



# General Assembly

Seventy-eighth session

Official Records

Distr.: General  
8 February 2024

Original: English

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## Sixth Committee

### Summary record of the 10th meeting

Held at Headquarters, New York, on Thursday, 12 October 2023, at 10 a.m.

*Chair:* Ms. Lungu (Vice-Chair) ..... (Romania)

## Contents

Agenda item 80: Crimes against humanity (*continued*)

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23-19345 (E)



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*In the absence of Mr. Chindawongse (Thailand), Ms. Lungu (Romania), Vice-Chair, took the Chair.*

*The meeting was called to order at 10.05 a.m.*

**Agenda item 80: Crimes against humanity (continued)**

1. **Mr. Evseenko** (Belarus) said that the draft articles on prevention and punishment of crimes against humanity prepared by the International Law Commission were an important addition to the existing international legal framework on the topic and would serve as an important source of practical recommendations that States could use as a starting point for constructive discussions on preventing crimes against humanity. However, owing to geopolitical confrontations, the crisis of multilateralism and a lack of trust, States held very different positions on the content and future of the draft articles and key issues, such as the definition of the term “crimes against humanity”, universal jurisdiction, immunity of State officials from foreign criminal jurisdiction, dispute settlement mechanisms and the relationship between a future convention and existing national laws.

2. The Committee should not rush its consideration of the draft articles, as an outcome produced under political pressure and an artificially imposed sense of urgency would be neither inclusive nor transparent. Without an in-depth exchange of views on the draft articles, unresolved differences would lead to disagreements on points of international law, resulting in disputes and conflicts. In order to ensure incremental progress, and considering that not all States were parties to the Rome Statute of the International Criminal Court, the Committee should continue considering the draft articles without any time limitations, to see how they aligned with norms in national laws and the provisions of related international legal instruments.

3. **Mr. Cappon** (Israel) said that, on 7 October 2023, the jihadist organization Hamas had carried out a planned and unprovoked attack, firing thousands of rockets on Israeli civilians, in clear violation of the basic principles and rules of international humanitarian law and international human rights law. In addition, hundreds of Hamas terrorists had infiltrated Israel and conducted a pogrom, filming and boasting on social media of their actions, which included the murder of babies, children and entire families. The Israeli authorities had reported that, to date, Hamas had killed more than 1,300 Israelis and had abducted 150 people, including women, children and elderly persons. In addition, more than 3,500 Israelis had been injured. Those figures were expected to increase. The implications of those extreme human rights violations

were clear, and given that all delegations present were engaged in matters of international law, none should remain silent.

4. Citizens of many other countries had also been brutally affected by the massacre. The terrorists had committed simultaneous war crimes when they had indiscriminately targeted Israeli civilians while using the residents of the Gaza Strip as human shields. In another war crime, they were presently using the Israeli hostages as human shields, threatening to execute them. Those practices were similar to those of ISIS, and indeed, given how Hamas members had killed and beheaded infants, Hamas was worse than ISIS. Therefore, every legal and other mechanism used against ISIS should be used against Hamas.

5. His delegation promoted the maintenance and development of international law, particularly within the Committee, and strove to ensure that the Committee remained a professional, legal forum that was not distracted by external matters. His delegation attached great importance to the outcome of the work of the International Law Commission on the agenda item under discussion. The recent attack was another, shocking, reason for Israel to advocate for the prevention and punishment of crimes against humanity. Israel was committed to international criminal justice, putting an end to impunity for the gravest international crimes. The international legal community must stand united and condemn such inhuman acts. Israel would fight the terrorists, not only for the sake of the country, but also for the maintenance of international peace and security, for the sake of Israeli children and for the sake of Palestinian children suffering under the regime of Hamas.

6. **Ms. van der Made** (Kingdom of the Netherlands) said, in response to the statement by the representative of Israel, that her delegation was shocked by and condemned the attack on Israel. It was extremely worried about the escalation of violence that had followed the attack and concerned for the victims on both the Israeli and Palestinian sides.

7. Although crimes against humanity were categorically prohibited under international law, civilian populations continued to be victims of atrocities and perpetrators continued to act with impunity. Crimes against humanity were the only core international crime that was not the subject of a specific convention. The current international context once again illustrated the need to fill the gap in the international legal framework. The draft articles on prevention and punishment of crimes against humanity adopted by the International Law Commission had brought the international

community closer to filling that gap; that had also been one of the Commission's objectives when it had begun its work on the topic in 2013. The elaboration of a convention based on the draft articles, as recommended by the Commission, would strengthen the international criminal justice system and would also contribute to strengthening national laws and criminal jurisdiction in the fight against impunity for crimes against humanity. The Committee had held a constructive discussion on the draft articles during the resumed session in April 2023. Her delegation hoped that the upcoming resumed session in April 2024 would result in progress towards the opening of treaty negotiations, which it would welcome.

8. The objective of the Ljubljana-The Hague Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity, War Crimes and Other International Crimes, adopted in Ljubljana in May 2023, which was to fight impunity for the most serious crimes, was similar to that of the draft articles. It would be important to maintain consistency between the text of a future convention on crimes against humanity and the Ljubljana-The Hague Convention. Widespread signature and ratification of the latter was critical. In that regard, her delegation invited all States to sign the Ljubljana-The Hague Convention at a ceremony to be held in February 2024 at the Peace Palace in The Hague.

9. **Ms. Rathe** (Switzerland) said that, decades after the adoption of the conventions on genocide and war crimes, there was still no universal convention on crimes against humanity. It had been more than four years since the International Law Commission had completed its excellent work on the draft articles on prevention and punishment of crimes against humanity, and it was time to take action on them. In 2022, the Committee had finally agreed on a process that had enabled it to conduct meaningful discussions on the draft articles. Her delegation welcomed the broad participation of delegations at the resumed session held in April 2023 and the substantive conversations that had taken place, which were a useful complement to the consultations that had been conducted by the Commission since 2015. It was important to continue those efforts. The Committee was responsible for following up on the Commission's recommendations; differences of opinion must not block discussions nor cause the Committee to perpetually put off taking a decision. Her delegation encouraged the Committee to continue its constructive engagement during the resumed session in April 2024.

10. Her delegation supported the Commission's recommendation to elaborate a convention on the basis of the draft articles. Such a convention would strengthen

the international criminal justice system while promoting inter-State cooperation and helping States to fulfil their primary responsibility to investigate and prosecute crimes against humanity. It would also complement treaty law on international crimes, and its universal application across legal systems and cultures would serve as a powerful symbol. States had the opportunity – and the responsibility – to fill the gap in international law that existed in relation to crimes against humanity.

11. **Ms. Zacarias** (Portugal) said that States should follow the International Law Commission's recommendation and convene a diplomatic conference to negotiate and adopt a convention on the basis of its draft articles on prevention and punishment of crimes against humanity. The resulting international legally binding instrument would be one more step towards the common goal of the international law community to ensure that crimes against humanity did not go unpunished. In 2022, the Committee had taken a decision that had created a dedicated, structured forum where delegations could explain their positions and work through their diverging views regarding the draft articles. Her delegation was encouraged by the constructive discussions the Committee had held during the resumed session in April 2023. It remained committed to the process agreed by the Committee and encouraged all delegations to continue to engage constructively, both during the intersessional period and during the second resumed session in April 2024, with a view to taking a decision with respect to the draft articles at the seventy-ninth session of the General Assembly.

12. The Ljubljana-The Hague Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes Against Humanity, War Crimes and Other International Crimes, adopted in May 2023, was fundamental for enhancing cooperation between Member States. Its existence should not preclude the Committee from advancing its discussion of the draft articles. Together, the two instruments could constitute an effective and comprehensive international legal framework for fighting impunity and ensuring accountability for crimes against humanity.

13. **Mr. Heidari** (Islamic Republic of Iran) said that his Government reaffirmed its unwavering commitment to the prevention and punishment of crimes against humanity. In line with General Assembly resolution [77/249](#), his delegation had actively participated in the Committee's work at the resumed session held in April 2023 to consider the draft articles on prevention and punishment of crimes against humanity adopted by the

International Law Commission. It would also submit its written comments on the draft articles by the end of 2023 and requested the Bureau and the Secretariat to accurately reflect all critical recommendations and comments when compiling the written summary of the Committee's deliberations, as called for in paragraph 5 of resolution 77/249.

14. Addressing crimes against humanity required collective and unanimous action by the international community as a whole. The divergence of views on both the draft articles and the Commission's recommendation concerning the fate of the draft articles prevented a united response to such crimes. Attempts to incorporate definitions emanating from non-universal instruments, and from national laws and practice in the context of progressive development, had also prevented Member States from reaching consensus. His delegation had taken note that several delegations had requested the opportunity to further consider the draft articles and ensure their consistency with their national laws. The Committee was the appropriate forum and should continue its deliberations on the current agenda item. It should also move forward with a holistic approach on all products of the Commission currently pending before it. In that connection, his delegation expressed its dissatisfaction with the Committee's selectivity with regard to its consideration of the Commission's products, a number of which had been pending for years before the submission of the draft articles.

15. The atrocities that were currently being perpetrated against the Palestinian people, in particular those living in Gaza, were pertinent to the agenda item. Measures such as the inhuman blockade against Palestinians, which intentionally inflicted severe living conditions on them, including deprivation of food, water and medicine, were aimed at bringing about the destruction of the Palestinian people and constituted a vivid example of crimes against humanity. The innocent people of Palestine, in particular women and children, had also been subjected to war crimes, including brutal and indiscriminate attacks, which amounted to collective punishment. Those heinous crimes were a reminder of the prolonged occupation of Palestine, which was the root cause of the situation. The international community should take all necessary measures to end the commission of such crimes against Palestinians forthwith and without conditions, and ensure that the perpetrators were brought to justice.

16. **Mr. Muhith** (Bangladesh) said that, during its war of liberation in 1971, Bangladesh had endured crimes against humanity, genocide and war crimes. Three million people had lost their lives, and some 200,000 women had been victims of sexual violence. As a State

party to the Rome Statute of the International Criminal Court, Bangladesh was fully committed to the prevention and punishment of crimes against humanity. In 2010 it had established an international crimes tribunal to punish the perpetrators of the crimes against humanity and genocide committed in 1971. The tribunal offered a good example of how internationally defined atrocity crimes could be tried in an effective national criminal justice system.

17. Bangladesh currently hosted over 1 million Rohingya people, who had faced the worst atrocities in Myanmar and had been forcibly displaced. Ensuring justice and accountability for those crimes was key to the sustainable resolution of that complex crisis. In that respect, Bangladesh was cooperating with the International Criminal Court in its investigation of the forced deportation of the Rohingya people and was extending full support to other accountability mechanisms, including the Independent Investigative Mechanism for Myanmar. It was also following the proceedings in the International Court of Justice in the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*.

18. The draft articles on prevention and punishment of crimes against humanity adopted by the International Law Commission offered a solid foundation for a potential future convention, subject to negotiation by all stakeholders. The Committee's members had held exceptional and enriching discussions at the resumed session in April 2023 and, despite differing perspectives on various provisions, had improved their mutual understanding of the draft articles. His delegation believed that, at the resumed session to be held in April 2024, the Committee would build on the progress made and deepen Member States' understanding of the draft articles, potentially paving the way for consensus in the future.

19. Until a convention on crimes against humanity was concluded, the international community must persist in its efforts to prevent and punish such crimes within the existing international legal framework, particularly given that they threatened global peace and security and affected the realization of the global development agenda. Although States had the primary responsibility for protecting people from crimes against humanity in their territory, in cases where a State failed to act to prevent such crimes, international cooperation became imperative. In such instances, the Security Council, as the primary custodian of international peace and security, must play its part in preventing and addressing those heinous crimes, including by using existing legal avenues, such as their referral to the

International Criminal Court. Nevertheless, no mechanism, whether national or international, would be effective without the support and cooperation of Member States. His delegation called on Member States to demonstrate genuine political will in addressing impunity and to cooperate with the relevant international justice mechanisms during all stages of legal proceedings.

20. His delegation denounced the ongoing armed conflict between Israel and Palestine and deplored the loss of innocent civilian lives. The continued Israeli occupation and forced settlements in Palestinian territory were the root causes of instability in the region. His delegation therefore reiterated its support for a two-State solution, whereby Palestine and Israel would exist side by side as independent States. Only that could bring lasting peace and stability in the region.

21. **Mr. Ndoye** (Senegal) said that the resumption of hostilities between Israel and Palestine since 7 October 2023 was a major concern for the international community. While the substantial loss of life on both sides was the direct responsibility of those causing it, it also reflected the failure of the international community to find a lasting solution to that long-standing conflict. Any human rights violation must be condemned, no matter who had sponsored or perpetrated it, or who was the victim. Attacks against civilians, including in the context of reprisals, were contrary to international law, including international humanitarian law. As the risks increased, it was important for the parties to the conflict to exercise restraint. The relevant provisions of the Geneva Convention relative to the Protection of Civilian Persons in Time of War must also be rigorously implemented. Article 27 thereof set out the obligation of any occupying Power to respect the fundamental rights of people in the occupied territory, providing that “they shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof”.

22. His delegation was deeply concerned at the rise in mass atrocities that could be classified as crimes against humanity, which were defined as specific offences committed as part of a large-scale attack targeting civilians, regardless of their nationality. Substantial disagreements between Member States had stymied the adoption of an international convention on prevention and punishment of crimes against humanity, although all Member States agreed that such acts should be condemned. The establishment of such an instrument, similar to the conventions on the crime of genocide and war crimes, was the moral responsibility of the international community. Fortunately, the Commission had finalized the draft articles on prevention and

punishment of crimes against humanity to serve as a basis for negotiating a future convention. In that regard, his delegation reaffirmed its commitment to continue engaging in substantive and productive discussions with a view to adopting a universal international convention, and urged other Member States to do likewise.

23. The commitment of Senegal to preventing and punishing the most serious crimes was evident in the fact that it was the first country in the world to have ratified the Rome Statute of the International Criminal Court. It had also established the Extraordinary African Chambers, within the Senegalese judicial system, in line with an agreement with the African Union in order to prosecute a former President. In addition, Senegal had participated, together with Argentina, Belgium, the Kingdom of the Netherlands, Mongolia and Slovenia, in an initiative to elaborate a multilateral treaty on mutual legal assistance and extradition that would facilitate the investigation and prosecution of the crime of genocide, war crimes and crimes against humanity.

24. In the absence of an international convention on crimes against humanity, greater emphasis must be placed on preventing mass atrocities. In that regard, his delegation wished to highlight the work of the Office of the Special Adviser to the Secretary-General on the Prevention of Genocide to detect and offer early warning in respect of such acts. His delegation also valued the International Criminal Court, a complementary jurisdiction that played a key role in the fight against impunity, and encouraged Member States to promote the universality of the Rome Statute.

25. **Ms. Buenrostro Massieu** (Mexico) said that, in 2022, her delegation, together with seven others, had introduced a draft resolution entitled “Crimes against humanity” in order to end the cycle of inaction and establish a deliberative process with a road map defined through clear deadlines and mandates that would include all States in the consideration of the Commission’s recommendation that a convention be elaborated on the basis of the draft articles on prevention and punishment of crimes against humanity. Together with the delegation of the Gambia, her delegation had facilitated the negotiations of that draft resolution, which had had 86 sponsors and had been adopted by the General Assembly, without a vote, as resolution [77/249](#).

26. The resulting deliberative process had been launched at the resumed session in April 2023, during which Member States had demonstrated their great interest in the draft articles. Her delegation was convinced that a constructive spirit would be maintained at the resumed session in April 2024 and urged the active participation of all delegations. The substantive nature

of the Committee's discussions and the large number of proposals raised underscored the need to advance to negotiations, on the basis of the draft articles, where all issues could be analysed appropriately. In that regard, her delegation noted that the draft articles could be strengthened, for example, by including slave trafficking, forced marriage and gender apartheid in their scope, and by better incorporating a gender perspective and the rights of victims and survivors. Her delegation hoped to provide more detailed comments on those points at the upcoming resumed session.

27. The process agreed on by the Committee members with regard to the draft articles and the Commission's recommendation reflected the Committee's potential to become the most important forum for the progressive development and codification of international law. It had also created a valuable precedent that could be applied to many topics before the Committee. Her delegation would continue working with others to ensure that, once the deliberative process had concluded, the Committee would take a decision in 2024 to begin negotiations with the aim of establishing a convention on the prevention and punishment of crimes against humanity, thereby closing a gap in international law.

28. **Mr. Hollis** (United Kingdom) said that his delegation acknowledged the harrowing statement delivered by the representative of Israel. The United Kingdom condemned the attacks conducted by Hamas and was unwavering in its support for Israel.

29. Referring to the statement delivered by the Gambia on behalf of a cross-regional group (see [A/C.6/77/SR.9](#)), he said that his delegation was pleased that a diverse group of States was speaking with one voice regarding crimes against humanity. His delegation remained strongly supportive of the Commission's work on that topic and the development of its draft articles on prevention and punishment of crimes against humanity into a convention. The lack of a general multilateral convention establishing a framework for the national prosecution of crimes against humanity was an indefensible lacuna given the fact that other serious crimes, such as genocide, war crimes and torture, were subject to such a framework. That gap undermined the prevention and prosecution of crimes against humanity and failed to give victims and survivors the recognition they deserved. Putting an end to such crimes was the greatest legacy the international community could leave to those who had suffered from them.

30. His delegation continued to see benefits in developing a convention enshrining the obligation to extradite or prosecute in respect of crimes against

humanity. Such a convention had the clear potential to bolster the prevention and punishment of conflict-related sexual violence and other crimes against humanity. It would also establish obligations for States to cooperate and provide a new legal basis for extradition and mutual legal assistance. Effective extradition arrangements were more important than ever, and, in that context, the United Kingdom affirmed that, where possible, justice was best pursued in the territory where the offence took place.

31. His delegation had previously worked alongside partners from all regional groups in order to make meaningful progress on the agenda item under discussion. It had therefore been pleased to see the Committee engage in a substantive and productive legal discussion on the draft articles at the resumed session. His delegation was fully committed to the process agreed by the Committee. It would continue to engage constructively and urged others to do the same, with a view to taking a decision on the matter at the seventy-ninth session of the General Assembly.

32. **Mr. Mainero** (Argentina) said that many delegations, including his own, had been ready to quickly act on the recommendation of the International Law Commission to elaborate a convention based on its draft articles on prevention and punishment of crimes against humanity when they had been first presented to the Committee in 2019, but at that time the Committee had been unable to reach an agreement on the way forward. Given the horror and suffering caused by crimes against humanity around the world and the fact that the prohibition of such crimes was a peremptory norm of general international law, the Committee's continuing inaction had been difficult to justify. Thanks to the efforts made by delegations at the seventy-seventh session of the General Assembly, the Committee had worked through the impasse and, at a resumed session in April 2023, had for the first time held a substantive discussion on all the draft articles, with the active participation of all delegations. The resumed session had met his delegation's expectations. There were still differing views concerning the way forward, which was why his delegation viewed the second resumed session, to be held in April 2024, as an important opportunity to identify areas of agreement and disagreement, and encouraged all delegations to maintain a constructive approach. His delegation reiterated its commitment to the fight against impunity and its belief that a convention on crimes against humanity would help to reinforce the legal edifice of international criminal law.

33. **Mr. Košuth** (Slovakia) said that, since the International Law Commission had submitted its draft articles on prevention and punishment of crimes against

humanity to the Committee in 2019, his delegation had consistently and clearly stated its view that the draft articles and commentaries thereto, of which a significant part reflected customary international law, presented a carefully drafted and solid basis for codification. His delegation welcomed the exchange of substantive views on the draft articles that had taken place during the resumed session held in April 2023 and looked forward to continuing the discussion in April 2024 with a view to broadening the convergence of opinion among delegations on the substance of the draft articles. His delegation would deliver further substantive comments on that occasion.

34. Events in 2022 and more recently had clearly demonstrated that crimes against humanity were not a theoretical topic, but very much a reality. His delegation therefore hoped that the discussions on prevention and punishment of those crimes did not end as a theoretical exercise when the Committee decided the way forward in 2024. By taking a meaningful step towards establishing a new convention, the international community could begin to bridge the legal gap and demonstrate to victims and future generations a firm and tangible commitment to ensuring that violence would not be overlooked and impunity would not be tolerated.

35. **Mr. Pieris** (Sri Lanka) said that his delegation firmly believed in the importance of addressing crimes against humanity as a collective responsibility of the global community. Sri Lanka stood firm against those grave offences, which shocked the conscience of humanity.

36. Regarding the definition of crimes against humanity, consideration should be given to the process of attributing conduct by labelling the criminal a *hostis humani generis*, or an enemy of humanity. There was ambiguity inherent in that term, including with regard to whether the concept was substantive or jurisdictional, whether the term *hostis* was part of the language of war rather than that of the law, and whether such a *hostis* should be treated as neither an adversary nor a criminal, and thus as not being entitled to the rights of either a belligerent or a criminal defendant, which might wrongly suggest that the *hostis* could be exterminated rather than punished. In fact, any political group that claimed to speak in the name of humanity would be acting in a manner repugnant to all tenets of law by denying its enemies the quality of being human. The perpetrators of crimes against humanity should, nonetheless, be held accountable. Universal jurisdiction did not rest on the location of the *hostis* outside the territorial jurisdiction of States; rather, the jurisdiction that Member States were currently engaged in establishing would simultaneously establish a practice

of accountability and create norms against intrinsically evil acts, to which anyone, including Heads of State, could be held accountable. In other words, enemies of all humanity would be held accountable before humane law, using fair procedures, thereby affirming humanity in the face of extreme evil.

37. In light of the experience of Sri Lanka with protracted conflict and the subsequent processes of accountability, reconciliation and national unity, his delegation understood the complex challenges in addressing crimes against humanity. Sri Lanka remained steadfast in its commitment to justice and reconciliation and emphasized the importance of respecting the sovereignty, territorial integrity and right to self-determination of nations during those processes. The fight against crimes against humanity was not just a legal obligation but also a moral imperative that required a collective effort.

38. **Mr. Habashnesh** (Jordan) said that his delegation was encouraged by the Committee's decision to hold two resumed sessions, in April 2023 and April 2024, to conduct in-depth discussions on the draft articles on prevention and punishment of crimes against humanity adopted by the International Law Commission. That development underscored the commitment of the international community to respond to such international crimes with the seriousness required. The grave nature of crimes against humanity required a resolute and objective approach. His delegation remained steadfast in its conviction that ensuring accountability for such crimes was of paramount importance. The gap in the legal regime with regard to combating crimes against humanity must be bridged as such crimes had far-reaching implications for international peace and security. The fight against impunity would not succeed without a legal framework for inter-State cooperation based on the criminalization of such crimes under national law.

39. His delegation stressed the crucial role that the Commission played in codifying international law and reiterated the importance of its recommendations. In that regard, it reaffirmed its support for the elaboration of an international agreement based on the draft articles, which offered a comprehensive framework for addressing crimes against humanity, including with regard to their definition, the establishment of national jurisdiction, inter-State cooperation and the application of the principle of *aut dedere aut judicare*.

40. Jordan reiterated its call for the protection of the Palestinian population of the Occupied Palestinian Territory. As Jordan had stated in its written submission to the International Court of Justice in the advisory

proceedings on the *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, the prolonged occupation by Israel had been marked by the commission of a large number of crimes against humanity. Those crimes had occurred as part of a widespread or systematic attack directed against the civilian population with knowledge of the attack and therefore met the threshold of crimes against humanity. His delegation looked forward to a fruitful discussion of the substantive aspects of the draft articles at the resumed session in April 2024.

41. **Ms. Šebenik** (Slovenia), noting that the International Law Commission, in addition to submitting its draft articles on prevention and punishment of crimes against humanity to the Committee and recommending the adoption of a convention based on them, had also included the prohibition of crimes against humanity on the list of peremptory norms of general international law set out in its draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*), said that it was the primary responsibility of States to ensure the protection of fundamental rights, which were threatened by crimes against humanity, and to build and reinforce an appropriate legal framework to criminalize such offences. Only the concrete action of States could foster a safe and peaceful environment at the national and global levels. A convention on prevention and punishment of crimes against humanity would offer an additional legal tool for national jurisdictions, create a new legal basis on which to conduct inter-State cooperation and strengthen accountability, and expand the opportunities and choices available to States. It was high time to close the gap in the international legal framework in relation to crimes against humanity and make meaningful progress to benefit all.

42. Her delegation was pleased that the Ljubljana-The Hague Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity, War Crimes and Other International Crimes had been adopted in Slovenia in May 2023. That landmark treaty would help to strengthen international legal cooperation in the investigation and prosecution of genocide, crimes against humanity, war crimes and other international crimes. The Ljubljana-The Hague Convention and a future convention based on the draft articles would be complementary, as they were aimed at the same goal.

43. Her delegation reiterated its commitment to engaging constructively in the substantive discussions that had begun during the resumed session in April

2023. Worrying events in many parts of the world should serve as an impetus for Member States to continue their constructive dialogue with the aim of understanding their various positions and bridging divergent views. Her delegation once again expressed its support for efforts leading to the opening of negotiations for a convention. The fight against impunity began at the national level and was realized through active international cooperation.

44. **Mr. Kirk** (Ireland) said that his delegation was a strong proponent of the elaboration of a convention on the basis of the draft articles on prevention and punishment of crimes against humanity adopted by the International Law Commission, in line with the Commission's recommendation. That was the best way to close a significant gap in the international treaty law framework. By holding resumed sessions on the draft articles, the Committee was offering States that were not ready to advance to the negotiation of a convention the opportunity to further reflect on the draft articles while ensuring that work on the important topic continued to move forward. His delegation had welcomed the Committee's detailed discussions on the draft articles conducted during the resumed session in April 2023 and thanked the Bureau and Secretariat for facilitating the session. Although delegations had not agreed on every issue, it had been clear that the majority of States were in favour of the elaboration of a convention. The fight against impunity for the most serious international crimes, including crimes against humanity, was more important than ever. The Committee's current debate on the agenda item, which fell between the two dedicated resumed sessions, was a moment to take stock. His delegation noted that it was the fifth time the Committee was discussing the draft articles during a formal session and it was now time for action.

45. His delegation welcomed the adoption of the Ljubljana-The Hague Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes Against Humanity, War Crimes and Other International Crimes in May 2023. That instrument would enable countries to cooperate internationally in the investigation and prosecution of the most serious international crimes. It was also complementary to the international community's endeavours in respect of crimes against humanity, in that both had the potential to contribute in a practical and significant way to the fight against impunity. The adoption of the Ljubljana-The Hague Convention demonstrated that progress could and would be made in achieving accountability for international crimes.

46. His delegation would submit written comments on the draft articles by the end of 2023 and hoped for



greater convergence at the resumed session in April 2024 on the issues on which there had been differences of opinion during the 2023 resumed session. The aim of advancing work on the topic was not simply to create a new convention, but to prevent the commission of crimes that directly threatened the maintenance of international peace and security. The international community's stasis in that regard sent a strong signal to those who believed that they could commit crimes against humanity without repercussion. Member States must work together, including at the upcoming resumed session, to transmit a clear message that perpetrators of crimes against humanity would face justice.

47. **Ms. Chan Valverde** (Costa Rica) said that, despite the fact that crimes against humanity were an international crime, on the same level as genocide and war crimes, they were not regulated by a dedicated convention. Victims of crimes against humanity deserved justice as much as victims of other international crimes. There was therefore an urgent need to fill that major gap in international law. The international community must work together to fulfil a historical obligation and complete the framework for international humanitarian law and human rights law. That would also have a deterrent effect and help prevent the commission of such offences.

48. Her delegation noted that the draft articles on prevention and punishment of crimes against humanity adopted by the International Law Commission had been well received by most Member States and it supported the Commission's proposal to elaborate a convention on the basis of the draft articles. It welcomed the progress made during the Committee's substantive discussions of the draft articles during the resumed session in April 2023 and looked forward to continuing those discussions at the resumed session to be held in April 2024. In that regard, the Committee should focus on technical and legal, rather than political, considerations, with the goal of establishing a legally binding agreement as soon as possible. It would also be important to focus on the proposed language of the draft articles, to ensure that it was meaningful and effective.

49. The substantive discussions held on the topic of crimes against humanity constituted a positive development in the Committee's working methods and her delegation hoped that the same approach could be adopted for other topics, as it enabled delegations to understand each other's positions and concerns in more detail through open dialogue, without which progress and consensus was not possible. The Committee would need to take a decision on the draft articles at the seventy-ninth session of the General Assembly, and in that respect, her delegation was in favour of an

international conference being convened under the auspices of the United Nations with a view to negotiating and adopting a convention on crimes against humanity. While the Committee had made good progress on the topic in 2022, it was important to recall that the debate was not the objective. Rather, the Committee's ultimate goal was to develop a solid framework to fight impunity for crimes against humanity wherever they were committed and to ensure justice for victims.

50. Costa Rica recognized the key role played by civil society and the media, which bravely and independently informed the public about situations where there was a high risk of atrocities and shared their experiences on the ground under difficult circumstances, including during situations where crimes were already being committed. Civil society was a bulwark against indifference and dehumanization and acted as the global conscience.

51. **Ms. Falconi** (Peru) said that, in a world in which millions of people had been victims of crimes against humanity, her Government considered it essential to draft a convention to complement the existing legal framework provided by, for example, the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, the Geneva Conventions of 1949 and their Additional Protocols, the Rome Statute of the International Criminal Court and the International Convention for the Protection of All Persons from Enforced Disappearance. Bearing in mind that the prohibition of crimes against humanity was a peremptory norm of general international law (*jus cogens*), and that such crimes were among the most serious crimes of concern to the international community as a whole, it was particularly appropriate to highlight the need to prevent them and to put an end to the impunity of the perpetrators.

52. Her delegation appreciated the Committee's substantive legal discussion of the draft articles on prevention and punishment of crimes against humanity, held during the resumed session in April 2023. Understanding States' positions was essential in order to make progress towards implementing the Commission's recommendation to elaborate a convention on the basis of the draft articles. Without prejudice to the debate held in April 2023 and the upcoming discussions planned for the resumed session in 2024, her delegation believed that the establishment of an ad hoc committee open to all States to analyse the draft articles would give States a valuable opportunity to engage substantively on the content of the draft articles and further consider the Commission's recommendation.

53. Crimes against humanity not only affected their victims but also eroded collective dignity and humanity. Such offences were not constrained by borders and transcended cultures and political systems, which highlighted the need to establish a solid and clear international regulatory framework to prevent them and ensure accountability. Her delegation reiterated its commitment to the process agreed by the Committee to move forward on the topic. Without prejudice to that process, it believed that the General Assembly should initiate preparations for a diplomatic conference with a view to protecting people from crimes against humanity and bringing those responsible to account.

54. **Ms. Solano Ramirez** (Colombia) said that the issue of crimes against humanity was of the utmost importance to her country, the international legal community, civil society and especially people around the world who were victims of such heinous crimes. The Committee had sent an important message to the world by successfully holding a substantive discussion of one of the major issues on the international legal agenda, within the specialized format of the resumed session held in April 2023.

55. Her delegation reaffirmed its commitment to combating impunity for the most serious crimes that shocked the conscience of humanity and its view that an international legally binding instrument on crimes against humanity could serve to consolidate and strengthen international criminal law. Her country had suffered the ravages of armed conflict, but it had also gained valuable experience in the implementation of cooperation, prevention and prosecution processes. The draft articles on prevention and punishment of crimes against humanity adopted by the International Law Commission correctly focused on effective prosecution through national-level measures and international cooperation. States would benefit from the elaboration of an instrument of positive law that addressed the current gaps in that regard.

56. The draft articles were not incompatible with, but rather complementary to, the Rome Statute. A future convention would make it possible for States to express their consent to undertake international obligations relating to international cooperation and legal assistance for the prevention and punishment of crimes against humanity without accepting the jurisdiction of the International Criminal Court. On the basis of its experience, including its relationship with the International Criminal Court, Colombia was convinced that a convention based on the draft articles could contribute to ensuring accountability and combating impunity in respect of crimes against humanity. Her delegation would continue to participate actively in the

process devised by the Committee to continue examining the draft articles.

57. **Mr. Elhomosany** (Egypt) said that the unprecedented escalation in the Gaza Strip and Israel had claimed hundreds of victims. His delegation categorically condemned any actions, under any pretext, that would expose any civilian population to killing, violence and bombardment on such a scale. The focus must be on protecting civilians and putting a stop to the bloodshed. The population of the Gaza Strip was being bombarded, besieged, starved, displaced and denied access to electricity, food and clean water. His delegation held Israel fully responsible for its policy of indiscriminate collective punishment, which flagrantly violated international law, including international humanitarian law. Israel must fulfil its obligations under the Geneva Conventions of 12 August 1949 as an occupying Power by allowing humanitarian access, protecting Palestinian civilians and preventing a humanitarian catastrophe. The current harsh reality was the inevitable result of political paralysis, a loss of interest on the part of the international community, and reliance on conflict management instead of efforts to achieve a just and comprehensive solution.

58. With regard to the draft articles on prevention and punishment of crimes against humanity adopted by the International Law Commission, it was important to establish an appropriate and agreed legal framework under international law to combat crimes against humanity and prevent impunity. Care must be taken, however, to avoid creating chaos and inconsistency among legal instruments. The State exercising jurisdiction must have a clear, genuine and unambiguous link to the crime in question, over and above the mere presence of the defendant on its territory; his delegation therefore had reservations about the provisions providing for the establishment of criminal jurisdiction solely on those grounds. The concept of universal jurisdiction should be approached cautiously, and should not be broadened without justification or in breach of existing agreements. In particular, his delegation had reservations regarding any reference to the Rome Statute of the International Criminal Court, which was not universal. Accordingly, it was also important to redraft those provisions of the draft articles that concerned the responsibility of commanders and superiors for crimes committed by their subordinates.

59. The Committee's deliberations on the agenda item should take place in a spirit of transparency and constructive dialogue. The discussion should not be guided towards predetermined conclusions, and no attempt should be made to impose time frames on which

there was no consensus. Stakeholders should keep all options open, show understanding for all points of view, and maintain the consensus-based working methods of the Committee.

60. **Mr. Geng Shuang** (China) said that his delegation supported the prevention and punishment of crimes against humanity, in accordance with the law, to achieve fairness and justice and promote peace and security. The discussions on the draft articles on prevention and punishment of crimes against humanity adopted by the International Law Commission that had taken place in recent years had reflected the high priority that the international community attached to the prevention and punishment of such crimes. However, certain elements of the draft articles remained highly controversial. His delegation supported the continuation of in-depth exchanges of views on legal issues related to the text but stressed that such discussions did not amount to negotiations on a potential future convention on crimes against humanity, nor were the draft articles a zero draft of a future convention.

61. Efforts to combat crimes against humanity should be consistent with universally recognized principles, in particular the principles of sovereign equality and non-interference in the internal affairs of States, and with the rules of international law. The immunity of State officials from foreign criminal jurisdiction must be respected at all times.

62. Given that the Rome Statute of the International Criminal Court had not been universally accepted, the definition of crimes against humanity contained therein should not simply be transposed into the draft articles. Furthermore, while all States had an obligation to combat crimes against humanity, the differences in national conditions and legal systems must be taken into account, and the right of States to exercise their discretion in the implementation of their international obligations must be fully respected.

63. All parties should approach the complex task of elaborating a convention on crimes against humanity in a responsible manner, engage in in-depth consultations and take decisions carefully on the basis of broad consensus. The divergence of views on such core issues as the definition of crimes against humanity and the scope of the obligations of States was becoming more prominent as discussions progressed. The draft articles did not reflect customary international law, as national practice had not been given due attention in their elaboration. An extensive review of national practice should be conducted with a view to bridging gaps and expanding consensus. It would also be necessary to enhance trust and strengthen practical cooperation at the

international level. Countries that had made false, politically motivated accusations of crimes against humanity against other States in recent years, in order to interfere in their internal affairs, should change course. Such manipulation hindered international cooperation and was not conducive to frank and effective dialogue.

64. Given that crimes against humanity were considered to be extremely serious, it was important to ensure that the scope of the concept remained reasonable. In recent years, there had been a tendency to overstretch and expand the definition of crimes against humanity to include acts whose qualification as such crimes was not sufficiently supported by customary international law or State practice. If that tendency continued, the concept of crimes against humanity could be abused or altered, which would undermine efforts to combat impunity.

65. While crimes against humanity went by different names in different countries, all States had attached great importance to preventing and punishing them and had adopted measures to that end. China supported the efforts of all States to strengthen relevant laws and law enforcement measures in accordance with their national conditions.

66. His delegation engaged actively in international efforts aimed at building greater consensus on the prevention and punishment of crimes against humanity. It hoped to engage with other States in a candid, in-depth exchange of views on the legal issues related to the draft articles, without presupposing the results or establishing a set timetable or road map, in order to promote the more effective prevention and punishment of crimes against humanity.

67. **Mr. Szczerski** (Poland) said that his delegation continued to support the elaboration of a convention on the basis of the draft articles on prevention and punishment of crimes against humanity prepared by the International Law Commission. A new instrument to combat crimes against humanity was urgently needed, as both the Moscow Mechanism of the Organization for Security and Cooperation in Europe and the Independent International Commission of Inquiry on Ukraine had indicated that the Russian Federation was committing crimes against humanity in the territory of Ukraine. In that regard, his delegation recalled that all States had an obligation under customary international law to prevent, prosecute and punish crimes against humanity.

68. Poland continued to advocate a comprehensive, victim-oriented approach to the prosecution of international crimes. In its view, there should be a direct reference to States' obligations towards victims in draft

article 3 (General obligations) and a separate provision on the rights of children. Articles 24 and 25 of the International Convention for the Protection of All Persons from Enforced Disappearance could be a valuable source of inspiration in that respect.

69. Supplementing the international treaty framework for the prevention and punishment of atrocity crimes would help to uphold international law, which was a priority for his Government. It would also be a natural consequence of the recognition by States of the preemptory nature of the prohibition of crimes against humanity. Poland stood ready to work with all delegations, in an inclusive and transparent manner, to bring about swift and meaningful progress under the present agenda item. Lastly, his delegation reiterated its unwavering condemnation of the crime of terrorism in all its forms, including the recent terrorist attack against Israel.

70. **Mr. Alkaabi** (Qatar) said that, in view of ongoing and emerging conflicts, States had an individual and collective responsibility to prevent crimes against humanity. The elaboration of a convention on the topic would help to prevent and punish such crimes and uphold the rule of law at the national and international levels. Continuing the deliberations that had taken place at the resumed session in April 2023 should make it possible to resolve any confusion or ambiguity concerning the draft articles on prevention and punishment of crimes against humanity adopted by the International Law Commission. In particular, in the interests of reaching consensus, it was essential to use the recognized terminology that appeared in other international agreements. The provisions of the draft articles should be consistent with those in force in Member States, particularly with regard to extradition. In order to ensure that any resulting international convention could be enforced, particular attention should also be given to the provisions concerning the settlement of disputes.

71. **Ms. Nguyen Thi Ngoc Ha** (Viet Nam) said that the scale and consequences of crimes against humanity shocked the world, caused immeasurable suffering and left lasting scars on the victims, their families and entire societies. The draft articles on prevention and punishment of crimes against humanity adopted by the International Law Commission represented an important contribution to the collective efforts of the international community to combat such crimes.

72. Her delegation was pleased that the resumed session convened in April 2023 had allowed Member States to exchange substantive views on all aspects of the draft articles. Viet Nam shared the view expressed

by many delegations that, while the draft articles provided a good basis for discussion, shortcomings remained to be addressed. For instance, some of the draft articles could be interpreted as allowing for universal jurisdiction to be exercised in respect of crimes against humanity, even though differing views on that question had been voiced within the Committee.

73. Her delegation was firmly committed to the suppression and punishment of crimes against humanity in accordance with international law, including the principles of respect for national sovereignty and non-intervention in internal affairs. Responsibility for the prevention and punishment of serious crimes lay primarily with States; international criminal mechanisms should be resorted to only after all national measures had been exhausted. To enable States to fulfil that responsibility, international cooperation should be enhanced and technical assistance should be provided to support the development of national capacities to investigate and prosecute crimes against humanity. Only through measures at the national level could such crimes and their root causes be addressed comprehensively in the long term.

74. The elaboration of a convention by the General Assembly or by an international conference of plenipotentiaries on the basis of the draft articles should be thoughtfully and thoroughly considered within the framework of the United Nations, including in the Sixth Committee. The need for such a convention and the potential process for its elaboration should be carefully considered, taking into account the multifaceted challenges currently faced by the international criminal institutions. In order for a future convention to be implemented effectively and enjoy universal acceptance, it would have to reflect different legal systems and national experiences and practices, and the legitimate concerns expressed by Member States would have to be addressed. Viet Nam supported the ongoing consensus-based process within the Committee and stood ready to engage actively and constructively in the discussions.

75. **Mr. Nyanid** (Cameroon) said that the resumed session held in April 2023 for the further consideration of the draft articles on prevention and punishment of crimes against humanity adopted by the International Law Commission had been a resounding success, with a high level of engagement from Member States. His delegation noted that there was broad consensus on the need to combat impunity and to prevent and punish crimes against humanity.

76. Cameroon welcomed the evolution of the draft articles thus far. It reiterated its position that the draft

articles required caution and deliberation, and that the sensitivities of Member States should be taken into account. A critical but measured review of the text was needed to further improve its content. In particular, there was a need for greater clarity regarding the scope of crimes against humanity and some of the obligations provided for in the text. For example, participation in any stage of enslavement should be considered a crime against humanity. So too should the pillaging of natural resources, given that it could force people to choose between facing certain death in a place that had been robbed of its wealth and risking their lives in search of a better life elsewhere.

77. With regard to the preamble to the draft articles, Cameroon stressed that all non-consensus-based provisions must be removed and the text must reflect an appropriate balance between different peoples and cultures. His delegation reiterated its previous comments on those matters and recalled that it had made a number of relevant proposals during the resumed session in April 2023. In particular, it proposed the development of a consensus-based definition of crimes against humanity that went beyond the current understanding by taking into account the complex non-lethal elements of such crimes. There should also be a greater focus on building the capacities of States to prevent and punish crimes against humanity.

78. His delegation noted with interest the provisions concerning the preliminary measures to be taken by the authorities of the State in which a crime against humanity had been committed. The system for States to establish jurisdiction and to engage in international judicial cooperation should be clearly set out in the draft articles. In that regard, the references to national jurisdiction should be more explicit and the role of judges should be sufficiently highlighted, in order to avoid over-generalizations that could lead to misunderstandings and slapdash procedures. Only judges should have the power to establish whether all elements constituting the offence were present and determine criminal responsibility for the offence.

79. The means of demonstrating that an order had been given to commit a crime against humanity based on irrefutable facts should be better addressed in the draft articles. It would also be necessary to show how it could be proved that an individual's stance had been such as to induce the commission of crimes against humanity or that a certain behaviour had aided their commission. The same applied to the attempted commission of such a crime. In his delegation's view, that would involve establishing a body of significant evidence that would demonstrate participation in the thinking, planning and logistics involved in the commission of those crimes.

The legal regime addressing crimes against humanity should therefore be based, under all circumstances, on the Latin maxim *contra factum non datur argumentum* (there is no argument against the facts).

80. Criminal jurisdiction should be clearly tied to State sovereignty in the draft articles. Jurisdiction should be exercised on the basis of a connection between the State and the place of commission of the crime, its perpetrator and its victim. National investigations should be rigorous, with investigators taking as much time and using as many resources as they needed to gather irrefutable evidence. The considerable differences between national legal frameworks and investigation practices should be taken into account.

81. The appropriate procedural safeguards should be further clarified, and it should be stipulated that custody or pretrial detention measures could be taken only in the event of an express request by a competent court or the existence of legal proceedings, in order to avoid arbitrary arrests and detentions based solely on accusations from informants. All procedural safeguards should be fully applied, in accordance with the legal maxim *abundans cautela non nocet* (excessive caution does no harm). In particular, the forum State should examine the question of the immunity of officials of another State and, when its competent authorities were aware that an official of another State covered by immunity might be targeted by the exercise of its criminal jurisdiction, it should not bring criminal proceedings until after such immunities had been waived, specifically and exclusively by the authorities of the other State, in accordance with the rule of *nemo dat quod non habet* (no one gives what they do not have), and should immediately cease any criminal proceedings initiated against the official and any related coercive measures, including those that might affect any inviolability that he or she might enjoy under international law.

82. Measures to protect judicial rights should be set out more clearly in the draft articles. Due process rights recognized under international and domestic law, in particular the right to the presumption of innocence, should be better established in the text. With regard to the means by which the rights afforded to the alleged offender should be exercised, it should be noted that under the laws of some countries, such rights were so strictly regulated that they had no real meaning. Moreover, the phrases "communicate without delay" and "to be informed without delay" were vague and relative. His delegation looked forward to a frank discussion of the pending issues pertaining to the draft articles at the second resumed session in April 2024.

83. **Mr. Ganou** (Burkina Faso) said that his delegation welcomed the in-depth exchange of views on the draft articles that had taken place during the resumed session in April 2023. The emergence and persistence of tensions around the world highlighted the need for the international community to make every effort to prevent and punish the most serious crimes. Some countries, especially in Africa, were particularly attuned to that need because they bore the scars of the slave trade, colonialism, fratricidal wars, aggression, apartheid, pillaging of their resources and the agonies of immigration. They currently faced attacks by armed terrorist and violent extremist groups. Those countries, which had never received justice or reparation, were now calling for measures to be taken to ensure that no other countries or individuals would face the same fate in the future.

84. His country had a coherent legal framework in place for the prevention and punishment of the most serious crimes, such as crimes against humanity, including those committed in the context of counter-terrorism efforts. It fully supported the adoption of an international convention on the basis of the draft articles on prevention and punishment of crimes against humanity adopted by the International Law Commission. Such a convention would establish a new legal basis for cooperation in combating the most serious crimes and promote the development of international judicial cooperation. His delegation urged Member States to focus on the need to combat impunity for crimes against humanity, on which there was general agreement, despite their diverging views as to the content of a future instrument and the means of achieving its conclusion. While the road to consensus would be long, the hope of adopting a universal instrument must not be sacrificed to haste or regional or national concerns. In-depth, open and inclusive discussions should be held so that the concerns of all groups could be taken into account throughout the process.

85. Lastly, efforts to prevent and punish crimes against humanity should be guided at all times by respect for the fundamental principles of international law enshrined in the Charter of the United Nations, including sovereign equality, non-interference in the internal affairs of States and respect for the immunities enjoyed by representatives of States.

86. **Mr. Peñalver Portal** (Cuba) said that his country was a longstanding defender of respect for international law and its principles, especially international criminal law. The draft articles on prevention and punishment of crimes against humanity adopted by the International Law Commission had made a significant contribution to

international efforts to prevent and punish such crimes and should strengthen the international criminal justice system. They also provided useful guidance to States that had not yet adopted national laws criminalizing such crimes.

87. His delegation appreciated the efforts of the Special Rapporteur to take into consideration the range of domestic and regional approaches to the issue with a view to achieving international consensus. Nevertheless, it continued to believe that any convention on the subject should reflect the fundamental principle that primary responsibility for preventing and punishing serious international crimes rested with the State in whose jurisdiction the crimes had occurred. States had the sovereign prerogative to exercise, in their national courts, jurisdiction over crimes against humanity committed on their territory or by their nationals. No one was better placed to prosecute the perpetrators of such crimes than the State that had jurisdiction, whether on the basis of territoriality or of the nationality of the defendant or the victims. Only when States were unable or unwilling to exercise jurisdiction should other mechanisms for prosecution be considered.

88. At the resumed session held in April 2023, serious substantive concerns had been expressed about the draft articles. One of the main concerns was that the definition of crimes against humanity given therein was based on that set forth in the Rome Statute of the International Criminal Court, to which many States, including Cuba, were not parties. Responsibility for developing such a definition rested solely with Member States. Moreover, the definition should not be in conflict with national laws on crimes against humanity. In order to ensure that a future convention gained broad acceptance, the range of domestic legal systems, including those of States not parties to the Rome Statute, must be taken into consideration in the drafting of the text.

89. Some existing legal instruments, such as the 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, already included provisions for extradition. However, that Convention had only 56 States parties; many of the States pressing for a convention on crimes against humanity had not signed it. In order to prevent contradictions and fragmentation, it was important to ensure that international efforts did not result in texts that conflicted with international instruments that had already been adopted.

90. The International Law Commission was not a legislative entity responsible for establishing norms of

international law; its role was to document the areas in which States had formulated norms that had implications for international law and to propose areas in which States might wish to consider the possibility of formulating such norms. Its products could acquire a binding character only with the consent of States. In that regard, the elaboration of the draft articles had been an exercise not in the codification of customary international law, but rather in the progressive development of the law. There was no cause to embark upon complex new negotiations before a prior exhaustive study of the draft articles had been carried out, nor was there any need for the text to be handled any differently from the Commission's past products.

91. His delegation was gravely concerned about the escalation of violence between Israel and Palestine, which was the result of the continuous violation of the inalienable rights of the Palestinian people for 75 years and of the aggressive and expansionist policy of Israel. Cuba called for a comprehensive, just and lasting solution to the Israeli-Palestinian conflict, on the basis of a two-State solution that would enable the Palestinian people to exercise its right to self-determination and to establish an independent and sovereign State on the basis of the pre-1967 borders and with East Jerusalem as its capital. Cuba called for peace and the negotiation of a solution that would prevent further escalation of a conflict that had already taken the lives of tens of thousands of people.

92. **Ms. Joyini** (South Africa) said that it was astonishing that, unlike all of the other most serious international crimes, crimes against humanity had not yet been addressed in a convention. Having endured horrific crimes against humanity itself, her country strongly supported the elaboration of a convention.

93. Her delegation was a proponent of the principle of complementarity. While international courts played an important part in ensuring accountability for serious crimes, they could never fully subsume the role that States could play in the broader investigation and prosecution of international crimes. The role of States in ending impunity for crimes against humanity remained paramount. Closer cooperation between States in that regard was growing ever more necessary in an increasingly globalized world. As an example, the arrest in South Africa in May 2023 of one of the four remaining fugitives indicted by the International Criminal Tribunal for Rwanda in connection with the Rwandan genocide had been possible only as a result of extensive cooperation between the South African authorities and the International Residual Mechanism for Criminal Tribunals.

94. The adoption in May 2023 of the Ljubljana-The Hague Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes Against Humanity, War Crimes and Other International Crimes was a significant development in combating impunity for international crimes. However, it did not obviate the need for a dedicated convention on crimes against humanity. Her delegation continued to support the ongoing substantive discussions on the question of a future convention and remained confident that Member States would be able to find a middle ground.

95. South Africa was gravely concerned about the recent devastating escalation in the conflict between Israel and Palestine. It condemned all attacks against civilians as crimes against humanity. The international community had a duty to act; it must shoulder its responsibility to remove obstacles to peace and address any violations of international law. No real and lasting peace in Israel, Palestine and the wider region would be possible in the absence of a just and comprehensive resolution of the conflict. No one in the region stood to gain from escalated tensions, increased violence, growing instability or a continued and protracted violent conflict. South Africa reaffirmed its solidarity with Palestine and its people in their fight for self-determination and called upon the International Criminal Court to investigate all crimes and breaches of international law that had been committed in that context.

96. **Ms. Flores Soto** (El Salvador) said that her delegation welcomed the convening of the resumed session in April 2023 for the Committee to further examine the draft articles on prevention and punishment of crimes against humanity adopted by the International Law Commission. Those deliberations had provided an opportunity to identify possible areas of consensus and points of continuing divergence.

97. The draft articles constituted a valuable contribution to the codification of international law, reflecting the crystallization of certain customary norms and providing a set of provisions for the international community to follow, while also maintaining the complementary nature of the international criminal justice system. It was useful that the draft articles set out general procedures for States in relation to matters such as the establishment of national jurisdiction, obligation of prevention, due process, non-refoulement and inter-State cooperation on the prevention and prosecution of crimes against humanity. In its work on the draft articles, the Commission must ensure full respect for the principle of complementarity. In the interest of representativeness, it might wish to explore the

possibility of including elements derived from the human rights-related jurisprudence of different regional legal systems.

98. The prohibition of crimes against humanity was a peremptory norm of general international law from which no derogation was permitted. Accordingly, States had a duty to promote efforts to combat impunity for such crimes. Her delegation would provide fuller comments on the draft articles at the resumed session in April 2024.

99. **Ms. Rios** (Plurinational State of Bolivia) said that it was essential for States to take collective action to ensure the prevention and punishment of crimes against humanity. The impact of such crimes was not limited to specific groups or times; they affected humanity as a whole. Yet, while conventions had been adopted on genocide and war crimes, there was a glaring gap when it came to crimes against humanity. Member States should build on the commitments that they had undertaken under the Charter of the United Nations and various instruments of international law, including human rights law and international humanitarian law, by continuing the progressive development of international law, in particular through the elaboration of a convention on crimes against humanity based on the draft articles on prevention and punishment of crimes against humanity adopted by the International Law Commission. Her delegation had participated actively in the discussions on the draft articles held during the resumed session in April 2023 and looked forward to the second resumed session in April 2024. It was important not to allow such crimes to be forgotten, as truth and justice were fundamental for healing and reparation.

100. **Ms. Essaias** (Eritrea) said that there must be no impunity for crimes against humanity, which were among the most serious crimes of concern under international law. Her Government was committed to exploring ways to promote justice in that regard through national legislation and the implementation of treaties to which it was a party, the Charter of the United Nations and international law.

101. The draft articles on prevention and punishment of crimes against humanity adopted by the International Law Commission represented an important step towards ensuring accountability for crimes against humanity; however, notwithstanding their merits, they remained legally ambivalent and should be revised to address the concerns expressed by Member States. In that regard, her delegation reiterated its reservations about the inclusion of the seventh preambular paragraph, referring to the definition of crimes against humanity set forth in article 7 of the Rome Statute of the International

Criminal Court. The Rome Statute did not enjoy universal recognition, and its consideration in the draft articles detracted from the rights of States that were not parties to it.

102. Her delegation also had concerns about the expansion of the scope of the principle of universal jurisdiction through draft article 7 (Establishment of national jurisdiction) and draft article 9 (Preliminary measures when an alleged offender is present), given that the scope and application of that principle were still being discussed within the Sixth Committee. It also had reservations about the reference in the preamble to the prohibition of crimes against humanity being a *jus cogens* norm, which was not fully explained in the commentaries.

103. The draft articles did not cover all crimes against humanity; their scope should therefore be expanded. What set such crimes apart from others was that they were widespread and systematic in nature, organized by a Government or other entity exercising political power and directed against a civilian population. They could thus include such serious crimes as human trafficking; crimes resulting in severe damage to the environment and serious harm to human beings and other species; the illegal exploitation of natural resources; illegal land dispossession; and the application of unilateral coercive measures or sanctions, which were illegal and detrimental to the well-being and development of the civilian population of targeted States.

104. States bore the primary responsibility for the prevention and punishment of crimes against humanity. Therefore, perpetrators should be prosecuted in accordance with the laws of their countries of nationality. In that regard, efforts should be made to develop and strengthen national investigation and prosecution capacities.

105. The draft articles must be aligned with the principles enshrined in the Charter of the United Nations and international law, including those concerning immunities under customary international law, sovereignty, non-intervention in the internal affairs of States, political independence and territorial integrity.

106. The primary contribution of the draft articles should be to promote national prosecution through positive complementarity. Given the shortcomings in the text and the diverging views expressed by States at the resumed session held in April 2023, her delegation believed that it was too early to convene a diplomatic conference. Instead, delegations should continue to engage in constructive discussions, in line with the Committee's tradition of consensus-based work.



107. **Ms. Bhat** (India) said that the objective of international law was to uphold the universal value of humanity. Thus, any serious violations of international law were contrary to the spirit and aims of the United Nations. Member States therefore had a responsibility and an obligation to ensure justice and accountability for grave violations of human rights and mass atrocities, in line with their national laws.

108. Many Member States were concerned that the draft articles on prevention and punishment of crimes against humanity adopted by the International Law Commission had largely been put together by analogy to or deduction from the provisions of existing conventions. Those conventions already thoroughly addressed the issue of crimes against humanity. In particular, the draft articles were clearly inspired by the 1948 Genocide Convention and the Rome Statute of the International Criminal Court. However, several States in Africa and Asia, including India, were not parties to the latter. Her delegation's understanding was that the States not parties to the Rome Statute had national legislation in place to address the relevant offences. No attempt should be made to impose legal theories or definitions derived from international agreements that did not enjoy universal acceptance. Attempts to incorporate elements emanating from non-universal instruments, or from national laws and practices in the context of progressive development, had hindered the process concerning the draft articles by preventing Member States from reaching consensus.

109. Her delegation believed that, for the sake of justice, including the rights of the accused and the interests of victims, the State having either territorial or active personality jurisdiction was best suited to effectively prosecute crimes against humanity. A clear principle of jurisdictional linkage should be established for States to exercise jurisdiction over crimes committed by their nationals, in line with the fundamental principle of international law that States had the primary sovereign prerogative to exercise jurisdiction through their national courts over crimes, including crimes against humanity, committed either in their territory or by their nationals.

110. India would continue to engage constructively in efforts to resolve various anomalies that remained in the draft articles, such as the exclusion of terrorism-related acts and the use of nuclear weapons from the list of crimes in draft article 2 (Definition of crimes against humanity). The concept of terrorism might have been alien at the time of the Nuremberg trials, but over the past four decades, the world had witnessed the devastation caused by terrorism-related activities. There was also evidence that many States had actively

conspired in such activities or provided support to terrorist groups. It was difficult to imagine that the Commission did not recognize that such crimes were a danger to important contemporary values and the peace, security and well-being of the world.

111. The word "shall" in paragraph 1 of draft article 5 (Non-refoulement) made non-refoulement an obligation, whereas the word "believing" in the same paragraph opened the door to non-compliance by giving States discretionary powers. Moreover, the draft article would override existing bilateral treaties on extradition and mutual legal assistance. With regard to draft article 7 (Establishment of national jurisdiction), multiple States might have – and wish to exercise – jurisdiction in a given situation, and the draft articles did not contain an explanation of how such a potential conflict of jurisdiction could be resolved. Similarly, paragraph 2, in addition to overriding existing bilateral treaties between States on extradition and mutual legal assistance, would further complicate the issue of jurisdictional conflict. Primacy should be accorded to the State which could exercise jurisdiction on the basis of at least one of the subparagraphs of paragraph 1. It went without saying that such a State would be more interested than others in prosecuting the offender in question.

112. Her delegation did not support the stipulation in paragraph 2 of draft article 13 (Extradition) that each of the offences covered by the draft articles should be deemed to be included as an extraditable offence in any extradition treaty existing between States. States should retain the prerogative to incorporate such offences in their existing bilateral treaties if they so wished.

113. **Ms. Siman** (Malta) said that there was a need for a global instrument on preventing and punishing crimes against humanity, in particular to avoid situations of non liquet, and promoting inter-State cooperation in that regard. Her delegation therefore supported the work of the International Law Commission in preparing its draft articles on prevention and punishment of crimes against humanity. The world should not remain silent in the face of the commission, as part of a widespread or systematic attack directed against any civilian population, of any of the inhumane acts listed in draft article 2 (Definition of crimes against humanity) thereof.

114. Her delegation welcomed the fact that the overwhelming majority of Member States had participated actively in the Committee's discussions on the draft articles during the resumed session held in April 2023. That high level of engagement attested to the need for and interest in the draft articles. Member States had seemed to agree that accountability for crimes against humanity was essential. There also

seemed to have been general agreement that the format of the session had promoted in-depth discussion. Moreover, the session had enhanced the relationship between the Committee and the Commission. Her delegation looked forward to further constructive consideration of the Commission's recommendation regarding the draft articles at the second resumed session on the topic, to be held in April 2024.

115. **Mr. Ben Lagha** (Tunisia) said that by preparing the draft articles on prevention and punishment of crimes against humanity, the International Law Commission had fulfilled its role in an exemplary manner by identifying a gap in the multilateral treaty framework, examining State practice and doctrine, codifying the relevant existing rules of customary international law and making recommendations regarding the progressive development of international law. The Commission's decision in 2019 to recommend the elaboration of a convention based on the draft articles had marked a significant step forward in the codification of the law relating to crimes against humanity.

116. The draft articles provided a good basis for the negotiation of an international convention that would fill the gap in international treaty law and strengthen the current architecture of international humanitarian law, international criminal law and international human rights law. His delegation was aware that some Member States had reservations about certain elements of the text or considered that additional elements should be included. While those views were worth further discussion, they should not prevent action on the Commission's recommendation, given that the majority of the international community was in favour of moving forward and, in the absence of a convention, crimes against humanity continued to be committed with impunity. There were plentiful examples from the past of the international community overcoming divergences of views in order to reach consensus on the conclusion of important legal instruments.

117. His delegation hoped that the discussions on the draft articles held during the two resumed sessions would enable the Committee to further examine the Commission's recommendation and take a consensus-based decision on the matter at the seventy-ninth session of the General Assembly. While his delegation was deeply committed to the Committee's tradition of decision-making by consensus, it believed that the Committee had a duty to ensure that its commitment to consensus did not prevent it from advancing in the consideration of agenda items or from fully performing its fundamental functions, including promoting the progressive development of the law, especially on

crucial issues such as the prevention and punishment of crimes against humanity and the fight against impunity.

118. While the Committee was discussing crimes against humanity and the fight against impunity, a large-scale human catastrophe was unfolding in the Gaza Strip, before the eyes and cameras of the whole world. The indiscriminate shelling of civilian populations and civilian infrastructure in the Gaza Strip over the past four days was contrary to international law and had caused the deaths of 1,417 Palestinians, including 447 children, as well as several members of staff of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). Tens of thousands of people had been displaced, while supplies of water, fuel and food were rapidly becoming dangerously depleted following the decision by the occupier to impose a total blockade and inflict collective punishment, actions which in other contexts would quickly be described as war crimes. The delay in protecting Palestinian civilians, opening humanitarian corridors and applying international humanitarian law was inexplicable. International humanitarian law prohibited attacks directed against civilians, whoever the victims and whoever the attackers. The selective application of rules and the use of double standards weakened the rule of law and called into question the credibility of the international community and its commitment to real sustainable peace in the Middle East.

119. **Ms. Ijaz** (Pakistan) said that crimes against humanity were among the most severe transgressions. Serious crimes against humanity were currently being committed in Palestine, occupied Jammu and Kashmir and elsewhere. Her Government was deeply concerned about the cycle of occupation, oppression and violence in Palestine. The Israeli occupying forces had created a dire and rapidly deteriorating humanitarian situation in Gaza through indiscriminate aerial bombardment – including of civilian targets and United Nations premises protected under international law – and the imposition of an inhumane blockade on food, fuel and medicines as a means of collective punishment. Those actions constituted war crimes and crimes against humanity.

120. The current cycle of aggression and violence was a sad reminder of the direct consequences of more than seven decades of illegal Israeli occupation, aggression and disrespect for international law, including the Security Council resolutions that recognized the inalienable right of the Palestinian people to self-determination. The international community must work together towards a just, comprehensive and lasting two-State solution with a viable, sovereign and contiguous

State of Palestine on the basis of the pre-1967 borders, with Al-Quds Al-Sharif (Jerusalem) as its capital. Peace in the Middle East would remain elusive in the absence of such a solution.

121. The need for global cooperation to end impunity for perpetrators of crimes against humanity and to secure justice for victims could not be overstated. The International Law Commission's draft articles on prevention and punishment of crimes against humanity and the commentaries thereto could provide useful guidance to Member States, thereby helping to ensure accountability. While the Commission's work could be considered as a useful starting point, and the discussions held during the resumed session in April 2023 had provided further insight, it would be premature to draw any conclusions on the nature and format of the draft articles before holding further in-depth discussions on them. Pakistan would be submitting written comments on the draft articles by the end of 2023 and urged other Member States to do the same. During previous discussions on the topic, many delegations had continued to express concerns regarding the content of some of the draft articles. Draft articles 7, 9 and 10, in particular, were based on an expansive interpretation of the doctrine of universal jurisdiction, on which the Committee had yet to reach a consensus.

122. Likewise, it must be ensured that the definitions set forth in the draft articles for the crimes of enslavement, torture and enforced disappearance were consistent with those contained in the relevant United Nations conventions. Care should be taken to avoid introducing new definitions that could create uncertainty as to their interpretation. Given the variety of perspectives, more time was needed to allow all delegations to meticulously examine the draft articles and ensure that they were consistent with their countries' Constitutions and domestic laws. It would be unwise to make a rushed use of the draft articles as the basis for a convention or to convene an international conference to draw up such a convention. The Committee should continue to discuss the draft articles, within the framework of resumed sessions, with a view to the development of consensus. That would be the most effective way to ensure that a future convention would be widely embraced by the international community, including States that were not parties to the Rome Statute of the International Criminal Court. It was important to focus on legal issues, to avoid politicization and selectivity and to create a sound, objective framework that genuinely addressed accountability and impunity for such crimes in full conformity with the principles and objectives of the Charter of the United Nations.

123. **Ms. Abd Karim** (Malaysia) said that her delegation remained supportive of the continued discussion and elaboration of the draft articles on prevention and punishment of crimes against humanity, whether by the General Assembly or by an international conference of plenipotentiaries. Malaysia remained committed to upholding the rule of law and ending impunity for perpetrators of crimes against humanity. It firmly believed that genocide, war crimes, crimes against humanity and the crime of aggression were among the most serious breaches of international law. The ongoing onslaught in Gaza was a reminder of the urgent need to push for consensus on the issue. Every effort must be made to ensure that the perpetrators of crimes against humanity were brought to justice. There must be no double standards when it came to addressing crimes against humanity and other grave breaches of international law, including international humanitarian law.

124. In Malaysia, perpetrators of crimes against humanity could be prosecuted under the country's general criminal laws, and a robust legal framework for mutual legal assistance and extradition facilitated international cooperation in addressing international crimes, including crimes against humanity. However, the unique characteristics of crimes against humanity meant that there was a need for a more nuanced, multifaceted approach that took into account the legal, ethical, political and international aspects of such crimes, which often fell outside the boundaries of her country's Penal Code and Criminal Procedure Code.

125. Malaysia welcomed the decision to convene a second resumed session in April 2024, which would provide a further opportunity for the Committee to engage in in-depth and interactive discussion on all aspects of the draft articles. Her delegation would contribute written comments on the draft articles and the Commission's recommendation, in response to the invitation in General Assembly resolution [77/249](#). A compilation of all such written comments and observations submitted by States should be circulated to delegations well in advance of the second resumed session. Lastly, her delegation reiterated its hope that any further development of the draft articles would be in line with existing frameworks, rather than duplicating them.

126. **Ms. Hanlomyuang** (Thailand) said that crimes against humanity shocked the collective conscience, infringed the principles enshrined in the Charter of the United Nations and challenged the international community's commitment to the rule of law, justice and human rights. Such crimes must be effectively prevented and suppressed in order to end impunity and

safeguard the rule of law. A convention based on the draft articles on prevention and punishment of crimes against humanity adopted by the International Law Commission would serve as a mechanism enabling States to strengthen domestic laws, national adjudication and international cooperation in order to ensure accountability for crimes against humanity.

127. With regard to the text of the draft articles, her delegation supported the definition of crimes against humanity provided in draft article 2, which was in line with article 7 of the Rome Statute of the International Criminal Court. The core elements of that definition had been refined and elaborated by international criminal tribunals over the course of many years. The alignment of the definitions would help maintain coherence and stability in the international criminal justice system.

128. Her delegation welcomed draft article 10 (*Aut dedere aut judicare*), which would help to narrow jurisdictional gaps in the prosecution of crimes against humanity. Similar provisions in other international legal instruments had played an important role in enabling States to prevent and punish other acts prohibited under international law, such as the offence of torture under the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. It would be crucial to include a provision on the obligation to extradite or prosecute in any future convention on crimes against humanity, in order to ensure the effectiveness of the instrument. Her delegation also supported draft article 13 (Extradition) and draft article 14 (Mutual legal assistance). It particularly welcomed the rationale behind paragraph 3 of draft article 13, which excluded the political offence exception to extradition in respect of crimes against humanity.

129. With regard to the establishment of national jurisdiction pursuant to draft article 7, it would be useful to formulate clear rules governing situations where duplicative or conflicting proceedings were conducted in different States against the same alleged perpetrator, or where a State received competing requests for extradition of a particular individual.

*The meeting rose at 1 p.m.*