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Chair: Mr. Chindawongse (Thailand)

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

Organization of work

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

2. Drawing attention to the proposed programme of work, he said that no provision had been made for a general debate at the current resumed session, since the Committee had already held a general debate on the agenda item at its meetings of 11 and 12 October 2023. Unlike at the previous resumed session, when the consideration of the Commission's recommendation had been based on a briefing by the Secretariat, a full debate on the matter was planned for the current resumed session.

3. At the previous session, the Committee had approved a recommendation by the Bureau that the written summary envisaged in resolution 77/249, to be transmitted to the Committee at its seventy-ninth session, be presented in the form of a technical report with an annex containing a summary of the deliberations at both sessions, to be prepared under the responsibility of the Chair and drawn from the oral reports of the co-facilitators. While the main part of the written summary, containing the technical report, would be presented for adoption paragraph by paragraph, according to the usual practice, the Chair's summary would be considered for inclusion in the Committee's written summary as a whole, and not on a paragraph-by-paragraph basis. As such, it would not be a negotiated text.

4. He had been informed that the main part of the written summary would be made available in all languages towards the end of the current week, or early the following week. He had also been informed that, owing to the liquidity crisis the Organization was facing, and the fact that the United Nations Headquarters would be closed on Wednesday, 10 April 2024, the Chair's summary, to be included in the annex, would only initially be presented in the language of drafting, namely English, but that versions in other languages would be made available soon after the end of the resumed session. The plan was to have the Chair's summary

finalized and circulated to all delegations by the close of business on Monday, 8 April 2024.

5. Turning to the working arrangements for the session, he said that to ensure that the deliberations were undertaken in an interactive format, as required by resolution 77/249, the "mini-debate" practice of the Commission would be used, such that delegations could request the floor in connection with a statement made during the regular debate. They might also comment on the views expressed by other delegations speaking during the interactive segment. The delegation whose statement was the subject of the interactive debate might respond to any and all interventions, without restriction on the number of such responses. The co-facilitators might also request the floor to intervene during the interactive segment.

6. The Bureau had appointed three co-facilitators for the resumed sessions: Ms. Sverrisdóttir (Iceland), Mr. Leal Matta (Guatemala) and Ms. Ruhama (Malaysia). At the current session, the Bureau had decided to nominate Mr. Rizal (Malaysia) as co-facilitator to replace Ms. Ruhama (Malaysia), who had had to return to capital. The role of the co-facilitators would be to guide the deliberations, in particular with regard to the interactive aspects, and prepare an oral report on the deliberations of the two resumed sessions, which would serve as a basis for the summary of the sessions to be prepared under the responsibility of the Chair at the end of the current resumed session.

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

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

Draft preamble and draft article 1

8. **Ms. Popan** (Representative of the European Union, in its capacity as observer), speaking also on behalf of the candidate countries Albania, Bosnia and Herzegovina, Georgia, Montenegro, North Macedonia, the Republic of Moldova, Serbia and Ukraine; and, in addition, Liechtenstein, Monaco and San Marino, said that there was a gap in the international treaty framework that needed to be filled. While crimes against humanity were one of the core international crimes and no less serious than genocide or war crimes, they were not yet the subject of an international convention. The Commission clearly agreed with that observation by recommending that a convention on crimes against humanity be elaborated on the basis of its draft articles.

9. The European Union and its member States believed that the draft preamble and draft article 1 constituted a good basis for the negotiation of a future convention. The preamble to a treaty had multiple functions. It was a significant element for understanding the context and purpose of the treaty, as confirmed by the International Court of Justice in its judgment in the *North Sea Continental Shelf* case. In addition, the parties to a treaty could not make reservations or declarations thereto in respect of its preamble.

10. The European Union and its member States took note of the fourth preambular paragraph and the recollection that the prohibition of crimes against humanity was a peremptory norm of general international law (*jus cogens*). While some delegations did not support the reference in the seventh preambular paragraph to the definition of crimes against humanity set forth in the Rome Statute of the International Criminal Court, on the grounds that it did not enjoy universal adherence and that such reference could impair universal acceptance of a future convention, the European Union and its member States believed that the focus should not be on the source of the definition but on the rationale for modelling the definition on the Rome Statute. That reference rightly reflected the fact that the definition was widely accepted beyond the 120 States parties to the Statute. While a number of delegations had expressed the preference that reference be made in the draft preamble to the principles of sovereign equality, territorial integrity and non-intervention in the internal affairs of States, and had expressed the need to have a contemporary gender perspective incorporated into the proposed convention, the European Union and its member States believed that those were important points that could be usefully discussed in a negotiating setting, without undermining the cardinal value of the objective of preventing and punishing crimes against humanity.

11. Lastly, draft article 1 (Scope) brought legal clarity and certainty to the twofold purpose of the draft articles: the prevention and punishment of crimes against humanity. A provision on scope should therefore be included in a future convention, as similar provisions were found in other instruments, such as the United Nations Convention against Corruption and the United Nations Convention against Transnational Organized Crime.

12. **Mr. Alwasil** (Saudi Arabia), speaking on behalf of the Group of Arab States, said that the Group would approach the discussions in good faith, given its belief in the importance of cooperation among States in the various legal frameworks to combat and prevent crimes against humanity, considered to be among the most serious international crimes. Nonetheless, the peoples of

the world were wondering how the international community could come together in the halls of the United Nations to discuss crimes against humanity without considering the crimes that had been committed against the Palestinian people for over 75 years by the Israeli occupation forces and settler militias, with impunity, thus demonstrating an unacceptable and selective application of international and moral norms. The Group of Arab States therefore called on the international community to fully assume its responsibility and put an end to double standards in the application of international law.

13. It was imperative that all necessary measures be taken, in accordance with international law, international humanitarian law and customary international law, to put an end to the crimes being committed by the Israeli occupation forces and to hold Israel accountable for the blatant violations and horrific crimes being committed in the Gaza Strip, and to protect the Palestinian people from the crimes being committed against them by the occupation forces and settler militias in the Gaza Strip and the occupied West Bank, including East Jerusalem. Those crimes included colonialism and occupation, incitement to violence, forced displacement, racial discrimination and a war of extermination against defenceless civilians. The Group of Arab States called on the international community to hold those responsible for the crimes of the Israeli occupation accountable for the consequences of the brutal aggression against and massacre of the Palestinian people, in accordance with the principle of universality of the rules of international law.

14. All Member States should adhere to international law and international humanitarian law and apply the relevant sanctions resulting from non-compliance to all perpetrators and aggressors equally, without any discrimination based on gender, religion, race or colour.

15. **Ms. Janfalk** (Sweden), speaking on behalf of the Nordic countries (Denmark, Finland, Iceland, Norway and Sweden), said that the lack of a dedicated convention on crimes against humanity – which were already clearly prohibited under international law – left a gap in the international treaty framework and hampered the ability to effectively prevent and punish those horrendous crimes. The Nordic countries therefore continued to steadfastly support the Commission's recommendation to elaborate a convention on crimes against humanity based on its draft articles, and to believe that the draft articles constituted an excellent basis for the negotiation of such a convention.

16. The draft preamble provided a balanced conceptual framework for the draft articles, usefully setting out the

general context in which they were elaborated and their main purposes. It started off rightly with the recognition of the horror caused by crimes against humanity and the threat that such crimes had posed and continued to pose to all humankind, and with the emphasis on the link between the pursuit of criminal justice and the maintenance of peace and security. The recollection that the prohibition of crimes against humanity was a peremptory norm of general international law (*jus cogens*) and the affirmation that the prevention and punishment of crimes against humanity were of concern to the international community as a whole were appropriate.

17. The Nordic countries continued to support the Commission's decision to use the definition of crimes against humanity in the Rome Statute as the material basis for the definition of crimes against humanity in the draft articles, and to make a reference thereto in the draft preamble. The Nordic countries had taken note of the concern of some delegations that such a reference could impair States' acceptance of a future convention, as the Rome Statute did not enjoy universal adherence. However, as the most recent codification of crimes against humanity that enjoyed broad international support beyond the 124 States parties to the Rome Statute, the definition contained in the Statute represented an appropriate starting point for future negotiations. In addition, being a State party to the Statute was not a precondition for becoming a State party to a future convention on crimes against humanity. Such convention would address the horizontal relations between States, whereas the Rome Statute addressed the vertical relations between the International Criminal Court and the States parties to the Statute.

18. Moreover, the jurisdiction of that Court was complementary to national criminal jurisdictions and, as recognized in the draft preamble, it was the duty of every State to exercise its criminal jurisdiction with respect to crimes against humanity. Again, as highlighted in the draft preamble, the effective prosecution of crimes against humanity entailed taking measures at the national level and enhancing international cooperation, including with respect to extradition and mutual legal assistance. The elaboration of a convention based on the draft articles would be an essential step in that regard.

19. For the Nordic countries, draft article 1 (Scope) contributed to legal clarity and certainty, indicating clearly that the draft articles had two mutually reinforcing objectives: preventing and punishing crimes against humanity. As the Commission indicated in its commentary to the draft article, States would remain bound at all times by whatever obligations existed under other rules of international law, including customary

international law. The draft preamble and draft article 1 constituted a good basis for the negotiation of a future convention.

20. **Ms. Cupika-Mavrina** (Latvia), speaking on behalf of the Baltic States (Estonia, Latvia and Lithuania), said that, like the majority of Member States, the Baltic States supported the idea of a convention on crimes against humanity based on the draft articles. The draft articles had been drafted with care and, most importantly, in a manner that would not lead to the fragmentation of international law. The draft articles would not only fill an existing legal gap in the international treaty framework, but would also help in the fight against impunity by ensuring that anyone who committed any of the core international crimes would be held accountable. The draft preamble provided the context and background of the draft articles and reflected the gravity and heinousness of such crimes. It would therefore be useful in the application and interpretation of a future convention. The Baltic States welcomed draft article 1 and the clear indication therein that the draft articles concerned both the prevention and the punishment of crimes against humanity.

21. **Mr. Muhumuza** (Uganda), speaking on behalf of the Group of African States, said that the fact that the General Assembly, in its resolution [77/249](#), not only took note of the draft articles but also decided that the Committee would resume its session in April 2023 and 2024, in order to exchange substantive views on all aspects of the draft articles and to consider further the recommendation of the Commission, was a clear manifestation of the collective will of the international community to prevent and punish crimes against humanity, which were among the most serious crimes that affected the international community, deeply shocked the conscience of humanity and endangered the cohesion of society. The Group of African States welcomed the convening of the resumed session aimed at achieving the necessary consensus towards a decision on the fate of the draft articles, without prejudice to the question of their future adoption or other appropriate action.

22. While the draft articles might constitute a potential basis for negotiation, the cultural specificities, geographical realities and the legitimate concerns of States should be taken into consideration in the current exercise. The Group was ready to constructively engage in meaningful and substantive discussions, with the focus on building a consensus. It nonetheless reiterated its concern about the Commission's attempt or decision to review some provisions borrowed from other internationally binding instruments in a manner that was inconsistent with its initial intention.

23. Further, the Group recalled the negative impacts of the historical, past tragedies of the slave trade, slavery and exploitation, including on the African continent, which were among the highest forms of crimes against humankind. It noted the vestiges and consequences of the transatlantic slave trade, which continued to affect the continent and people of African descent. It therefore called for the recognition of slave trade and slavery as crimes against humanity. Similarly, the fundamental legal concepts of historical importance to African Member States, such as the principles of territorial integrity, sovereign equality and non-interference in the internal affairs of States, enshrined in the Charter of the United Nations, should be explicitly mentioned in the draft articles.

24. The Group of African States also warned against double standards and selectivity in the exercise of justice, as they undermined the international legal order. In that context, the Group took note of Security Council resolution [2728 \(2024\)](#) on the situation in the Middle East, expressed grave concern regarding the warnings by United Nations special rapporteurs of an unfolding genocide in the Gaza Strip, and called not only for an end to attacks on all civilians, but also for the protection of civilians in accordance with international law, including humanitarian and human rights law, and for an immediate humanitarian ceasefire aimed at achieving a permanent and sustained cessation of hostilities.

25. There was a need for international cooperation in combating crimes against humanity, with priority given to issues such as mutual legal assistance and extradition, which should be based on bilateral treaties and the relevant national laws. The general obligations of States should be linked first to national laws and then to undertakings freely entered into under the mechanisms provided for by international law, in order to ensure that those obligations were in line with the spirit and letter of international law. Further, the prohibition of crimes against humanity must be precise and formulated in the light of the capacity of States to punish such crimes.

26. Lastly, to effectively combat impunity, more efforts should be made in line with accepted and applicable international legal instruments.

27. **Mr. Kirk** (Ireland) said that his delegation continued to support the elaboration of a convention on the basis of the draft articles. It broadly supported the draft preamble, including the recognition therein that crimes against humanity threatened international peace and security, the affirmation that such crimes must be prevented, and the determination to put an end to impunity for the perpetrators of those crimes. Ireland had long been a strong supporter of the international

criminal justice system as a means of ending impunity for international crimes and thereby contribute to the prevention of such crimes and the maintenance of international peace and security. It had sought to genuinely facilitate the pursuit of accountability for such crimes in a principled and consistent manner by calling for and supporting efforts to that end, regardless of where the crimes occurred and who committed them.

28. The ongoing horrifying levels of violence suffered by civilians in conflicts showed that it was now more important than ever to reinforce and improve the international criminal justice system, in part by elaborating a convention on crimes against humanity on the basis of the draft articles, which would close a stark gap in the international treaty framework governing the prevention and punishment of international crimes. His delegation had been encouraged by the discussions at the previous resumed session, where most States had been in favour of the elaboration of such a convention. It was confident that any divergence of views on the precise content of the draft articles that remained after the current session could be resolved during negotiations on the elaboration of a convention, which it believed should take place as soon as possible.

29. **Ms. Song** Miyoung (Republic of Korea) said that her delegation was generally happy with the current structure and composition of the draft preamble; its wording was commonly found in multilateral treaties addressing the most serious crimes, such as the Convention on the Prevention and Punishment of the Crime of Genocide and the Rome Statute. The draft preamble was therefore a solid conceptual foundation for the draft articles, effectively setting a precedent for addressing crimes against humanity within a legal framework. Her delegation supported the recollection in the eighth preambular paragraph of the duty of States to exercise their criminal jurisdiction with respect to crimes against humanity, as they bore the primary responsibility for investigating and prosecuting such crimes. It was imperative that the most serious crimes, including crimes against humanity, should not go unpunished. The draft preamble effectively outlined the inception, focus and intended direction of the draft articles.

30. Her delegation generally supported draft article 1 (Scope) as drafted. As to whether or not a provision on territorial scope should be included in the draft articles, it believed that the phrase “in the territory”, which was included in several of the draft articles, sufficed to convey the concept of geographical scope. It was noteworthy that many bilateral treaties and multilateral conventions did not explicitly include provisions on territorial scope or on the definition of the word “territory”. Consequently, a stand-alone provision on

territorial scope might not be required. It might be preferable instead to address the question in the relevant individual draft articles.

31. **Ms. Bisharat** (Jordan) said that since the Nuremberg trials, there had not been any significant developments in the legal regime on crimes against humanity, with no single multilateral convention being dedicated to preventing and punishing such crimes and promoting inter-State cooperation in that regard. With crimes against humanity being among the gravest atrocities known to humankind, the need for a dedicated convention was evident. The draft articles filled the existing gap in the legal regime to combat and prevent the most serious international crimes and purported to ensure that the perpetrators of crimes against humanity were brought to justice.

32. The principles included in the draft preamble were appropriate and valuable, as they offered a conceptual framework for the draft articles, with the first three preambular paragraphs establishing the connection between maintaining international peace and security and combating impunity for crimes against humanity. The reference in the fourth preambular paragraph to the prohibition of crimes against humanity as having *jus cogens* status was crucial, reflecting the fact that the prohibition was accepted and recognized by the international community as a norm from which no derogation was permitted. The reference to the definition of crimes against humanity in the Rome Statute was in no way intended to create obligations towards the Court for States that were not parties to the Statute.

33. The two prongs of the scope of the draft articles – prevention and punishment – was well articulated in draft article 1.

34. **Mr. Aron** (Indonesia) said that crimes against humanity were not just violations against individuals but also an affront to humanity as a whole. The international community must cooperate in order to prevent such crimes, hold the perpetrators accountable, and ensure justice for the victims.

35. Referring to the draft preamble, he said that, in the first preambular paragraph, the phrase “children, women and men” should be replaced with “people”, there being no need to mention particular groups in the draft articles, since crimes against humanity referred to a widespread or systematic attack directed against any civilian population, regardless of the specific group involved. The reference to the Rome Statute in the seventh preambular paragraph was unnecessary. In its commentary to that preambular paragraph, the Commission had suggested that the definition of crimes against humanity set forth in article 7 of the Statute had been considered only as a

threshold matter. However, if the scope of the draft articles was aligned with that of the Statute, then it was redundant to identify the sources and rationale of the definition. Moreover, the inclusion of the seventh preambular paragraph might imply the existence of some divergence between the draft articles and the Statute, which could be misleading not only as to the content of the draft articles, but also as to the relevance of the Commission’s own work.

36. **Ms. Ensing** (Kingdom of the Netherlands) said that crimes against humanity were among the most serious crimes under international law of concern to the international community as a whole. Even though those atrocities were categorically prohibited under international law, they continued to be committed and their perpetrators continued to act with impunity. The current international context once again illustrated the need to fill the gap in the international legal framework for the prevention and punishment of the most serious international crimes. A specific convention on the prevention and punishment of crimes against humanity would serve to strengthen and facilitate the harmonization of domestic laws on such crimes, facilitate inter-State cooperation and offer another instrument for combating impunity. The draft articles represented a strong basis for a future convention on crimes against humanity.

37. Her delegation agreed with the recollection in the fourth preambular paragraph that the prohibition of crimes against humanity was a peremptory norm of general international law (*jus cogens*). The affirmation that crimes against humanity must be prevented and the determination to put an end to impunity for the perpetrators of those crimes, set out in the fifth and sixth preambular paragraphs, highlighted the two interconnected objectives of the draft articles and of a future convention, namely the prevention and punishment of crimes against humanity. Her delegation welcomed the general reference in the seventh preambular paragraph to article 7 of the Rome Statute, which contained a definition of crimes against humanity that served as a model for the definition of such crimes and was supported by a large number of States. Retaining that definition would provide legal certainty.

38. Draft article 1 (Scope) appropriately set out the two main objectives of the draft articles, namely the prevention and punishment of crimes against humanity, and should be retained.

39. **Ms. Vittay** (Hungary) said that the draft articles had not been crafted in a vacuum, but within an existing legal framework, since the concept of crimes against humanity had already been codified in many international

instruments, including the Nuremberg Charter, the Rome Statute, the Genocide Convention and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Hungary, having signed and ratified all those instruments, emphasized the imperative of preventing fragmentation and conflict in the legal obligations resulting therefrom. Specifically, a future convention on crimes against humanity should align seamlessly with the Rome Statute, considering the significant number of States that were parties to the Statute. For the sake of clarity, her delegation did not claim that the provisions of the draft articles were, or should be, a mere replication of existing provisions from other treaties, and would be open to improving the current text. Nonetheless, it commended the Commission's commitment to averting collisions between its text and existing treaty frameworks, for the sake of compatibility and coherence.

40. The unique history of the past eight decades had left a mark on the manner in which the draft preamble and draft article 1 were crafted. For example, compared with its counterpart in the Genocide Convention, the draft preamble was rather lengthy, reflecting developments over that period, including the importance of the reference to the Rome Statute and to the *jus cogens* character of the prohibition of crimes against humanity. Nonetheless, Hungary remained open to including additional wording in the draft preamble. The wording of draft article 1 (Scope) was well founded and appropriate, as it reflected the dual focus of the draft articles – prevention and punishment of crimes against humanity. In so doing, it followed the pattern found in both the Genocide Convention and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The wording on the prevention component in particular provided States with the necessary flexibility as to which preventive measures to adopt, as long as they were in line with the basic objectives of the future convention.

41. **Mr. Gorke** (Austria), referring to the draft preamble, said that his delegation shared the view, expressed not just by the Commission but also by the International Criminal Tribunal for the Former Yugoslavia and several regional human rights courts, that the prohibition of crimes against humanity constituted a *jus cogens* norm. It agreed with the Commission that the definition of crimes against humanity set forth in article 7 of the Rome Statute served as a useful model, even though the Rome Statute did not yet enjoy universal membership. That definition was drawn from customary international law and largely corresponded to article 6 of the Nuremberg Charter. Austria continued to believe that the eighth preambular

paragraph, which stipulated that it was the duty of every State to exercise its criminal jurisdiction with respect to crimes against humanity, did not require States to exercise universal jurisdiction. As to the scope of a future convention set out in draft article 1, it remained his delegation's position that matters not covered by such a convention would still be regulated to a large extent by customary international law.

42. **Mr. Escobar Ullauri** (Ecuador) said that his delegation continued to support the negotiation of a convention on the prevention and punishment of crimes against humanity, which would close a gap in international law on the criminalization, prevention and prohibition of atrocity crimes. It believed that the current discussions would enable the participants to make progress in their joint efforts to strengthen accountability for serious violations of international law.

43. With regard to the draft preamble, while his delegation agreed with the current formulation of the first preambular paragraph, it was open to other wording that could reinforce the message about the continuing perpetration of crimes against humanity. It was appropriate to maintain the generic reference in the third preambular paragraph to the principles of international law embodied in the Charter of the United Nations, in order to avoid a discussion on which principles of should be included and which should be left out. His delegation strongly supported the recognition in the fourth preambular paragraph that the prohibition of crimes against humanity was a peremptory norm of general international law (*jus cogens*). It understood, however, that the paragraph did not imply that all the provisions of the draft articles reflected peremptory norms of general international law. The paragraph would ensure that the prohibition produced all the legal effects conferred by the said recognition. It was also worth recalling that the wording of the paragraph was consistent with the criterion established by the Commission on the subject.

44. With regard to the seventh preambular paragraph, his delegation understood the concern that the reference to the Rome Statute might raise among States that were not parties to that instrument; an alternative to the word "considering" could therefore be considered. Nonetheless, it was important to maintain consistency between a future convention on crimes against humanity and the Statute. His delegation agreed with the stipulation in the eighth preambular paragraph that it was the duty of every State to exercise its criminal jurisdiction with respect to crimes against humanity, without prejudice to the principle of complementarity. With regard to the tenth preambular paragraph, one of

the main contributions of a convention on crimes against humanity would be to promote horizontal cooperation among States. His delegation therefore supported the proposals designed to strengthen the wording concerning international cooperation.

45. His delegation found the current formulation of draft article 1 (Scope) acceptable, and supported the suggestion to insert the words “by States” after the words “prevention and punishment”, in order to add legal clarity and underline the importance of horizontal cooperation among States. However, it was unnecessary to include a reference to the prohibition of the use of force in a manner that was incompatible with the Charter, and to the retroactive effect of a future convention, which would be reiterative.

46. **Mr. Silveira Braoios** (Brazil) said that his delegation was engaging in the current discussions on the understanding that its views would in no way prejudice its approach to any future negotiations on the topic. It reserved its right to reconsider or complement its views in the future.

47. It would be useful to incorporate into the preamble of a future convention on crimes against humanity provisions referring to the principles of the Charter related to the general prohibition of the use of force and non-intervention in the internal affairs of States. Such provisions would facilitate universal accession to a future convention by addressing the concerns that allegations of crimes against humanity might be used as a pretext for aggression and interference in the internal affairs of States. His delegation welcomed the recognition that the prohibition of crimes against humanity was a peremptory norm of general international law (*jus cogens*), as had been asserted in the jurisprudence of several international and national courts and such regional courts as the Inter-American Court of Human Rights. While not all the provisions of the draft articles constituted *jus cogens* norms, no derogation from the prohibition of such crimes was acceptable. Any caveat in that regard would be inconsistent with the serious nature of crimes against humanity under international law.

48. His delegation supported the inclusion of a preambular paragraph containing a reference to the definition of crimes against humanity set forth in the Rome Statute, which would help to avoid the fragmentation of international law. It also acknowledged that a significant portion of the world’s population lived in States that were not parties to, and therefore were not bound by, the Statute. However, that preambular paragraph was also important to ensure that a future

convention would be applied in conformity with the principles of complementarity and *non bis in idem*.

49. For the sake of clarity, it would be advisable to preserve the provision on the scope of the draft articles in a future convention. Expressly circumscribing that scope as being the prevention and punishment of crimes against humanity, as set out in draft article 1, would help establish clear boundaries for the interpretation and application of all the provisions of a future convention. Brazil was also of the view that, given the absence of a provision to the contrary, the scope *ratione temporis* of a future convention should be interpreted in accordance with article 28 of the Vienna Convention on the Law of Treaties, dealing with the non-retroactivity of treaties.

50. **Mr. Simonoff** (United States of America) said that, more than 75 years after the Nuremberg and Tokyo trials, there was no general multilateral convention on the prevention and punishment of crimes against humanity, which continued to be committed, all too often with impunity. It was time to begin the process of strengthening the legal framework for preventing and punishing such crimes. Accordingly, his delegation would support a decision to begin a process to negotiate a convention on the prevention and punishment of crimes against humanity later during the year.

51. His delegation noted the important role that the draft preamble and draft article 1 (Scope) played in the overall structure of the draft articles, and was pleased to see that the draft preamble, which set the general context and main purpose of the draft articles – including prevention and accountability – had been inspired by wording found in the Genocide Convention. The United States viewed that Convention, in many respects, as the primary model for any future convention on the prevention and punishment of crimes against humanity. Nonetheless, further clarification of draft article 1 would be useful. For instance, it could be stated therein that nothing in the draft articles should be construed as authorizing any act of aggression or other use of force inconsistent with the Charter, or as allowing for the duty to prevent and punish crimes against humanity to be used as a pretext for unlawful uses of force. Similarly, it should be stated more clearly that the draft articles would not modify international humanitarian law, or criminalize conduct undertaken in accordance with that law, which was *lex specialis* in situations of armed conflict. The draft articles should not be interpreted in ways that might purport to alter international humanitarian law or criminalize conduct undertaken in accordance with that law.

52. **Ms. Essaia**s (Eritrea) said that crimes against humanity were among the most serious crimes under

international law and afflicted every region of the world. The primary responsibility for the prevention and punishment of such crimes lay within the domestic jurisdiction of States. The draft articles should, therefore, focus on promoting national prosecution, in line with the principle of complementarity. With regard to the draft preamble, the fact that States had the sovereign right to exercise jurisdiction over such crimes committed by their nationals and/or on their territory meant that the principles of national sovereignty, political independence and territorial integrity and non-intervention in the internal affairs of States should be included in the third preambular paragraph. An explicit reference to the immunity of States and their officials from foreign criminal jurisdiction should also be included in the paragraph. Regarding the fourth preambular paragraph, without prejudice to the Commission's work on the current topic, her delegation believed that *jus cogens* norms (and their legal consequences) should be identified systematically and in accordance with a generally accepted methodology. Further study was necessary in that respect.

53. In order to ensure the broadest acceptance of the draft articles, it was important for their provisions to reflect widely accepted principles of international law. The reference to the Rome Statute definition of crimes against humanity in the seventh preambular paragraph was unacceptable, because the Statute was not universally recognized; including that reference in the draft preamble would compromise the rights of non-States parties to the Statute. Although it acknowledged the Commission's intent to establish an additional component in the current international legal framework with the draft articles, her delegation believed that, notwithstanding their merits, the draft articles remained legally ambiguous. Despite their purported universality, they would result more in selectivity rather than egalitarianism.

54. Eritrea reiterated its condemnation of double standards concerning the rule of law at the international level, particularly in international criminal law. Unless such concerns were addressed, the international community could not prevent a new treaty from becoming yet another archetypical instrument of selective justice. Considering the divergence of views among States in respect of the draft articles, it was premature to engage in negotiations on the text, without first building a universal consensus on the establishment of a framework that did not embody selectivity, politicization or double standards.

55. **Mr. Lopez Ferrucci** (Argentina) said that the principles included in the draft preamble were appropriate and valid, since they provided the

conceptual framework for the interpretation of the draft articles. The preambular paragraphs were also consistent and allowed for complementarity with other existing treaty regimes that were related, to a certain extent, to crimes against humanity, such as the Rome Statute, the International Convention on the Suppression and Punishment of the Crime of Apartheid, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention for the Protection of All Persons from Enforced Disappearance.

56. His delegation agreed with the assertion in the fourth preambular paragraph that the prohibition of crimes against humanity was a peremptory norm of general international law (*jus cogens*), because it was a general rule of international law and was accepted by the international community as a norm from which no derogation was permitted. Crimes against humanity were now universally rejected, whether committed by States or by individuals. The acceptance and recognition of that prohibition could be found in a variety of sources, including the judgments of international courts and tribunals, the conduct of States and academic writings. It was precisely the *jus cogens* character of that prohibition that justified its codification in a binding instrument. The sixth preambular paragraph, which concerned the determination to put an end to impunity for the perpetrators of crimes against humanity and thus to contribute to the prevention of such crimes, was vital in that it expressed the object and purpose of the instrument.

57. His delegation welcomed the reference in the draft preamble to the rights of victims in relation to crimes against humanity. Victims were often denied their rights for various reasons, including their social marginalization, the lack of political will to investigate the crimes and prosecute the perpetrators, and weak criminal justice systems. Argentina therefore supported the inclusion of the reference to the rights of victims in the draft preamble as well as in the body of the draft articles.

58. **Ms. Jiménez Alegría** (Mexico) said that a convention on the prevention and punishment of crimes against humanity was needed to close a historical gap in international law. Such a convention would set out the obligation to prevent and punish crimes against humanity, and help to strengthen national systems and the principle of complementarity. The convention would also allow for the harmonization of definitions and State actions and the consolidation of customary international law on the topic, and foster international cooperation and technical assistance in the investigation and prosecution of those crimes. In short, the convention

was not only necessary, but would also contribute significantly to the progressive development of international law.

59. Her delegation recognized the interpretative importance of the draft preamble and supported its contents. The text was based on the wording of other relevant international treaties, including the Genocide Convention and the Rome Statute. It captured the basic principles in a balanced manner. However, it could be strengthened with a reference to the principles of international law embodied in the Charter, such as the prohibition of the use of force, non-intervention in the internal affairs of States and respect for national sovereignty and territorial integrity; a reference to the principle of complementarity, since it aligned fully with the focus placed by the international community on the fight against impunity through criminal justice; and retention of the reference to the prohibition of crimes against humanity as a peremptory norm of general international law (*jus cogens*). The text should also include a reference to the rights of women, children and Indigenous Peoples. The gender perspective should be introduced in the draft preamble and set out as a cross-cutting issue throughout the draft articles and, in general, in a future convention. In that connection, efforts should also be made to strengthen the victim- and survivor-centred approaches to crimes against humanity.

60. Lastly, her delegation acknowledged that draft article 1 helped to bring greater clarity and certainty to the scope of the draft articles and its two objectives: prevention and punishment.

61. **Ms. De Raes** (Belgium) said that her country had always attached great importance to the effort to combat impunity for the most serious crimes affecting the international community as a whole and was deeply convinced that that effort contributed to international peace and security. Demanding accountability for the most serious crimes was indeed essential to restoring the people's trust in inclusive institutions and to achieving lasting peace. It was vital to adopt a victim-centred approach in pursuing the mutually reinforcing objectives of peace and justice. The inclusive nature of accountability was crucial for ensuring its effectiveness and reinforcing its credibility.

62. States had the foremost duty to prosecute the perpetrators of crimes against humanity, which meant that they needed to put in place the appropriate legal framework, criminalize the acts in their domestic law and ensure that their courts had the necessary jurisdiction over those crimes. Indeed, that principle was at the core of the Rome Statute, in which the International Criminal Court was presented as being

complementary to national courts. Belgium therefore supported the elaboration of a convention on the basis of the draft articles. By setting out the obligation of States to prevent crimes against humanity, to criminalize them in their domestic law, and to investigate and prosecute the alleged perpetrators, such a convention would indeed fill the existing gap in international treaty law.

63. It was noted correctly in the draft preamble that the prohibition of crimes against humanity was a peremptory norm of general international law (*jus cogens*) and that such crimes deeply shocked the conscience of humanity. While measures taken at the national level were indispensable, the fight against crimes against humanity could not be undertaken successfully without international cooperation, not only between States but also between States and international organizations. Since the mandate of the Commission was not just the codification of international law but also its progressive development, it was vital to ensure that the proposed convention was consistent with existing international instruments, including the Rome Statute and other agreements pursuing a similar objective of combating impunity for the most serious crimes, such as 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.

64. **Mr. Hasenau** (Germany) said that crimes against humanity were among the most serious crimes known to humankind. Yet, there remained an obvious gap outside the Rome Statute framework that needed to be closed in order to strengthen accountability and bring the perpetrators of such crimes to justice domestically and universally. A new convention on crimes against humanity would complement treaty law on the most serious crimes and foster inter-State cooperation with regard to the investigation, prosecution and punishment thereof.

65. Germany welcomed the positive approach to the recommendations of the Commission, which enjoyed wide support throughout the international community. Since concerns and suggestions by various partners had been thoroughly evaluated and discussed, it was time to move forward and to proceed with the elaboration of a convention on the basis of the draft articles. His delegation was convinced that a convention would provide further impetus to the prevention of atrocity crimes. The draft articles would serve as a solid basis for States to conduct successful negotiations in an inclusive manner, taking into account current achievements in international criminal law, while approaching new topics of common concern with due openness. Germany

fully supported the elaboration of a convention and would continue to proactively contribute to the process leading to its adoption.

66. **Ms. Bhat** (India) said that the prevailing differences among legal systems must be taken into consideration in the discussions on the draft articles and for the success of any future convention on crimes against humanity, with due respect for the principle of sovereign equality of States. Any attempt to simply transpose the provisions of existing legal regimes into a draft convention would be futile. While the draft articles were inspired by the Rome Statute and the Genocide Convention, it was worth noting that several States in Africa and Asia, including India, were neither signatories nor parties to the Rome Statute, and 43 States Members of the United Nations were neither signatories nor parties to the Genocide Convention.

67. As the draft articles drew from those instruments, a convention emanating therefrom might not enjoy universal acceptance. There should therefore be no attempt to impose legal theories or definitions derived from international agreements that did not enjoy universal acceptance. It was her delegation's understanding that Member States that had not subscribed to the Rome Statute had extant national legislation in place to deal with crimes against humanity. Besides, the acquittals in recent years at the International Criminal Court had also cast a shadow on the Court's credibility and appeared to substantiate the view that the Court might not serve the broader cause of justice when cases were referred to it primarily for political reasons. The selective application of a prospective convention was also a matter of concern for States that were not parties to the Rome Statute.

68. Her delegation believed that 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. The goal of preventing crimes against humanity and other core crimes would not be necessarily advanced by the adoption of an additional treaty instrument. India was therefore not in support of efforts that would result in duplication of existing international legal mechanisms.

69. The foundational status of the principles of sovereign equality and territorial integrity of States and non-intervention in the internal affairs of States should be highlighted in the draft preamble, as was the case in

other conventions, such as the United Nations Convention against Transnational Organized Crime and the International Convention for the Suppression of the Financing of Terrorism, which enjoyed greater universality than those cited in the commentary to the draft preamble. Furthermore, only a rule accepted and recognized by the international community of States as a whole would constitute a *jus cogens* norm. The studies and judgments cited in the commentary to the fourth preambular paragraph were insufficient to substantiate the assertion that the prohibition of crimes against humanity was a *jus cogens* norm. The provision should therefore be deleted.

70. **Mr. Al-Fatlawi** (Iraq) said that crimes against humanity represented a clear threat to international peace and security; they diminished the values of humanity, morality and justice and left lasting effects, undermining the safety and security of communities, countries and regions long after they had been committed. The rule of law must therefore be deployed to combat them, without discrimination based on the identity of the victim or the perpetrator or on political factors. Concerted international efforts were required to bring to justice the perpetrators of crimes against humanity, prevent the commission of such crimes in the future, and support and protect victims. The international community must work together to put an end to those horrific crimes and build a more peaceful and safer world for all.

71. The Iraqi people had fallen victim to atrocious crimes perpetrated by Da'esh; those crimes reflected the barbarity, brutality, extremism and destructive ideology of that group. Da'esh committed the crimes of genocide with the killing of thousands of Iraqis, torture, sexual slavery and forced marriage, as well as theft and looting of private and public property, and destruction of cultural heritage sites, including museums and archaeological sites. It used the funds generated from those activities to finance other terrorist activities and erase the cultural identity of the people in the areas it controlled. The Government of Iraq had made significant efforts to provide security and stability in liberated areas of the country, to ensure the rule of law and to exercise its national jurisdiction. Iraqi courts were competent to prosecute those who committed or assisted in the commission of those crimes.

72. His delegation urged concerned countries to cooperate with Iraq to prosecute the perpetrators of those crimes and to enhance cooperation in legal and criminal matters, in accordance with the relevant rules of international law. It was important to ensure that the issue of jurisdiction mentioned in the draft articles was restricted to national jurisdiction and not expanded to

universal jurisdiction, which could be problematic and would only prolong the discussions in the Committee. The international community had a humanitarian duty to address the crimes committed against the Palestinian people by the Israeli occupation forces. The violations being committed in the occupied territories were crimes against humanity; international cooperation was required to put an end to the criminal practices of the occupation forces. Many of those violations, which undermined the basic rights and human dignity of the Palestinian people, had been documented.

73. His delegation renewed its support for the Commission and its efforts to strengthen the rule of law, even though it did not share some of the views expressed in the draft articles.

74. **Mr. Amaral Alves de Carvalho** (Portugal) said that a convention on crimes against humanity was necessary and urgent to fill an important gap in international law and in the fight against the most serious crimes of international concern. The draft preamble set out a conceptual framework for the draft articles, defining their main objectives and the general context in which they had been developed. It was in part inspired by wording found in the preambles to international instruments relating to the most serious crimes, including the Genocide Convention and the Rome Statute. Of particular note was the reference to the *jus cogens* nature of the prohibition of crimes against humanity. It should be recalled that the prohibition of crimes against humanity had been included in the non-exhaustive list of *jus cogens* norms annexed to the Commission's draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*), which the General Assembly had taken note of in its resolution 78/109.

75. Lastly, draft article 1 (Scope) highlighted the dual scope of the draft articles by indicating that they applied both to the prevention and to the punishment of crimes against humanity.

76. **Mr. Hernandez Chavez** (Chile) said that his delegation supported the Commission's recommendation that a convention be elaborated based on the draft articles on prevention and punishment of crimes against humanity, through a mechanism agreed by the Committee, especially a conference of plenipotentiaries. The draft preamble set the appropriate conceptual framework for the commencement of discussions on a universal convention. His delegation reaffirmed the comments it had made in the past regarding the third, fourth, fifth, sixth, seventh, eighth, ninth and tenth preambular paragraphs. The text of the entire draft preamble was balanced and included references to

pertinent elements, such as the obligation or duty of every State to exercise its criminal jurisdiction with respect to crimes against humanity and the main values that should inform the application of the convention, including the reference to the rules of general international law governing the matter.

77. In response to points raised by other delegations at the previous session, especially the need to include explicit references to some principles of international law embodied in the Charter of the United Nations, such as the general prohibition of the threat or use of force against the territorial integrity or political independence of any State, the recognition of the sovereign equality of States and non-interference in the internal affairs of States, he said that Chile reaffirmed its unshakeable adherence to those principles and to the purposes of the Charter. In the event of a negotiation, his delegation was open to those specific principles being incorporated into the preamble, either by strengthening the wording of the third preambular paragraph or by introducing a new preambular paragraph, or a combination of the two options. The seventh and eighth preambular paragraphs of the Rome Statute already contained a formula which could provide a common base that could be explored in a negotiation. His delegation would, in principle, not promote additional clauses in the body of the treaty that would embody those principles, without prejudice to the consideration on its merit and in a constructive manner of any proposal presented during a formal negotiation.

78. Lastly, Chile believed that, based on the statements delivered by delegations on the draft preamble at the previous resumed session, it was possible and feasible to negotiate formulas that would generate a high level of consensus.

79. **Mr. Kamara** (Sierra Leone) said that his delegation recognized the critical role played by preambles in the interpretation of treaties, as set out in article 31 of the Vienna Convention on the Law of Treaties. It was important for a treaty to have a streamlined and coherent preamble which not only enhanced understanding of the treaty but also reinforced its effectiveness and relevance. His delegation therefore supported efforts to reformulate the draft preamble to achieve those objectives. It welcomed the recognition in the first preambular paragraph of the shocking nature of crimes against humanity and supported the proposal to strengthen the text by acknowledging the persistence of such atrocities, emphasizing their gravity and the urgent need for action. It also supported the suggestion to refer to "people" rather than to "children, women and men" in the first preambular paragraph, in order to align the text with the wording found in the Charter of the United

Nations and show that those crimes affected all individuals, regardless of gender or age group.

80. Sierra Leone welcomed the emphasis in the second preambular paragraph on the intrinsic relationship between justice, accountability for crimes against humanity and the broader notions of peace and security. It appreciated the reference in the third preambular paragraph to the principles embodied in the Charter, although it shared the view expressed by many other delegations that the paragraph could be further refined by referring to specific principles of international law found in the Charter, such as the prohibition of the threat or use of force, sovereign equality and non-intervention in the internal affairs of States.

81. His delegation also supported the recognition in the fourth preambular paragraph that the prohibition of crimes against humanity was a peremptory norm of general international law (*jus cogens*), which was consistent with the Commission's work on the topic of peremptory norms of general international law (*jus cogens*). It also agreed with the recognition in the eighth preambular paragraph that it was the duty of every State to prevent and punish crimes against humanity and to exercise its criminal jurisdiction over such crimes; every State should be guided by the principle of complementarity in that effort.

82. Sierra Leone appreciated the attention paid in the ninth preambular paragraph to the rights of victims and witnesses, and advocated a survivor-centred approach and the inclusion of references to redress and truth. It also supported the suggestion to address the rights of alleged offenders in a separate paragraph, in order to align the text with the principles set out in the International Covenant on Civil and Political Rights. His delegation also recognized the importance of horizontal cooperation between States, as emphasized in the tenth preambular paragraph, and supported the call for stronger wording referring to the requirement to cooperate drawn from the Genocide Convention. The role of intergovernmental organizations in combating impunity must also be acknowledged.

83. **Ms. Lungu** (Romania) said that her delegation supported the retention of the draft preamble in its current form, as it established the basis and the conceptual framework of the provisions that followed; it was also drafted as a progression and foreshadowed the object and principles of the draft articles. Of all the provisions of the draft preamble, her delegation was particularly attached to the reference to the peremptory character of the prohibition of crimes against humanity, the recognition of the duty of every State to exercise its domestic criminal jurisdiction with respect to crimes

against humanity, and the reference to the relevant article of the Rome Statute, as it had consistently supported a coherent approach with regard to the definition of those crimes. There were no obvious gaps in the content of the draft preamble, nor a compelling need to add further details, enumerations or clarifications thereto.

84. Draft article 1 was straightforward. It outlined the scope of the draft articles by clarifying that they covered both the prevention and the punishment of crimes against humanity. In addition, the formulation of the draft article, and the commentary thereto, further indicated the limited material scope of the draft articles, in the sense that they did not extend to other serious international crimes, such as genocide, war crimes or the crime of aggression. Although the scope of the draft articles could be deduced from both the title and the draft preamble, draft article 1 was not superfluous; on the contrary, its clarity and brevity might facilitate the acceptance of a future convention.

85. **Ms. Dakwak** (Nigeria), while commending the Commission for its effort on the draft articles and the Secretariat for providing a robust basis for the current interactions, said that her delegation was concerned that some regions, especially Africa, had been overlooked in the choice of co-facilitators for the session. Her delegation hoped that the Secretariat would be able to provide an explanation, for the sake of inclusivity and fairness.

86. The topic of crimes against humanity continued to be of interest to Nigeria because of the devastating impact of those crimes on victims and on humanity as a whole. Such crimes destroyed families, shattered dreams, displaced persons and had lasting impacts even on survivors. Every responsible Government must put in place structures to fight those crimes to the fullest extent permitted by international law. In the light of the mandate set out in General Assembly resolution [77/249](#), her delegation wished to caution the Secretariat and the co-facilitators about the use of a set of guiding questions which, although developed in good faith, would further divert the Committee's discussion from the main area of focus.

87. Referring to the draft preamble, she said that her delegation noted the importance of streamlining the text in order to ensure consistency and reflect the context of the discussion in line with the principles of international law. It was open to a reformulation of the text. In the first preambular paragraph, it would be preferable to use the word "people", rather than "children, women and men", so as to avoid designating specific groups and ensure that the text was more inclusive. In the seventh

preambular paragraph, her delegation did not agree with the reference to the definition of crimes against humanity found in article 7 of the Rome Statute, because it did not reflect all the constituent elements of such crimes.

88. In draft article 1 (Scope), her delegation welcomed the focus on the main objectives of a future convention, namely prevention and punishment of crimes against humanity.

89. **Mr. Mead** (Canada) said that the elaboration of a convention on the basis of the draft articles could equip the international community with an additional tool to fight crimes against humanity, domestically and internationally, and to cooperate both in preventing such crimes and in bringing perpetrators to justice. Canada would continue to support a move towards negotiations on a convention. It would be important to state clearly in any future convention that crimes against humanity might be committed in times of both peace and war. It would be necessary, however, to ensure that such convention did not operate to modify international humanitarian law, which constituted *lex specialis* in the context of armed conflicts. Such clarification could be incorporated into the draft preamble, if not specifically included in the operative provisions.

90. Canada reiterated its stance on the draft preamble expressed at the previous resumed session and in its written submission. It maintained its position that it was proper to characterize the prohibition of crimes against humanity as a *jus cogens* norm, as found in the fourth preambular paragraph. It was essential to include a reference to customary international law in the seventh preambular paragraph as constituting the primary source of law for crimes against humanity. His delegation recognized that not all States were parties to the Rome Statute. Nonetheless, it believed that a reference to that instrument in any future convention was relevant in the light of the contributions of the International Criminal Court to the jurisprudence on crimes against humanity. Canada continued to believe that the principle of *aut dedere aut judicare* set out in draft article 10 should be better reflected in the tenth preambular paragraph, which currently referred to prosecution only.

91. With regard to draft article 1 (Scope), his delegation reiterated its view that the scope of any future convention should provide greater clarity as to its object and purpose.

92. **Mr. Milano** (Italy) said that his delegation was only presenting preliminary remarks and that it reserved the right to complement or revise them in due course, including in the course of negotiations on a future convention on crimes against humanity. It continued to

support the recommendation that the draft articles should be turned into a binding international instrument. Their purpose was to address a pressing concern of the international community as a whole, namely the need to end impunity and ensure justice and accountability for the most heinous crimes. The draft articles were comprehensive and prescriptive in nature, and generally reflective of State practice and existing customary international law. They filled an important normative gap with regard to horizontal judicial cooperation for the prosecution of crimes against humanity. A future universal convention on judicial cooperation with regard to crimes against humanity would strengthen both the primary responsibility of States in prosecuting and punishing those responsible for such crimes, and the principle of complementarity in international criminal law.

93. Unlike the Genocide Convention, the Geneva Conventions of 12 August 1949 and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the draft articles had not been formulated in a vacuum. Since the 1990s, several international courts and tribunals, including the International Criminal Court, had been established to prosecute and punish international crimes, including crimes against humanity. It would therefore be useful to include in the draft preamble a paragraph acknowledging the important contribution of international courts and tribunals in tackling impunity and protecting the rights of victims. In all other respects, his delegation supported the draft preamble, including the statement that the prohibition of crimes against humanity was a peremptory norm of general international law (*jus cogens*).

94. Lastly, with regard to draft article 1 (Scope), for the sake of legal precision, the words “by States” should be inserted after “prevention and punishment”, in order to avoid conflation with existing instruments. That change would make it clear that the draft articles addressed horizontal cooperation between and among States, as opposed to vertical cooperation with competent international courts and tribunals, and that they set out the obligations of States under international law.

95. **Mr. Aref** (Islamic Republic of Iran) said that his delegation was not yet convinced that the elaboration of a new convention would bring any added value to the existing international legal framework concerning the prevention and punishment of crimes against humanity. The draft articles should therefore remain open to further in-depth discussion and consideration. An effective fight against such crimes required genuine and effective fulfilment of obligations free from double standards, politicization and selectivity; the fragmentation of

international law on the current topic would serve no purpose.

96. It was crucial that the draft articles reflect the overarching status of the fundamental principles of international law. In that regard, his delegation saw merit in reiterating, in the draft preamble as well as in an appropriate place in the initial draft articles, the need to comply with the principles of sovereign equality, non-intervention in the internal affairs of States and territorial integrity, thus expanding on the third preambular paragraph, which contained a reference to the principles of international law embodied in the Charter of the United Nations. It was worth recalling that the importance of non-intervention in the internal affairs of States was highlighted in the preamble to the Rome Statute.

97. With regard to the fourth preambular paragraph, his delegation maintained that there was no consensus on the topic of peremptory norms of general international law (*jus cogens*) in international law, and that State practice and *opinio juris* concerning such paramount matters as the identification of *jus cogens* and its effects remained unclear in some respects. Thus, the need for the draft articles to address the *jus cogens* character of the prohibition of crimes against humanity required further study. The reference to the Rome Statute in the seventh preambular paragraph also needed further consideration, given that many States were still not parties to the Statute.

98. Lastly, his delegation wished to draw attention to the atrocious crimes, including genocide and crimes against humanity, that were being committed by the Israeli regime against the Palestinian people. Indeed, the participants at the current meeting should not lose sight of the catastrophic situation where systematic and widespread attacks were persistently being directed against the Palestinian people, resulting, in particular over the past six months, in the murder, forcible displacement, persecution of and intentional infliction of serious bodily harm on thousands of Palestinian people, including women, children and the elderly, along with the intentional and calculated deprivation of access of Palestinians to food and medicine. The international community as a whole should not acquiesce to the perpetration of such egregious crimes and should urgently call on the occupying regime to cease any further perpetration of such crimes, while ensuring that those responsible were held fully accountable.

99. **Ms. Yankssar** (Saudi Arabia) said that while her delegation was keen to achieve justice and international peace by establishing legal rules aligned with the

purposes of the Charter of the United Nations, the discussions on the draft articles should not be rushed. Indeed, it was important for States to be able to reach a consensus on the draft articles. Her delegation reiterated its position that while draft article 1 (Scope) provided that the draft articles applied to the prevention and punishment of crimes against humanity, the prevention and punishment of crimes against humanity constituted the purpose, not the scope, of the draft articles. Draft article 1 should therefore be reformulated to state, under the heading “Scope”, that: “The present draft articles apply to crimes against humanity”, or under the heading “Purpose”, that: “The purpose of the present draft articles is the prevention and punishment of crimes against humanity”.

100. While her delegation believed in the importance of preventing crimes against humanity and combating impunity, any proposed draft articles or convention in that regard should reflect universally agreed principles; it should not undermine State sovereignty, or affect relations between States in a manner that would undermine international peace and security. There should be no reference whatsoever to the Rome Statute in the draft articles, because many States were not parties to the Statute and any such reference could deter many of them from supporting the draft articles.

101. **Ms. Lora-Santos** (Philippines) said that her delegation continued to consider the draft articles to be an important contribution to the international community’s collective efforts to deter and curtail atrocity crimes. During previous deliberations, it had flagged concerns relating to the sovereignty of States, overly broad assertions of jurisdiction and the politicization of human rights, as captured in the relevant summary records, and therefore considered that the question of the elaboration of a convention based on the draft articles required further examination. The current resumed session, building on the achievements of the last resumed session, provided exactly the forum for such examination.

102. Recalling that the Vienna Convention on the Law of Treaties provided that the preamble established the context and objectives of a treaty, she said that the provisions of the draft preamble were similar to those of the Rome Statute, including the recognition that crimes against humanity threatened the peace, security and well-being of the world; the determination to put an end to impunity for the perpetrators of those crimes and thus to contribute to the prevention of such crimes; and the recollection that it was the duty of every State to exercise its criminal jurisdiction with respect to crimes against humanity. During the current discussions, it must be made clear that the draft preamble provided

context for the draft articles and had not simply been appropriated from a text elaborated twenty-five years ago. There were important lessons to be drawn from the past two decades, including shifts in the general understanding of sexual and gender-based crimes, which must be reflected in the text.

103. Her delegation would support stronger wording on international cooperation, including wording based on that found in similar conventions, such as the Genocide Convention, in which it was stated explicitly that cooperation was required. It hoped that the instrument would pave the way for enhanced inter-State cooperation and strengthen the complementary nature of efforts to address impunity, which should be firmly anchored on respect for sovereignty. Her delegation supported the current formulation of draft article 1 (Scope), as it indicated that the draft articles would apply to both prevention and punishment.

104. The Philippines was already in compliance with the fundamental obligation set out in draft article 6 (Criminalization under national law) to ensure that crimes against humanity constituted offences under its criminal law. Its 2009 law on crimes against international humanitarian law, genocide and other crimes against humanity defined crimes against humanity as certain acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack. The law included provisions that could inform the aspiration for progressive development of international law and its codification, such as those on the protection of victims and witnesses, reparations and the applicability of international law.

105. Her delegation called on all others to seize the opportunity and work together to fill the normative gap which had reduced access to justice for victims of crimes that deeply shocked the conscience of humanity.

106. **Mr. Li Linlin** (China) said that his delegation supported the prevention and punishment of crimes against humanity and had always participated constructively in the general discussions on the topic. It believed that the fight against such crimes should be undertaken in accordance with the Charter of the United Nations and universally recognized principles and rules of international law. Given the close linkage between crimes against humanity and international peace and security, and considering the focus of the draft articles on imposing obligations on States in the prevention and punishment of crimes and judicial cooperation, it was necessary to emphasize the fundamental importance of the principles of sovereign equality and territorial integrity of States and non-interference in their internal

affairs, and to ensure respect for the immunity of State officials from foreign criminal jurisdiction under international law.

107. The third preambular paragraph only made a general reference to recalling the principles of international law embodied in the Charter, without highlighting some specific and important principles contained therein. His delegation therefore suggested that the relevant wording be further refined, drawing on the provisions of international conventions such as the United Nations Convention against Corruption, the United Nations Convention against Transnational Organized Crime and the International Convention for the Suppression of the Financing of Terrorism.

108. Turning to the fourth preambular paragraph, which referred to the prohibition of crimes against humanity as a peremptory norm of general international law (*jus cogens*), he said that such norms were defined in article 53 of the Vienna Convention on the Law of Treaties as norms accepted and recognized by the international community of States as a whole and from which no derogation was permitted. At a time when the international community remained divided as to the *jus cogens* character of that prohibition and when no research had shown that it had met the criteria of being accepted and recognized by the international community of States, his delegation saw no justification for considering the prohibition a *jus cogens* norm. In fact, there had always been significant disagreement within both the Commission and the Committee as to whether that prohibition constituted *jus cogens* as such.

109. His delegation was opposed to the expansion or generalization of the concept of crimes against humanity, and to its use by some States as a tool to denounce or suppress others. It was imperative that all parties adopt a responsible attitude, conduct thorough consultations, build mutual trust and make prudent decisions on the basis of a broad consensus. Although there was currently no specific convention on crimes against humanity, the vast majority of States had already incorporated those crimes or specific acts that such crimes entailed into their domestic legal orders. Moreover, specific acts of crimes against humanity were prohibited under legal frameworks such as those of international humanitarian law and international human rights law. Pending the elaboration of a convention, countries should continue strengthening the implementation of their domestic laws and international cooperation in a manner consistent with existing international law and their national conditions.

110. **Ms. Dime Labille** (France) said that while there were international conventions governing war crimes

and genocide, there was none governing crimes against humanity. Her delegation fully supported the ongoing process aimed at the elaboration of a convention on the prevention and punishment of crimes against humanity, thereby helping to strengthen the international criminal justice system. The current resumed session provided an ideal opportunity for moving forward and for making use of the high-quality text produced by the Commission. Her delegation also noted that the International Criminal Court played a central role in the adjudication of the most serious crimes affecting the international community as a whole, with the primary responsibility for the adjudication of such crimes being left up to national judicial authorities, on the basis of the principle of complementarity.

111. Her delegation welcomed the draft articles, which were inspired from and reproduced part of the Rome Statute. The draft preamble, which was drawn in large part from the preamble to the Rome Statute and contained an express reference to the definition of crimes against humanity set out in that Statute, seemed appropriate. Nonetheless, the reference in the fourth preambular paragraph to the prohibition of crimes against humanity as a peremptory norm of general international law (*jus cogens*) seemed premature. Indeed, the notion of *jus cogens* had been debated intensely during the Commission's work on the topic "Peremptory norms of general international law (*jus cogens*)", and was the source of disagreement among States. It should therefore be examined in more detail and carefully. Of course, France stood ready to work on the drafting of a formula that might reflect all the views of States in a consensual manner.

112. Lastly, her delegation wished to point out the complementarity between the draft articles and another essential tool in the fight against impunity for the perpetrators of the most serious crimes, namely the Ljubljana-The Hague Convention for International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity, War Crimes and Other International Crimes. The adoption and promotion of the Convention would only heighten the need for progress on the draft articles. The draft preamble and draft article 1 constituted a good basis for the negotiation of a future convention on crimes against humanity. While there were divergences on the draft articles as such, a consensus was emerging among delegations on the importance of preventing and punishing crimes against humanity. The Committee should continue discussing the draft articles in a constructive manner.

113. **Ms. Rathe** (Switzerland) said that crimes against humanity were among the most serious crimes affecting

the international community as a whole. It was therefore essential to prevent and punish them in accordance with international law. It was high time to fill the gap that remained in that area, decades after the adoption of conventions on genocide and war crimes. Her delegation therefore fully supported the recommendation to elaborate a convention on the basis of the draft articles.

114. With regard to the draft preamble, the stipulation that the prohibition of crimes against humanity was a peremptory norm of general international law (*jus cogens*) was important. Her delegation welcomed the reference to article 7 of the Rome Statute in connection with the definition of crimes against humanity. Indeed, although the future convention would not be linked to the International Criminal Court or the Rome Statute, it should be properly integrated into the framework of existing international law. In that respect, it was worth noting that the definition drawn from the Rome Statute was the product of legal developments over several decades and had been adopted following inclusive negotiations.

115. With regard to draft article 1 (Scope), her delegation supported the stipulation that the draft articles covered both the prevention and the punishment of crimes against humanity. Indeed, Switzerland considered the prevention of such crimes to be just as important as their punishment. Despite suggestions for additions to the draft article, her delegation believed that the elements contained therein were sufficient, as its purpose was to define the scope of the future convention.

116. **Mr. Cappon** (Israel) said that his delegation's support for advancing the imperative goal of preventing and punishing crimes against humanity was categorical and stemmed from its consistent commitment to international criminal justice and to putting an end to impunity for the gravest international crimes. The need to ensure accountability for the most heinous international crimes remained no less relevant today than almost a century ago. Some representatives who had spoken before seemed to have forgotten the important purpose of the current resumed session by shamelessly politicizing the discussion. The prohibition and punishment of crimes against humanity everywhere should be the goal of the entire international community and the sole guide for the current discussions.

117. There was no law without facts and the facts were very clear. Israel had suffered a heinous terrorist attack perpetrated by Hamas on 7 October 2023. The atrocities committed on that day and since then unquestionably constituted violations of the most fundamental norms of international law and amounted to war crimes and crimes against humanity. They included the slaughter of

more than 1,200 Israeli and foreign citizens, the wounding of over 5,500 people, widespread acts of torture and maiming, burning of people alive, beheadings, rape and other forms of sexual violence, mutilation of corpses and the taking of some 240 hostages, 134 of whom were still being held by Hamas in Gaza. More than six months since that day, information about the atrocities that had taken place was still being uncovered. Only a few weeks previously, the Special Representative for Sexual Violence in Conflict had published a mission report on the sexual violence perpetrated against Israeli women and girls by Hamas since 7 October 2023, as yet another reminder of the importance of giving particular attention to sexual and gender-based crimes in conflict.

118. There was no doubt that the perpetrators of the most heinous crimes should be prosecuted for their actions. The task of investigating those attacks and bringing the perpetrators to justice was therefore of vital importance, and Israel had been taking active steps in that regard. As part of its commitment to the rule of law and to ensuring accountability for violation of international law, Israel was dedicated to investigating and initiating legal proceedings against those who perpetrated, planned and otherwise took part in those heinous acts. However, Israel also hoped to contribute to the overall prevention of such acts in the future.

119. His delegation welcomed the decision of the General Assembly to establish the resumed sessions and believed that the Committee was the appropriate forum to look for an additional path forward, through constructive engagement. His delegation had taken note of the diverse views expressed by Member States at the previous resumed session concerning the substantive content of the draft articles as well as their future format. In that regard, given the vital goals of the project and the need to reach a consensus, Israel supported further continuation of the meaningful and inclusive discussions among Member States during the current resumed session. Israel was committed to the effort to achieve a broad acceptance of the rules for preventing and punishing crimes against humanity, based on well-established principles of international law and consensus among States.

120. Lastly, the draft preamble could help provide guidance for Member States on how to address different issues regarding the draft articles. By encapsulating collective values and principles, the draft preamble might provide the contours for an effective dialogue.

121. **Ms. Hutchison** (Australia) said that crimes against humanity were among the most egregious crimes of international concern; by the widespread, systematic

and violent manner of their commission, they undermined and threatened all three pillars of the Charter of the United Nations. In that context, Australia remained convinced that it was time to close the gap in the international legal framework by commencing negotiations on a convention on crimes against humanity.

122. The draft preamble provided an important conceptual framework for the draft articles and established their main purposes. Her delegation welcomed the emphasis in the draft preamble on the primary responsibility of States to investigate and prosecute crimes against humanity, and on the importance of both prevention and punishment of such crimes. Those elements underpinned the precise need for a convention, which would empower States and equip them with the tools needed to close the existing impunity gap.

123. The fourth preambular paragraph, which referred to the *jus cogens* status of the prohibition of crimes against humanity, was an important inclusion, in that it reflected the fact that the international community accepted and recognized that prohibition as a norm of general international law from which no derogation was permitted. Her delegation found the Commission's reasoning in that regard in its commentaries to be persuasive, particularly with respect to the breadth of national, regional and international courts and tribunals – including the International Court of Justice – that had found that the prohibition of crimes against humanity had *jus cogens* status.

124. Australia acknowledged that there were differences of opinion over the reference in the seventh preambular paragraph to the definition of crimes against humanity set out in the Rome Statute. As a steadfast supporter of the International Criminal Court, Australia agreed with Jordan that the draft articles did not in any way bind States that were not parties to the Statute. It did recognize, however, that the seventh preambular paragraph, as currently drafted, might deter some States from joining a future convention. Her delegation would therefore support the proposal made by Canada in its written submission to consider simply “noting” the Rome Statute.

125. Australia recognized that any preamble to a future treaty would ultimately need to reflect the substantive content of the treaty. To that end, it was open to considering an additional or alternative preambular text. For example, there might be value in reaffirming all the purposes and principles of the Charter in the draft preamble, as had been suggested by several States. There might also be an opportunity to build upon the

existing text to reaffirm the rights of Indigenous Peoples in the draft preamble.

126. Australia also supported the scope of the draft articles, as set out in draft article 1. Taken together, the draft preamble and draft article 1 set the right tone and balance from the outset to ensure that the draft articles provided a strong basis for future negotiations on a convention. The healthy engagement on the draft articles already evident to date in the Committee only strengthened her delegation's confidence that differences in position could be resolved through further constructive engagement in the current exchange of views and, ultimately, through diplomatic negotiations.

The meeting rose at 1 p.m.