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International Law Commission
Sixty-seventh session (first part)

Provisional summary record of the 3255th meeting
Held at the Palais des Nations, Geneva, on Friday, 22 May 2015, at 10 a.m.

Contents

Crimes against humanity (continued)
Present:

Chairman: Mr. Singh

Members:
Mr. Candioti
Mr. Comissário Afonso
Mr. El-Murtadi
Ms. Escobar Hernández
Mr. Forteau
Mr. Gómez-Robledo
Mr. Hassouna
Mr. Hmoud
Mr. Huang
Ms. Jacobsson
Mr. Kamto
Mr. Kittichaisaree
Mr. Kolodkin
Mr. Laraba
Mr. McRae
Mr. Murase
Mr. Murphy
Mr. Niehaus
Mr. Nolte
Mr. Park
Mr. Peter
Mr. Petrič
Mr. Saboia
Mr. Šturma
Mr. Tladi
Mr. Valencia-Ospina
Mr. Vázquez-Bermúdez
Mr. Wisnumurti
Sir Michael Wood

Secretariat:

Mr. Korontzis Secretary to the Commission
The meeting was called to order at 10 a.m.

**Crimes against humanity** (agenda item 9) *(continued)* (A/CN.4/680)

Ms. Escobar Hernández commended the Special Rapporteur on his first report, which comprehensively described not only the background to the topic, but also international and national legal responses to crimes against humanity. She fully agreed with the Special Rapporteur on the need for an international legal instrument to curb such heinous crimes to the fullest extent possible. The Commission’s earlier work on related issues, such as the Principles of International Law Recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal (Nürnberg Principles), the draft Code of Crimes against the Peace and Security of Mankind and the Rome Statute of the International Criminal Court had made an important contribution to efforts to suppress the most serious international crimes and to safeguard the legal values and principles central to “humanity’s conscience”.

In the past few decades, the following had become clear: the defence of the key principles and values of the international community was directly linked to the fight against impunity; certain types of conduct had to be characterized as contrary to those principles and values; crimes against humanity were among those prohibited types of conduct; and States had a general legal obligation to adopt all the requisite measures at the domestic and international levels to prevent and punish such crimes. The Commission should therefore set out to define mechanisms to give effect to those international principles and obligations at the domestic level and to strengthen international cooperation and mutual legal assistance. It was essential to ensure that devious procedural tactics did not render the wealth of international legal instruments inoperative, with the result that perpetrators of crimes against humanity went unpunished.

She naturally shared the laudable concerns in that regard voiced by the Special Rapporteur in paragraph 12 of his report. However, many of the aims outlined in that paragraph had been or were in the course of being achieved, through the legal process that had culminated in the adoption of the Rome Statute and through the international, regional and national measures taken to implement it. Many countries, including Spain, had incorporated crimes against humanity as a separate legal category of crimes in their criminal codes.

The true value of draft articles on crimes against humanity would lie in mobilizing genuine cooperation to facilitate real international legal assistance among States. It was often gaps and technical defects in that area which frustrated the prosecution of crimes against humanity. International criminal tribunals and the International Criminal Court did not always have the competence to judge cases involving crimes against humanity. It was therefore vital that, when such crimes occurred, justice could be secured through international cooperation. That did not mean that the Commission should not consider general questions and questions related to the definition of crimes against humanity, but it should address them as a means of consolidating inter-State cooperation through mutual legal assistance.

For that reason, she fully agreed with the approach mapped out in the Special Rapporteur’s first report. She welcomed the fact that draft article 2 reproduced article 7 of the Rome Statute word for word, apart from the necessary adjustments. She also concurred with the analysis of the various elements that defined the scope of that category of crimes, as it was consistent with their interpretation in case law and learned writings. Since the definitions in the Rome Statute had been the outcome of broad consensus after extensive debate, the Special Rapporteur was wise not to depart from them. There was no doubt that current international law made it incumbent upon States to prevent and punish crimes
against humanity. She therefore welcomed the fact that the draft articles covered that obligation.

In draft article 1, paragraph 1, the phrase “each State party confirms” should be deleted, since it was axiomatic that crimes against humanity were international crimes. It would therefore be preferable to word that article:

“Crimes against humanity, whether committed in time of peace or in time of war, are international crimes which States undertake to prevent and punish.”

[Los crímenes de lesa humanidad, cometidos tanto en tiempo de paz como en tiempo de guerra, son crímenes internacionales que los Estados se comprometen a prevenir y sancionar.]

It would be advisable to amend the second paragraph to ensure that the measures adopted were as wide-ranging as possible and that it would be impossible to impose any restriction on the territory to which the duty to prevent and punish crimes against humanity applied. The text as it stood would leave a loophole which might hinder the achievement of those aims. A possible alternative might read:

“States shall take all such legislative, administrative, judicial or other measures as are necessary and effective in order to prevent the commission of crimes against humanity in any territory and in respect of any person subject to their jurisdiction.”

[Los Estados tomarán todas las medidas legislativas, administrativas, judiciales y de otra índole que sean necesarias y efectivas para impedir la comisión de los crímenes de lesa humanidad en todo el territorio o por toda persona que esté sometida a su jurisdicción.]

Some of the expressions used in the report should be reviewed more carefully, especially with a view to the adoption of commentaries. Did the term “State-sponsored torture” exclude instances when a State simply tolerated, disregarded or pretended to be unaware of torture? It was sufficient to refer to “torture” without any further qualification, otherwise the Commission’s work might have an adverse effect on sufficiently well-settled legal definitions. With regard to the reference in the final sentence of paragraph 5 to crimes committed abroad “in situations where the offender is present in the State’s territory”, she pointed out that the presence of the offender in the State’s territory was not necessarily required for the exercise of universal jurisdiction. The Commission should bear that in mind when it dealt with the definition of courts competent to hear cases of crimes against humanity.

There was no doubt that the final outcome of the Commission’s work should be a set of draft articles that was prescriptive, so that the General Assembly could potentially transform them into a convention. However, she requested clarification as to whether it lay within the Commission’s terms of reference to draw up such a convention itself.

She recommended the referral of the two draft articles to the Drafting Committee.

Mr. Gómez-Robledo said that the Special Rapporteur’s first report offered an excellent argument in favour of drafting a convention on crimes against humanity. In response to the question raised by Ms. Escobar Hernández, he saw nothing to prevent the Commission from recommending to the General Assembly that the outcome of the Commission’s work should take the form of a convention. However, she requested clarification as to whether it lay within the Commission’s terms of reference to draw up such a convention itself.

A convention on crimes against humanity in harmony with the Rome Statute would promote the latter’s implementation at the national level and thereby strengthen the complementarity regime. The extremely serious nature of crimes against humanity meant that any convention on that subject should include the principle of aut dedere aut judicare and provide for the possibility of exercising universal jurisdiction over those crimes. Given
the widely differing views on universal jurisdiction, it might be wise for the Commission to study that question in greater depth, and without prejudice to the Sixth Committee’s work on the matter.

A definition of crimes against humanity should not be conditional upon the existence of an armed conflict, since the conduct constituting that type of crime could occur in times of peace as well. The draft articles should cover three kinds of criminal responsibility for the perpetration of crimes against humanity: individual criminal responsibility; indirect State responsibility when the State had failed to prevent the commission of such crimes; and direct State responsibility for their commission. It might be insufficient to say that the State had a duty to prevent the crimes: in view of the findings of the International Court of Justice, to which the Special Rapporteur referred in paragraph 96 of his report, the draft articles should perhaps expressly refer to the State’s obligation not to commit them.

As pointed out in paragraph 39 of the report, the prohibition of crimes against humanity was a non-derogable peremptory norm of international law (jus cogens). Accordingly, articles 26 and 41, paragraphs 1 and 2, of the articles on responsibility of States for internationally wrongful acts were relevant and should be taken into account. To that end, more should be said about the prevention and punishment of crimes against humanity. It should be explicitly recognized that the prohibition of the commission of crimes against humanity was a peremptory norm of general international law and that no rule to the contrary was permissible. It should be indicated that all States had a duty to cooperate to put an end, by lawful means, to the commission of crimes against humanity: that would create a link to the obligations that members of the Security Council should assume when dealing with situations when crimes against humanity were being committed, thereby improving the chances of curbing the use of the veto, as Mexico and France had been proposing for some time. Needless to say, reservations to a convention on crimes against humanity would be impermissible, something that he assumed would be reflected in future reports.

Based on the Special Rapporteur’s conclusions concerning the definition of a “widespread or systematic attack” as a core element of a crime against humanity, as elaborated in paragraphs 128 and 131 of the report, and on the fact that crimes against humanity could be committed in times of peace or war, the use of weapons of mass destruction must also be regarded as a crime against humanity. The Special Rapporteur should therefore analyse the legal instruments relating to weapons of mass destruction, the relevant case law and legal literature, as well as the discussions at the Conferences on the Humanitarian Impact of Nuclear Weapons held in 2013 and 2014 and at the 2010 and 2015 Review Conferences of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons. Article 36 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I), provided that the development of a new weapon placed parties under the obligation to determine whether its use would be prohibited by any rule of international law. He hoped that such matters would be taken up in future reports.

The Special Rapporteur should also look into the question of whether persons who had allegedly committed crimes against humanity must be prosecuted exclusively in ordinary courts. In four cases involving Mexico, the Inter-American Court of Human Rights had held that members of the military who committed such crimes should be tried in ordinary courts, unlike what happened in certain other countries.

Turning to the draft articles, he proposed that the words “not to commit” [no cometer] should be inserted before the words “to prevent and punish” in draft article 1, paragraph 1, to be consistent with the case law of the International Court of Justice. He proposed the addition of a new paragraph 1 bis, to read: “Each State party confirms that that
the prohibition of crimes against humanity is a peremptory norm of general international law.” [Todo Estado parte confirma que la prohibición de los crímenes de lesa humanidad constituye una norma imperativa de derecho internacional general.] The text of draft article 1, paragraph 3, should be revised to reflect the language of the articles on responsibility of States for internationally wrongful acts and to read: “No exceptional circumstances or justification whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as precluding the wrongfulness of crimes against humanity.” [En ningún caso podrán invocarse circunstancias excepcionales ni justificaciones, tales como estado de guerra o amenaza de guerra, inestabilidad política interna o cualquier otra emergencia pública, como excluyentes de la ilicitud de los delitos de lesa humanidad].

A new paragraph 3 bis should be inserted, to read: “Each State party shall cooperate to bring to an end, through lawful means, the commission of any crimes against humanity.” [Todo Estado parte deberá cooperar para poner fin, por medios lícitos, a toda comisión de crímenes de lesa humanidad.] In draft article 2, paragraph 1, the words “the use of inherently indiscriminate weapons” [uso de armas de naturaleza indiscriminada] should be added to list of acts defined as crimes against humanity.

In conclusion, he recommended the referral of the draft articles to the Drafting Committee.

Mr. Kittichaisaree, responding to the comments just made, said that the issue of universal jurisdiction came up frequently in other areas of the Commission’s work, for example, in the topic “The obligation to extradite or prosecute (aut dedere aut judicare)”. The Sixth Committee had also been considering it for several years but had made little progress. Paragraph 5 of the report, together with draft article 1, paragraph 2, could provide useful guidance for the Sixth Committee in that regard. The question remained as to whether the Commission should undertake its own study of the issue, as Mr. Gómez-Robledo had suggested.

Mr. Hmoud said that in his first report, the Special Rapporteur provided solid arguments and a factual basis for launching a project to fill the gaps in the existing international regime for combating crimes against humanity, particularly in the areas of inter-State cooperation, criminalization under national laws and the establishment of jurisdiction by States. The fact that the International Criminal Court dealt only with high-profile crimes made it essential for States to investigate and prosecute crimes against humanity under national legislation. However, it was clear from the study cited in paragraphs 58 to 61 of the report that that was the case in a minority of States. That left open a gap that could be filled by a convention that harmonized national laws, facilitated mutual legal assistance and established the principle of aut dedere aut judicare in relation to crimes against humanity.

Crimes against humanity could only be combatted under national jurisdictions or that of the International Criminal Court. However, if a State did not have legislation criminalizing crimes against humanity, whether or not it was a party to the Rome Statute, an individual on its territory who committed such crimes could escape prosecution if the International Criminal Court did not have jurisdiction or there was no other obligation on that State to surrender the individual to another State with jurisdiction. That was the main area where the proposed convention could play an important bridging role. Nonetheless, any new legal instrument should not overlap with or undermine the Rome Statute, but should complement the international legal framework on crimes against humanity. That could be achieved through specific rules regulating the relationship between the proposed convention’s regime and other multilateral and bilateral legal regimes. States should not have to choose between their obligations under other treaties and the proposed convention.
The international community had made considerable progress in the development of the concept of crimes against humanity, which were no longer considered in terms of conflict or territorial boundaries but in terms of their gravity and universal character. The fact that several regional and hybrid courts and tribunals as well as national courts also had jurisdiction over crimes against humanity indicated that the prohibition of the commission of such crimes was well established in international law. It was important to build on those developments and find ways of dealing with discrepancies among national laws on definitions and the establishment of jurisdiction and with the absence of a global inter-State enforcement mechanism.

Since crimes against humanity were in the same category as genocide and war crimes, the Commission should consider elements from the relevant treaties in its work on the topic. Those included the obligation to prevent and punish, the establishment of jurisdiction, lack of immunity for the commission of crimes, enforcement mechanisms and measures to guarantee non-repetition.

With regard to the obligation of prevention, one important issue was whether a State had to prevent the commission of crimes against humanity within territories under its jurisdiction or beyond its jurisdiction. Another aspect was whether the obligation was to achieve a result or to make best efforts, and what would be the standards for such efforts. It was clear from the relevant treaties and case law that the obligation to prevent was one of taking effective measures, and not one of result. It would be unrealistic and against the rules of general international law to oblige a State to achieve an outcome. A State should take all necessary legislative, administrative and other measures to achieve the result, and high standards or benchmarks should be applied to assess its performance in that regard. However, such measures must not infringe the principles of international law and must remain within the confines of lawful measures.

Draft article 1, paragraph 2, limited the obligation to prevent crimes against humanity to any territory under the jurisdiction of a State. Although the extraterritorial application of a national law was controversial in international law, as matter of legal policy, the Commission could strike a balance between the extent of a State’s obligation to prevent and its other legal obligations under international law. That could be done in a provision setting out the obligations that States parties could assume collectively to prevent the commission of the crimes against humanity in any territory, such as the imposition of sanctions. A State could also be obliged to take measures within its territory or jurisdiction to prevent the commission of crimes against humanity outside its territory, such as by prosecuting persons in its territory who planned or instigated the commission of such crimes outside its territory. However, a State should not be in a position to choose between its obligations under the proposed convention and other obligations under international law of equal or higher legal value.

The commentary to the draft articles should explain the type of measures required to prevent crimes against humanity and the minimum standards applicable. It should deal with the issue of what kind of knowledge a State was expected to have before taking preventive measures, such as knowledge of the risk and of prior human rights violations. A related aspect was the non-derogable nature of the obligation to prevent. Clearly, the obligation to prevent applied to any person, irrespective of their status or situation. His last point on the obligation to prevent and related measures was that a State’s failure to implement the obligation could give rise to its responsibility or to collective action on part of other States parties to a convention on the subject. While the responsibility aspect could be covered by the general rules on responsibility of States, the issue of collective measures might have to be dealt with in future draft articles.

He agreed with the Special Rapporteur that the definition of crimes against humanity should be in line with the definition contained in article 7 of the Rome Statute. However, it
was crucial to encourage States parties to the proposed convention to harmonize the definition in their national laws with that of the Rome Statute: that would strengthen inter-State cooperation, including the provision of mutual legal and judicial assistance, and remove obstacles to surrendering accused persons to a State that had jurisdiction.

One aspect that should be clarified in the commentary was the relationship between the issue of systematic attack and the policy element implicit in the words “directed against”. Case law was not settled on that aspect, and the fact that the terms “widespread” and “systematic” were disjunctive made it important to clarify the difference between the terms “systematic” and “directed against”, given that the policy element had been downplayed in recent case law.

Another issue was who was the perpetrator of the attack. The report seemed to lean towards the premise that the attack could be led either by a State or by a private actor, such as an armed group or a criminal organization. During an armed conflict, whether international or non-international, armed groups could be identified on the basis of the definition of international humanitarian law contained in the Geneva protocols. Yet in the absence of an armed conflict, such an identification depended on the elements that qualified the private actors as perpetrators of the attack, such as the ability to exercise a certain authority or control a territory in the same manner as the State. Alternatively, the elements used in international humanitarian law to define an armed group that was party to a conflict could be applied to private actors in peacetime for the purposes of the proposed convention.

In conclusion, he recommended the referral of the draft articles to the Drafting Committee.

**Mr. Kamto** said that he was not convinced by Mr. Hmoud’s argument that the current project would help to close the gap resulting from the failure by some States to ratify the Rome Statute and to ensure that crimes against humanity were defined as offences under their criminal law. Even if the draft articles eventually became the provisions of a new convention, States had the prerogative to decide whether or not to accede to it, and the gap would still exist. Moreover, a State did not have to be a party to the Rome Statute in order to define crimes against humanity as offences under its national law. The Commission should therefore not overestimate the value of the “closing the gap” argument.

**Mr. Hmoud** said that the issue was not whether or not a State was a party to the Rome Statute because, if it was, its key obligation was to accept the prescribed jurisdiction of the International Criminal Court. The problem was that the majority of States did not have sufficient legislation in place to trigger national prosecution of crimes against humanity. The importance of a new convention, as he saw it, was that it could encourage States to include a definition of crimes against humanity in their national legislation, which in turn could assist in implementing inter-State cooperation and mutual legal assistance.

**Ms. Escobar Hernández** said that she agreed with Mr. Kamto that the Commission should not overestimate the value of “closing the gap”. However, the fact that the draft articles could eventually become a convention would have an important overall effect, including that of encouraging States to amend their national legislation in order to incorporate crimes against humanity, thereby reaffirming the principles of the Rome Statute. It was unavoidable that gaps would continue to exist, because of the very nature of international treaties. Strictly speaking, the Rome Statute required States to accept the jurisdiction of the International Criminal Court only with respect to the crimes referred to in article 5 and to comply with the provisions set out in Part IX concerning international cooperation and mutual legal assistance. The issue of complementarity should be borne in mind, since if the draft articles became a convention, they would exist on the same plane as the Rome Statute, thus requiring the establishment of a mechanism to regulate the
interrelationship between the two instruments in order to avoid leaving any doors open to impunity.

Mr. Tladi said that he did not consider the value of a future convention on crimes against humanity to lay in the fact that it would encourage States to adopt national legislation on the offence, because States could do that even without the Convention, and many had already done so. Rather, it would lay in the establishment of a legal framework for an inter-State cooperation mechanism.

Mr. Hmoud said that he had not meant to suggest that encouragement to adopt national legislation on crimes against humanity was the key motivating factor for proceeding with the project – it was merely one of the factors. That said, the harmonization of national laws with the rules of international law on crimes against humanity was important, because one small discrepancy in the definition of those crimes in a State’s legislation compared with the definition in international law could be exploited to prevent a judge from extraditing an individual.

Mr. Petrič said that States were very much aware that problems existed with inter-State legal cooperation, as evidenced by the fact that the Crimes Against Humanity Initiative had been launched as a platform for discussion by all stakeholders, including the Commission. Although a future convention on crimes against humanity would no doubt raise awareness of the inhumanity of such crimes, the Commission should not expect it to be a major motivating factor for States to enact national legislation on them. One of the future convention’s most important contributions would be the establishment of rules on inter-State cooperation.

Mr. Gómez-Robledo said that, in perhaps no other sphere of criminal law was the obligation to harmonize national legislation with international law so vital as in that of crimes against humanity. Without it, there was no way, at least in countries with a civil law tradition, for a judge to punish perpetrators of those crimes in accordance with their corresponding characterization under international law, independently of the primacy or lack thereof afforded to the treaty within the State’s legal system. In contrast to what Ms. Escobar Hernández had indicated, the obligation of States to bring their national laws into conformity with the Rome Statute was absolutely clear; without it, there was no way to comply with the Statute’s provisions. Consequently, the merits of a future convention on crimes against humanity lay in requiring States to define such crimes as criminal offences in their national legislation and in requiring them to promote inter-State cooperation.

Mr. Park said that he had four general observations to make on the future direction of the Commission’s work on the topic. First, one of the limits inherent in the very nature of international conventions was that they relied entirely on the voluntary participation of States. Consequently, States that committed or were at risk of committing crimes against humanity could simply choose not to accede to a future convention, and even if they did accede, they could enter a reservation. The Commission must consider how it would resolve those issues in order to preserve the effectiveness of a future convention. His proposal was that it should apply to any foreigner who committed a crime against humanity outside the territory of a State party and who was later found in any part of the territory under the State party’s jurisdiction. That proposal was in keeping with the Special Rapporteur’s position, as described in paragraph 13 of his report.

His second observation was that the Commission must consider how a future convention on crimes against humanity might impact existing national legislation on that subject. States might be reluctant to accede to the convention if its provisions differed significantly from those contained in their national law. The Commission should therefore conduct close consultation and exchanges of opinion with States, especially in the context of meetings of the Sixth Committee.
Thirdly, States parties to the new convention should be encouraged to sign and ratify the Rome Statute, creating a two-fold impediment to the escape of criminals from punishment, at either the domestic level or internationally. He proposed the insertion of a draft article to that effect.

Fourthly, the Special Rapporteur emphasized in paragraph 21 of his report that the draft articles should be crafted to ensure that States parties to the Rome Statute could comply with its procedures even after acceding to the new convention. However, it was not entirely clear how competing requests that a person should be surrendered to the International Criminal Court by a State that was a party to both the convention and the Rome Statute, on the one hand, and by a State that was a party to the convention but not to the Rome Statute, on the other, would be handled in terms of which request would be given priority. If the Court decided that the case was admissible, the requested State would be subject to the application of article 90, paragraph 4, of the Rome Statute, but it would also be under an international obligation to extradite the person to a requesting State, given that the future convention would contain a provision on the obligation to extradite or prosecute. The Special Rapporteur should clarify that issue.

Turning to draft article 1, he sought clarification concerning the exact meaning and scope of the obligation to prevent that was embodied in paragraph 2. The Special Rapporteur referred in paragraph 99 of his report to the judgment of the International Court of Justice in the case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), in which the Court had decided that the obligation to prevent was a positive one that could be violated by omission. Yet, it was unclear what constituted such an omission. In the same judgment, cited in paragraph 101 of the report, the Court stated that the content of the duty to prevent varied from one instrument to another, according to the wording of the relevant provisions, and depending on the nature of the acts to be prevented. It was therefore difficult to know what the content of the obligation to prevent was and at what point the responsibility of the State was engaged. Consideration should be given to including in the commentary the five specific measures for meeting the obligation to prevent crimes against humanity that were set out in paragraph 116 of the report.

The question also arose as to how the obligation to prevent was to be implemented in relation to existing domestic laws whose purpose was to apply the Rome Statute, since they focused on the obligation of States to punish. The jurisdictional scope of the obligation to prevent also needed to be clarified, because in draft article 1, paragraph 2, the phrase “in any territory under its jurisdiction” might have the effect of extending the scope beyond the jurisdiction of the Rome Statute and of the national laws adopted for its implementation.

With regard to the general structure and content of draft article 1, he said that it did not make sense to combine the obligation to prevent and the obligation to punish in a single provision, as did paragraph 1. Moreover, the measures referred to in paragraph 2 addressed only prevention, which was not only inconsistent with the title of the draft article but could also raise the question why there was no separate provision on punishment. It would be more appropriate to set out each of the three paragraphs of draft article 1 in a separate draft article. From a structural standpoint, it would be best to state the purpose of the convention at the very beginning: for example, “to establish a prevention and punishment system at a national level and to strengthen cooperation among States”. In addition, it might be desirable to include a provision to the effect that the convention was without prejudice to the authority and activities of the International Criminal Court. Draft article 1, paragraph 1, used the term “in time of war”. However, the term “armed conflict” was more appropriate because it was more widely accepted.

With regard to the future programme of work, he said that there were four additional subjects that it should address.
First, provisions were needed on cooperation mechanisms among States and international organizations or agencies that dealt with crimes against humanity – for example, the independent international commissions of inquiry set up by the Human Rights Council to address States in which systematic, widespread and grave violations of human rights had been committed. The reports of those bodies often expressly mentioned crimes against humanity.

Secondly, victims’ rights and witness protection should be covered: the subject would need to be clarified in detail with reference to relevant conventions. It might be worth reviewing the provisions regarding compensation for victims contained in article 75 of the Rome Statute, article 14 of the Convention against Torture and article 91 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I).

Thirdly, a clear provision on whether the future convention could be applied retroactively or not was needed.

Fourthly, the nature of compulsory dispute settlement would need to be addressed – specifically, what would be the most appropriate form for the compulsory dispute settlement procedure to be given?

The meeting rose at 11.55 a.m. to enable the Drafting Committee on Identification of customary international law to meet.