



General Assembly

Seventy-eighth session

Official Records

Distr.: General
28 May 2024

Original: English

Sixth Committee

Summary record of the 40th meeting

Held at Headquarters, New York, on Tuesday, 2 April 2024, at 10 a.m.

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

Contents

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

This record is subject to correction.Corrections should be sent as soon as possible, under the signature of a member of the delegation concerned, to the Chief of the Documents Management Section (dms@un.org), and incorporated in a copy of the record.Corrected records will be reissued electronically on the Official Document System of the United Nations (<http://documents.un.org/>).

24-06023 (E)



Please recycle



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

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

Agenda item 80: Crimes against humanity (continued)

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

Draft articles 2–4 (continued)

2. **Ms. Bisharat** (Jordan) said that her delegation supported the Commission's decision to draw on the definition of crimes against humanity in the Rome Statute as the basis for draft article 2. While not all Member States were parties to the Rome Statute, there were advantages to using the definition contained therein, which reflected relevant jurisprudence and developments in international criminal law from the work of the international military tribunals at Nuremberg and Tokyo to the work of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia. It was therefore the most authoritative definition available. Her delegation supported the requirement in the chapeau of paragraph 1 that the acts in question be committed as part of a "widespread or systematic attack", which it viewed as a disjunctive rather than conjunctive requirement.

3. Her delegation reiterated its support for the inclusion of paragraph 3 of the draft article as a "without prejudice" clause, which would ensure that, should a convention based on the draft articles be adopted, States parties would retain the flexibility to include a broader definition of crimes against humanity in their national law. The paragraph would also ensure that the draft article did not prejudice or restrict developments in international law relating to crimes against humanity or affect binding obligations under other treaties.

4. With regard to draft article 3 (General obligations), her delegation was of the view that paragraph 1 was not necessary and might be counter-intuitive. Individuals, not States, committed crimes against humanity, but the wording used in the paragraph gave the impression that States did in fact commit such crimes, even though it was intended to avoid doing so. The paragraph should be deleted because it was inconsistent with the core purpose of the draft articles, which was to serve as a law enforcement instrument for bringing individual perpetrators to justice. It was important to ensure that judges and prosecutors in a

given country could not bring charges against a foreign State on the basis of the draft articles.

5. Paragraph 2 of the draft article set out the general obligation of each State to prevent and punish crimes against humanity in all circumstances, including armed conflict. The assertion in the paragraph that crimes against humanity were crimes under international law reflected the characterization of such crimes in customary international law, which produced legal consequences arising from the fact that the prohibition of such crimes was a preemptory norm of general international law.

6. Draft article 4 (a) contained a clear description of the scope of the obligation to prevent crimes against humanity, which was limited to any territory under the jurisdiction of the State concerned. Her delegation believed that the standard of due diligence required to prevent crimes against humanity was higher where a State had the capacity to influence individuals who were on a territory under its jurisdiction. A State could take only preventive measures that were lawful under international law, such as the adoption of laws criminalizing crimes against humanity and providing for punishments that could serve as deterrents. The parties to armed conflicts and the occupying Powers in situations of occupation must ensure that their armed forces were subject to, and complied with, the necessary preventive measures. Military codes should contain specific prohibitions, obligations and punishments with regard to the commission of crimes against humanity. The duty of cooperation set out in draft article 4 (b) was important. However, there was a need to specify what the duty of cooperation with intergovernmental and other organizations entailed; otherwise, the provision would be a source of contention between States and such organizations.

7. **Ms. Ensing** (Kingdom of the Netherlands) said that the Rome Statute, and the definition of crimes against humanity contained therein, reflected years of State practice and were the result of extensive negotiations. Her delegation welcomed the fact that the definition in draft article 2 was modelled on the definition in the Statute, which would ensure consistency and legal certainty. While not all States were parties to the Statute, her delegation was of the view that its definition of crimes against humanity largely reflected customary international law. However, her delegation strongly supported the decision to remove the definition of gender from the draft articles, which would help to ensure a more inclusive approach. Any further development of the definition of gender should be based on the jurisprudence of international and national legal bodies.

8. In her delegation's view, the requirement that acts must be part of a widespread or systematic attack was a disjunctive rather than a conjunctive requirement, meaning that it was not necessary for both conditions to be met for an act to constitute a crime against humanity. Her delegation therefore supported the current formulation of the chapeau of paragraph 1 of the draft article. It also welcomed the inclusion of the "without prejudice" clause in paragraph 3, which ensured that the definition of crimes against humanity set forth in paragraphs 1 and 2 did not call into question any broader definitions that might exist in international law or in national legislation.

9. Her delegation considered that the obligations set out in draft articles 3 (General obligations) and 4 (Obligation of prevention), should be viewed as separate but interrelated obligations. Given that draft article 3, paragraph 2, was modelled on article I of the Convention on the Prevention and Punishment of the Crime of Genocide, her delegation considered that it could be interpreted with reference to the jurisprudence of the International Court of Justice concerning article I. Her delegation considered that the obligation to prevent crimes against humanity was an obligation of conduct and not of result, and States were obliged to employ all means reasonably available to them to prevent such crimes as far as possible. The ability to influence possible perpetrators of crimes against humanity was especially relevant in an assessment of whether a State had duly discharged its obligation to prevent. The notion of due diligence was of critical importance in that regard.

10. Draft article 4 gave effect to the general obligations set out in draft article 3 by requiring States to take effective legislative, administrative, judicial or other preventive measures. Draft article 4, unlike draft article 3, clearly defined the scope of the State's obligation of prevention, stipulating that it was limited to territory under its jurisdiction. While draft article 4 required States to take concrete measures, her delegation was of the view that it was not necessary to mention specific examples of measures that States should take, since the measures taken would depend on the national context. Lastly, her delegation was of the view that crimes against humanity could be committed in peacetime as well as during armed conflict and was therefore pleased to note that draft article 3 reflected that view.

11. **Ms. Vittay** (Hungary) said that her delegation was pleased that the definition of crimes against humanity in draft article 2 was aligned with the definition in article 7 of the Rome Statute. It was important to ensure coherence among legal frameworks and avoid fragmentation and contradictions. Her delegation also

noted that the definition largely reflected customary international law. With regard to the requirement that, to constitute a crime against humanity, an act must be part of a widespread or systematic attack, her delegation acknowledged the concerns of those who advocated that the criteria "widespread" and "systematic" be cumulative rather than disjunctive, but noted that the jurisprudence of international tribunals supported a disjunctive test. Having said that, her delegation noted the concern that a disjunctive set of criteria might not be sufficient to exclude unrelated crimes. The disjunctive test must also be read in conjunction with the provision stating that an attack must be committed pursuant to or in furtherance of a State or organizational policy. That wording prevented individual, isolated incidents from qualifying as crimes against humanity. Her delegation was receptive to proposals to expand the list of crimes in draft article 2 to include other crimes, in particular forced marriage. Such proposals could be considered in the context of future negotiations.

12. Article 7 of the Rome Statute contained a specialized definition of gender, whereas draft article 2 did not. Given that her delegation remained cautious about merely replicating existing treaty wording in a new convention, it was content with the current wording of the draft article. While coherence was paramount, adjustments that did not result in contradictory obligations might be acceptable. Her delegation also noted that the implementation of any new instrument based on the draft articles would fall within national jurisdictions. Consequently, undefined terms, including "gender", were subject to interpretation by competent national authorities or courts, in accordance with applicable national laws.

13. **Mr. Kuymizakis** (Malta) said that his delegation was pleased with the fruitful discussions that had taken place at the previous resumed session. Given the importance of enhancing the relationship between the Commission and the Committee, the Committee should give due consideration to the draft articles on prevention and punishment of crimes against humanity and the Commission's recommendation in that regard.

14. The draft articles provided a good basis for the elaboration of a convention. His delegation saw merit in improving the definition of crimes against humanity. The draft articles should reflect the broad spectrum of atrocity crimes that had a gender dimension; with that aim in mind, the Commission had already introduced some relevant elements into the text. Discussion should continue as to how to better reflect the crimes of persecution and apartheid, among others, in the draft articles, so as to enable victims and survivors to hold perpetrators to account for crimes committed through

systematized oppression and to advance a survivor-centred approach that placed the rights and agency of survivors at the forefront of all actions.

15. His delegation hoped that the Committee could make progress towards negotiations that would provide an opportunity to reconcile differing views and advance towards the elaboration of a convention, in line with the Commission's recommendation.

16. **Mr. Gorke** (Austria) said that the definition of crimes against humanity in draft article 2 constituted codification of customary international law, since it was based on article 7 of the Rome Statute, the source of which was customary international law. It was important for the definition in draft article 2 to be consistent with the Statute definition, but being a party to the Statute was neither a precondition for nor a consequence of the application of the definition in the draft article. That definition represented a reasonable starting point for future negotiations. His delegation did not rule out the possibility of further additions to the list of crimes in the draft article, such as gender-based apartheid. Furthermore, paragraph 3 provided that the draft article did not preclude the emergence of broader definitions of crimes against humanity. With regard to the concerns expressed about the required elements of crimes against humanity, both the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia had deemed it sufficient for an attack to be either "widespread" or "systematic" in order to constitute a crime against humanity.

17. Turning to draft article 3 (General obligations), he said that while earlier conventions, such as the Genocide Convention, did not expressly provide for an obligation not to engage in specific acts, his delegation saw merit in the explicit reference to the obligation of States not to engage in acts that constituted crimes against humanity in paragraph 1. That obligation was twofold, applying both to State organs and to persons acting on the instructions or under the direction or control of the State. His delegation also welcomed the reference to the obligation to prevent crimes against humanity in paragraph 2, a similar obligation having been set forth in the Genocide Convention. In addition, it welcomed the clarification in paragraph 3 that no exceptional circumstances could be invoked as a justification of crimes against humanity.

18. His delegation noted that the reference to "effective legislative, administrative, judicial or other appropriate preventive measures" in draft article 4 (Obligation of prevention) had been inspired by wording in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Since

torture was one of the acts listed in the definition of crimes against humanity in the draft articles, it was logical to take a similar approach in relation to the prevention of crimes against humanity. His delegation did not consider that the set of obligations imposed on States in relation to prevention was too broad; in fact, the word "appropriate", qualifying "preventive measures", provided sufficient flexibility. At the same time, the requirement that preventive measures be in conformity with international law was consistent with the jurisprudence of the International Court of Justice and might also dispel the concerns of some delegations.

19. **Mr. Silveira Braoios** (Brazil) said that the definition of crimes against humanity set out in draft article 2 should include, in the chapeau of paragraph 1, acts committed not only with knowledge of the attack but also with the intent to commit such attack. An express reference to "intent" in addition to "knowledge" might help domestic courts, when applying a future convention, to decide on the appropriate penalty for the specific conduct in question.

20. His delegation welcomed the elimination of the former paragraph 3 of the draft article on the definition of crimes against humanity, as suggested by Brazil in 2018, given that the definition of gender contained therein had not reflected the current understanding of the term "gender" in international human rights law. It would be pragmatic not to include a definition of the concept in a future convention; such omission would not prevent future developments in customary international law. Leaving it to Member States to interpret the meaning of the term in accordance with their national laws could alleviate concerns that would prevent ratification of a future convention.

21. Brazil supported the inclusion in the draft article of crimes involving sexual and gender-based violence that were of such gravity as to constitute crimes against humanity. However, the list of such crimes in the draft article was not exhaustive. It would be desirable to specify, as far as possible and in accordance with the principle of strict legality that guided criminal law, additional forms of sexual and gender-based violence of comparable gravity. A future convention would provide an opportunity to codify the prohibition of acts already identified in jurisprudence, such as forced marriage, which had been recognized as inhumane criminal conduct by the Special Court for Sierra Leone, the Extraordinary Chambers in the Courts of Cambodia and the International Criminal Court. Other examples included reproductive violence of similar gravity, such as forced pregnancy, forced sterilization, forced abortion and forced contraception. Similarly, Brazil was open to discussing the criminalization, in a future

convention, of inhumane acts in the context of a regime of deliberate and systematic subjugation of an entire social group based on their gender, with the intention of maintaining that regime and resulting in severe deprivation of fundamental rights.

22. His delegation was of the view that persecution, as referred to in paragraph 1 (h) of the draft article, should be a stand-alone crime, as in the statutes of the international tribunals for the former Yugoslavia and Rwanda. The International Tribunal for the Former Yugoslavia, in the *Kupreškić* case and others, had rejected the notion that persecution should be linked to other crimes listed in its Statute and had affirmed that a narrow definition of persecution was not supported in customary international law.

23. His delegation believed that the definition of enforced disappearance of persons in paragraph 2 (i) of the draft article should not be more restrictive than the definition of enforced disappearance set forth in the International Convention for the Protection of All Persons from Enforced Disappearance. The removal of a person from the protection of the law was not a constituent element of the crime but a consequence of it, while the duration of the disappearance was irrelevant to the gravity of the risks inflicted on the victims.

24. The domestic courts of States in which the principle of strict legality played a central role in criminal law might face legal challenges in applying a provision such as that contained in paragraph 1 (k) concerning “other inhumane acts”. It was therefore necessary to strike a balance between, on the one hand, the need to ensure accountability for serious crimes that were not specifically codified under international law, given the practical unfeasibility of providing an exhaustive list of all acts of such nature, and, on the other hand, the importance of specifying punishable acts as far as possible. Brazil would favour the inclusion in the list of crimes against humanity, alongside enslavement in paragraph 1 (c), of slave trade, understood as the abduction, kidnapping, acquisition or disposal of any person, regardless of, inter alia, age, race or gender, or migration, refugee or statelessness status, for the purpose of reducing that person to or maintaining him or her in any form of enslavement.

25. In draft article 3 (General obligations), the explicit reference to the obligation of States not to engage in acts that amounted to crimes against humanity was an important corollary to the obligation to prevent such crimes. His delegation also supported the notion that crimes against humanity were not perpetrated exclusively in conflict settings, as reflected in paragraph 2 of the draft article, and the provision in paragraph 3

that no circumstances whatsoever might be invoked as a justification of such crimes. Draft article 4 (a) could benefit from an express reference to both de jure and de facto jurisdictions, to enhance legal certainty as to the obligation of States to prevent crimes against humanity in any territory that they controlled.

26. **Ms. Ghaus** (United States of America) said that draft article 2 was the most important provision in the draft articles, as the definition of crimes against humanity had implications for all the obligations and rights set forth in the other provisions. In particular, the chapeau of paragraph 1 was a critical element of the definition: certain acts were crimes against humanity only when they were committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack. That characteristic made such acts, if they were not already violations of international law, a matter of international concern and was consistent with international humanitarian law, under which making the civilian population the object of attack was prohibited and punishable as a war crime. It also distinguished crimes against humanity from other international crimes, such as genocide.

27. Noting that the draft article was drawn nearly verbatim from the definition of crimes against humanity contained in article 7 of the Rome Statute, she said that States parties to the Statute might have an interest in ensuring that the definition in the draft articles was consistent with the definition in the Statute. Some States had raised concerns about references to the Statute in the draft articles, including in the preamble, and objected to the inclusion of such references on the basis that they were not parties to the Statute. The United States was not a party to the Statute, but it considered that the definition of crimes against humanity contained therein largely reflected customary international law. Accepting the definition used in the Statute or using it as a basis for further work did not constitute acceptance or endorsement of the Statute or of the jurisdiction of the International Criminal Court. The question should be whether the definition itself was a good basis for future deliberations. As a non-State party to the Statute, the United States supported the use of the definition as the basis for potential negotiations, as the Commission had done.

28. Her delegation also noted that the definition in article 7 provided the most comprehensive list of acts constituting crimes against humanity in any multilateral instrument and included rape and other forms of sexual violence, which were often overlooked in efforts to hold accountable those responsible for atrocities. Nonetheless, her delegation believed that there was value in giving further consideration to the definition of

crimes against humanity in the draft articles. Some of the terms used in the definition lacked clarity. In view of the important role that the International Criminal Court's Elements of Crimes had played in clarifying the definition of crimes against humanity in the Rome Statute, further consideration should be given to whether aspects of that publication could be drawn on to help clarify the definition in draft article 2. Noting that the draft article differed in certain respects from article 7 of the Statute, she said that her delegation viewed the decision not to include the definition of gender found in article 7 as a positive change. Her delegation also acknowledged efforts by civil society to encourage States to consider gender within the framework of the crime of apartheid in any future convention relating to crimes against humanity and welcomed thoughts from other delegations on that issue.

29. Her delegation welcomed the fact that draft article 3 (General obligations) drew inspiration from article I of the Genocide Convention. However, paragraph 2 could be expanded slightly to confirm that crimes against humanity could be committed by both State and non-State actors.

30. With regard to draft article 4 (Obligation of prevention), her delegation welcomed the clarification that efforts to prevent crimes against humanity must be undertaken in conformity with applicable international law. It would be useful to specify that the draft articles should not be construed as authorizing any use of force inconsistent with the Charter of the United Nations and to clarify that efforts to punish crimes against humanity must also be undertaken in conformity with applicable international law, including fair trial guarantees. With regard to subparagraph (a), her delegation noted the obligation of States to take effective legislative, administrative and judicial measures to prevent crimes against humanity, including crimes against humanity committed by their personnel outside their territory. Her delegation was pleased that subparagraph (b) drew attention to the significant role that international cooperation played in efforts to prevent crimes against humanity. However, her Government still had concerns, as previously expressed in its written comments, about the scope of the obligation to cooperate with other States and relevant international organizations, given that there might be circumstances in which such cooperation was not appropriate.

31. **Mr. Mainero** (Argentina) said that, although not all States were parties to the Rome Statute, his delegation agreed with the Commission's decision to use the widely accepted definition of crimes against humanity set out in article 7 of the Statute as a basis for draft article 2. That definition was the product of a long

process of evolution of customary law. It also reflected extensive national and international jurisprudence and represented a consolidation of the process of codification of crimes against humanity. However, it was not set in stone, since the essence of international law was that it evolved together with State practice. Furthermore, the wording offered by the Commission was merely a model. There was nothing to prevent another definition from serving as a basis for the negotiation of a future convention. Some elements of the definition might have evolved in the light of developments in international law since the adoption of the Rome Statute in 1998. For example, the definition of enforced disappearance of persons in draft article 2, which was based on the definition in the Statute, differed from the definition of enforced disappearance contained in the International Convention for the Protection of All Persons from Enforced Disappearance. The definition in the Convention did not refer to the intention of removing the person in question from the protection of the law or to the period of time involved in the commission of the crime. It would be preferable for a future instrument on prevention and punishment of crimes against humanity to include a definition of enforced disappearance similar to that contained in the Convention, since the Convention reflected the current understanding of that crime.

32. It was true that paragraph 3 of the draft article established that the draft article was without prejudice to other broader definitions provided for in other international instruments or in national law. However, bearing in mind that one of the objectives of a future convention on crimes against humanity was to promote the harmonization of national laws, the definition of enforced disappearance contained in such a convention should reflect the latest developments in international law.

33. His delegation supported draft articles 3 and 4. Draft article 3 provided for a general obligation on States not to engage in acts that constituted crimes against humanity and to prevent and punish crimes against humanity, even in exceptional circumstances, such as armed conflict, internal political instability or other public emergency. Draft article 4 contained a specific obligation for States to take effective legislative, administrative, judicial or other appropriate preventive measures and to cooperate with one another and with relevant international organizations, as appropriate, to prevent such crimes.

34. **Ms. Jiménez Alegría** (Mexico) said that draft articles 2, 3 and 4 struck an appropriate balance between the legislative and jurisprudential evolution of the definition of crimes against humanity, general

obligations and the obligation of prevention. Overall, her delegation supported the content of the three draft articles.

35. Her delegation viewed positively the fact that the definition of crimes against humanity in draft article 2 was based on article 7 of the Rome Statute. The definition and the list of acts constituting crimes against humanity set out in the Statute reflected more than 75 years of practice and of legislative and jurisprudential evolution. Furthermore, the definition enjoyed broad support, from 124 States, including Mexico. Her delegation also believed that the definition largely reflected customary international law. The chapeau of draft article 2, paragraph 1, correctly identified the elements of crimes against humanity, which were acts committed as part of a widespread or systematic attack directed against a civilian population, with knowledge of the attack. Her delegation welcomed the updates to the definition, such as the inclusion of the “without prejudice” clause that would allow States to provide for a broader definition in their own laws. That flexibility should not, however, be interpreted in a manner contrary to the purpose of a future convention. Her delegation also welcomed the fact that there was no definition of gender in the draft article. Gender must be a cross-cutting issue in negotiations on a future convention, given that crimes against humanity could affect persons in different ways depending on their gender. Consideration could also be given to the inclusion of additional crimes, such as slave trade, forced marriage, reproductive violence and gender apartheid.

36. With regard to draft article 3, her delegation agreed with the recognition of the general obligations not to engage in acts that constituted crimes against humanity and to prevent and punish such crimes. It also agreed with the clarification, based on the Genocide Convention, that crimes against humanity could be committed both during armed conflict and in peacetime, and with the prohibition on invoking exceptional circumstances as a justification of crimes against humanity. In her delegation’s view, the commission of crimes against humanity constituted a violation of peremptory norms of general international law (*jus cogens*). It was therefore important to analyse the general obligations set out in the draft article in the light of the articles on responsibility of States for internationally wrongful acts.

37. Her delegation observed that draft article 4 was aimed at establishing the obligation to prevent crimes against humanity. In that context, the reference to the taking of legislative, administrative and judicial measures was appropriate. Her delegation stood ready

to continue the discussion on ways to clarify the scope of the obligation of prevention.

38. **Ms. Bhat** (India) said that, in her delegation’s view, the definition of crimes against humanity in draft article 2 reproduced verbatim article 7 of the Rome Statute, which did not enjoy universal acceptance and did not reflect existing customary international law. Her delegation also had serious objections to the exclusion of terrorism-related acts and the use of nuclear weapons from the definition. Over the past four decades, the world had witnessed the devastation caused by terrorism-related activities. There was also evidence that many States had actively conspired in such activities or provided support to terrorist groups. It was difficult to imagine that the Commission did not recognize that such crimes were a danger to important contemporary values and the peace, security and well-being of the world.

39. The formulation of draft article 3 (General obligations) was ambiguous. It also ran counter to the fourth preambular paragraph because its characterization of crimes against humanity as crimes under international law was based on customary law, whereas the fourth preambular paragraph referred to the prohibition of crimes against humanity as a peremptory norm of general international law. The draft article should also clearly indicate the need to respect the principles of sovereignty and non-interference.

40. With regard to draft article 4 (Obligation of prevention), her delegation believed that the reference to other organizations in subparagraph (b) was not only inappropriate but also ambiguous. Cooperation should be restricted to States and relevant intergovernmental organizations only.

41. **Mr. Amaral Alves De Carvalho** (Portugal) said that the definition of crimes against humanity contained in the Rome Statute was a logical starting point for the definition in draft article 2. In his delegation’s view, the reason for using the Statute definition was not to impose the Statute on States that were not parties to it or to suggest that the Statute should be accepted by those that did not wish to subscribe to it. Rather, it was because there were legal reasons to do so, which had been spelled out clearly by the Commission. A great deal of effort had gone into the development of the definition in the Statute, which was the product of a broad and inclusive exercise involving many States, not only the parties to the Statute. The definition largely reflected customary international law and was widely supported by State practice. It also incorporated many elements from other international treaties, as had been recognized by international courts and tribunals over the years,

which was important for ensuring broader consistency and avoiding fragmentation in international law. That definition was therefore a good basis for developing a future definition for the proposed convention. However, that did not mean that it should be replicated verbatim in the draft article.

42. The Commission had itself made some adjustments to the provision. In that regard, his delegation supported the decision not to include a definition of the term “gender” in the draft article, which allowed for greater flexibility and protection and better reflected current realities. It might be worth considering additional changes to the draft article, such as broadening the definitions of “enforced disappearance of persons” and “persecution”, and better aligning them with definitions found in treaty law and customary international law. Ultimately, Member States must decide how and to what extent the draft articles should be adjusted and what level of progressive development might be warranted. A delicate balance must be found between progressive development and legal certainty and consistency, which had implications for accountability. The matter could only be addressed comprehensively at the stage of negotiation of a convention.

43. His delegation considered that the “without prejudice” clause in draft article 2, paragraph 3, offered a good balance in terms of pursuing the goal of an internationally agreed definition and promoting the harmonization of national laws, in order to facilitate inter-State cooperation, while respecting the right of States to adopt or retain broader definitions. It was appropriate for the definition of crimes against humanity in the draft articles to be a floor rather than a ceiling. However, his delegation acknowledged the concerns that had been raised about the provision and remained open to further discussion.

44. Draft article 3 (General obligations) was a fundamental element of the draft articles, insofar as it clearly set out the obligations of States not to engage in and to prevent and punish crimes against humanity. Current international law, in particular the Rome Statute, was focused on individual criminal responsibility. A future treaty based on the draft articles would fill a gap by establishing that there were obligations for States under international law with regard to the prevention, prohibition and punishment of crimes against humanity, the breach of which triggered State responsibility. In order to emphasize that such a treaty was intended to promote horizontal judicial cooperation in pursuit of accountability and justice for the commission of crimes against humanity, his delegation supported the proposal made by the representative of Italy at the Committee’s thirty-eighth

meeting (see [A/C.6/78/SR.38](#)) that the words “by States” be inserted after “prevention and punishment” in draft article 1 (Scope).

45. Turning to draft article 4 (Obligation of prevention), he said that, as indicated in the commentary to the draft article, the obligation to prevent the commission of crimes was not unique to the draft articles; it had also been set forth in many multilateral treaties. The obligation to prevent and the obligation to punish went hand in hand and were mutually supportive.

46. The phrase “in conformity with international law”, contained in the chapeau, was consistent with the finding of the International Court of Justice in *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)* that “every State may only act within the limits permitted by international law”. His delegation fully supported the inclusion of the phrase, which it understood to mean that measures undertaken by a State to fulfil its obligation to prevent crimes against humanity must be consistent with the rules of international law, including those on the use of force established in the Charter, international humanitarian law and international human rights law.

47. The draft article provided a combination of guidance and flexibility to assist States in fulfilling their obligation to prevent crimes against humanity. The commentaries to the draft articles offered further guidance in that respect. His delegation noted in particular the reference to cooperation between States in draft article 4 (b), which was one of the main tenets of the draft articles. It reflected the duty to cooperate set forth in the Charter and other instruments of international law, but also allowed for flexibility in respect of cooperation with organizations besides intergovernmental organizations.

48. **Ms. Flores Soto** (El Salvador), referring to draft article 2, said that the definition of crimes against humanity contained therein should not be based solely on article 7 of the Rome Statute; relevant developments in international human rights law should also be taken into account. For example, with regard to making sexual violence a crime in international law under the category of crimes against humanity, including genocide, it was vital that the draft articles reaffirm the survivor-centred approach to the provision of support to victims and that such support covered victims’ physical, psychological, emotional, social and cultural needs. In addition, victims should not be forced to face their attacker again when providing testimony and should not be subjected to evidence-gathering processes that amounted to revictimization.

49. The draft articles could also accommodate developments relating to slave trade and provide for the right to reparations for historical injustices, including the trans-Atlantic slave trade. They could recognize explicitly that those entitled to reparations included not only those who suffered directly from crimes against humanity but also subsequent generations who lived with the consequences of those crimes.

50. Draft article 2, paragraph 2 (i), concerning the definition of “enforced disappearance of persons”, should provide stronger protection for victims by identifying as possible perpetrators not only States and political organizations but also persons or groups of persons acting with the authorization, support or acquiescence of the State. Her delegation also agreed with the comments made earlier in the meeting by the representative of Argentina, who had noted that the definition in the International Convention for the Protection of All Persons from Enforced Disappearance did not refer to the intention of removing the person in question from the protection of the law or to the period of time involved in the commission of the crime.

51. With regard to draft article 3 (General obligations), her delegation considered that, since the prohibition of crimes against humanity was a peremptory norm of general international law, it followed that the obligation to prevent such crimes was also a peremptory norm. Her delegation therefore supported the provision in paragraph 1 that each State had the obligation not to engage in acts that constituted crimes against humanity. It should also be stated explicitly that the obligation included a prohibition on the facilitation of mechanisms for assistance in the commission of such crimes.

52. **Mr. Košuth** (Slovakia), recalling the comments made by his delegation the previous year, said that Slovakia welcomed, as a basis for further negotiations, the definition of crimes against humanity provided in draft article 2, not necessarily because it reflected article 7 of the Rome Statute, but mainly because it had enjoyed broad acceptance among States thus far and was the result of robust and lengthy deliberations, first within the Commission and then among States, including the more than 160 States that had participated in the negotiation of the Rome Statute at the Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court. His delegation’s understanding, based on the records of the Diplomatic Conference, was that it was not the definition of crimes against humanity that had caused the major difficulties in the negotiations. That understanding appeared to be supported by statements made during the Committee’s debates on the draft articles, including statements by

some delegations that had abstained from the vote on, or even voted against, the adoption of the Rome Statute.

53. There were ample useful examples in case law to explain and support the conditions required for an “attack” to constitute a crime against humanity, as referred to in draft article 2, paragraph 1. As a civil-law State, Slovakia was not necessarily concerned about the interplay between paragraph 1 (k), which referred to “other inhumane acts of a similar character”, and the *nullum crimen* principles. For his delegation, that was a matter of domestic law. His delegation noted with interest the proposals to adjust or add elements to the draft article and considered that the logical next step would be to discuss them in the context of formal negotiations on a convention on crimes against humanity.

54. Concerning draft article 3 (General obligations), his delegation agreed with the statement in paragraph (19) of the commentary that treaty practice, jurisprudence and the well-settled acceptance by States established that crimes against humanity were crimes under international law that should be prevented and punished whether or not committed in time of armed conflict, and whether or not criminalized under national law. Slovakia did not consider the obligations set out in paragraphs 1 and 2 of the draft article to be affected or altered by armed conflict.

55. Turning to draft article 4 (Obligation of prevention) and recalling his delegation’s previously expressed support for the broad and flexible wording used by the Commission, he said that the inclusion of the reference to “other appropriate preventive measures” in subparagraph (a) would allow States to adopt tailor-made preventive measures, taking into account their individual circumstances and relevant local, regional or other contexts. The draft article did not impose an excessive obligation on States, as it did not require them to take any measures beyond legislative, administrative and judicial measures, unless such additional measures were necessary for compliance with the obligation of prevention. The fact that – as noted by the representative of Austria – any preventive measures must be in conformity with international law alleviated some of the concerns about the types of measures that could be adopted under the draft article. In general terms, his delegation considered draft articles 2, 3 and 4 to be highly satisfactory.

56. **Ms. Dakwak** (Nigeria) said that, as a signatory to the Rome Statute, her country welcomed the fact that draft article 2 (Definition of crimes against humanity) was modelled on article 7 of the Statute. However, her delegation continued to have concerns about the current

narratives regarding the term “gender”, as defined in article 7, paragraph 3, of the Statute, in particular the conspiracy theory that the Statute’s definition of gender was obsolete or outdated. The reasoning of the drafters of the Statute in deciding to include that paragraph must be taken into consideration. Moreover, there appeared to be a false perception that the Commission’s decision to not replicate that paragraph in draft article 2 had been based on views expressed in an overwhelming number of submissions from Member States. Given that a relatively small number of States had submitted written comments on the issue of crimes against humanity since 2015, Nigeria requested that the Commission explain the methodology it had used to determine that an overwhelming number opposed the inclusion of the Statute’s definition of gender in the draft articles. Her delegation did not consider the number to be high enough to justify the Commission’s decision. Nigeria continued to call for transparency and openness in the discussion of the matter. In accordance with General Assembly resolution 77/249, the decision on the elaboration of a future convention on the basis of the draft articles or other appropriate action would be taken in the light of the written comments and observations of Governments, as well as the views expressed – including her delegation’s views – in discussions at the seventy-seventh and seventy-eighth sessions of the General Assembly and the written summary of the deliberations to be prepared by the Sixth Committee at the end of the second resumed session.

57. Crimes against humanity were defined in the Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights (Malabo Protocol) as certain acts committed as part of a widespread or systematic attack or enterprise directed against any civilian population, with knowledge of the attack or enterprise. Nigeria supported the proposal made by the African Group at the Committee’s 38th meeting (see A/C.6/78/SR.38) to include slave trade in the list of crimes against humanity in draft article 2, given that the structural and institutional consequences of slavery and slave trade continued to affect the African continent and people of African descent to the present day. In addition, Nigeria called for colonialism and the illicit exploitation of resources to be added to the list. The international community currently had an opportunity to rewrite the dark and painful story of Africa, and history would not forgive a failure to do so. Colonialism in Africa had involved a massive exploitation of the continent’s human and natural resources, which explained the continent’s current poor performance. For more than 400 years, its people – including children – had been brutally taken away as slaves to build and develop countries in the West and

elsewhere, in severe and inhuman conditions that had deprived them of their human dignity, freedom and identity. Slavery and slave trade were the worst forms of crime that could be committed against humankind, and their impact was incalculable.

58. The exploitation by colonizers of Africa’s mineral and other natural resources had also had devastating consequences for the environment. In Africa, the illicit extraction, exploitation and depletion of minerals, fossil fuels and wildlife had resulted in severe environmental degradation. While the human cost of the diamond trade in parts of Africa was well known, the world was less familiar with the devastating environmental impact of the exploitation of other resources. As an example, oil spills in the Niger Delta caused by Western oil companies had contaminated rivers and farmlands, destroying livelihoods in fishing and farming communities. Moreover, the international community continued to turn a blind eye to the environmental consequences of the pillaging of resources in the Democratic Republic of the Congo, keeping the focus only on the conflict situation in the country. Such exploitation of natural resources should be considered a crime against humanity.

59. Her delegation called upon all like-minded people, particularly Africans, to hold the perpetrators of slavery and slave trade to account and demand justice for those who had endured or died in slavery. In his remarks at the commemorative meeting on the occasion of the International Day of Remembrance of the Victims of Slavery and the Transatlantic Slave Trade, the President of the General Assembly had underscored the urgent need for accountability and reparations. People of African descent were the only race that had not been given compensation and reparations for the heinous and inhuman acts committed against them. The legacy of slave trade, slavery, colonialism and the exploitation of resources was still visible and continued to undermine efforts to bring transformation and sustainable development to Africa and its people. The colonizers had viewed Africa as a place of unlimited resources to exploit, giving little consideration to the long-term impact of their activities. Such exploitation had led to a loss of nutrients in the soil, which had affected food production and led to poverty, unemployment and insecurity. Under the Malabo Protocol, exploiting natural resources without complying with norms relating to the protection of the environment and the security of the people was considered illicit exploitation of natural resources.

60. Africa was the richest region of the world in terms of natural resources but the poorest by economic standards. The West had enriched itself while

systematically stymieing Africa's development. The West must right the wrongs it had committed by paying reparation and compensation and by returning plundered cultural artefacts, which continued to generate a huge amount of revenue for the economies of the Western States where they were on display while the countries from which they had been taken languished in poverty and instability. Political stability could not be achieved without economic stability, and it was reasonable to demand reparation to address the economic deficit created by colonialism and slavery. The various forms of financial aid, support and assistance that had been provided thus far should not be construed as reparation; reparation must be explicitly designated as such. A future convention on crimes against humanity should address that issue. The inclusion of colonialism, slave trade and illicit exploitation of resources as crimes against humanity in the future convention would fill a gap that had been left by the Convention against Torture, the Genocide Convention and other instruments. Moreover, history must not be allowed to repeat itself in the new scramble for Africa.

61. Turning to draft article 3 (General obligations), she said that, in the light of the unfolding situation in Gaza, her delegation supported the stipulation in paragraph 1 that States had an obligation not to engage in acts that constituted crimes against humanity. However, in order to ensure respect for the principle of non-interference in the internal affairs of States, paragraphs 2 and 3 should be removed and an explicit reference to that principle should be added.

62. With regard to draft article 4 (Obligation of prevention), it was essential to clearly define the role of the organizations mentioned in subparagraph (b). Cooperation did not mean that organizations should take on the obligations of States. It was the State that had a duty to cut off financial assistance, support and the supply of arms to any other State that was committing crimes against humanity, and the State must be held accountable for failure to comply with that duty.

63. **Mr. Silveira Braoios** (Brazil), responding to the comments made by the representative of Slovakia, said that while Brazil was also a civil-law State, it saw a need for caution with regard to the use of catch-all phrases in criminal law, such as the phrase "other inhumane acts of a similar character" in paragraph 2 (k) of draft article 2. The implementation at the national level of provisions that included such phrases could vary widely, which could have implications for international law.

64. **Mr. Mead** (Canada) said that his delegation acknowledged the plethora of views expressed by States in respect of the appropriateness of using the definition

of crimes against humanity in the Rome Statute as the basis for draft article 2. Given the value of legal certainty, Canada remained of the view that the definition in the Rome Statute should be used as a reference point for the definition to be included in any future convention on crimes against humanity and encouraged all States to consider the benefits of having harmonized definitions. Nevertheless, given that the definition in the Statute was the result of compromise and had been tailored to the specific purpose of defining the jurisdiction of the International Criminal Court, there would be value in considering changes that would allow a future convention on crimes against humanity to better reflect customary international law.

65. Canada took note of the proposals to include additional acts, some of which were already recognized as crimes against humanity under customary international law, in the list of crimes in the draft article. His delegation reiterated its support for crystallizing the status of acts that had already been recognized as crimes against humanity, such as forced marriage. The definition of forced marriage could be modelled on the one provided by the International Criminal Court in *The Prosecutor v. Dominic Ongwen*. Canada also remained open to hearing arguments in favour of including other specific crimes that might not yet have been recognized as crimes against humanity.

66. Gender would be an important aspect of any future convention on crimes against humanity. Given the divergence of views on the definition of gender, it might be best to avoid providing a definition of that term and to leave it to each State to establish its own definition at the national level.

67. The requirements that an act be "widespread" or "systematic" in order to constitute a crime against humanity should remain disjunctive, so as to reflect customary international law. Paragraph 1 (h) of the draft article should simply refer to the act of persecution, for consistency with the treatment of the other crimes in the list. The remaining elements in paragraph 1 (h) could be included in the definition of persecution in paragraph 2 (g). His delegation reiterated its recommendation against implying that persecution constituted a crime against humanity only if it was committed on the basis of grounds universally recognized as impermissible under international law. It also reaffirmed its support for the "without prejudice" clause in paragraph 3, which would reassure States that they would retain the flexibility within their national legal frameworks to apply definitions under customary international law that might be broader than the definition in a future convention on crimes against humanity, without any additional obligations being imposed on other States.

68. It would be useful to state in draft article 3 (General obligations) that a convention based on the draft articles would not affect international humanitarian law, unless that point were to be included in the preamble to such a convention.

69. The wording of draft article 4 (Obligation of prevention) should be aligned more closely with that of article 2 of the Convention against Torture, given the similarities between the two. Canada noted the questions and concerns that had been raised regarding cooperation in prevention but considered that, while States should have flexibility, provision for effective inter-State cooperation and other appropriate forms of cooperation would be key in any future convention aimed at preventing crimes against humanity. In that connection, it would be worth including a reference to cooperation with international courts and tribunals “as appropriate”.

70. **Mr. Milano** (Italy) said that his delegation was among those that had stressed the importance of aligning the definition of crimes against humanity in draft article 2 with the definition provided in the Rome Statute – which was generally reflective of customary international law – in order to avoid inconsistencies between legal instruments. His delegation therefore supported the draft article as the basis for a definition in a future convention. It was also worth noting that the definition in the Statute was the result of a consensus-based process in which more than 160 States had participated.

71. The key requirement under the draft article that an attack be carried out pursuant to or in furtherance of a State or organizational policy in order to be considered a crime against humanity was consistent with the case law of international courts and tribunals. As noted in the commentary to the draft article, the offender need not be a State official or agent. Crimes against humanity could be committed by non-State entities and organizations, such as political groups, rebel groups or even criminal organizations.

72. Paragraph 3 was important because it made it clear that the draft article represented a minimum standard and that it was without prejudice to broader definitions provided for in other international instruments, in customary international law or in national law. States might therefore agree to apply a broader definition. For example, the definition of “enforced disappearance” contained in the International Convention for the Protection of All Persons from Enforced Disappearance was broader than the definition of “enforced disappearance of persons” in the draft articles, in that it did not require that the crime be part of a State or

organizational policy or that it continue for a prolonged period of time.

73. His delegation could support draft article 3 (General obligations) as currently formulated. Paragraph 1 provided a clear legal standard from the perspective of the law on State responsibility, in that it prohibited acts constituting crimes against humanity that were attributable to a State under the secondary rules of attribution. Paragraph 2 provided for an obligation of due diligence, in that the State was required to use the means at its disposal to prevent the commission of crimes against humanity. The fulfilment of that obligation required a case-by-case evaluation, taking into account all relevant factors, including the capacity of the State to exert control and influence over a group of persons that were likely to commit or were already committing crimes against humanity. The paragraph also contained the important clarification that crimes against humanity were not necessarily committed in the context of armed conflict.

74. The obligation of prevention provided for in draft article 4 involved positive action, not only in the form of legislative, administrative or judicial measures in the territory under the jurisdiction of the State, but also through international cooperation with other States, international organizations and, as appropriate, other organizations, such as the International Red Cross and Red Crescent Movement. The requirement that such actions be conducted “in conformity with international law” was important. At the domestic level, it was crucial that the prevention of crimes against humanity did not involve the violation of fundamental human rights. At the international level, prevention could not justify measures in violation of international law, including with regard to the use of military force.

75. **Mr. Aref** (Islamic Republic of Iran) said that the “without prejudice” clause in paragraph 3 of draft article 2 (Definition of crimes against humanity) was a departure from article 7 of the Rome Statute. His delegation had serious doubts as to whether the paragraph would serve the purpose of preventing crimes against humanity, given that it could lead to the fragmentation of international law. That comment was without prejudice to his delegation’s basic position with regard to some elements of crimes against humanity as set out in article 7 of the Statute.

76. It would be useful to make it clear in draft article 2 that the use of unilateral coercive measures against a civilian population was a crime against humanity. Unilateral coercive measures, such as the deprivation of access to food and medicine, that were imposed in a systematic or widespread manner on civilian

populations were designed to have a harmful effect on everyday life and could lead to civilian deaths.

77. Referring to paragraph 3 of the draft article, he said that the reference to customary international law appeared to challenge the non-hierarchical relationship between the main sources of international law and called into question the stated scope of the draft articles. The same held for the reference to international instruments, particularly since the Commission indicated in the commentary that the term “international instrument” was to be understood as being broader than just a legally binding international agreement and could include such instruments as resolutions of international organizations. Since crimes against humanity were among the most egregious crimes, the threshold for their identification should be higher than that for less serious crimes, so as to better reflect their gravity and ensure legal certainty in distinguishing them from other crimes. The establishment of a higher threshold could also prevent the politicized attempts of a few to abuse the noble cause of countering crimes against humanity in order to further their own interests. In that connection, his delegation was of the view that the conditions of “widespread” and “systematic” in paragraph 1 of the draft article should be conjunctive requirements.

78. The wording of draft article 3 (General obligations) was somewhat confusing in that it provided that crimes against humanity were “crimes under international law”. That characterization had been used in treaties in the definitions of other crimes, such as transnational organized crime and corruption, but those definitions were still not deemed to be custom-based. It was for that reason that the expressions “the most serious crimes of international concern” and “the most serious crimes of concern to the international community” had been used in the Rome Statute. Moreover, the draft articles were not internally consistent, as it was stated in the fifth preambular paragraph that crimes against humanity were “among the most serious crimes of concern to the international community as a whole”.

79. The need for compliance with the principles of sovereign equality, non-interference in the internal affairs of States and territorial integrity in all efforts to prevent and punish crimes against humanity should be mentioned in the preamble to and the body of the draft articles.

80. The overly broad wording of draft article 4 (Obligation of prevention) did not leave States sufficient freedom with regard to administrative and procedural matters at the national level and would increase legal ambiguity regarding the scope of the obligation of

prevention. Moreover, it was unclear whether there was any legal basis, including State practice, for the obligation to cooperate with “other organizations”, as provided for in paragraph 1 (b), especially since, according to the commentary, those organizations included non-governmental organizations. His delegation therefore considered it inappropriate to impose such an obligation on States and called for the provision to be reconsidered, with much caution.

81. **Ms. Hasler** (Liechtenstein) said that her delegation supported the elaboration of a convention on crimes against humanity, which would close a gap in the international criminal justice system and ensure justice for the victims of atrocity crimes. Overall, the draft articles provided a solid basis for such a convention.

82. It must be recognized that the definition of crimes against humanity provided in the Rome Statute was considered to reflect customary international law. The fact that the definitions of the core crimes – including crimes against humanity – contained in the Statute had been used both within and outside the framework of the International Criminal Court was evidence of both their practical effectiveness and their acceptance. It was therefore worth highlighting that, under article 7, paragraph 1 (h), of the Statute, persecution could constitute a crime against humanity if it was committed in connection with any other act that might constitute a crime against humanity or in connection with any of the other crimes within the jurisdiction of the International Criminal Court, namely genocide, war crimes and the crime of aggression. However, under draft article 2, paragraph 1 (h), the act of persecution was considered a crime against humanity only if it was committed in connection with any of the other acts considered crimes against humanity under paragraph 1. The definition in the draft articles was thus narrower than the one in the Rome Statute. Her delegation accordingly suggested that paragraph 1 (h) be amended to refer also to war crimes, genocide and the crime of aggression in connection with persecution.

83. The question of immunity was governed by customary international law and was also covered in the jurisprudence of the International Court of Justice and other international courts. In that regard, draft article 7 of the Commission’s draft articles on immunity of State officials from foreign criminal jurisdiction provided that immunity *ratione materiae* should not apply in respect of crimes against humanity, while the International Court of Justice had held that immunity *ratione personae* did not apply before international courts. Liechtenstein shared the Commission’s view, reflected in draft article 6, paragraph 5, of the draft articles on prevention and punishment of crimes against humanity,

that the fact that a perpetrator of crimes against humanity held an official position did not exclude his or her criminal responsibility.

84. Liechtenstein looked forward to the future elaboration of a convention on crimes against humanity within the framework of an international conference.

85. **Ms. Arumpac-Marte** (Philippines) said that in 2009 the Philippines had adopted Republic Act 9851, which dealt with crimes against international humanitarian law, genocide and other crimes against humanity. The definition of crimes against humanity set out in draft article 2, which was an almost verbatim copy of article 7 of the Rome Statute, was also generally consistent with the definition provided in Republic Act 9851, which included as crimes against humanity, *inter alia*, wilful killing, extermination, torture, persecution and other inhumane acts of a similar character. The definitions of terms provided in draft article 2, paragraph 2, were also generally consistent with those in Philippine law. Her delegation could therefore support the draft article, with some suggested amendments, including replacing “murder” with “wilful killing” in paragraph 1 (a); adding the word “arbitrary” before “deportation or forcible transfer of population” in paragraph 1 (d); and adding “sexual orientation” to the list of the impermissible grounds for persecution in paragraph 1 (h).

86. Philippine law specifically mentioned persecution on the basis of sexual orientation and also referred to enslavement. Her delegation was open to further discussion of the definitions of specific crimes against humanity in paragraph 2 of the draft article, including the proposal that slave trade be included as a criminal act distinct from enslavement. In addition, given the shifts in the understanding of sexual and gender-based crimes over the past two decades, it would be appropriate to consider the gender dimension in paragraph 2 (h), concerning apartheid, to take into account inhumane acts committed in the context of an institutionalized regime of systematic oppression on the basis of gender and committed with the intention of maintaining that regime. Her delegation could also support paragraph 3, on the understanding that, should a State wish to adopt or retain a broader definition of crimes against humanity in its national law, the draft articles would not preclude it from doing so.

87. Her delegation supported the inclusion in draft article 3 of the general obligations of States not to engage in acts that constituted crimes against humanity and to prevent and punish such crimes. Those obligations were in line with Philippine law. Furthermore, under Philippine law, as in paragraph 3 of

the draft article, no exceptional circumstances whatsoever could be invoked as a justification of crimes against humanity.

88. Her delegation supported the inclusion of draft article 4 (Obligation of prevention). The Philippines had complied with the obligation set out in subparagraph (a) to take legislative measures to prevent crimes against humanity, in particular by enacting Republic Act 9851. Cooperation for the effective prevention of crimes against humanity must always be undertaken in conformity with international law.

89. **Mr. Li Linlin** (China), referring to draft article 2, said that the definition of crimes against humanity therein could not be considered to have universal acceptance, given that it was based on the definition in the Rome Statute, to which more than one third of the world’s countries were not parties. Moreover, the Statute definition did not reflect customary international law. While some delegations claimed that the Statute definition had enjoyed the support of the majority of States at the time of negotiation of the Statute, the reality was that heated debates on whether or not crimes against humanity could be committed in situations not involving armed conflict and on the meaning of the phrase “widespread or systematic attack” had continued into the late stages of the negotiations. At the time of its adoption, the Statute had enjoyed the support of only 120 States; therefore, it could not be considered to reflect the views of the international community as a whole.

90. Definitions of crimes against humanity were contained in various instruments, including the Charter of the International Military Tribunal for the Far East, the Statute of the International Tribunal for the Former Yugoslavia, the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea and the Statute of the Special Court for Sierra Leone. Those definitions differed significantly from one another, including with regard to the questions of whether crimes against humanity could be committed in peacetime, whether such crimes could be committed by any organization or group or only by Governments, and whether acts must be motivated by national, political, ethnic, racial or religious grounds in order to be considered crimes against humanity. Since the Rome Statute was only one of many relevant instruments, its definition of crimes against humanity could not simply override all others.

91. It would be difficult to identify customary international law to support a definition of crimes against humanity. A significant number of States parties

to the Rome Statute did not provide for crimes against humanity in their domestic law, and there were significant differences among the definitions that did exist. Very few States that were not parties to the Rome Statute had any practice in relation to crimes against humanity at all. There was also a risk that the definition in the draft article could come into conflict with relevant international conventions. For instance, torture, enforced disappearance and apartheid were classed as crimes against humanity in the draft article, but the law on those crimes was already governed by separate international conventions. It was worth noting that the definition of torture in paragraph 2 (e) of the draft article was very different from the definition in the Convention against Torture, which had 173 States parties.

92. Lastly, the definition of crimes against humanity in the draft article was outdated, as it did not reflect developments that had taken place in the nearly 30 years since the adoption of the Rome Statute. In that regard, his delegation agreed that some elements should be removed and that additional crimes, such as unilateral coercive measures and slave trade, might need to be taken into account. For those reasons, China called for further in-depth consideration of the draft article.

93. **Ms. Dime Labille** (France) said that it was essential that the definition of crimes against humanity in draft article 2 be identical to the definition in article 7 of the Rome Statute, except for some non-substantive changes that had, on the whole, been made. At the resumed session in April 2023, some delegations had expressed the view that draft article 2 could not be modelled on the corresponding provision in the Rome Statute because the Statute was not universally accepted, or because they did not consider article 7 of the Statute to reflect customary international law. However, article 7 of the Statute was simply the most recent expression of the consensus of the international community on the question. The definition in draft article 2 reflected practice that had been established for decades. It was no surprise that it resembled the definition in the Rome Statute, given that the Statute had contributed to the codification of international criminal law.

94. The definition in draft article 2 also reflected the evolution of the concept of crimes against humanity, as influenced by customary international law and international courts and tribunals, including the International Criminal Court, the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda. As an example, in 2012 the Supreme Court Chamber of the Extraordinary Chambers in the Courts of Cambodia had sentenced Kaing Guek Eav, alias Duch, to life imprisonment for

crimes against humanity using the definition contained in the Rome Statute. That definition was also contained in the recently adopted 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.

95. Her delegation remained ready to engage in further discussions with other delegations in as broad and transparent a manner as possible and continued to call for the universal adoption of a much-needed convention on the prevention and punishment of crimes against humanity.

96. **Ms. Rathe** (Switzerland) said that her delegation welcomed the fact that the definition of crimes against humanity in draft article 2 reproduced the definition in article 7 of the Rome Statute, with only non-substantive changes. It was important to avoid using a definition that deviated from the Statute definition, given that the International Criminal Court played a central role in prosecuting and trying crimes against humanity. The definition also reflected the progressive evolution of international law, and States had had the opportunity to discuss it during the negotiations on the Rome Statute and had reached agreement on it. Many States, including Switzerland, had incorporated the definition into their national laws. It therefore provided a solid basis for ensuring the coherence of the existing legal framework.

97. In that respect, it was important not to revise the chapeau of draft article 2, paragraph 1. The requirements that an attack be “widespread” or “systematic” were disjunctive, rather than conjunctive; either requirement could be met. That formulation should be maintained in the text of a future convention. Her delegation appreciated the fact that paragraph 3 established that the draft article was without prejudice to any broader definition provided for in any international instrument, in customary international law or in national law.

98. With regard to draft article 3 (General obligations), her delegation appreciated the specification that States had the obligation to prevent and punish crimes against humanity, whether committed in time of war, in the context of an armed conflict or in peacetime. It also welcomed the provision in paragraph 3 that no exceptional circumstances whatsoever could be invoked to justify such crimes.

99. With regard to draft article 4, her delegation welcomed the inclusion of an article specifically dedicated to the obligation of prevention. The obligation to take preventive measures was a feature of most multilateral treaties addressing crimes since the 1960s;

the Commission provided many examples in its commentary to the draft article. In that regard, her delegation agreed with the assertion in the draft article and the draft preamble that preventive measures must be taken in conformity with international law. It also welcomed the phrase “or other appropriate preventive measures”, which provided States with a degree of leeway to fulfil their obligation of prevention. Regarding the suggestion made at the 2023 resumed session that the phrase “as appropriate” should be moved to the beginning of subparagraph (b), her delegation affirmed that its current placement was justified.

100. **Ms. Solano Ramirez** (Colombia) said that, as a party to the Rome Statute, Colombia viewed favourably the fact that the definition of crimes against humanity in draft article 2 closely followed the definition in article 7 of the Rome Statute and in the International Criminal Court’s Elements of Crimes. The acts listed in the draft article had been recognized in all legal families as constituting crimes against humanity, as reflected in the Rome Statute regime and the work of all the international criminal courts and tribunals. For that reason, her delegation viewed the list as the minimum that should be included in the definition of crimes against humanity; the definition should be a floor rather than a ceiling. Her delegation also considered it important to keep the “without prejudice” clause in paragraph 3 of the draft article, so as to allow for any broader definition of such crimes provided for in other international instruments, in customary international law or in national law, or that might be articulated in the case law of international criminal courts and tribunals in future.

101. Therefore, although Colombia was a party to the Rome Statute, it did not insist on strict adherence to the Statute definition. In that regard, her delegation believed that the Statute definition of persecution, for example, was too restrictive, and it would be better to use broader concepts from customary international law and the jurisprudence of regional tribunals, such as the Inter-American Court of Human Rights. In addition, it would be preferable to use the definition of enforced disappearance set out in the International Convention for the Protection of All Persons from Enforced Disappearance or the Inter-American Convention on Forced Disappearance of Persons, which was clearer than the Rome Statute definition.

102. Her delegation agreed with the decision to dispense with a definition of gender in the draft articles. Colombia attached great importance to the use of a gender mainstreaming approach in a future crimes against humanity convention, in line with one of the key

components of its foreign policy. That had implications for editorial questions, such as the use of gender pronouns, as well as for matters relating to victims, including the differentiated treatment that should be given to victims on the basis of their gender.

103. Her delegation was open to including additional acts, such as slave trade, forced marriage and reproductive violence, in the list in draft article 2. The issue of reproductive violence in particular was extensively covered in the jurisprudence of Colombian courts. The addition of any act to the list must be subject to rigorous standards, meaning that it must be based on analysis of the constituent instruments of international courts and tribunals and a review of the applicable customary international law, and that the definition of the act in question must be broadly supported by State practice and the jurisprudence of international and regional courts and tribunals. In that respect, it would be appropriate to refer to the adoption of a restrictive approach to interpretation and to the principles of *nullum crimen sine lege* and *in dubio pro reo*, perhaps in the draft preamble.

104. Her delegation appreciated the fact that draft article 3 (General obligations) not only addressed crimes against humanity from a punitive perspective, but also recognized every State’s obligation not to engage in the acts concerned. With regard to paragraph 2, it was necessary to provide for a general obligation to prevent the commission of such acts and, as mentioned in her Government’s written comments, it should be made clear that that obligation was an obligation of means and was measured by a standard of due diligence. That was clear from international jurisprudence. There should also be a reference to the obligation to prevent crimes involving breaches of *jus cogens* norms and to the aggravated regime of State responsibility that applied to such crimes. Her delegation understood that paragraph 3 referred to the conduct of both States and non-State actors and that it applied in both times of peace and times of war. That provision was both natural and welcome.

105. The concept of the obligation of prevention, contained in paragraph 2 of the draft article, was further developed in draft article 4. That obligation extended to the prevention of acts that could constitute crimes against humanity and was a feature of most of the multilateral treaties that dealt with those crimes. At the same time, her delegation believed that the obligation of prevention could never be used to justify aggression. However, the obligations established in the draft article were perhaps too vague, given the lack of clarity regarding how preventive acts would be deemed to be

“in conformity with international law”, particularly with regard to the role of third States.

106. Draft articles 2, 3 and 4 would all be essential components of a future convention on crimes against humanity. However, all of them could benefit from greater clarity and more detail. Her delegation was interested in discussing each provision in more detail. In particular, it was willing to discuss the valid views of the delegations of Brazil, Cameroon and Nigeria, among others. However, her delegation believed that the three draft articles were generally on the right track.

107. **Ms. Janah** (New Zealand) said that her delegation believed that the definition of crimes against humanity in draft article 2 reflected a careful and appropriate balance between competing values. It welcomed the fact that the draft article drew on the definition of crimes against humanity in article 7 of the Rome Statute; that approach presented advantages in terms of legal certainty and harmonization. Her delegation nevertheless remained open to adjustments to the definition that were underpinned by broad support, which would ensure that the definition remained fit for purpose in the context of a future convention.

108. Her delegation supported the inclusion of a “without prejudice” clause in the definition. While article 7 of the Rome Statute did not contain the wording used in paragraph 3 of draft article 2, article 10 of the Statute provided that nothing in that Part of the Statute “shall be interpreted as limiting or prejudicing in any way existing or developing rules of international law for purposes other than this Statute”. The “without prejudice” clause in draft article 2 was therefore not a substantial departure from the Statute. Furthermore, the inclusion of the clause ensured that a future convention would not call into question broader definitions that might exist in international law or national laws. While concerns had been raised that the “without prejudice” clause might introduce ambiguity into the definition, a future convention that included the clause would establish clear minimum common definitions while providing the flexibility for States to reflect broader definitions in their domestic law.

109. Her delegation supported the decision not to include a definition of gender in the draft articles, in view of the evolution of international human rights law and international criminal law since the adoption of the Rome Statute. It remained open to wording that was aimed at enhancing prevention and accountability measures for sexual and gender-based crimes.

110. Her delegation supported the inclusion of the obligations set out in draft articles 3 and 4 and welcomed the clarification provided in paragraph 2 of

draft article 3 (General obligations) that crimes against humanity were crimes under international law, whether or not committed in time of armed conflict. The draft article reflected State practice and jurisprudence and confirmed that the acts in question constituted crimes against humanity, regardless of the existence of a nexus with armed conflict. Her delegation also supported paragraph 3 of the draft article, which made it clear that no exceptional circumstances could be invoked as a justification of crimes against humanity.

111. **Ms. Mocanu** (Romania), referring to draft article 2, said that her delegation welcomed the Commission’s decision not to depart from the definition of crimes against humanity in the Rome Statute so as to prevent normative fragmentation. For the 124 States parties to the Statute, which included Romania, the current wording ensured consistency with their existing obligations. Despite some concerns expressed during the resumed session of 2023, her delegation was of the firm view that the inclusion of the definition in a future treaty would not affect the status, or the obligations or lack thereof, of States that were not parties to the Statute. The draft article reflected a solid contemporary definition of crimes against humanity that was widely endorsed and accepted. Her delegation was aware that elements of the definition might need to be updated to reflect developments since the negotiation of the Statute. The proposals made in that regard during the 2023 resumed session were relevant and worthy of discussion during future negotiations. At the same time, it was vital to minimize risks to the stability of the definition and to avoid undermining critical elements of established international criminal law. In the light of the explanations provided in the Commission’s commentary, her delegation endorsed the decision not to include a definition of gender in the draft articles. It also welcomed the “without prejudice” clause in paragraph 3 of draft article 2.

112. With regard to draft article 3, her delegation shared the Commission’s view that the general obligation not to engage in acts that constituted crimes against humanity comprised two components: an obligation on States not to commit such acts through their own organs or persons within their control and an obligation not to aid or assist another State in the commission of an internationally wrongful act. The clarification in paragraph 2 of the draft article that crimes against humanity were offences under international law, whether they were committed in a time of armed conflict or during peacetime, was critical. Her delegation also supported the inclusion of the statement that no exceptional circumstances whatsoever could be invoked as a justification of crimes against humanity.

113. Draft article 4 was an important pillar of the text and her delegation endorsed the Commission's effort to strive for a robust provision on the obligation to prevent the commission of crimes against humanity, which was consistent with existing treaty practice. The Commission had also avoided being overly prescriptive in the drafting of the provision, giving States significant flexibility to determine the precise measures that they would take to prevent crimes against humanity. While some delegations considered that the extent and nature of the obligations in the draft article were unclear, her delegation considered that maintaining a degree of flexibility would ultimately ensure better implementation of the treaty by providing for adaptation to specific contexts. National authorities would thus be able to build on existing domestic preventive measures.

114. **Mr. Yamashita** (Japan) said that Japan supported the activities of the International Criminal Court to prosecute and punish crimes against humanity as the most serious crimes of concern to the international community. His delegation supported the decision to base the definition of crimes against humanity in draft article 2 on the definition in article 7 of the Rome Statute. However, it believed that the constituent elements of some of the criminal acts listed in the definition remained unclear and should be clarified.

115. **Mr. Woodfield** (United Kingdom) said that his delegation supported the definition of crimes against humanity contained in draft article 2, which reflected the long development of the definition of crimes against humanity, as noted in the Commission's commentary. It reflected the terms of article 7 of the Rome Statute and had therefore been endorsed by the 124 States from different geographical regions that had ratified the Statute. Importantly, a number of non-States parties to the Statute also used or accepted the Statute definition. However, his delegation was conscious that not all Member States were parties to the Statute and that it was important to remain attuned to developments in contemporary practice.

116. Concerning "other inhumane acts", as mentioned in paragraph 1 (k) of draft article 2, it was worth noting that, in *The Prosecutor v. Dominic Ongwen*, the International Criminal Court had held that forced marriage fell within the category of other inhumane acts; moreover, other States had expressed support for the inclusion of forced marriage as a stand-alone offence in the text of a future convention. The definition of that crime could be worded along the following lines:

Forced marriage means causing a person to enter into marriage with another person through the use of violence, threats or any other form of coercion,

in circumstances where that conduct may cause either person to enter into the marriage without free and full consent. For the purposes of this paragraph: (i) children and those lacking capacity cannot give free and full consent; (ii) marriage means any conjugal union (whether or not legally binding).

Concerning the definition of forced pregnancy provided in paragraph 2 (f) of the draft article, his delegation had made proposals, in the written comments it had submitted in December 2023, to strengthen the wording by removing the focus on confinement and the carveout relating to national laws on pregnancy, as well as to address the inability of children to give free and full consent.

117. His delegation was aware that the lack of a definition of gender in the draft articles was supported by some States and of concern to others. In that regard, it reiterated that it supported the omission of a definition. The issue of gender was sensitive, and a discussion of international criminal law was perhaps not the place to resolve the divergent views of States. The draft articles were concerned with the prosecution of crimes against humanity at the national level; it was rightly left to each State to determine the definition of gender in accordance with its domestic law.

118. Turning to draft article 3 (General obligations), he said that his delegation welcomed the fact that paragraph 1 specified that each State had an obligation not to engage in acts that constituted crimes against humanity. That was important in the fight to prevent atrocity crimes. The United Kingdom supported the objectives set out in paragraph 2, which provided that each State undertook to prevent and punish crimes against humanity.

119. With regard to draft article 4, his delegation welcomed the guidance provided by the Commission in paragraph (11) of its commentary, which conformed with his delegation's understanding of what the obligation of prevention would require of States. Further clarification might be beneficial so that States would not be made subject to an uncertain range of obligations pursuant to the provision. With respect to jurisdictional scope, his delegation maintained its view that the reference to "any territory under its jurisdiction" in subparagraph (a) and elsewhere in the draft articles should be amended to "in its territory". The obligation on States to cooperate with one another to prevent crimes against humanity, provided for in subparagraph (b), could often assist in the effective prevention of such crimes. However, his delegation was not aware of other treaties on the suppression of serious international

crimes that contained similar wording. His delegation noted that the phrase “as appropriate” applied only to cooperation with organizations other than intergovernmental organizations; instead, a qualifier such as “where appropriate” should apply to the entire provision.

120. **Mr. Khaddour** (Syrian Arab Republic) said that the categories of crimes listed in draft article 2 (Definition of crimes against humanity) had been copied verbatim from article 7 of the Rome Statute of the International Criminal Court. They had not been updated, and no consideration had been given to contemporary reality or to new patterns of violations and crimes, such as those systematically perpetrated by certain States against the peoples of other States with a view to subjecting them to harsh and inhumane living conditions and deliberately depriving them of the most basic needs and basic rights to health, education and the minimum requirements for a decent life. That characterization clearly applied to embargoes, starvation and the illegal imposition of unilateral coercive measures. In practical and legal terms, in view of both their purpose and their effect, such coercive measures fully met the definition of the crime of persecution set out in paragraph 2 (g) of draft article 2. Accordingly, his delegation proposed that consideration be given to including those types of violations among the categories of crimes listed in the draft article.

121. Another difficulty with the proposed definition was that it required that the crimes be committed as part of “a widespread or systematic attack”. His delegation wondered whether it was correct to insist that those crimes must be linked to an attack. It was also unclear what was meant by an attack. For instance, his delegation wondered whether an attack would be required for a crime such as slavery, forced marriage or forced sterilization, even if it involved only a small number of victims. It might be useful to resort to the definition contained in the 1996 Draft Code of Crimes against the Peace and Security of Mankind, prepared by the Commission’s Drafting Committee and reviewed at the forty-seventh and forty-eighth sessions of the Commission, which defined crimes against humanity as an act “committed in a systematic manner or on a large scale and instigated or directed by a Government or by any organization or group”.

122. It was not enough to continue repeating vague concepts as though they were a given. The definition of crimes against humanity under consideration was relatively new; it had gained currency only in the 1990s. In the statute of the International Criminal Tribunal for the Former Yugoslavia, crimes against humanity were characterized as acts committed in armed conflict,

whether international or internal in character; the question of their widespread or systematic nature had not arisen. In the statute of the International Criminal Tribunal for Rwanda, crimes against humanity were characterized as widespread or systematic, but also as having been committed on national, political, ethnic, racial or religious grounds. In both cases, the definition of crimes against humanity was connected with the types of conflict that had taken place in the former Yugoslavia and Rwanda respectively.

123. The definition now under consideration was broader and open to interpretation: it required that an attack be widespread or systematic and that it be directed against any civilian population, without any specification as to the meaning of the concepts involved. Indeed, the characterization of any given attack as widespread or systematic remained controversial in international jurisprudence and had been applied inconsistently by different courts and tribunals. It was unclear which party should determine whether such an attack had occurred. It would not be acceptable for national courts to fulfil that role, especially when it came to applying unconventional and controversial rules of jurisdiction, such as universal criminal jurisdiction, which had proved to be merely a political tool. Moreover, even the concept of “civilian population” needed to be defined clearly and precisely, as was the case in the 1949 Geneva Conventions, particularly when considering potential crimes against humanity in both international and non-international armed conflicts.

124. In short, it was difficult to see how the definition could be taken for granted as part of customary international law, let alone a peremptory norm. It was understandable that representatives of States parties to the Rome Statute supported the definition, but that stance could not be the basis for an objective discussion.

125. The fact that the concept of crimes against humanity remained vague had led to inconsistencies in practice. Attempts to prosecute individuals for crimes against humanity had resulted in unprecedented situations of conflict of laws and contradictory judgments, most of which were based on the political whims of certain States.

126. **Ms. Solano Ramirez** (Colombia), referring to the statement made by the representative of the Syrian Arab Republic, said that, in order to engage in negotiations on a treaty on the topic of crimes against humanity, States would need a text to use as a starting point. Delegations of States parties to the Rome Statute had proposed using that instrument, while also noting that they were open to considering other definitions of crimes against humanity

and including other acts in the definition, as part of the negotiation process. The Commission itself had made some adjustments to the Rome Statute definition when it had prepared the draft articles. No State had proposed imposing the Statute on States that were not parties to it.

127. **Mr. Khaddour** (Syrian Arab Republic), responding to the comments made by the representative of Colombia, said that while the position of States parties to the Rome Statute was understandable, it was not clear why they viewed that instrument as an exemplary text. The definition of crimes against humanity in the draft articles was essentially a copy of that in the Rome Statute, which included crimes that dated back to the Nuremberg Tribunal, and thus might not reflect the contemporary reality.

128. It went without saying that the Committee's discussion should be based on a legal text, but that text should reflect current reality, at least by reflecting contemporary methods of conflict. In addition, issues such as slavery, trafficking in persons and forced marriage were still being discussed currently, yet those were crimes that had been committed for centuries and yet had not been included in the definition. Any crime committed against humanity was a crime against humanity. For example, some acts referred to by certain African delegations, such as destruction of cultural heritage, destruction of their peoples' identity and slave trade, were clearly crimes against humanity; they were crimes against the very essence of humanity. His delegation had no issue with the crimes of genocide, torture and unlawful imprisonment, which were all recognized in national laws in many countries. However, the requirement that an attack be widespread or systematic, which had first been introduced in the Rome Statute and had not been taken up in the context of the International Tribunal for the Former Yugoslavia or the International Criminal Tribunal for Rwanda, was being presented as something that was self-evident. That might have been the case in the past, but was not so today.

129. **Mr. Nyanid** (Cameroon), responding to the comments made by the representative of Colombia, said that States that were not parties to the Rome Statute had the right not to subscribe to the definition of crimes against humanity in that instrument. The definition in the draft articles was based on the Rome Statute definition, which itself had been inspired by the relevant provisions of the Charter of the Nuremberg Tribunal and the statutes of other international criminal tribunals. States should not continue to rely on past precedents; fresh thinking was required.

130. The definition in the draft articles did not capture all the dimensions of humanity, for example humanity

as the quintessence of human nature or humanity as objective identity. It was outdated and failed to take into account current realities and aspirations. That was why States, like Cameroon, that were not parties to the Rome Statute wished to include non-lethal acts, which could be more dangerous than lethal acts, in the definition of crimes against humanity. A potential convention on crimes against humanity would be a form of *lex specialis* that would need to include an stand-alone definition of such crimes. Otherwise, it would be dead on arrival.

131. **Ms. Dime Labille** (France), welcoming the comments made by the representative of Colombia and responding to the comments made by the Syrian Arab Republic and Cameroon, said that her delegation considered the Rome Statute definition of crimes against humanity to be acceptable and suitable. While it was possible to debate adjustments to that definition, it was worth noting that the definition was not being imposed on anyone, as it had in fact already been accepted. Cameroon and the Syrian Arab Republic had signed the Rome Statute in 1998 and 2000, respectively, thus indicating that they had accepted that instrument in principle and also accepted the possibility of becoming a State party to it, although they held the sovereign right to decide for any reason not to become a State party by ratifying it. It was thus logical to assume that those two States agreed with the definition of crimes against humanity in the Rome Statute, or at least had agreed with it at the time of their signature, and that, given the number of other States that had also signed the Statute, the definition contained therein could serve as a basis for discussion.

132. **Ms. Jiménez Alegría** (Mexico) said that her delegation agreed with the comments made by the delegation of Colombia and emphasized that the use of the Rome Statute definition of crimes against humanity was not an attempt to impose that definition. The definition was instead intended to be used as a starting point and as a means to advance from discussions in the Sixth Committee to a negotiation process, wherein States could further develop their positions. For that reason, her delegation considered the Statute definition to be adequate. That definition was also reflected in the legislative practice and jurisprudence of Mexico. Nonetheless, given that the Statute had been adopted in 1998, her delegation also saw value in making adjustments to the definition of crimes against humanity contained therein.

133. **Mr. Amaral Alves De Carvalho** (Portugal) said that his delegation echoed the comments made by the representatives of Colombia and Mexico, although it also agreed with the representative of the Syrian Arab

Republic on a number of points. There were solid legal reasons for using the Rome Statute definition of crimes against humanity as a starting point for discussion, but that did not mean that the definition in draft article 2 could not be adapted or adjusted, including in the light of developments in international law since the adoption of the Statute. His delegation stood ready, in particular in the context of negotiations on a future convention, to engage in a debate on whether, how and to what extent the definition should be adjusted, and indeed had already suggested some amendments to the definition.

134. **Ms. Motsepe** (South Africa) said that her delegation supported the definition of crimes against humanity in draft article 2, which reproduced almost verbatim the definition in article 7 of the Rome Statute, and the use of that definition as a basis for discussion. The definition in the Statute had been extensively negotiated over a number of years and had been applied even by non-States parties to the Statute in their jurisprudence at the national level. The reference to the Rome Statute provisions in the preamble to the draft articles in no way constituted an obligation to comply with the Statute, unless a State was a party thereto.

135. Her delegation nevertheless understood that the definition might not be perfect and thus welcomed suggestions aimed at addressing shortcomings and taking account of current realities. For example, the definition of forced pregnancy in both the Rome Statute and the draft articles did not refer to girls. The girl child, by virtue of her sex or gender, was vulnerable and required protection, especially against forced pregnancy, which in most cases was a result of rape in the context of the commission of international crimes. Her delegation therefore called for the inclusion of girls in the definition of forced pregnancy to ensure the specific protection of the girl child. In the same vein, her delegation supported the calls for the inclusion of forced marriage as a crime against humanity when committed as part of a widespread or systematic attack. That crime put women, or in most cases the girl child, in a vulnerable position of being forced, without consent and mostly without the ability to make an informed decision, into marriage.

136. Her delegation welcomed draft articles 3 (General obligations) and 4 (Obligation of prevention). Section 232 of the Constitution of South Africa, which was the country's supreme law, provided that customary international law was law in the country unless it was inconsistent with the Constitution or an Act of Parliament. In addition, section 233 of the Constitution obliged the national courts, when interpreting any legislation, to give preference to any reasonable interpretation of the legislation that was consistent with

international law over any alternative interpretation that was inconsistent with international law. In that regard, where international law provided more protection than national law, the South African courts were obliged to give preference to international law provisions. The obligations in the draft articles were either already provided for in South African laws or were covered by the country's other international obligations. They were therefore greatly welcomed.

137. **Ms. Carral Castelo** (Cuba) said that her delegation had concerns about some of the draft articles under consideration in view of the fact that Cuba was not a party to the Rome Statute. While it recognized that some States parties to the Statute were open to considering new proposals with regard to draft article 2 (Definition of crimes against humanity), her delegation was not in a position to embark on a substantive negotiation process. More specifically, paragraph 2 (a) of the draft article was ambiguous, as it was not clear from the wording what constituted an attack directed against a civilian population. The paragraph should include more details regarding the concept of a civilian population. It also provided that such an attack could be committed in furtherance of a State or organizational policy, but it was not clear what types of organizations were meant. In addition, the definition of forced pregnancy in paragraph 2 (f) should be amended to reflect international practices in relation to sexual and reproductive health. The concept of persecution was not clearly defined in paragraph 2 (g). Similarly, the definition of enforced disappearance of persons in paragraph 2 (i) seemed incomplete. Her delegation reserved the right to continue to make comments on the draft articles while reiterating that it was not in a position to embark on negotiations.

138. **Mr. Almarri** (Qatar) said that the reference to crimes against humanity in draft article 3, paragraph 2, stood on its own; it did not require a qualifier such as "whether or not committed in time of armed conflict". It would therefore be useful to include in the draft articles the components of the offence of crimes against humanity. Some of the terminology in the draft articles, such as the phrase "other inhumane acts of a similar character" in paragraph 1 (k) of draft article 2 (Definition of crimes against humanity), was too vague. Similarly, in subparagraph (a) of draft article 4 (Obligation of prevention), the phrase "or other ... measures" should be removed because it was overly broad and non-specific. Using clearer and more precise terminology would help the participants in the current discussion, not to mention other stakeholders, to define their positions.

The meeting rose at 1 p.m.