of disproportionately extensive provisions on extradition and mutual legal assistance; and a pure procedural treaty on extradition and mutual legal assistance, on the other hand, addressing genocide, crimes against humanity and war crimes.

35. With respect to the topic of peremptory norms of general international law (*jus cogens*), she said that the scope and effects of *jus cogens* now extended well beyond articles 53 and 64 of the 1969 Vienna Convention on the Law of Treaties. Thus, treaties and other international norms, such as those stemming from custom or unilateral declarations or binding acts of international organizations, should not come into existence or produce legal effects if they conflicted with a *jus cogens* norm. In addition, the breach of such a norm entailed, next to the legal consequences attached to any internationally wrongful act, particular consequences already set out in article 41 of the articles on responsibility of States for internationally wrongful acts. Those legal developments fell outside the scope of the Vienna Convention and her delegation was pleased to see that they were well reflected in draft conclusions 13 to 20 of the draft conclusions adopted by the Commission on second reading.

36. Her delegation particularly welcomed draft conclusion 3 which, inter alia, provided that *jus cogens* norms reflected and protected fundamental values of the international community. However, that cardinal characteristic of *jus cogens* norms provided also a criterion for their identification, given that, for a norm to qualify as peremptory, it should be accepted and recognized by the international community of States as reflecting and protecting such values. States as well as courts and tribunals often referred to such acceptance and recognition when asserting that a norm was part of *jus cogens*. More affirmative wording should therefore be inserted in paragraph (16) of the commentary to the draft conclusion. Once amended, that paragraph should be moved into the commentary to draft principle 4, which dealt with the identification of peremptory norms.

37. Greece concurred with the Commission's conclusions, in paragraph (15) of its commentary to draft conclusion 3, that the persistent objector rule was not applicable to peremptory norms and that such norms did not apply on a regional or bilateral basis. Both conclusions were well-founded and stemmed from the universal applicability of *jus cogens* norms. In the view of her delegation, draft conclusion 21 (Procedural requirements) should be recommendatory in nature, as also acknowledged by the Chair of the Drafting Committee in his oral report of 26 July 2018, on what was then draft conclusion 14. However, words such as "is to" and "are to" stood at the intersection between soft and hard law formulations. In addition, paragraph 4, which prescribed, inter alia, that the invoking State "may not carry out the measure which it has proposed until the dispute is resolved", was not suitable for a non-binding text, owing to its binding effect.

38. Her delegation commended the Commission for codifying major areas of public international law and for elaborating vital international instruments and draft articles on contemporary issues of international law. That work continued to be of relevance in the current radically transformed international environment. Indeed, the Commission was the only body within the

United Nations system that was widely recognized as having the authority to codify and progressively develop international law. That was a very important task, given that codification was an ongoing process closely linked to the establishment and development of the rule of law. That process, however, did not take place *in abstracto*, but within the framework of the United Nations. In that respect, the selection of new topics for consideration by the Commission was essential for the future of its work, as well as for its credibility. However, in recent years, the Commission had added a wide variety of new issues on its programme of work, at a noticeably rapid pace and without fully satisfying the criteria that it had elaborated for the consideration of new topics. Her delegation therefore called upon the Commission to avoid including new topics in its programme of work in cases where very little State practice existed, and in cases that had not crystallized into concrete customary law rules, since that risked turning the Commission into a law-making body, thus deviating from its traditional and well-established role as a codification organ.

39. **Mr. Kingston** (Ireland), speaking on the topic "Crimes against humanity", said that his delegation strongly supported the call for the elaboration of a convention based on the draft articles on prevention and punishment of crimes against humanity adopted by the Commission, preferably by an international conference of plenipotentiaries. It welcomed the consideration given by the Commission to the relationship between the draft articles and the joint initiative for a multilateral treaty for mutual legal assistance and extradition for domestic prosecution of the most serious international crimes. Ireland supported both initiatives, which it considered complementary and with the potential to contribute in a practical and significant way to the fight against impunity.

40. Turning to the topic of peremptory norms of general international law (*jus cogens*), he said that due to the extensive nature of the draft conclusions adopted by the Commission on first reading, his delegation had not had the time to prepare detailed observations, but would do so by the deadline of December 2020. Nonetheless, it welcomed the fact that articles 53 and 64 of the Vienna Convention on the Law of Treaties had been central to the Commission's consideration of the topic, and that the primary focus of the draft conclusions was on determining whether a norm of general international law had the added quality of having a peremptory character. His delegation favoured an approach that addressed the way in which *jus cogens* rules were to be identified and the legal consequences flowing from them. It welcomed the confirmation in the commentary to draft conclusion 3 that peremptory norms were universally applicable and, therefore, did not apply on a regional or bilateral basis.

41. Ireland continued to have misgivings about the illustrative list of *jus cogens* norms provided in annex I. While it appreciated that the list was intended to be non-exhaustive, the fact that it did not represent a comprehensive list of those norms considered by the Commission in its previous work could create confusion or give the perception that those included in the list were somehow being given precedence. Accordingly, although consideration of the topic naturally required the discussion of examples of *jus cogens* norms in order to fully understand their nature, the list generated little added value and might indeed be counterproductive.

42. With regard to provisional application of treaties, his delegation welcomed the inclusion of five draft model clauses on the topic, set out in annex I to the Commission's report (A/74/10), which might constitute a useful tool for treaty negotiators as a guide for parties seeking to avail themselves of provisional application. It was helpful that those model clauses had been refined to focus more precisely on the most common issues facing States. Ireland also welcomed the "understandings" that underpinned the revised proposal for the draft model clauses, as set out in chapter XI of the report, which gave helpful context and guidance.

43. **Mr.** Elsadig Ali Sayed **Ahmed** (Sudan), speaking on the draft articles on prevention and punishment of crimes against humanity adopted by the Commission, said that in draft article 2 the definition of crimes against humanity was not particularly clear, as it could include crimes defined under treaties or conventions that were unrelated to the subject of the draft articles. Although his delegation disagreed with the Commission basing its text on the text on the Rome Statute of the International Criminal Court, it believed that a balanced approach had been adopted.

44. With regard to draft article 6 (Criminalization under national law), his delegation agreed that crimes against humanity must also be considered offences in national criminal law. However, it would have been preferable for States to be afforded some level of flexibility to determine whether a given crime was a crime against humanity. Paragraph 3 of the draft article was also unclear; it should have included a stipulation that people were responsible for crimes if they intended to commit such crimes, not just if they knew, or had reason to know, that such crime was about to be committed or was being committed. In paragraph 5, which provided that the fact that an offence was committed "by a person holding an official position" did not exclude substantive criminal responsibility, the

Commission had been careful to avoid raising the question of immunity directly. His delegation found the content of the paragraph relevant, because immunity should not constitute a roadblock to accountability and reparation for victims.

45. Turning to draft article 7 (Establishment of national jurisdiction), he said that his delegation was pleased that it was up to States to take the necessary measures to establish jurisdiction over crimes against humanity. However, the wording could have been more specific, to avoid the text being interpreted as an invitation for the unlimited and unconditional application of the principle of universal jurisdiction. Draft article 8 (Investigation) was excellent in both form and content, in that it called on States to carry out investigations whenever there was reasonable ground to believe that a crime against humanity had been committed. With regard to draft article 9, on preliminary measures when an alleged offender was present, his delegation was pleased that the Special Rapporteur had taken into account the concerns of States in his report (A/CN.4/725) by including the stipulation in paragraph 3 that a State that had taken a person into custody had an obligation to immediately notify other States that such person was in custody, and by recommending that the phrase "as appropriate" be added to the second sentence of the paragraph.

46. Concerning draft article 11 (Fair treatment of the alleged offender), his delegation agreed with the Special Rapporteur's recommendation in his report (A/CN.4/725) to delete at the end of paragraph 1 the phrase ", including human rights law", since that phrase was superfluous, in that the preceding phrase "international law" clearly included human rights law. Without that change, the paragraph would have given the impression that human rights law was either replacing or taking precedence over international humanitarian law. With regard to draft article 13 (Extradition), States had the sovereign right to establish jurisdiction in their national courts over crimes against humanity committed in their territories or by their nationals. Any alternative mechanism would only reflect the inability or unwillingness of States to establish such jurisdiction. Although there were already many conventions covering the subject of crimes against humanity, the recommendation that the draft articles be turned into a convention was worth considering.

47. Turning to the topic "Peremptory norms of general international law (*jus cogens*)", he said that the debate over the illustrative list of *jus cogens* norms proposed by the Special Rapporteur in his fourth report (A/CN.4/727) could be endless, because States were still wondering about the relevance of the norms, about the possibility of achieving a consensus, about the conditions to be fulfilled for a norm to be removed from or added to the list, and about the truly *jus cogens* nature of the norms. His Government would be submitting its written comments on the topic within the established deadline.

48. Lastly, it was important for the Commission to continue striking a balance between progressive development and codification in fulfilling its mandate, in particular with regard to sensitive topics on which a consensus had yet to be achieved. It was preferable to continue recording the law as it existed (*lex lata*) than advocating its development (*lex ferenda*). In its work, the Commission should make a distinction between *lex lata* and *lex ferenda* and also reflect the positions expressed by States. It seemed premature for the Commission to undertake work on universal criminal jurisdiction at the current juncture, when State practice on the topic was insufficient, the procedures for its implementation remained unclear, and the appropriate rules and mechanisms for determining the crimes to which it could apply had yet to be defined.

49. **Mr. Tiriticco** (Italy) said that, as a country that had always been at the forefront of efforts to promote the rule of law at the international level and to ensure full accountability for the most heinous crimes, Italy supported the draft articles on prevention and punishment of crimes against humanity and the Commission's recommendation that they be turned into an international legally binding instrument. The draft articles were comprehensive and prescriptive in nature and generally reflective of State practice and existing customary international law. They filled an important normative gap, that of horizontal judicial cooperation for the prosecution of crimes against humanity, and brought added value to international cooperation in ensuring accountability for the most serious crimes.

50. His delegation saw a future universal convention on judicial cooperation with regard to crimes against humanity as a tool to reinforce the principle of complementarity in international criminal law, including under the Rome Statute of the International Criminal Court. It favoured the insertion of a general formulation in such a convention aimed at avoiding any risk of conflict with the obligations of States parties to the Rome Statute. While it was aware of the need for universal participation in the future instrument and fully respected the *pacta tertiis* rule, Italy would continue to insist on the need for such a formulation. At the same time, it appreciated the inclusion in the draft articles of the rule that, despite their particularly heinous character, crimes against humanity must be prosecuted in

compliance with the principles of due process and fair trial.

51. His delegation believed that the parallel initiatives being undertaken to foster horizontal judicial cooperation in ensuring accountability for crimes against humanity were meritorious per se, and was carefully considering participating actively in them. There was a need, however, for full coordination between those initiatives and any future convention based on the draft articles, to avoid inconsistencies which might make it difficult for national lawmakers to incorporate those instruments into their domestic legal orders.

52. Turning to the topic "Peremptory norms of general international law (*jus cogens*)", he said that although the work of the Special Rapporteur was commendable, the set of draft conclusions adopted by the Commission on first reading did not dispel the doubts that his Government had already raised in the past. The draft conclusions were an example of expository codification, in part because they lacked the theoretical depth needed for the main normative intricacies of the notion of *jus cogens* to be identified and for their legal consequences to be fully captured. They were simply a restatement of the normative elements that were already part of the law of treaties and the law of State responsibility. For that reason, it was hard to see the practical added value of the draft conclusions, given their current form and scope, if not for the fact that they would bring a number of consolidated notions of international law under a single instrument.

53. With regard to the definition of *jus cogens* norms and the criteria for their identification, the Commission relied on the somewhat circular definition contained in article 53 of the Vienna Convention for its standard formulation of the two constituent elements – non-derogability and general recognition by the international community as a whole – which were long recognized in both practice and doctrine. The Commission also set out a number of legal consequences of *jus cogens* related to the law of treaties and the law of State responsibility which had long been recognized not only by itself but also by international tribunals as stemming from the hierarchical superiority of peremptory norms and the idea that action contrary to them lacked legal validity under international law. On the other hand, the more controversial questions, including those related to the interplay between State immunity, jurisdiction and State responsibility for breaches of *jus cogens* norms, were not addressed, except in passing in the commentaries. Italy deemed those interconnections of extreme importance for balancing the right of access to a remedy, including for the victims of breaches of *jus cogens* obligations, and compliance with State immunities from jurisdiction. A case in point was when a State failed to reconcile its international obligations, including those stemming from the judgments of an international court, with the fundamental constitutional principles of its domestic legal order.

54. Given the reluctance of the International Court of Justice to refer to the notion of *jus cogens*, the assertion in draft conclusion 17 that *jus cogens* norms gave rise to obligations erga omnes was significant and critical to the understanding of *jus cogens* and some of the thorny issues contained in the articles on responsibility of States for internationally wrongful acts. His delegation believed that the non-exhaustive list of *jus cogens* norms, whether contained in the main text or in the annex, would benefit from a more extensive analysis of international jurisprudence, in particular that of the International Court of Justice, beyond the mere – albeit sometime selective – restatement of the Commission's findings dating back to the 1970s. Rather than develop a non-exhaustive list of what it had determined in the past to be rules of *jus cogens*, the Commission should develop a list of what it currently saw as rules of *jus cogens*, on the basis of the practice of States, international organizations and courts and tribunals.

55. While Italy recognized the important role that notions like *jus cogens* played in the application of the fundamental norms of the international community, it remained of the view that a study, instead of a set of draft conclusions, would be more suitable to fulfil the Commission's mandate to advance the understanding of complex international legal phenomena, if that was the Commission's intention. If, however, the intention was to provide States with a useful practical tool, it would be preferable to adopt a step-by-step drafting process, to be discussed with States, with regard to issues of treaty law and the law of State responsibility, where the Commission's guidance would be welcome.

56. With regard to the topic "Provisional application of treaties", the five draft model clauses proposed by the Commission in annex A of its report (A/74/10) might be useful in providing guidance for the treaty practice of States. However, draft model clause 4, which stated that "a State [An international organization] may declare that it will not provisionally apply a treaty [or article (s)…] when the decision to its [their] provisional application results from a resolution of [X international organization or X intergovernmental conference] to which that State [international organizations] does not agree", was of limited potential use when international organizations were endowed with the power to adopt binding measures with regard to their member States,

including measures that would prevail over conflicting obligations contained in treaties. One clear example was that of the Security Council adopting measures under Chapter VII of the Charter of the United Nations that would prevail over any opt-out treaty clause on provisional application. In general, it would be useful for the Commission to state clearly that draft model clause 4 might not operate with regard to the membership of States in certain international organizations.

57. His delegation believed that the topic of reparations to individuals for gross violations of international human rights law and serious violations of international humanitarian law, which was particularly important in the light of the increasing attention that the international community was paying to accountability for grave violations of international human rights law and international humanitarian law, satisfied all the criteria established by the Commission for inclusion in the long-term programme of work. Given the intended objective of spelling out a number of secondary rules on State responsibility, which would complement the articles on State responsibility, the form of draft principles should be preferred over that of draft guidelines for the Commission's output on the topic. Moreover, given the specific subject-matter, which was governed by sectorial treaty instruments, careful consideration should be given to the interrelationship between primary and secondary rules. It would also be useful for the Commission to provide further clarification as to the relationship between the prospective instrument on the topic and the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

58. In conclusion, Italy believed that the topic "Prevention and repression of piracy and armed robbery at sea", which was aimed at addressing a very topical issue that had given rise in recent years to differing interpretations among States concerning its applicable legal regime, in particular with regard to enforcement activities in the fight against piracy, also satisfied all the criteria for inclusion in the long-term programme of work. Italy reiterated its commitment to freedom of navigation on the high seas and believed that a set of draft articles developed by the Commission with regard to piracy and armed robbery at sea would contribute to legal certainty and international cooperation in safeguarding trade and navigation at sea.

59. **Mr. String** (United States of America), speaking on the topic "Crimes against humanity", said that the United States had a long history of supporting justice for victims of crimes against humanity and other international crimes and atrocities. Despite the importance and gravity of the topic, his delegation believed that it was not yet time to consider negotiating a convention based on the draft articles on prevention and punishment of crimes against humanity adopted by the Commission. Although some of the written comments submitted by his delegation and others had been taken into account in the final draft articles, the Commission had chosen not to incorporate other State proposals for revision. The United States was concerned that, as currently formulated, the draft articles lacked clarity with respect to a number of key issues, and believed that those issues must be addressed in order to reach consensus among States and to ensure that any future convention would be effective in practice.

60. Among other concerns, the draft articles needed to allow for flexibility in implementation, taking into account the diversity of national systems, the situation of both States parties and non-States parties to the Rome Statute of the International Criminal Court, and the diversity within national systems. The draft provisions of the proposed convention were also not sufficiently reflective of the challenges that had arisen in international criminal justice, including by failing to reflect lessons learned and reforms enacted following excessively broad assertions of jurisdiction by national and international courts. In that context, his delegation reiterated its continuing, longstanding and principled objection to any assertion of jurisdiction by the International Criminal Court over nationals of States that were not parties to the Rome Statute, including the United States, absent a Security Council referral or the consent of such a State.

61. For those reasons, his delegation respectfully proposed that the topic of crimes against humanity be included on the Committee's agenda for the seventy-sixth session, for further work based on the draft articles. Consideration should be given to potential modalities of work that would allow for a thorough, substantive exploration of the challenges posed by a potential convention, such as a working group. An inclusive and rigorous approach would have the greatest probability of a successful outcome that strengthened the ability to provide justice for victims of crimes against humanity.

62. On the topic of peremptory norms of general international law (*jus cogens*), he said that his delegation was, at the current juncture, offering only preliminary observations on six of the draft conclusions adopted by the Commission on first reading. His delegation had questions about the purpose of draft conclusion 3 (General nature of peremptory norms of

general international law (*jus cogens*)), which appeared to introduce additional criteria for the identification of *jus cogens* norms. If, as the Commission indicated in its commentary to the draft conclusion, such had not been the intent, then it would seem more appropriate to place the content of the draft conclusion and the commentary thereto in a discussion of the historical development of the principle of *jus cogens*.

63. Draft conclusion 5 (Bases for peremptory norms of international law (*jus cogens*))was of limited utility. As a threshold matter, and as the Commission indicated in its commentary to draft conclusion 4, there was no substitute for establishing the existence of the relevant criteria for *jus cogens*. In that respect, his delegation was particularly concerned by the statement that "general principles of law may serve as the bases for peremptory norms of general international law (*jus cogens*)". His delegation was not only unaware of any evidence to support that conclusion, but was also concerned by the implication that there were characteristics of general principles of law that would allow one to assume the existence of criteria required for establishing a principle of *jus cogens*. While general principles of law might influence the practice of States in that context, they did not themselves constitute an independent basis for peremptory norms.

64. In respect of draft conclusion 7, the Commission appeared to have considered several variations of the standard of acceptance and recognition by States that would be sufficient to meet the criterion of "international community as a whole". His delegation wondered whether "a very large majority" was sufficient, in the light of the peremptory status of *jus cogens* principles, and since the Commission's own discussion had included formulations suggesting that there should be a higher threshold. His delegation appreciated that the concept in question was difficult to capture and would be giving it careful thought in preparation for its full comments for submission by the end of 2020.

65. His delegation reiterated its concern about draft conclusion 16, which stated that "a resolution, decision or other act of an international organization that would otherwise have binding effect does not create obligations under international law if and to the extent that they conflict with a peremptory norm of general international law (*jus cogens*)". While the draft conclusion no longer expressly included Security Council resolutions, the Commission made it clear in its commentary that the draft conclusion would apply to such resolutions and could invite States, irrespective of Article 103 of the Charter of the United Nations, to disregard or challenge binding Security Council resolutions by relying on even unsupported *jus cogens* claims. While his delegation appreciated the statement in the commentary that resolutions, decisions or acts of the Security Council required additional consideration, it remained highly concerned that the draft conclusion could have quite serious implications, not least because there was no clear consensus on which norms had *jus cogens* status.

66. His delegation was confused by the inclusion of draft conclusion 21 (Procedural requirements), which concerned dispute resolution. In principle, the idea of establishing procedural safeguards as a check on meritless assertions of a breach of a *jus cogens* norm was commendable. It was, however, unclear how the current proposal would work in practice if the affected States did not agree to submit the matter to dispute resolution. More fundamentally, the draft conclusion was inappropriate, not only because international law imposed no obligation on States to agree to submit disputes relating to *jus cogens* – or any other disputes – to binding third-party resolution, but also because the draft conclusions as a whole purported to reflect the existing state of the law rather than draft articles proposed for inclusion in a convention to be negotiated by States.

67. The United States disagreed with the decision to include a non-exhaustive list of peremptory norms in the draft annex. Even though it recognized the effort to limit the list to a factual statement of norms that the Commission had previously referred to as having *jus cogens* status, without express comment as to whether those prior references were well founded, the list was presented as being "without prejudice to the existence or subsequent emergence of other peremptory norms", which could be read as presupposing that the norms on the list had been properly included. Inevitably, questions would arise as to why certain norms were included in the list and some, like the prohibition of piracy, were not, and whether the *jus cogens* norms had been accurately identified in the earlier documents of the Commission on which it was based. Certainly, some of the items in the list were *jus cogens* norms, including most prominently the prohibition of genocide. However, his delegation was not convinced that other specific items on the list either should be included or were accurately described.

68. As case in point, while the United States recognized the right to self-determination, it questioned whether that right constituted a *jus cogens* norm. The Commission itself had been inconsistent with respect to that conclusion, which was reflected in its lack of methodology when considering the status of the right to self-determination in prior projects. In its discussion of

the status of the right to self-determination in the commentary, the Commission did not make a clear distinction between peremptory norms and obligations *erga omnes*. While peremptory norms gave rise to obligations *erga omnes*, the reverse was not always the case and could not be assumed with respect to the right to self-determination. Other items on the list might very well constitute peremptory norms, but were ill defined both in the annex and in the commentary, "the basic rules of international humanitarian law" being a case in point. Even if it was to be accepted that some rules of international humanitarian law were *jus cogens* norms, there was considerable uncertainty as to which were peremptory. The Commission suggested in its report (A/74/10) that some future project might resolve which specific rules of international humanitarian law were peremptory, but the need for that future work only underscored why that broad category should not be included in the annex, and indeed, why draft conclusion 23 and the annex should be removed.

69. With regard to provisional application of treaties, his Government was currently reviewing the draft model clauses proposed by the Special Rapporteur for inclusion in the draft guide on the topic and might provide additional views as part of its formal comments on the project subsequently.

70. Turning to the new topics proposed by the Commission, he said that his Government shared the concerns expressed by States during the discussion at the seventy-third session in respect of the number of topics and the resources required for States to conduct meaningful reviews of the voluminous materials produced by the Commission. His delegation respectfully submitted that the Commission should consider whether it would be more valuable to tackle fewer topics. A more targeted approach could allow for deeper government engagement and increased opportunity for comment by a wider array of States. In that respect, the United States would favour the Commission taking on only one new topic – in addition to the work that had begun on sea-level rise – at the current juncture. Of the proposed new topics, it would be most supportive of that of prevention and repression of piracy and armed robbery at sea. While there was much existing codified and customary international law on the topic, further elucidation by the Commission might prove useful.

71. His delegation did not support the addition to the Commission's programme of work of the topic "Reparation to individuals for gross violations of international human rights law and serious violations of international humanitarian law." Focusing on "gross violations" of international human rights law and "serious violations" of international humanitarian law was likely to create three significant challenges. First, it was difficult to see how the Commission could avoid addressing the substance of those two distinct bodies of law, given that the project would set a threshold for the level of violation that would potentially be addressed, and the substance of those bodies of law had been addressed extensively elsewhere. Second, there was a risk that the topic could be politicized, as there might be significant disagreement on the types of situations that give rise to "gross" or "serious" violations. Given the many variables in the context of reparations, including the forum and process for such claims and the facts relating to a particular situation, it would be difficult to identify generalizations that would be valuable and instructive.

72. The United States also continued to have concerns about the Commission taking up the topic of universal criminal jurisdiction while it was still under active consideration in the Sixth Committee, including in a working group, and remained concerned about the parameters of any potential study on the topic.

73. Lastly, his delegation noted that the Commission had been increasingly moving away from draft articles, with its outputs being variously described as "conclusions", "principles" and "guidelines". The difference between those labels was not always clear, particularly when some of them contained what appeared to be suggestions for new, affirmative obligations of States, which would be more suitable for draft articles. Such was the case, for example, with the draft principles on protection of the environment in relation to armed conflict. Although fashioned merely as "principles", the first substantive provision, draft principle 3 [4], provided that "States shall, pursuant to their obligations under international law, take effective legislative, administrative, judicial and other measures to enhance the protection of the environment in relation to armed conflict." It would be useful to have more transparency as to what the Commission intended by fashioning conclusions, principles and guidelines, and whether any distinctions should meaningfully be drawn between them. A clear delineation on that issue might also help avoid confusion as to what status should be afforded to the Commission's work in the absence of a clear expression of State consent to codification.

74 **Mr. Metelitsa** (Belarus), speaking on the topic "Crimes against humanity", said that the draft articles on prevention and punishment of crimes against humanity adopted by the Commission, could serve as the standard for the harmonization of national laws and formal international legal practice. They also represented a balanced instrument that could provide a

good foundation for a draft convention on the topic. With regard to draft article 2 (Definition of crimes against humanity), the list of crimes contained in paragraph 1 should be closed, although subparagraph (k), which referred to other inhumane acts of a similar character, served as a sort of insurance policy against certain crimes falling outside the convention, including crimes committed after the adoption of the text. Nonetheless, leaving a loosely defined element in the text could create problems in the future. While the definition of "enslavement" in paragraph 2 (c) referred in part to trafficking in persons, it would have been preferable for trafficking in persons to be set out as a separate crime against humanity, especially bearing in mind the significant changes that had occurred in respect of that crime since the adoption of the Rome Statute of the International Criminal Court.

75. Belarus disagreed with the inclusion of paragraph 3, which stated that the draft article was "without prejudice to any broader definition provided for in any international instrument, in customary international law or in national law", because such definitions required further finetuning and more convincing justification. It opposed the position taken by the Commission in paragraph (41) of its commentary to the draft article, where it indicated that it had decided not to retain the definition of "gender" contained in the Rome Statute, because several developments in international human rights law and international criminal law had occurred since the adoption of the Statute reflecting the current understanding as to the meaning of the term. However, given the sensitivity of the topic, it would be preferable for the Commission to use internationally agreed wording, to ensure the universality of a future convention. Moreover, the instruments it cited to reflect those developments did not reflect the collective position of States.

76. Referring to draft article 3, he said that paragraph 1 should be either deleted or reworded. The current wording conflated individuals and States as subjects that could incur criminal responsibility for crimes against humanity. The Nürnberg Tribunal had acknowledged that crimes against international law were committed by people, not by abstract entities such as States. That idea was enshrined in both the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Prevention and Punishment of the Crime of Genocide. The obligation of States to prevent crimes against humanity included the obligation to prevent State officials from participating in the commission of such crimes. It was no accident that the issue of the international legal responsibility of States was not subject to regulation under the draft articles. Including the issue of responsibility of States in the current context would automatically bring up the issue of the responsibility of international organizations, which also had an international legal responsibility for the violation of peremptory norms of general international law.

77. Draft article 4, paragraph (b), which concerned the obligation of States to cooperate with other States, relevant intergovernmental organizations and other organizations in order to prevent crimes against humanity, should be limited to what was contained in existing international treaties. In draft article 5, paragraph 2 was not a particularly logical follow-on from paragraph 1. In determining whether a person being returned to another State would be in danger of being subjected to a crime against humanity, it was important to consider not just the general human rights situation in the country, but also any information about crimes being committed as part of widespread or systemic attacks, as set forth in draft article 2.

78. In paragraph 3 of draft article 6, rather than state that each State shall take the necessary measures to ensure that commanders or other superiors were criminally responsible for crimes against humanity committed by their subordinates if they "knew or had reason to know" that the subordinates were about to commit or were committing the crime, the Commission should use the criterion set forth in article 28 of the Rome Statute, namely if they "knew or should have known" that the subordinates were committing or about to commit the crime. Regarding draft article 7 (Establishment of national jurisdiction), he said that a more effective way of preventing impunity for crimes against humanity would be to delete the dispositive element "if that State considers it appropriate" from subparagraphs (b) and (c) of paragraph 1. An alternative solution could be to use the formulation "if this is set forth in its national law". His delegation's comments on draft articles 8, 9 and 10 would be available on the PaperSmart portal.

79. In draft article 11, paragraph 3, to rule out any subjective interpretation, the Commission should specify that the purpose of the rights set out in paragraph 2 was to ensure the protection of the rights of a person suspected of committing a crime. With regard to draft article 12, his delegation had doubts about the appropriateness of including, in paragraph 3, the forms of compensation for damages, such as satisfaction and guarantees of non-repetition. Achieving the goal of a future convention on the topic of extradition would be facilitated by including, in paragraph 4 of article 13, peremptory as opposed to dispositive wording, concerning the use of the draft articles as the legal basis

for extradition. On draft article 14, his delegation proposed the following wording for paragraph 6: "Without prejudice to its national law, the competent authorities of a State may, without prior request, transmit information relating to crimes against humanity to a competent authority in another State". The obligation to cooperate with international mechanisms, as set forth in paragraph 9, should be deleted or toned down, considering that the status of evidence collection mechanisms in international law remained unclear.

80. Turning to peremptory norms of general international law (*jus cogens*), he said that when planning future work on the topic, the Commission should focus on the fundamental aspects of the normative architecture of international law, and should ensure that the legal content of the concepts covered was clarified. His delegation welcomed the version of the draft conclusions adopted by the Commission on first reading, which had become more balanced and substantive than the previous versions. It supported the procedural focus of the draft conclusions, in that the Commission did not propose an analysis of the content of specific peremptory norms but rather a methodology for identifying such norms and distinguishing them from other norms of international law. That approach had proven useful for the preparation of the reports on international customary law and interpretation of international treaties. As his delegation would be submitting its written comments by the deadline of December 2020, its comments at the current juncture would be preliminary in nature.

81. As a general comment, the text should also be based on the practice of States. Concerning draft conclusion 3 (General nature of peremptory norms of general international law (*jus cogens*)), his delegation suggested using the expression "universal human values" or "universal values", and that the Commission consider whether existing peremptory norms represented values in and of themselves. It should be stated clearly that peremptory norms of general international law were applicable to all subjects of international law, including international organizations. That comment was also applicable to draft conclusions 17 to 19, particularly in respect of organizations with supranational authority. On draft conclusion 5 (Bases for peremptory norms of general international law (*jus cogens*)), he said that determining whether an international treaty could constitute an independent source of peremptory norms of international law was complex, but his delegation supported the Commission's overall approach.

82. Belarus shared the position taken by the Commission in its commentary to draft conclusion 7 that the acceptance and recognition of a very large majority of States was required for a norm to be recognized as having peremptory status. That comment should, however, be moved from the commentary into the draft conclusion itself. It was of course not possible in practice to recognize the norms applicable to all subjects of international law, without exception, but it was incorrect to say that the recognition of the status of *jus cogens* in just the majority of States would be sufficient, because that would mean ignoring the position of several other States.

83. One promising area for possible future work was draft conclusion 10, which concerned the interaction between international treaties and peremptory norms of general international law. It would be preferable not to say that a treaty as a whole was void if it conflicted with a peremptory norm of general international law, but that any specific provision of the treaty that conflicted with a peremptory norms would be void. The proposal to consider individual provisions rather than the treaty as a whole was based on the importance of stability in treaty relations and on the recognition that when States entered into international treaties they rarely did so with the intention of violating a peremptory norm of general international law. In that connection, his delegation did not support paragraph 1 of draft conclusion 11, which stated that "a treaty which, at the time of its conclusion, conflicts with a peremptory norm of general international law (*jus cogens*) is void in whole, and no separation of the provisions of the treaty is permitted".

84. The question of the invalidity of a treaty as a whole should only arise if its object and purpose conflicted with a peremptory norm. In all other cases, such as the example of the agreement concluded between the Netherlands and the Saramaka community cited in the commentary to draft article 10, it would be correct to speak of the non-application of a specific provision that conflicted with a peremptory norm that was not a necessary condition for the fulfilment of the remaining provisions of the treaty. His delegation saw no obstacle to reviewing the presumption in the Vienna Convention that a treaty in which individual rules conflicted with a peremptory norm was invalid as a whole, to favour the presumption of the separability of treaty provisions, albeit subject to strict conditions. In draft conclusion 10, the question of the invalidity of a treaty that conflicted with a new *jus cogens* norm was even more controversial. His delegation believed that such norms generally took the form of rules of customary international law. The question of how "a general practice accepted as law" that directly conflicted with an existing treaty could be established required further

clarification. The same considerations also applied in general to draft conclusion 14.

85. Belarus supported the establishment of an indicative list of peremptory norms of general international law, a useful albeit difficult task. In the list established by the Commission, it was doubtful why the crime of apartheid, which was a case of racial discrimination, was set out as a separate crime. His delegation welcomed the inclusion of the right of self-determination, but felt that it would be useful to include other principles of international law, as reflected inter alia in the Charter of the United Nations. In respect of provisional application of treaties, his delegation welcomed the draft model clauses on the topic proposed by the Special Rapporteur, which would help to provide consistency, since the wording of different provisional application clauses tended to differ from country to country, depending on their legal and political circumstances.

86. He wished to draw attention to the fact that, in footnote 2 to annex A, reference was made to the Treaty between the Russian Federation, the Republic of Belarus, the Republic of Kazakhstan and the Kyrgyz Republic on the deepening of integration in economic and humanitarian fields. In the Russian version of the report, the name of the Republic of Belarus in the official title of that treaty was incorrect.

87. Lastly, his delegation was of the view that the topics of reparation to individuals for gross violations of international human rights law and serious violations of international humanitarian law, and prevention and repression of piracy and armed robbery at sea proposed for inclusion in the long-term programme of work of the Commission did not reflect the needs of the international community as a whole. The initiators of the topic of reparations recognized that it was quite controversial and was borne out of political expediency rather than legal necessity. There was also no need for further work on codification on the topic of piracy and robbery at sea, which was already regulated by the United Nations Convention on the Law of the Sea and other international treaties. The absence of stipulations in the criminal codes of some States was not justification enough for elaborating an international instrument on the topic. It would be more useful for the Commission to consider other topics that were of interest to the international community as a whole, such as the right to development in the context of the Sustainable Development Goals and the legal aspects of artificial intelligence and other new technologies.

88. **Mr. Bandeira Galindo** (Brazil) said that a fluid and constructive relationship between the Commission and the Sixth Committee often gave rise to products that were relevant to the international community in terms of both their content and their effectiveness. While the current process of written comments and annual debates provided opportunities for fruitful interactions, other measures could still be taken by both bodies. The General Assembly could provide more guidance on strategic and policy priorities regarding the codification and progressive development of international law, including on the identification of new topics for consideration by the Commission. At the same time, since it was challenging for some countries, especially developing countries, to draft written comments on the Commission's work, the Commission could contribute to increased diversity of inputs when studying a topic if it prepared questionnaires that required simple and direct answers on State practice. It would also be useful if the Commission's Working Group on methods of work could clarify the taxonomy for the various outcomes of its discussions, whether articles, principles, conclusions or guidelines, including the criteria it applied when deciding on the type of output.

89. Referring to crimes against humanity, he said that since deciding to include the topic in its programme of work, the Commission had been engaged in an extensive exercise involving not only its members, but also Governments and international and other organizations. Convinced of the need to address the existing gap in the international law framework, Brazil had been supporting that process since its inception, including by providing constructive comments for the draft articles on prevention and punishment of crimes against humanity. While noting with appreciation that the work of the Special Rapporteur built upon the Rome Statute of the International Criminal Court, during the consultation period, Brazil had proposed the inclusion of an additional provision from the Rome Statute in the preamble, in order to make clear that nothing in the draft articles should be taken as authorizing any State party to intervene in an armed conflict or in the internal affairs of any State.

90. Although that proposal had not been explicitly included in the draft articles, his delegation welcomed the fact that the principle had been reaffirmed in the Commission's report (A/74/10). In paragraph (4) of its commentary to the draft preamble of the draft articles, the Commission stated that "the third preambular paragraph recalls the principles of international law embodied in the Charter of the United Nations, which include the principle of the sovereign equality of all States and the principle that States shall refrain in their

international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations". In its commentary to draft article 4 (Obligation to prevent crimes against humanity), it also cited the decision of the International Court of Justice that "when engaging in measures of prevention, it is clear that every State may only act within the limits permitted by international law".

91. His delegation welcomed the detailed provisions on mutual legal assistance contained in draft article 14 and in the draft annex, which were largely inspired by the United Nations Convention against Corruption, with a view to ensuring comprehensive cooperation among States at all stages of the law enforcement process, which was crucial for promoting the goals of preventing and punishing crimes against humanity. Brazil joined the large number of States that favoured the elaboration of a convention on crimes against humanity on the basis of the draft articles. In order to promote an inclusive and legitimate process for the drafting of a convention that could be universally ratified, negotiations should take place in the General Assembly, engaging the entire community of Nations. For the next steps with regard to the draft articles, the Commission would need to address the relationship between universal jurisdiction and the jurisdiction of the International Criminal Court, and to include safeguards in the draft articles to prevent abuse of the principle of universality.

92. Turning to peremptory norms of general international law (*jus cogens*), he said that Brazil welcomed the adoption on first reading of the draft conclusions on the topic, thus demonstrating that progress could be made even when dealing with particularly complicated and sensitive subjects, as recognized by the Commission itself. His delegation would be submitting its full comments and observations in writing and would therefore only make preliminary comments at the current juncture. With regard to the non-exhaustive list of *jus cogens* norms contained in the annex to the draft conclusions, he said that Brazil commended the Commission, and the Rapporteur in particular, for finding a creative balance between the value of an illustrative list and the methodological nature of the current topic. Listing the norms that the Commission had already considered as *jus cogens* facilitated their identification and prevented a lengthy substantive discussion on the hierarchy of other norms that could potentially be considered *jus cogens* as well. Given that the list should reflect the terms used by the Commission, his delegation would also favour replacing the expression "prohibition of aggression" with the expression "prohibition of the use of force".

93. With regard to the method of determining whether a norm rose to the level of *jus cogens* captured in draft conclusion 7, which concerned the acceptance and recognition of the international community of States as a whole for a norm to have *jus cogens* status, he said that his delegation supported the idea of following the approach taken in the Vienna Convention on the Law of Treaties. In particular, his delegation agreed with the conclusion that only norms that were accepted and recognized by a very large majority of States as *jus cogens* could be considered as such. While commending the Special Rapporteur for deciding to address the issue of regional *jus cogens*, his delegation felt that it would be better for the Commission to focus on peremptory norms of general international law, leaving the issue of regional *jus cogens* for a regional forum, taking into account both the practical and conceptual challenges to advance such a concept and the potential existence of normative hierarchy in regional systems.

94. His delegation would have preferred to see an explicit reference to Security Council decisions in draft conclusion 16, which dealt with the consequences of *jus cogens* for binding resolutions of international organizations. Given the hierarchy of international obligations created by Article 103 of the Charter of the United Nations, the Commission should not shy away from recognizing that the Security Council was also bound by *jus cogens* norms.

95. Brazil welcomed the inclusion of the topic "Reparation to individuals for gross violations of international human rights law and serious violations of international humanitarian law" in the long-term programme of work of the Commission, not only because of the widespread albeit unsystematic practice on the issue, but also because of its close linkages with the Commission's work in other areas, such as *jus cogens* and general principles of law. The Commission could make a positive contribution to the harmonization of standards and practices on reparations, while giving due regard to the distinctive objectives, principles and mandates that inspired the different regimes dealing with the issue. His delegation also took note with interest of the Commission's decision to include in its long-term programme of work the topic "Prevention and repression of piracy and armed robbery at sea", and of its statement that its objective would not be to seek to alter the provisions of the United Nations Convention on the Law of the Sea. Brazil was in favour of moving the topic "Extraterritorial jurisdiction" from the Commission's long-term programme of work to its current programme of work.

96. **Mr. Larsen** (Australia) said that his delegation welcomed the adoption of the draft articles on

prevention and punishment of crimes against humanity and the recommendation that States elaborate a convention on the basis of the draft articles. Such a convention could play a role in closing the gap in the current structure of conventions regarding serious international crimes.

97. On the topic of peremptory norms of general international law (*jus cogens*), he said that the draft conclusions adopted by the Commission on first reading would provide a useful framework for the identification of such norms. However, Australia remained doubtful as to the utility of considering regional *jus cogens*, given the conceptual and practical challenges involved and the fear that such a concept might undermine the universality of *jus cogens*. His delegation remained unconvinced as to the practical value of the non-exhaustive list of *jus cogens* norms provided in the annex to draft conclusion 23. Should such a list nevertheless be considered necessary, it would be important to remember that the Commission noted in its commentary to the draft conclusion that the draft conclusions as a whole were methodological in nature and did not attempt to address the content of individual peremptory norms of general international law (*jus cogens*), and that the norms included in the list were those that it had previously referred to as having peremptory character.

98. **Mr. Mulalap** (Federated States of Micronesia), speaking on the topic "Peremptory norms of general international law (*jus cogens*)", said that the draft conclusions adopted by the Commission on first reading made a major contribution to the study and implementation of international law, underscoring the notion that there were certain norms that commanded the attention and compelled the action of the international community as a whole. Micronesia therefore welcomed the decision to include a non-exhaustive list of norms having peremptory character. While a full listing of all existing peremptory norms of general international law was admittedly outside the scope of the Commission's work on the topic, it was still useful to have a sense of what the Commission itself had previously identified as being *jus cogens*.

99. Micronesia fully endorsed the Commission's reference in its commentary to draft conclusion 23 to obligations "of essential importance for the safeguarding and preservation of the human environment, such as those prohibiting massive pollution of the atmosphere or of the seas" as peremptory norms of general international law (*jus cogens*). The protection of natural environments of importance to the international community as a whole – such as the ocean and the atmosphere – satisfied the stipulation in draft conclusion 3 that peremptory norms of general international law reflected and protected fundamental values of the international community. Those values included ensuring safe and healthy natural environments for present and future generations. While such environments might be subject to various legal regimes where there was a clear demarcation between the right of sovereignty and other State rights, it was indisputable that the harmful impact of any activity on any part of a natural environment would spread to other parts of the environment. The wide range of multilateral environmental agreements and processes pertaining to natural environments attested to the paramount importance that the international community placed on the conservation, protection and sustainable use of such natural environments and their resources.

100. By logical extension, in line with draft conclusions 17 and 19, each State had an obligation to take all necessary steps to safeguard and preserve natural environments of importance to humankind. The gross or systemic failure of a State to discharge that obligation was a serious breach of *jus cogens* and all States had an obligation to cooperate through lawful means to end such a breach. Unfortunately, there were several examples where States failed to take all the necessary steps to curb activities carried out by other States that caused massive pollution of natural environments of importance to humankind. Such serious breaches of *jus cogens* demanded a collective international response. Micronesia was grateful to the Commission for laying out very clearly the relevant international law on that point.

101. His delegation endorsed the Commission's decision to place on its long-term programme of work the topic "Reparation to individuals for gross violations of international human rights law and serious violations of international humanitarian law", and took note of the Commission's assertion in footnote 16 of the syllabus for the proposed topic contained in its report (A/74/10) that the result of its work on the subject might influence other areas of international law where violations of the rights of individuals invoked State responsibility to make reparation, such as international investment law, international environmental law and international trade law.

102. There was growing agreement in the international community that human beings had the right to a healthy environment, or at the very least, that the enjoyment of various human rights was dependent on a healthy environment. The ongoing work by the United Nations Special Rapporteur on Human Rights and the Environment was a very useful resource in that regard, as it canvassed existing law and practice in the

international community to reinforce that notion in a convincing manner. If the Commission decided to actively examine the proposed topic, then Micronesia strongly encouraged it to broaden its scope to cover the relevant international environmental law, including available and necessary reparations to individuals for actions that severely harmed their use and enjoyment of relevant natural environments.

103. **Mr. Wenaweser** (Liechtenstein), speaking on the topic "Crimes against humanity", said that his Government strongly supported the strengthening of international cooperation in the fight against impunity for the most serious crimes, including crimes against humanity. Too often, there was a misperception among the public and among policymakers that there was an established hierarchy of the most serious crimes, with genocide being at the top. However, crimes against humanity were indeed one of the most serious crimes that required the attention of the international community. A convention on the topic would therefore ensure that appropriate action was taken to deliver justice to victims of such atrocities.

104. His delegation welcomed the fact that the Rome Statute of the International Criminal Court had served as the basis for the draft articles on prevention and punishment of crimes against humanity adopted by the Commission. Although the Statute had not yet been universally ratified and some States were reluctant to embrace the concept of international criminal justice itself, its quality was not at issue; the Statute should be followed more closely in a future convention on crimes against humanity. His delegation was nonetheless concerned that the draft articles did not contain a "no reservations" clause. Indeed, the possibility of formulating reservations to a future convention would be detrimental to its effectiveness and value. Another concern was the absence of a clear statement to the effect that there could be no immunity for crimes against humanity. In the view of his delegation, current customary international law clearly suggested as much, and anything short of such an unequivocal statement would undermine the Commission's efforts with regard to the progressive development of international law. The draft articles would have benefitted from clear wording in that respect, reflecting in particular the substance of article 27 of the Rome Statute.

105. Liechtenstein was, however, encouraged by the inclusion in the draft articles of provisions concerning international cooperation, including in particular international accountability mechanisms. It viewed the elaboration of a convention on crimes against humanity as complementary and non-competing with efforts to formalize inter-State cooperation, including through such mechanisms as the initiative for a new multilateral treaty on mutual legal assistance and extradition for domestic prosecution of the most serious international crimes. Such a convention would be an important step in closing a gap in the international criminal justice system. His delegation believed that the draft articles offered an excellent basis for that work and stood ready to engage in a negotiating process at the earliest possible time and in a suitable format.

106. **Ms. Mangklatanakul** (Thailand) said that her delegation supported the draft articles on prevention and punishment of crimes against humanity as well as the Commission's recommendation for the elaboration of a convention on the basis of the draft articles. Such a convention would help to facilitate national prosecutions, end impunity and strengthen international cooperation in the suppression of such crimes. Given the need to prevent heinous crimes and strengthen the rule of law, her delegation recognized the necessity of draft article 4, concerning effective preventive measures and international cooperation to prevent crimes against humanity. It saw value in draft article 10 (*Aut dedere aut judicare*), which contained essential elements that might assist States in fulfilling their obligations under international law in the manner that they considered to be most appropriate for each particular context. Those elements were critical in closing jurisdictional gaps, preventing alleged perpetrators from going unpunished and combating impunity. Thailand supported draft articles 14 (Mutual legal assistance) and 13 (Extradition), in particular its paragraph 3, where it was indicated that a request for extradition based on a political offence might not be refused solely on the ground that the offence was political in nature.

107. On the topic "Peremptory norms of general international law (*jus cogens*)" and the draft conclusions adopted by the Commission on first reading, she said that her delegation agreed with the general approach of using the definition of jus cogens in article 53 of the 1969 Vienna Convention on the Law of Treaties, the most widely accepted contemporary definition of jus cogens, as the basis for the definitions in draft conclusion 2. With respect to draft conclusion 7, on identification of jus cogens, she said that because of its extraordinary legal effects, care should be taken when applying the criterion of "acceptance and recognition by the international community of States as a whole". Further clarification and discussion were needed in order to determine whether or not the now-established threshold of "a very large majority of States" was sufficient. Indeed, the subjective nature of that type of threshold posed a real challenge. It still did not accurately reflect what the negotiators of article 53 had

intended. The expression “as a whole” required a much higher threshold than simply a “large majority” or even “a very large majority”. However, generally, her delegation would agree with the Commission that it was not only about a matter of numbers. Indeed, the universality of acceptance and recognition across regions, legal systems and cultures, among other things, also needed to be considered.

108. Her delegation believed that the establishment of an illustrative list of jus cogens norms might actually hinder the development of jus cogens, which might and should evolve over time. Although the list was no-exhaustive and was without prejudice to the existence or subsequent emergence of other peremptory norms, it could be interpreted as merely a set of examples which States could observe when developing criteria for the universal acceptance of jus cogens rather than codifying them.

109. Thailand appreciated the Commission’s decision to include sea-level rise in relation to international law in its programme of work and to establish a Study Group on the topic. The initial stage of work would be very critical, in particular the legal implications of sea-level rise with respect to the law of the sea, including in relation to maritime boundaries and the protection of persons affected by such phenomena. The Commission’s work on the topic would benefit not only coastal States but the international community as a whole.

*The meeting rose at 1.10 p.m.*