

Provisional

For participants only

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International Law Commission
Seventy-first session (first part)

Provisional summary record of the 3454th meeting

Held at the Palais des Nations, Geneva, on Tuesday, 30 April 2019, at 10 a.m.

Contents

Crimes against humanity (*continued*)


Organization of the work of the session

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Present:

<i>Chair:</i>	Mr. Šturma
<i>Members:</i>	Mr. Al-Marri
	Mr. Argüello Gómez
	Mr. Cissé
	Ms. Escobar Hernández
	Ms. Galvão Teles
	Mr. Grossman Guiloff
	Mr. Hassouna
	Mr. Hmoud
	Mr. Huang
	Mr. Jalloh
	Mr. Laraba
	Ms. Lehto
	Mr. Murase
	Mr. Murphy
	Mr. Nguyen
	Mr. Nolte
	Ms. Oral
	Mr. Ouazzani Chahdi
	Mr. Park
	Mr. Petrič
	Mr. Rajput
	Mr. Reinisch
	Mr. Saboia
	Mr. Tladi
	Mr. Valencia-Ospina
	Mr. Wako
	Sir Michael Wood

Secretariat:

Mr. Llewellyn	Secretary to the Commission
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The meeting was called to order at 10.05 a.m.

Crimes against humanity (agenda item 3) (*continued*) (A/CN.4/725 and A/CN.4/725/Add.1)

Mr. Tladi, thanking the Special Rapporteur for his hard work on the topic, said that he wished once again to express his disappointment and frustration at the Commission's choice to address only crimes against humanity, to the exclusion of other crimes, a decision which he had previously warned against as the single greatest threat to States' taking up the draft articles with a view to concluding a treaty. The difficulties referred to in the report (A/CN.4/725) with regard to the relationship between the Commission's work on the topic and the separate State-led initiative for a convention addressing crimes against humanity, genocide and war crimes would not have existed if the Commission had decided to adopt a broader approach.

He noted that, in paragraph 19 of the report, the Special Rapporteur recalled that the nature of the Commission's work on the topic was not "codification of existing law" but rather the crafting of treaty text. That implied that the articles to be adopted could hardly be wrong, since, in crafting treaty text, there was a huge margin of discretion, limited only by peremptory norms of general international law and common sense. Although he did not agree with many of the choices that had been made, such as the decision to take wording for the extradition and mutual legal assistance provisions directly from the United Nations Convention against Corruption, the choices were not wrong, but were simply different from those that he would have made. For that reason, while he would not comment on all issues, that did not mean that he embraced the choices that had been made on them.

The suggestion, made by Sierra Leone and echoed by Spain, that the name of the topic should be changed to "Prevention and punishment of crimes against humanity" was worth considering. Although the Special Rapporteur considered the current title to be sufficient for the final stage of the Commission's work, it might be interpreted as implying that the draft articles concerned the promotion of crimes against humanity or other such subjects. The proposed wording described the content of the draft articles more clearly. He noted that some States, including France and Germany, when describing the instrument that might emerge from the Commission's work, referred to an international convention on the prevention and punishment of crimes against humanity; the Special Rapporteur, too, had spoken of it in those terms in his introductory statement at the Commission's preceding meeting.

He agreed with the Special Rapporteur that the language in the preamble concerning peremptory norms of general international law should be retained. He pointed out, however, that while the report indicated that the United Kingdom had expressed doubt about the preambular paragraph in its statements before the Sixth Committee in 2017, it had, in its written submission on the subject in 2019, simply taken note of the preambular reference and observed that the Commission had previously identified the prohibition of crimes against humanity as a peremptory norm. That could hardly be interpreted as an expression of doubt.

With respect to draft article 2, he supported the wording proposed by New Zealand, which was clearer and more readable than the current text. The Special Rapporteur preferred to retain the language of the Convention on the Prevention and Punishment of the Crime of Genocide, which dated back some 70 years. However, some other language from the Genocide Convention had not been used in the draft articles, presumably for stylistic reasons; it thus seemed to be acceptable to use improved language, so long as the meaning was retained.

On draft article 3, he supported the Special Rapporteur's proposal to delete paragraph 3, on the term "gender", and to make a consequent amendment to paragraph 1 (*h*).

Concerning draft article 4, he agreed with those States that had queried the inclusion of its paragraph 2, as that paragraph did not concern the obligation of prevention. However, he did not agree with the Special Rapporteur that the issue with paragraph 2 was only that it related to a justification that might be invoked by States. He shared the view of Belarus,

Greece, Slovenia and Spain that the real issue was that the exclusion of justifications was not part of the duty to prevent, but concerned, rather, the circumscription of the crime itself. In other words, anything for which a justification could be raised would not constitute a crime at all. From that perspective, it appeared that the paragraph ought to be moved to draft article 3, as suggested by the Russian Federation.

As to whether draft article 5 should be expanded to cover other crimes, he generally agreed that *non-refoulement* should be applicable in cases where there was a risk of commission of other serious crimes under international law. However, like the Special Rapporteur, he thought that, since the Commission had decided that the scope of the topic should be narrowly limited only to crimes against humanity, addressing other crimes in only that one provision would be an odd way to proceed.

As to the question of irrelevance of official capacity in draft article 6, there was a need for consistency with the draft articles on immunity of State officials from foreign criminal jurisdiction. The ideal solution would be to adopt a provision similar to draft article 7 on that topic, but referring only to crimes against humanity. However, it would perhaps be more realistic to suggest that the issue should be addressed in the commentary, which already contained some “without prejudice” language that could be modified to make it more neutral. While the current wording seemed to imply that there were no exceptions to immunity and that paragraph 5 did not affect that position, the commentary ought to suggest that paragraph 5 did not address the question of immunity, without implying anything about the state of the law in that area. However, that matter could be addressed when the report was adopted.

On the title of draft article 11, “Fair treatment of the alleged offender”, and the proposal by Sierra Leone to replace the words “the alleged offender” with either “the person” or “suspects and alleged offenders”, he agreed with the Special Rapporteur that the term “person” was too broad. However, the argument that the term “suspect” was not mentioned in the draft article was not convincing, since the word “offender”, which appeared in the current title, was not used in the article either. With respect to paragraph 1, he recognized that, as Belarus had suggested, the phrase “including human rights law” would be covered by “applicable national and international law”, but nevertheless did not think that it was superfluous. The phrase had been inserted for emphasis, and removing it would be misleading. The Special Rapporteur’s second reason for advocating its removal, namely that its inclusion might be seen as displacing or downgrading “international humanitarian law”, could be addressed through the insertion of those words, so that it would read “international human rights law and international humanitarian law”.

He agreed with those States that supported the shorter versions of the provisions on extradition and on mutual legal assistance.

Regarding draft article 13 *bis*, he noted that States already had the right to consider, as appropriate, entering into agreements on any subject, including on the transfer of prisoners. He was concerned that the provision might be viewed by some national courts, including those of his country, South Africa, as creating a new obligation for Governments to pursue such agreements. He therefore did not support its referral to the Drafting Committee. If the Commission did decide to include it, the commentary should very explicitly and repeatedly make clear the discretionary nature of the provision and the fact that it created no obligations whatsoever. However, he feared that even that would not be sufficient in the South African context.

He continued to support the Special Rapporteur’s decision not to include a provision on amnesties. In his opinion, the commentary made it plain that amnesties in one State were not a bar to prosecution in another State. However, he agreed with the suggestion made by Sierra Leone that the commentary should specify that the distinction between blanket amnesties and conditional amnesties should be included as a factor for determining whether *aut dedere aut judicare* obligations had been met.

On the relationship between the draft articles and the international obligations of States with respect to international criminal tribunals, he agreed with the Special Rapporteur that the conclusion reached by the Commission on first reading was absolutely correct. He did not intend to repeat his previous statement on the matter but, in accordance

with the rules of procedure of the General Assembly, reserved the right to request the floor to make supplementary comments.

As to the separate initiative by States, he shared the Special Rapporteur's opinion that States' simultaneous pursuit of both that initiative and the Commission's project would be ineffective. While it was his opinion that expanding the Commission's project to include the other core crimes could increase the chance that it would be used as a basis for a new convention, he did not think that the Commission was likely to do so.

He recommended that, with the exception of draft article 13 *bis*, the draft articles should be submitted to the Drafting Committee for amendment as he had described. Agreeing with the Special Rapporteur that the Commission should recommend the draft articles to the General Assembly, he hoped that that body would take up the topic and, inspired by the separate initiative, expand the scope of the draft articles.

Mr. Park, noting the significant progress made over the last few years on the topic of crimes against humanity, said he hoped that it would lead to a meaningful outcome in the form of draft articles that, as far as possible, reflected the proposals made by Governments and, in consequence, attracted strong support from States for an international convention on the topic. To expedite the second reading of the draft articles, he recommended that the Commission should focus on suggested changes to the substantive content and leave technical matters, such as reservations or the establishment of a monitoring body, to be decided at the diplomatic conference.

He noted that, in chapter III of the report, the Special Rapporteur expressed concern about the potential tension between the Commission's work on the topic and the separate initiative taken by several States towards the adoption of a new convention on mutual legal assistance for the investigation and prosecution of crimes against humanity, genocide and war crimes. The initiative risked generating significant overlap with the draft articles, which was likely to cause confusion among States. The Commission therefore needed to engage in discussion with the countries involved in order to avoid such risks. Some experts had expressed concerns about specific provisions of the proposed draft convention on mutual legal assistance, particularly on amnesties for genocide, crimes against humanity and war crimes, which might go against customary international law.

With regard to the third preambular paragraph, Belgium and other States had pointed out the need to be aware of the possible consequences of referring to *jus cogens*, particularly in view of the absence of any such reference in the Rome Statute and treaties such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention for the Protection of All Persons from Enforced Disappearance. Moreover, given that countries such as China and the Islamic Republic of Iran had expressed doubt as to whether crimes against humanity had the status of *jus cogens*, it might even be questioned whether the reference to *jus cogens* truly represented the view of the international community. However, it was true that most countries now recognized crimes against humanity as violations of peremptory norms of international law, and the Commission had previously taken the position that their prohibition was a peremptory norm of general international law. He therefore agreed with the Special Rapporteur that the reference to *jus cogens* should not be deleted.

In respect of the fourth preambular paragraph, he supported the suggestion made by Brazil to include a paragraph addressing the obligation of States not to intervene in or use force against other States. The preamble to the Rome Statute contained a similar provision, and those principles were an important cornerstone of modern international law; they could, for instance, be incorporated into the preamble to the draft articles through the addition, after the phrase "Determined to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes", of the words "without hampering the principle of sovereign equality and non-intervention".

In draft article 2 (General obligation), while the wording was almost identical to that of article 1 of the Convention on the Prevention and Punishment of the Crime of Genocide, France had proposed that the phrase "crimes under international law" should be replaced with "the most serious crimes of international concern". Crimes against humanity encompassed a wide range of illicit acts, as provided under article 7 of the Rome Statute,

but, as Austria, France, and the Islamic Republic of Iran had pointed out, characterizing them as “crimes under international law” might allow States to interpret them as including crimes such as corruption. Such a broad interpretation was not necessarily consistent with the scope of the definition given in the Rome Statute.

To maintain stability in the international criminal legal regime, it was critical that the definition of crimes against humanity in draft article 3 should conform to the one given in article 7 of the Rome Statute, as was currently the case. However, as certain countries had pointed out, some of the language in draft article 3 might need to be reformulated, either because the definition in the Rome Statute was outdated or because the context of its application had changed. In draft article 3 (l) (h), the clause “in connection with the crime of genocide or war crimes” might need to be deleted, as the Special Rapporteur had recommended, since the wording was designed to establish a form of jurisdiction unique to the International Criminal Court, which also encompassed other crimes, such as genocide and war crimes, that were neither regulated nor referred to in the draft articles. He agreed with the Special Rapporteur that only those words should be deleted, as deleting the entire second half of the subparagraph could make the scope of the definition too broad. That would ensure that the original meaning intended by the drafters of the Rome Statute would be retained, focusing on acts of persecution that were related to other acts that constituted crimes against humanity, albeit in the national context rather than the context of the International Criminal Court.

Many States had criticized the use of the term “gender” in draft article 3 (3). He supported the Special Rapporteur’s recommendation that paragraph 3 and the related wording in paragraph 1 (h) should be deleted. The source text in article 7 (3) of the Rome Statute did not reflect the development of the concept of “gender” since the adoption of the Statute in 1998. The draft articles were intended to protect civilian populations from crimes against humanity, and the current wording might improperly limit the scope of such protection. However, he would be grateful for clarification of how, if the Commission decided to delete paragraph 3, the Special Rapporteur would explain the intentional omission of a definition of “gender”.

With respect to draft article 4, it would be useful to clarify the scope of the obligation to prevent crimes against humanity, as had been proposed by several States. In particular, in-depth discussions should be held with a view to providing a more exhaustive list of specific obligations; the proposed insertion of the words “such as education and training programmes” would not offer sufficient guidance to States. In that connection, it seemed appropriate to delete the word “including” from the current version of paragraph 1 of the article.

In paragraphs 118 and 119 of the report, the Special Rapporteur proposed a new version of the draft article in which the first paragraph set out an obligation not to engage in acts that constituted crimes against humanity and the second paragraph set out an obligation to prevent such crimes. However, the “no exceptional circumstances” rule was set out only in the first paragraph, not the second, which might give the impression that it applied only to the obligation not to engage in acts that constituted crimes against humanity. In order to rule out that interpretation, he proposed that the sentence beginning “No exceptional circumstances” should be made into a new paragraph 3. In addition, the title of the draft article should be adjusted to reflect the two separate obligations.

With regard to the “territorial” formula used in draft article 5, he agreed with the Special Rapporteur that the central issue was not whether a State expelled, returned, surrendered or extradited a person from that State’s territory (*de jure* or *de facto*) to the territory of another State (*de jure* or *de facto*), but whether a State placed the person within the control of another State. However, the Special Rapporteur’s recommendation that the words “territory under the jurisdiction of” should be deleted from paragraph 1 would leave the meaning of the words “another State” open to interpretation. For that reason, it would be preferable simply to delete the words “territory under” from paragraph 1 and “the territory under” from paragraph 2, as had been proposed by Sierra Leone and Uruguay.

In response to concerns expressed by States that draft article 6 (3) was ambiguous and that the specific wording “should have known” might not be consistent with customary

international law, and to a proposal by one State that the paragraph should reflect the *mens rea* standard of “knew or had reason to know”, which appeared in the Statute of the International Tribunal for the Former Yugoslavia and the Statute of the International Criminal Tribunal for Rwanda, the Special Rapporteur was recommending a more streamlined version that built upon the approach taken in article 86 (2) of the 1977 Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I). However, as the Rome Statute set forth the contemporary standard in that regard, had been adopted by more than 122 States and had served as the basis for the definition of crimes against humanity, the standard it set forth should be followed. That would have the added advantage of ensuring consistency and complementarity with the work of the International Criminal Court. Moreover, the States parties to the Rome Statute had already adopted the standard set forth in that instrument.

With regard to the liability of legal persons, which was addressed in draft article 6 (8), the current formulation seemed appropriate. Although some States had expressed concerns that the provision did not reflect existing customary international law and that the criminal liability of legal persons was still an emerging issue and was not recognized in many countries, an indirect form of corporate liability was already recognized in many international conventions, including the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Corruption. Moreover, various national courts had recognized corporate liability for international crimes, and the Special Tribunal for Lebanon had interpreted the term “person” in its Statute as referring to legal as well as natural persons. In that context, it was difficult to deny the existence of the necessary State practice. Indeed, by means of the treaties to which he had referred, States had already acquired the mechanisms to recognize the administrative, civil or criminal liability of legal persons. Although France had suggested that the provision could be reformulated on the basis of article 5 of the International Convention for the Suppression of the Financing of Terrorism, the current wording, which was based on article 3 (4) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, was clearer and offered sufficient guidance to States.

It was also important to consider the link between draft article 6 and the topic of immunity of State officials from foreign criminal jurisdiction. However, although some States had expressed a desire to include a provision that would deny immunity to all State officials, including Heads of State, Heads of Government and ministers for foreign affairs, based on article 27 (2) of the Rome Statute, the possibility of including such a provision would need to be reviewed in the light of the discussions on the immunity of State officials from foreign criminal jurisdiction.

It was not necessary to make any changes to draft article 7. Its scope was appropriate and was in accordance with the wording used in a large number of treaties. As the Special Rapporteur noted, the concerns expressed by States with regard to universal jurisdiction should be addressed in the commentary. The main issue seemed to concern situations in which multiple States had jurisdiction over an alleged offender, but, as such situations were not addressed in similar international treaties, it would be preferable to address them in the commentary to draft article 13. In order to maintain the stability of the international legal order, that provision should be consistent with existing treaties with regard to the scope of jurisdiction.

The current wording of draft article 8 was based on that of article 12 of the Convention against Torture. Although some States had raised concerns regarding the meaning of the expressions “prompt and impartial” and “competent authorities”, those concerns could be addressed in the commentary, on the basis of the case law of international courts and the Views of the Human Rights Committee.

He did not think that it was necessary to make any changes to draft article 9, which was based on article 6 of the Convention against Torture. The concerns raised by certain States regarding the need for safeguards to prevent the abuse of the universality principle could be addressed in the commentary. Israel, for example, had expressed the position that

safeguards should be adopted “in order to prevent the initiation of inappropriate, unwarranted or ineffective legal proceedings”. However, it did not seem necessary to alter the wording of the draft article, as had been proposed by other States, given that it drew upon the wording of widely accepted treaties such as the Convention against Torture.

The wording of draft article 10 should be adjusted for closer alignment with the *aut dedere aut judicare* obligation laid down in article 7 of the Convention for the Suppression of Unlawful Seizure of Aircraft (the “Hague formula”), as recommended by the Special Rapporteur. It was unlikely that States would object to such an adjustment, as it did not change the meaning of the provision.

He agreed with the Special Rapporteur that the superfluous words “including human rights law” at the end of draft article 11 (1) should be deleted, as human rights law was clearly covered under the preceding phrase, “international law”. Moreover, as the Special Rapporteur noted, the inclusion of that final phrase might be interpreted as displacing or downgrading international humanitarian law. It did not seem necessary to offer a longer article addressing a much wider array of rights of the accused, as had been advocated by some States, as the current version left some room for States to determine the appropriate standard of fair treatment in accordance with their domestic laws.

With regard to draft article 12, he agreed with the Special Rapporteur that the scope of paragraph 3 should be limited to acts attributable to the State under international law or committed in any territory under its jurisdiction. As Australia had noted, “it would be helpful to clarify that a State would not be under an obligation to provide compensation for victims of crimes against humanity perpetrated by a foreign Government outside of the said State’s territory or jurisdiction”. Although several States had urged that a definition of “victims” should be provided, most treaties did not define that term, which should be interpreted in accordance with each State’s domestic laws, as victims would ultimately be provided with redress under domestic procedures. On a related point, the reference to moral damage in paragraph 3 might not be necessary because, as Singapore had argued, no such reference was contained in the Rome Statute. Emphasis should instead be placed on prompt, fair and adequate compensation, as provided for under article 24 (4) of the International Convention for the Protection of All Persons from Enforced Disappearance.

The Special Rapporteur’s recommendation that a new paragraph 1 should be added to draft article 13 seemed an appropriate means of offering additional guidance to States. However, the text of the new paragraph, as proposed in paragraph 256 of the Special Rapporteur’s report, should be adjusted to mirror the exact language of article 44 of the United Nations Convention against Corruption; in other words, the phrase “who is the subject of the request for extradition and” should be inserted before the phrase “is present in territory under the jurisdiction of a requested State”.

It might also be worth discussing whether, in the context of extradition, the principle of nationality should be explicitly recognized alongside the principle of territoriality. The Special Rapporteur had found that, in practice, deference was often accorded to the State where the crime had occurred or the State of nationality of the alleged offender, which was often the same. While the territorial link should be given priority, the principle of nationality might also need to be recognized in certain circumstances.

Draft article 13 *bis*, which concerned the conclusion of bilateral or multilateral agreements or arrangements on the transfer of persons sentenced to imprisonment or other forms of deprivation of liberty, was a useful provision. The Special Rapporteur might wish to consider the possibility of providing further guidance on the content of such agreements or arrangements, either in the provision itself or in the commentary, and of specifying the purpose of such transfers by inserting the words “for the purpose of fair treatment and effective rehabilitation”.

Concerning draft article 14, he agreed with the Special Rapporteur that the final clause of paragraph 2 should be moved to the beginning of the paragraph. He also agreed that the last phrase of paragraph 7 should be deleted, as proposed by Germany, given that the phrase was not based on such treaties as the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Corruption. Lastly, he supported the addition of a new paragraph 9 in order to recognize the role of

other international mechanisms that had a mandate to collect evidence with respect to crimes against humanity. As legal proceedings concerning core international crimes were often lengthy, he suggested that the words “or preserve” should be inserted after the words “a mandate to collect”.

He supported the Special Rapporteur’s decision not to recommend any changes to draft article 15, which mirrored the language of various international conventions.

Mr. Hassouna, expressing appreciation for the lengthy, detailed and comprehensive analysis contained in the Special Rapporteur’s fourth report, said he hoped that, at the current session, the Commission would be able to adopt the complete set of draft articles on crimes against humanity on second reading. The draft articles could then be submitted to the General Assembly with the recommendation that they should be used as the basis for a convention on crimes against humanity.

The majority of the general comments and observations of States, as summarized in chapter I (A) of the report, reflected an endorsement of the Commission’s methodology in drafting the articles and a recognition of their consistency with the Rome Statute and the desirability of a convention on crimes against humanity. However, he wished to make four general comments in that regard. First, throughout its work on the topic, the Commission had sought not only to prepare a perfect set of draft articles covering all issues in relation to the subject, but also to ensure that the new convention to which they might give rise would be universally accepted and implemented by States. Secondly, the detailed guidance provided in the draft articles would be useful to States for the purposes of adopting, ratifying and incorporating the provisions of a new convention into their national legislation. Thirdly, although the Commission had developed the draft articles on crimes against humanity on the basis of conventions concerning other crimes, it had given due regard to the different nature of those other crimes, the special context of each convention and the need to harmonize its proposed legal rules with the rules set out in those other conventions. Fourthly, although the Commission had followed the definition of crimes against humanity set out in the Rome Statute, it had also taken into account the fact that the definition of crimes against humanity that was used by the International Criminal Court was narrower than the definition under customary international law and that the purpose of the Commission’s draft articles was to regulate those crimes at the national level, whereas the jurisdiction of the International Criminal Court was limited, by the Rome Statute, to “the most serious crimes of international concern”.

Concerning the draft preamble, he shared the view expressed by some States that the relationship between the draft articles and the obligations of States to refrain from intervening in or using force against other States should be clarified in the commentary. The third preambular paragraph, which recognized the prohibition of crimes against humanity as a peremptory norm of general international law (*jus cogens*), should be retained, but the commentary should include a brief analysis of the consequences flowing from that status in the specific context of crimes against humanity. With regard to the fifth preambular paragraph, he, like the Special Rapporteur, was in favour of retaining the existing language. Nevertheless, in order to address the concerns expressed by certain States, it should be emphasized in the commentary that prevention was of paramount importance and that, when prevention failed, States had a duty to punish. Lastly, the notion of justice should somehow be included; for example, the aim of “achieving justice for victims” could be mentioned either in the text of the preamble or in the commentary.

In his view, draft article 1 should not be deleted, as had been suggested by one State, as the Commission’s practice was to include a draft article on the scope of each of its projects. He did not consider it necessary to include a non-retroactivity clause, as had been suggested, given that article 28 of the 1969 Vienna Convention on the Law of Treaties already provided a sufficient default rule in that regard.

With respect to draft article 2, in the interest of clarity the Commission should consider redrafting the general obligation in the active voice, as proposed by one State.

He supported the Special Rapporteur’s four recommended changes to draft article 3. In addition, the Commission should consider making a number of changes to the commentary. Specifically, it should clarify that the definition of apartheid included the

more general and comprehensive concept of racial discrimination and segregation; that the word “trafficking” in paragraph 2 (c) should be understood in terms of the definition set out in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime; and that military personnel who were no longer engaged in combat were regarded as civilians for the purpose of defining the civilian population against whom attacks were directed.

With regard to persecution, he agreed with the Special Rapporteur that the clause “in connection with the crime of genocide or war crimes” should be deleted from paragraph 1 (h). As to the Special Rapporteur’s recommendation that the catch-all clause “other grounds that are universally recognized as impermissible under international law” should not be changed, he agreed with those who had argued that, although also used in the Rome Statute, the expression “universally recognized” was legally indeterminate and inappropriate for a convention that was intended to achieve some level of harmonization across countries with regard to crimes against humanity, since the term would be open to different interpretations by different national courts. Mention could be made in the commentary of other grounds of persecution that had come to be recognized as impermissible under international law, such as language, social origin, sexual orientation, gender identity, refugee or migratory status and statelessness.

He saw some merit in the view that the definition of torture in paragraph 2 (e), which contained the additional requirement that the person concerned must be “in the custody or under the control of the accused”, was inconsistent with customary international law, which had never included a custody or control element. In the light of the comments received, the Commission should consider amending paragraph 2 (i) to reflect the more objective definition of enforced disappearance contained in the International Convention for the Protection of All Persons from Enforced Disappearance and to remove the unduly burdensome intentionality and duration requirements, which could be interpreted differently by different States. He also agreed with the proposal by a number of United Nations bodies to add the phrase “or any other form of deprivation of liberty” after “arrest, detention or abduction”. He supported the Special Rapporteur’s recommendation that paragraph 3, which contained a definition of gender, should be deleted, for the reasons cited in the report. He agreed that paragraph 4 should be retained with the inclusion of an explicit reference to customary international law.

In line with the Special Rapporteur’s recommendation, the Commission should amend draft article 4 to include a new paragraph 1 that explicitly referred to the obligation of States not to commit crimes against humanity. In addition, the word “including” should be deleted from the chapeau of the original paragraph 1, as the phrase “other preventive measures” in paragraph 1 (a) was flexible enough to include a wide range of measures, which should be elucidated further in the commentary with a non-exhaustive list of concrete examples. Concerning the divergent views of States on the phrase “territory under [a State’s] jurisdiction” in paragraph 1 (a), he agreed with the Special Rapporteur that no revision of the text was warranted.

If the phrase “territory under the jurisdiction of” was deleted from draft article 5 (1), as recommended by the Special Rapporteur, national courts might interpret the remaining phrase – “to another State” – as requiring the transfer of the person concerned to another State’s territory. The Commission should therefore adopt the proposal made by two States to replace the phrase with “the jurisdiction of another State”, which would cover not only the State’s territory but also any context in which the State exercised control over the individual concerned. Contrary to some of the comments received, he did not believe that the *non-refoulement* obligation in paragraph 1 should be expanded to cover other crimes under international law or other human rights violations, since the purpose of draft article 5 was to highlight that obligation in the context of crimes against humanity only.

Unlike some States and non-governmental organizations (NGOs), he supported the Special Rapporteur’s position on draft article 6, to the effect that a provision preventing military courts or tribunals from exercising jurisdiction over crimes against humanity was not warranted. There was also no need for a detailed provision concerning *mens rea* or possible grounds for excluding criminal responsibility. The Commission should not expand

the commentary, as suggested by some States, to indicate that crimes against humanity could be prosecuted under other categories of crime, nor should it include conspiracy or incitement among the forms of liability contained in paragraph 2. It should, however, adopt the Special Rapporteur's proposed reformulation of paragraph 3 on the responsibility of commanders and superiors, as requested by some States and NGOs, given that it was reflective of customary international law.

There were differing opinions among States and NGOs concerning the Commission's decision not to include a provision prohibiting the application of immunities to crimes against humanity. While desirable, such a provision was likely to undermine the Commission's stated goal of developing a convention that would be widely ratified. He shared the Special Rapporteur's view that the non-applicability of any statute of limitations, as provided for in paragraph 6, should not be extended to civil proceedings. Indeed, the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law prohibited statutes of limitations only with respect to crimes under international law. While he agreed with the Special Rapporteur that no textual changes were warranted in paragraph 8, on the liability of legal persons, the commentary should perhaps be amended to reflect some of the concerns raised by States. In his view, a specific provision on the *nullum crimen sine lege* principle and the exception thereto was unnecessary.

Unlike some States, he believed that draft article 7 did not restrict the broader concept of universal jurisdiction because paragraph 3 afforded States sufficient freedom with respect to the establishment of criminal jurisdiction in accordance with their national law. Conflicts of jurisdiction between States should not be addressed in draft article 7 but could be mentioned in the commentary. The reference to "a ship or aircraft" in paragraph 1 (a) should be retained, but the commentary should be updated to reflect the concerns expressed by States. Similarly, the commentary to paragraph 1 (b) should be modified to define stateless persons in accordance with the Convention relating to the Status of Stateless Persons.

The Commission should consider amending the commentary to draft article 8 on investigation to account for some of the concerns raised by States. For example, the circumstances that triggered the obligation to investigate and the scope and content of the obligation to investigate should be clarified. Similarly, he agreed with the Special Rapporteur that the Commission might wish to amend the commentary to draft article 9. *Inter alia*, it should clarify that the draft article did not address customary or treaty-based immunities and was without prejudice to the Commission's consideration of the topic of immunity of State officials from foreign criminal jurisdiction. The commentary should explain that the term "preliminary inquiry" had a broad meaning that referred to all initial investigations or inquiries, regardless of the terminology used at the national level.

He supported the Special Rapporteur's proposal to more closely align draft article 10 with the standard "Hague formula". The Commission should also revise the commentary to clarify that surrendering an alleged offender to a competent international criminal tribunal was not a requirement of draft article 10, but merely an alternative to the primary obligation to prosecute.

He did not support the Special Rapporteur's recommendation that the phrase "including human rights law" should be deleted from draft article 11 (1). In order to address the concern that the phrase could be interpreted as downgrading the importance of international humanitarian law, and to emphasize the importance of human rights law in the context of fair treatment of the alleged offender, he proposed that the phrase should be amended to read "including human rights law and international humanitarian law".

He supported the Special Rapporteur's recommendation that the clause "committed through acts attributable to the State under international law or committed in any territory under its jurisdiction" should be inserted after "crimes against humanity" in draft article 12 (3). A reference to crimes committed through omission should also be included, as the Basic Principles and Guidelines on the Right to a Remedy and Reparation stipulated that "a State shall provide reparation to victims for acts or omissions which can be attributed to the

State". Paragraph 1 (b) should be amended to include an obligation to ensure the psychological well-being, dignity and privacy of victims and witnesses. The need for States to provide specific protection to vulnerable groups such as children, persons with disabilities and victims of sexual violence should also be highlighted. The commentary should be modified to acknowledge the right of victims to know the truth and to have access to information relating to pending cases concerning violations committed against them.

Concerning draft article 13 on extradition, the last sentence of the new paragraph 1 proposed by the Special Rapporteur should refer to the "extradition request" of the State. The commentary should also be amended to explain the circumstances in which refusal to extradite would not be permissible.

The Commission should consider adopting the Special Rapporteur's three recommended changes to draft article 14, including the proposed new paragraph 9, and endorse his proposal to retain the "long-form" article. The commentary could be fleshed out to give examples of the purposes for which mutual legal assistance could be provided and refer to the International Criminal Police Organization (INTERPOL) as a channel for broader inter-State cooperation.

He supported the Special Rapporteur's recommendation that no changes should be made to draft article 15 but that the commentary should be revised to account for some of the concerns expressed. Similarly, the Commission should endorse the Special Rapporteur's recommendation that no changes should be made to the draft annex on mutual legal assistance but that the commentary should clarify the meaning of the terms "*ordre public*" and "other essential interests" contained in paragraph 8 (b), which some States viewed as "indeterminate legal concepts".

Concerning possible additional draft articles, the Commission should consider adopting the Special Rapporteur's proposed new article 13 *bis* on the transfer of sentenced persons. He agreed that the Commission should not revisit the relationship between the draft articles and the obligations of States with respect to international criminal tribunals. The Commission should not adopt a provision prohibiting amnesties but could consider a provision requiring States to establish alternative non-judicial mechanisms in cases where amnesty laws were adopted. Decisions on an institutional monitoring mechanism and the prohibition of reservations should be left to States, in accordance with the Commission's prior practice of leaving the negotiation of final clauses to States.

As to the relationship between the draft articles and the separate mutual legal assistance initiative for a new convention that would address crimes against humanity as well as genocide and war crimes, it was regrettable that the Commission's work on the topic, which had started in 2014 with the full endorsement of the General Assembly, might suddenly lose the full support it deserved. However, a convention focusing on crimes against humanity would highlight the particularly heinous nature of those crimes and demonstrate that the importance attached to them by the international community was such as to warrant the conclusion of a separate convention. The Commission should therefore finalize the draft articles and submit them to the General Assembly with the recommendation that States should use them as a basis for adopting a convention on crimes against humanity, while noting the need to ensure that such a convention was adequately harmonized with the separate initiative in order to avoid potentially contradictory international obligations and the possible risk of fragmentation of international law. However, in order to avoid undue delay, and taking into account the financial implications of a diplomatic conference, the most appropriate way forward might be for the General Assembly itself to take action to conclude such a convention. That option, and the others proposed by the Special Rapporteur, should be discussed by the Commission at the current session. In conclusion, he was in favour of referring the draft preamble, draft articles and draft annex to the Drafting Committee.

Sir Michael Wood said that it was clear that the Commission was not, for the most part, seeking to codify rules of customary international law on the topic of crimes against humanity. Rather, it was proposing to States a set of provisions for a future convention on the prevention and punishment of crimes against humanity, which would be a matter for

negotiation among States. He saw no reason for concern on that score. Regarding Mr. Tladi's view that the Commission should also have dealt with genocide and war crimes under the topic, he agreed with Mr. Hassouna's point that, by focusing on crimes against humanity, the Commission was highlighting the heinous nature of those crimes. Mr. Tladi had also raised the possibility of changing the title of the topic. As doing so at such a late stage could cause confusion and would have practical implications, another solution might be to add, above the preamble, a title to the draft articles referring to prevention and punishment.

In the report, the Special Rapporteur dealt carefully with the large number of comments received from States and others, which were to be welcomed. The Commission would also have to examine the additional comments received since the submission of the report, especially when revisiting the commentaries; the need for the Commission to be seen to have regard for the views of States had been stressed in the Sixth Committee in 2018.

He agreed with most of the recommendations put forward in the Special Rapporteur's fourth report. In particular, he agreed that, unless there was a pressing need to make changes, the Commission should not depart from the language used in earlier, widely accepted conventions, as to do so could lead to uncertainty by appearing to call into question the accepted understanding of existing provisions. He would not address possible changes to the commentaries, except to reiterate that the Commission might wish to consider shortening the commentary to draft article 3, given that details about the case law of criminal courts and tribunals might well become outdated over time.

With regard to the preamble, he, like some States, and notwithstanding the apparently altered view of the United Kingdom, would prefer to omit the paragraph recognizing that the prohibition of crimes against humanity was a *jus cogens* rule, as that was an issue that should be addressed under the topic of peremptory norms of general international law (*jus cogens*). More importantly, as the Special Rapporteur seemed to acknowledge, the inclusion of that paragraph could be seen to suggest that consequences within the scope of the draft articles followed from the *jus cogens* status of the prohibition, which was not the case. The Commission should not include an unnecessary paragraph that might make a convention based on the draft articles harder for some States to accept. For similar reasons, he continued to be in favour of omitting the preambular paragraph that recalled article 7 of the Rome Statute. In addition, as pointed out by Mr. Murase, such a reference would be somewhat misleading if the definition of crimes against humanity set out in the Commission's draft articles departed from the one in the Rome Statute in one or two significant respects, as he believed it should.

Turning to draft article 3, he said that he agreed with the Special Rapporteur's proposals, including the deletion of the words "or in connection with the crime of genocide or war crimes" from paragraph 1 (*h*) and the deletion of paragraph 3 on gender. The Special Rapporteur had made a strong and convincing case for both deletions, and it was to be hoped that there would be a consensus on those points.

He agreed with the Special Rapporteur that draft article 6 (3) should be replaced with a more streamlined provision on the responsibility of commanders. The detailed provision was appropriate for the Rome Statute, which was in effect a code for the International Criminal Court, but such a provision was unnecessary and perhaps even inappropriate when addressed to national courts, which might be expected to already have their own detailed criminal codes. Article 10 on *aut dedere aut judicare* was a central provision; the Special Rapporteur's proposed revision, which did not affect the substance, was an improvement.

He shared the Special Rapporteur's assessment, set out in chapter II of the report, concerning possible additional draft provisions. The one addition that he had originally thought might be acceptable was the proposed paragraph on the transfer of sentenced persons; however, in view of the very valid points made by Mr. Tladi in that respect, he had changed his position, and would not be in favour of referring article 13 *bis* to the Drafting Committee.

Regarding chapter III of the report, on the mutual legal assistance initiative, he was grateful to the Netherlands for having informed the Commission of the project and having shared the draft prepared by the core group of States, but it would have been helpful to know of it at an earlier stage.

The main issue was the eventual relationship between the Commission's draft articles on crimes against humanity and the mutual legal assistance initiative. The Commission's draft articles were the result of a transparent process involving extensive collegial work, both within the Commission and with States and others, including the Sixth Committee. Having only just seen the first draft of the mutual legal assistance treaty, he still had no clear picture of how much support it enjoyed.

The Netherlands had expressed the view that the two projects were mutually supportive and could not only coexist but also mutually reinforce each other and be further developed side by side, but had not explained how. The core group of States behind the mutual legal assistance initiative seemed to take the view that their draft could be adopted rapidly. Perhaps that was true, but at what cost? Would they, for example, consider carefully the many suggestions made by States, international organizations and NGOs on the Commission's draft articles, which appeared to be relevant to their draft treaty?

He fully agreed with the Special Rapporteur that the pursuit by States of both initiatives simultaneously might be inefficient and confusing, and increased the risk that neither initiative would succeed. If both initiatives were adopted as conventions, that could lead to a situation where two groups of States were parties to two different conventions covering much of the same ground, yet were not mutually bound *inter se*. There would inevitably be differences between the two instruments, and there would be two different circles of States parties; some States would have mutual obligations under one treaty, while others would have mutual obligations under the other. It would, of course, be for States to decide how to proceed if they were faced with not one but two proposals. In any event, he saw no reason for the Commission to change course, especially in view of the strong support that its work had received thus far.

In conclusion, he was in favour of referring the draft preamble, the draft articles – with the possible exception of draft article 13 *bis* – and the draft annex to the Drafting Committee for consideration and a final tidying up. He hoped, in particular, that the Commission's schedule would provide adequate time for consideration of the draft commentaries, which, as the report made clear, would cover some important points.

Mr. Rajput said that the Special Rapporteur was to be congratulated on the manner in which he had so ably and objectively captured the comments of States on such an important and sensitive topic, and on the fact that he had managed to absorb a vast number of comments from various agencies and NGOs. In preparing the draft articles, the Special Rapporteur had relied mostly on existing treaties that enjoyed widespread support; States had generally welcomed that approach, which provided a strong foothold for the Commission's work. However, it was not clear why some provisions from existing treaties had been used as they stood, while others had been altered and still others had been ignored completely. In the absence of clarification on that point, treaty provisions appeared to have been selected or ignored for reasons of convenience rather than in accordance with any identifiable criteria. The Special Rapporteur had undoubtedly taken various factors into account in selecting the various treaty provisions, such as similarities in context, overlapping subject matter, number of States parties or subsequent changes in practice, but those factors needed to be spelled out. One good example of clarity in that respect was the Special Rapporteur's proposal to drop the definition of gender in draft article 3 (3): the reason for diverging from the existing definition in the Rome Statute was clearly set out. On many other occasions, however, such clarity was missing. He therefore urged the Special Rapporteur, in redrafting the commentary, to clarify the criteria used in deciding whether to reproduce, alter or ignore existing treaty provisions. That clarification should be provided both generally, in the introductory paragraphs of the commentary, and specifically in the commentary to provisions in respect of which existing treaty provisions had been reproduced, altered or ignored.

Brazil, in its comments on the draft, advocated the inclusion of two paragraphs from the preamble to the Rome Statute: the seventh preambular paragraph, which reaffirmed the purposes and principles of the Charter of the United Nations, in particular the principle that all States should refrain from the use of force; and the eighth preambular paragraph, which emphasized the rule of non-intervention in the internal affairs of other States. Both of those paragraphs were missing from the preamble to the Commission's draft articles. While the second preambular paragraph of the draft articles did recognize that crimes against humanity threatened the peace, security and well-being of the world, Brazil rightly noted that the paragraph needed to be balanced by a reference to the obligation of States to refrain from the use of force and from intervention in the affairs of other States. Elaborating on that point in the commentary was not sufficient. The reason for including those two preambular paragraphs in the Rome Statute could be found in the drafting history of that instrument, and was applicable to the draft articles as well: States had wished to ensure that the Rome Statute could not become a political tool for interfering in the internal affairs of States. Several States had insisted on the addition of those paragraphs to the Rome Statute. The two paragraphs themselves drew on the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, which was an instrument expressing customary international law. Not to include them would be a conspicuous departure from the balance achieved in the Rome Statute. The suggestion by Brazil must therefore be accepted.

In relation to draft article 1, Turkey and Chile supported the inclusion of a non-retroactivity clause. The United Kingdom made a similar point in its comments on draft article 6 (6). While the Special Rapporteur's report indicated that a clarification would be made in the commentary, that approach was insufficient in relation to such an important topic. Non-retroactivity was a substantive issue that should be set out in the text. The Commission itself had devoted article 13 of its draft Code of Crimes against the Peace and Security of Mankind to the principle of non-retroactivity, emphasizing, in its commentary to the article, the importance of non-retroactivity and the principle of *nullum crimen sine lege* and drawing attention to the prominent international and regional instruments that contained an express provision on the subject. The drafters of the Rome Statute, too, had been aware of the need for a provision on non-retroactivity and a provision that would prevent the International Criminal Court from imposing punishment on the basis of customary law in respect of crimes that were not clearly defined in the Statute. That position was set out in paragraph 58 of the 1995 report of the Ad Hoc Committee on the Establishment of an International Criminal Court (A/50/22), which outlined the drafting history of the Statute and the reasons for the inclusion of a provision on non-retroactivity. The inclusion of those provisions had been thought necessary, in particular, in light of the criticism of the military tribunals established after the Second World War. He therefore proposed that a new paragraph 2 should be added to draft article 1, using article 13 (1) of the draft Code of Crimes against the Peace and Security of Mankind as a model.

He agreed with the Special Rapporteur on the need to retain the connection between persecution and other acts for the purposes of draft article 3 (1) (h), and supported the changes made by the Special Rapporteur, for the reasons given by the latter. The only additional argument he wished to make was that the criminal tribunals that used a broader definition of "persecution" had been established by a resolution of the Security Council or through the intervention of an international organization, or reflected the decisions of regional courts. No broader definition was to be found in any treaty. The Commission itself had tried to adopt a broader definition in article 18 (e) of the draft Code of Crimes against the Peace and Security of Mankind, but States had rejected it. Consequently, persecution, unless connected to other acts, did not constitute a crime against humanity under article 7 (1) (h) of the Rome Statute.

With regard to draft article 3 (1) (k), Sweden, on behalf of the Nordic countries, had made an important suggestion that the principle of legality should be expressly mentioned, in line with article 22 (2) of the Rome Statute. According to that article, in cases of ambiguity, the definition of a crime must be interpreted in favour of the person being investigated, prosecuted or convicted. That would protect the basic human rights of accused persons. Again, the reason for diverging from the Rome Statute was unclear. He was not convinced by the Special Rapporteur's argument that the principle of legality operated as a

part of human rights law and that the objective of the draft articles was not to repeat detailed provisions on the human rights of the accused. Such reasoning gave the impression that article 22 (2) of the Rome Statute was irrelevant, redundant and unnecessary. If States, in their wisdom, had felt it necessary to refer expressly to the principle of legality in the Rome Statute, he did not think that the Commission should depart from that practice. He recalled that the draft Code of Crimes against the Peace and Security of Mankind, as drafted by the Commission, did not contain a provision on legality; States had added it during the negotiations on the Rome Statute. The Commission should avoid putting itself in that situation again.

The principle of legality should be referred to not only in draft article 11, which was procedural in nature; it should also feature prominently in the definition clause. Its application could not be left to domestic jurisdictions, some of which shifted the burden of proof to the accused. Legality should therefore be expressly mentioned in the definition of crimes against humanity. He proposed the addition of a new paragraph, based on article 22 (2) of the Rome Statute, at the end of draft article 3: “The definition of crimes against humanity shall be strictly construed and shall not be extended by analogy. In case of ambiguity, the definition shall be interpreted in favour of the person being investigated, prosecuted or convicted.”

As noted in paragraph 142 of the report, some States had expressed reservations regarding the provision in draft article 6 (3) on commanders or other superiors. According to Hungary, Israel and Uruguay, the standard in the Rome Statute, which was followed in that paragraph, was broader than the standard used in customary international law. Their concerns arose from the use of the phrase “should have known”, rather than “had reason to know”, which was the standard of knowledge used in customary international law. However, in some respects, the formula in article 28 of the Rome Statute was an improvement, in that it covered both military commanders and any person effectively acting as a military commander, and included the concept of effective control. The inclusion of that concept in the draft articles was essential; otherwise, commanders would be held responsible even if their troops mutinied or were acting beyond the commander’s authority and control. While he understood the preference to reproduce existing treaty provisions verbatim, in the case at hand the Commission should be slightly more ambitious and do some original drafting. Specifically, in draft article 6 (3) (a) (i), it should replace the words “either knew or, owing to the circumstances at the time, should have known” with “either knew or had reason to know”.

Concerning draft article 10, he agreed with the proposal by Chile to introduce a provision on the principle of *ne bis in idem*, along the lines of article 20 of the Rome Statute. That principle should not be relegated to the commentary; in the Rome Statute, States had felt the need to set it out expressly in article 20. Moreover, as draft article 7 allowed for the possibility that jurisdiction could be exercised by more than one State, a situation in which a person was prosecuted more than once for the same offence was a real possibility under the draft articles as they stood. An independent provision tracking the language of article 20 (3) of the Rome Statute should therefore be added to the draft articles, preferably after draft article 11, on fair treatment of the alleged offender.

Regarding draft article 11 (1), he agreed with Mr. Tladi that the words “human rights law” should be retained and that the words “humanitarian law” should be added, in order to guarantee fair treatment of accused persons.

With respect to draft article 14, on mutual legal assistance, he agreed with the conclusions of the Special Rapporteur but not with the latter’s reluctance to diverge, even minutely, from the texts of the treaties on which the draft articles were based. For example, the suggestion by Sierra Leone to replace “any” with “one or more” in the chapeau of paragraph 3 was a drafting improvement that did not change the substance. However, regarding the suggestion made by France for the same paragraph, he agreed with the Special Rapporteur that there was no need to list further specific situations where the provision of mutual legal assistance would be relevant. The commentary could clarify that paragraph 1 covered the situations referred to by France. Likewise, there was no need to include references to national regulations on the protection of personal data or to specify that information received as a result of mutual legal assistance could be used only for the

purposes of investigation, not prosecution. Those points were covered by the “without prejudice” provision in paragraph 6 and could be clarified in the commentary.

He did not believe that the separate State-led initiative to draft a convention on international cooperation in the investigation and prosecution of the crime of genocide, crimes against humanity and war crimes would affect the Commission’s work on crimes against humanity. There might be some overlap with regard to mutual legal assistance and extradition, but most of the provisions of the draft articles appeared to be unaffected. Also, it was difficult to predict what precise form the proposed mutual legal assistance convention would take. At the moment, only a limited number of States were involved in the project; once they were joined by additional States, the focus of the proposed convention could undergo further changes. He agreed with the Special Rapporteur that the Commission should not be distracted by those developments. The relationship between the Commission’s work and the proposed convention was a matter for States to determine.

Regarding the form that the Commission’s recommendation should take, he was in favour of the third possibility listed by the Special Rapporteur, namely, a recommendation that the General Assembly should recommend the draft articles to Member States with a view to the conclusion of a convention.

Lastly, he was in favour of referring the draft articles to the Drafting Committee.

Organization of the work of the session (agenda item 1)

Mr. Grossman Guilloff (Chair of the Drafting Committee) said that the Drafting Committee on the topic of peremptory norms of general international law (*jus cogens*) was composed of Mr. Argüello Gómez, Mr. Cissé, Ms. Galvão Teles, Mr. Gómez-Robledo, Mr. Huang, Ms. Lehto, Mr. Murase, Mr. Murphy, Mr. Nguyen, Mr. Nolte, Ms. Oral, Mr. Ouazzani Chahdi, Mr. Park, Mr. Rajput, Mr. Reinisch, Mr. Ruda Santolaria, Mr. Šturma, Mr. Vázquez-Bermúdez, Sir Michael Wood and Mr. Zagaynov, together with Mr. Tladi (Special Rapporteur) and Mr. Jalloh (Rapporteur), *ex officio*.

The meeting rose at 12.50 p.m.