

Document:-
A/CN.4/3258

Summary record of the 3258th meeting

Topic:
Crimes against humanity

Extract from the Yearbook of the International Law Commission:-
2015, vol. I

*Downloaded from the web site of the International Law Commission
(<http://legal.un.org/ilc/>)*

of violence directed against a specific group of individuals, irrespective of whether they were nationals or non-nationals of a State; and they could take place both in times of peace and war. Fourth, according to various studies conducted, the majority of States, even those that were parties to the Rome Statute of the International Criminal Court, did not have specific legislation on crimes against humanity.

60. In conclusion, he endorsed the proposed future programme of work and recommended the referral of the draft articles to the Drafting Committee.

61. Mr. VÁZQUEZ-BERMÚDEZ said that in his first report, the Special Rapporteur made a good argument for drafting a set of articles on crimes against humanity that could serve as a basis for a future convention. He agreed with the Special Rapporteur that draft articles with particular emphasis on inter-State cooperation would assist States in their efforts to prevent and punish such crimes. A new international instrument dealing specifically with crimes against humanity should encourage more States to adopt or harmonize relevant national laws and enhance the system of complementarity on which the Rome Statute of the International Criminal Court rested.

62. The *jus cogens* character of the prohibition of crimes against humanity gave rise to a number of legal consequences that should be analysed, in terms both of the responsibility of States for internationally wrongful acts and of the responsibility of perpetrators. Moreover, States had the obligation to cooperate to bring an end, by internationally lawful means, to any violation of a *jus cogens* obligation. He proposed that this point be explicitly made either in a specific draft article or in a paragraph in the preamble. If the latter option was preferred, he proposed that the preambular paragraph read: “Reaffirming that the prohibition of crimes against humanity is a peremptory norm of general international law (*jus cogens*)” [*Reafirmando que la prohibición de los crímenes de lesa humanidad es una norma imperativa de derecho internacional general (jus cogens)*].

63. Turning to specific comments on the two draft articles, he agreed that the phrase “[e]ach State party confirms”, in draft article 1, paragraph 1, should be deleted. It was modelled on article 1 of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, but it seemed unnecessary in the current historical context. He also shared the view that it would be more appropriate to refer to “armed conflict” rather than “war” and that it should be made clear, either in the draft article or in a commentary, that the term “armed conflict” referred to both international and non-international armed conflicts. He preferred the term “international crimes” to “crimes under international law” and was in favour of the wording for draft article 1, paragraph 1, proposed by Mr. Cafilisch.

64. Generally speaking, he endorsed the Special Rapporteur’s reasoning on the obligation to prevent, as set out in paragraph 80 and those that follow of the first report. He agreed with other members that since that obligation required prevention of the commission of crimes against humanity by State bodies, it must be clearly explained that the draft articles encompassed both the responsibility of States for internationally wrongful acts and the criminal

responsibility of individual perpetrators. In that connection, Mr. Forteau’s proposal to refer explicitly to the obligation of “States” rather than “States parties” in the proposed convention warranted consideration. Draft article 1, paragraphs 2 and 3, ought to convey the *jus cogens* character of the prohibition of crimes against humanity. He supported the view that the issues covered in those paragraphs should be dealt with in separate draft articles.

65. He concurred with the Special Rapporteur that the definition of crimes against humanity in draft article 2 should be virtually the same as that contained in article 7 of the Rome Statute of the International Criminal Court. However, more flexible wording could be found to allow for the expansion of the provision in future, to keep pace with customary international law. Referring to the crimes against humanity listed in paragraph 1 (*k*) as “[o]ther inhumane acts of a similar character intentionally causing great suffering, or serious injury to body integrity or to mental or physical health”, he pointed out that biological experiments might well come under that category. They were not necessarily confined to situations of armed conflict, and thus did not always constitute war crimes.

66. The Special Rapporteur should analyse the relationship with crimes against humanity of refugee and migration law with reference to the obligation to prosecute or extradite and with a view to combating impunity. Rather than denying an alleged perpetrator refugee status in or entry to its territory, the State in question should seek to prosecute or extradite the person concerned.

67. In conclusion, he said that the proposed future programme of work seemed feasible and that he recommended the referral of the draft articles to the Drafting Committee.

Organization of the work of the session (*continued*)*

[Agenda item 1]

68. Mr. FORTEAU (Chairperson of the Drafting Committee) announced that the Drafting Committee on the topic of crimes against humanity was composed of Ms. Escobar Hernández, Mr. Hmoud, Ms. Jacobsson, Mr. Kamto, Mr. Kittichaisaree, Mr. Kolodkin, Mr. McRae, Mr. Murphy, Mr. Park, Mr. Petrič, Mr. Saboia, Mr. Tladi, Mr. Wako, Sir Michael Wood and Mr. Vázquez-Bermúdez (*ex officio*).

The meeting rose at 1.05 p.m.

3258th MEETING

Thursday, 28 May 2015, at 10.05 a.m.

Chairperson: Mr. Narinder SINGH

Present: Mr. Cafilisch, Mr. Candioti, Mr. El-Murtadi Suleiman Gouider, Ms. Escobar Hernández, Mr. Hassouna, Mr. Hmoud, Mr. Huang, Ms. Jacobsson, Mr. Kamto, Mr. Kittichaisaree, Mr. Kolodkin, Mr. Laraba,

* Resumed from the 3250th meeting.

Mr. McRae, Mr. Murase, Mr. Murphy, Mr. Niehaus, Mr. Nolte, Mr. Park, Mr. Peter, Mr. Petrič, Mr. Saboia, Mr. Tladi, Mr. Vázquez-Bermúdez, Mr. Wako, Mr. Wisnumurti, Sir Michael Wood.

**Crimes against humanity (*continued*) (A/CN.4/678,
Part II, sect. I, A/CN.4/680, A/CN.4/L.853)**

[Agenda item 10]

FIRST REPORT OF THE SPECIAL RAPPORTEUR (*concluded*)

1. The CHAIRPERSON invited the members of the Commission to pursue their consideration of the first report on crimes against humanity (A/CN.4/680).

2. Mr. WAKO thanked the Special Rapporteur for his excellent first report, which was comprehensive, well documented and longer than usual—but rightly so, as it laid the foundation for the project. At the outset, he himself had not been convinced of the need for work on the topic: he had felt that time should be allowed for the Rome Statute of the International Criminal Court and the International Criminal Court to become fully established. When the topic was first placed on the Commission's agenda, the objective of developing a new convention on crimes against humanity had not been universally welcomed, even by members of the Commission. Some States had expressed reservations, particularly France, which had stated in the Sixth Committee that it would be preferable to encourage universal adherence to the Statute and to strengthen the effectiveness of existing norms. However, the extremely interesting conclusions in the final report of the conference on crimes against humanity organized in 2014 by the Washington University in St. Louis School of Law, and the article by Mr. M. Cherif Bassiouni entitled "Crimes against humanity: the need for a specialized convention",¹²⁴ had persuaded him to revise his initial position and to take a more positive outlook on the topic.

3. The Special Rapporteur had tried to outline in his first report the advantages of having a new convention on crimes against humanity, in view of the lacunae in international criminal law that were not addressed in the Rome Statute of the International Criminal Court. The Statute focused narrowly on effective prosecution of the "most serious crimes of concern to the international community". It aimed at establishing an international criminal court and contained elaborate provisions on investigation and prosecution and on international cooperation and judicial assistance. Through the principle of complementarity, it emphasized the importance of national criminal jurisdiction. The preamble stressed the fact that punishment must be effectively ensured through measures at the national level and through enhanced international cooperation. However, the international cooperation envisaged was cooperation between the International Criminal Court and the States which had ratified the Statute. Part 9, on international cooperation and judicial assistance, and Part 10, on the enforcement of sentences, dealt only with

the relationship between the Court and States parties to the Statute. Although it was based on the vertical relationship between the Court and States parties, the Rome Statute of the International Criminal Court nevertheless recognized the important role of the various organs of the State. Implicit in the Statute was the recognition that such organs had the primary role in ending impunity: hence the need for strong and effective administration of justice at the national level.

4. As the Special Rapporteur acknowledged in paragraph 24 of his first report, the International Criminal Court had not been designed, nor did it have the resources, to prosecute all persons responsible for crimes against humanity. The Court itself had admitted that with all the goodwill in the world, it could not prosecute all offenders, and must therefore concentrate only on top offenders, leaving those below the top level free of prosecution. As to the cost of investigations and prosecution, it was far from negligible: according to some studies, it was tantamount to the cost of the entire judicial systems of some developing countries. Strong and efficient national systems of justice and inter-State cooperation were needed—the horizontal approach supporting the vertical one—in order to provide the opportunity to deter and prosecute all perpetrators of crimes against humanity. The new convention should therefore emphasize inter-State cooperation and judicial assistance; it should provide for extradition of perpetrators of crimes against humanity, thereby obviating the need for bilateral treaties on extradition. Since the International Criminal Court came into the picture only after the event, in other words, after a crime against humanity had been committed, the question of prevention should be a central focus of any new convention on the subject.

5. Turning to draft article 1, he said he was concerned that the future programme of work, as set out in chapter VI of the first report, failed to indicate that the new convention would deal with questions other than those connected with prosecution, which were in the domain of the Rome Statute of the International Criminal Court at both the national and international levels. Just as the proposed convention could strengthen investigation and prosecution through various mechanisms, it could also have a chapter on prevention of crimes against humanity, which should be understood in the broad sense, and not solely in terms of preventing crimes that were about to be committed. As stated in paragraph 116 of the first report, the obligation to prevent would normally oblige States parties to adopt the national laws, institutions and policies necessary to establish awareness of the criminality of an act and to pursue initiatives to educate government officials as to the State's obligations under the convention to develop training programmes for the police, the military, militias and other relevant personnel. It was for that reason that he was not in favour of deleting draft article 1, paragraph 2—because it could provide the basis for a chapter on prevention. Such a chapter could indicate the legislative, administrative, judicial and other measures that States should put in place and provide guidelines for formulating the necessary laws, policies and measures, while ensuring, as Mr. Kolodkin had suggested, that they were in accordance with international law. It would also encourage States to harmonize laws and promote inter-State relations, as pointed out by Mr. Petrič, Mr. Šturma and Mr. Tladi,

¹²⁴ *Columbia Journal of Transnational Law*, vol. 31, No. 3 (1994), pp. 457–494.

among others. It could be a basis for obligating States to provide technical assistance to other States that could not afford such measures themselves.

6. Paragraphs 52 to 64 of the first report presented a convincing analysis of the definition of crimes against humanity in national law. One conclusion was that of the 34 States that had a national law specifically on crimes against humanity, only 10—including Kenya, which was not mentioned—had adopted verbatim the definition of such crimes contained in article 7 of the Rome Statute of the International Criminal Court. It did not necessarily follow that a new convention would result in more States incorporating an appropriate definition of crimes against humanity into their internal legislation. The International Criminal Court had tried, through its advisory services, to assist States in drafting appropriate legislation to domesticate the Statute, but without success, partly because that was not its primary function. In any event, he agreed with the pragmatic approach taken by the Special Rapporteur in taking over, *mutatis mutandis*, the definition of crimes against humanity contained in article 7 of the Statute. During the debate, however, some members who were in favour of that approach had nevertheless been of the opinion that States should not be compelled to transpose the article 7 definition into their national legislation, but should rather just integrate its substance, as Mr. Petrič had suggested. However, as indicated in paragraph 64 of the first report, because there were significant discrepancies among national laws of States that had criminalized crimes against humanity, there were considerable impediments to inter-State cooperation. The adoption of the article 7 definition would therefore be preferable, for the sake of harmonization. Since differences in interpretation by different national courts could not be ruled out, it could be specified, as Mr. Nolte had suggested, that national courts must take into account the decisions of the International Criminal Court.

7. As had been pointed out during the discussion in the Sixth Committee, the Commission's work must neither undermine the universality of the International Criminal Court nor overlap with existing regimes, but should rather complement them. In dealing with the issues, therefore, it must be kept in mind that the International Criminal Court remained, as stated in paragraph 4 of the first report, at the centre of efforts to address genocide, crimes against humanity and war crimes. There was nevertheless a real danger, which must not be minimized, that the Commission might create a competing regime, resulting in parallel activities that might threaten the universality of the International Criminal Court. To counteract that danger, it might be useful to insert at either the start or the end of the convention a provision explicitly stating that the convention would not prejudice any of the provisions of the Rome Statute of the International Criminal Court and the regulations made under it, which would prevail in the event of conflict.

8. Among the challenges brought up by the proposed convention was the issue of immunities. It was possible that certain States had not ratified the Rome Statute of the International Criminal Court to avoid being subject to the jurisdiction of the International Criminal Court and, in particular, did not want their Heads of State or Government or other top-ranking officials to be brought

before the Court. Article 27 of the Rome Statute of the International Criminal Court, which provided that official capacity did not exempt an official from criminal responsibility under the Statute, was a stumbling block not only for those States that had refused to ratify the Statute but also for those that had done so but wished to withdraw from it or, as some African States had done through the African Union, advocated the amendment of the provision so as to exempt sitting Heads of State from prosecution in accordance with customary international law. There was therefore a strong possibility that, if the issue of immunity was not dealt with properly in the convention that the Commission was proposing to develop, far from commanding broad adherence to both instruments within the international community, the new convention would instead provide an escape route for States that did not wish to ratify the Statute, thereby undermining the authority of the International Criminal Court. The Special Rapporteur should therefore address the issue of immunity in his future work.

9. Such matters also had implications for the provisions relating to extradition and the universal jurisdiction of domestic courts. There again, it was desirable that, in his next report, the Special Rapporteur examine in depth the customary international law on universal jurisdiction and how the draft convention might modify or alter custom by including provisions on strengthening cooperation among nations and States. There was a growing school of thought supporting the idea that the role in exercising universal jurisdiction of domestic courts should now be taken over by the International Criminal Court.

10. There was merit in the view of Mr. Tladi, which was shared by certain States in the Sixth Committee, to the effect that the proposed convention should emphasize a wider range of crimes, including genocide and war crimes, while limiting the objectives pursued to extradition and mutual legal assistance. However, unless the General Assembly revised what had been decided, it was too late to modify the topic as it was included in the Commission's long-term programme of work in 2013: there was no going back.

11. Turning to the draft articles, and re-emphasizing his desire for draft article 1, paragraph 2, to be retained, he said that as the Special Rapporteur explained in paragraph 115 of his first report, the phrase "in any territory under its jurisdiction" appeared to allude to extraterritorial jurisdiction; the words "or control" or "or effective control" should be included, by analogy with draft article 4 (a) of the text on the protection of persons in the event of disasters.¹²⁵ That said, he could also go along with the proposal by Mr. Nolte on that point. Concerning draft article 1, paragraph 1, he supported the proposal to replace the word "war" with "armed conflict", with the Special Rapporteur to elaborate the sense in which it was used. As far as paragraph 3 of the draft article was concerned, he agreed with other members of the Commission that it could be improved by being redrafted in line with article 10 of the Rome Statute of the International Criminal Court and article 2, paragraph 2, of the Convention against torture and other cruel, inhuman or degrading treatment or punishment.

¹²⁵ *Yearbook ... 2014*, vol. II (Part Two) and corrigendum, p. 65.

12. With regard to draft article 2, paragraph 2 (a), he said that the Special Rapporteur had been pragmatic in adopting the definition of an “[a]ttack directed against any civilian population” contained in article 7, paragraph 2 (a), of the Rome Statute of the International Criminal Court. He nevertheless requested the Special Rapporteur to explain the phrase “pursuant to or in furtherance of a State or organizational policy to commit such attack”. Whereas the use of the phrase in the Statute was justified by the fact that the Statute aimed at facilitating the prosecution of only top-level officials, it should be slightly modified for the proposed convention so as to allow for the prosecution of more officials by national courts. Experience had shown that the prosecution of some alleged perpetrators of crimes against humanity had had to be abandoned because of the lack of a link with the policy of a State or of an organization. Concerns had also been expressed about the use of the terms “policy” and “systematic”, because of the difficulty of finding out when and how a policy was decided on and by whom or at what level of a Government or an organization. Questions had also been raised about why there should be a policy element in crimes against humanity, whereas the same was not true for the crime of genocide. He considered the policy element to be unnecessary and thought it should be reviewed by the Drafting Committee or the Special Rapporteur in his next report, in the light of the information provided by Mr. Kitichaisaree on the background to the adoption of article 7 of the Statute. Given that human rights were now more widely accepted by all, the removal of the policy requirement might be feasible.

13. In conclusion, he said that he supported the referral of the draft articles to the Drafting Committee and welcomed the sensitivity shown by the Special Rapporteur to the key role of the International Criminal Court in the fight against crimes against humanity.

14. Mr. HASSOUNA thanked the Special Rapporteur for his first report. It was clear, comprehensive and well researched and provided a sound foundation for the analysis of the topic. The Special Rapporteur was also to be commended for his outreach efforts in seeking to explain the project to various Governments on four continents. Members of the Commission should deploy their own efforts in their respective regions to raise awareness of the need for a convention on crimes against humanity. After all, the Commission’s goal was not only to prepare a skilfully drafted text, but also to convince Governments of its relevance, so as to ensure its acceptance and implementation.

15. Recalling the difficulties which, according to its Chairperson, Mr. Bassiouni, the Drafting Committee on the Rome Statute of the International Criminal Court had faced in 1998, when it was working on article 7, because of the lack of a codified definition of crimes against humanity, he said that in comparison, for the formulation of the references to genocide in the statutes of various hybrid or mixed-model tribunals, the Convention on the Prevention and Punishment of the Crime of Genocide had served as a model, thus avoiding a multiplicity of definitions. The time was long past for the formulation of a convention specifically on crimes against humanity, one that would regulate not only the hierarchical

relationship between States and international tribunals, but also horizontal relations between States. According to Mr. Bassiouni, such a convention would enhance harmonization among national laws and ensure greater compliance with the Rome Statute of the International Criminal Court by States parties thereto and non-States parties alike. The past 50 years had seen a considerable increase in the number of victims, across several continents, of conflicts of a non-international character and purely internal conflicts. The number of victims was staggering, and the legal void was glaring. In the light of such large-scale victimization by non-State actors, it was astounding that a convention did not already exist. Paradoxically, certain criminal activities that resulted in fewer victims and less human harm were the subject of a large number of international conventions. Such was the case with international drug trafficking, on which there were 13 conventions, or terrorism, which had generated 19 conventions on specific acts, for lack of an overall convention to cover them all, irrespective of the specific means used to achieve the unlawful result.

16. Many of the acts that were now called “terrorist” fell within the category of crimes against humanity. One had only to look at the almost daily perpetration of such crimes by several groups to see that the commission of crimes against humanity was not only continuing but also expanding, and that the absence of codification was glaring. In the face of that dire reality, the legal arguments in support of a new convention now seemed overwhelming. They included the need to enhance inter-State cooperation on crimes against humanity; to prevail upon States to include such crimes in their criminal codes; to remedy gaps in the coverage of the Convention on the Prevention and Punishment of the Crime of Genocide; to ensure that all perpetrators of crimes against humanity, whether Heads of State or low-ranking military officers, were brought to trial; to clarify the content of the obligation to prosecute or extradite with respect to crimes against humanity; and, lastly, to envisage the possibility of establishing universal jurisdiction over crimes against humanity. He hoped that such arguments would help to convince sceptics of the need for a new convention whose purpose, in his view, would be essentially to combat impunity and ensure that justice was done.

17. As to the general approach that should be adopted by the Special Rapporteur, he should be careful not to create an unduly broad instrument, the substance of which would overlap with the Rome Statute of the International Criminal Court. The plan to concentrate on the horizontal relations among States was an appropriate way of avoiding such overlapping; however, there was still a potential danger, and the Special Rapporteur must remain vigilant.

18. The thorough research that had gone into the formulation of the draft articles attested to the Special Rapporteur’s efforts to find the middle ground, as recommended by States in the Sixth Committee, while taking account of the input from members of the Commission. He had drawn, appropriately, from the definition of crimes against humanity in the Rome Statute of the International Criminal Court, which was widely accepted, even though several issues remained controversial.

19. With regard to draft article 1, he said that the Special Rapporteur had rightly incorporated the obligation to prevent and punish crimes against humanity among the obligations placed upon States. Like other members of the Commission, however, he would prefer the two obligations to be dealt with separately. He also found it regrettable that, in his first report, the Special Rapporteur did not specify the nature of the obligations—whether *jus cogens*, *erga omnes* or customary—as that was the starting point for any quest for their implementation. Moreover, the responsibility of a State that failed to prevent and punish such crimes, an aspect missing from the report, should be mentioned in the commentary.

20. The proposal to replace the term “war” with “armed conflict” in draft article 1, paragraph 1, was appropriate. The use of the phrase “undertake to prevent” was likewise appropriate. It had been sufficiently explored by the International Court of Justice in its judgment 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 it had identified two relatively clear obligations placed upon States, namely, on the one hand, the duty to prevent and, on the other, the obligation not to commit the prohibited acts. However, the Court had also cautioned that the “content of the duty to prevent varies from one instrument to another, according to the wording of the relevant provisions, and depending on the nature of the acts to be prevented” (para. 429 of the judgment). Hence the Court did not purport to establish a general rule applicable to all cases when a treaty instrument or other legally binding norm imposed on States the obligation to prevent certain acts. Accordingly, it should be made clear in the commentary which actually were the obligations placed upon States. He also favoured adding the words “or control” after “territory under its jurisdiction” in draft article 1, paragraph 2.

21. Concerning draft article 2, on the definition of crimes against humanity, he noted that the Special Rapporteur had adopted language derived from article 7, paragraph 2 (a), of the Rome Statute of the International Criminal Court, according to which an attack against a civilian population must be “pursuant to or in furtherance of a State or organizational policy to commit such an attack”. This language was the result of a compromise among States that had disagreed as to whether the requirements in that paragraph that an attack be widespread and systematic were conjunctive or disjunctive, and as to whether all widespread or systematic attacks on a civilian population were to be prosecuted as crimes against humanity, or whether the International Criminal Court’s jurisdiction should be limited to crimes organized by a State or similar entity. However, the Statute did not specify what constituted such an organization or who was capable of creating an organizational policy that would meet the criteria of article 7, paragraph 2. It was left to case law to determine that, but there had been dissenting opinions within Pre-Trial Chamber II in an investigation concerning the *Situation in the Republic of Kenya*. States parties, for their part, had taken differing approaches to the State or organizational policy requirement. Regardless of whether the Commission took a broad or narrow view on that issue, it must make it abundantly clear who or what

could commit a crime against humanity by defining what constituted an organizational policy, either in the draft articles themselves or, at the very least, in the commentary. It would be unfortunate to leave States parties to the future convention in the dark on that score, especially since the convention would require them to enact domestic legislation that criminalized crimes against humanity, which presupposed that they be clear about what acts and which actors might be prosecuted.

22. He was also in favour of including in draft article 2 a “without prejudice” clause along the lines of article 10 of the Rome Statute of the International Criminal Court, in order to take into account the developing rules of international law. Lastly, he believed that the commentary to the draft articles should indicate whether they were to be interpreted in the same way as the Statute, from which they were derived; according to the interpretations given by the International Court of Justice or the various international criminal courts; or solely according to harmonized and widely agreed upon interpretations. As to the future programme of work, in his view, it would be ideal if the work on crimes against humanity could be completed by 2020, the date tentatively set by the Special Rapporteur. In upcoming reports, he suggested addressing the obligations of States parties with respect to crimes against humanity, but a number of other important issues, some of which were mentioned in the first report, should also be examined. They included inter-State cooperation in matters of extradition, mutual legal assistance, State responsibility, universal jurisdiction, the obligation to prosecute or extradite, *jus cogens*, the immunity of State officials, statutes of limitation, amnesties, the liability of legal persons, reservations, capacity-building measures, and mechanisms of supervision. Some other complex issues could also be addressed, such as the retroactive application of the convention, the enforcement of its mandatory rules, the party empowered to determine that a crime against humanity had been committed, and the application of the “double jeopardy” principle. A final major issue on which the Commission should reflect was whether it should aim at formulating a maximalist convention that risked minimal ratification or a minimalist but universally accepted one. The Commission would have to make some hard choices there. In conclusion, he pledged his full support to the Special Rapporteur with the full agenda that awaited him and recommended the referral of the two draft articles to the Drafting Committee.

23. Mr. KAMTO congratulated the Special Rapporteur on his first report, which provided an overview of the topic and sketched out the direction to be taken in further work. The fact that the Special Rapporteur had the avowed objective of drafting a convention on the prevention and punishment of crimes against humanity was not merely a matter of form. As a matter of principle, and in the light of the distribution of responsibilities between the Commission and the General Assembly, it would be controversial to speak of a draft convention. The Special Rapporteur did so, however: although, in paragraph 13 of his report, he described the overall objective of his work as being to “draft articles for what could become a convention”, on several subsequent occasions, he referred to “the convention”, thereby perpetuating the ambiguity as to the nature of his work. Several members of the Commission had

unquestioningly adopted the term “convention”. However, the use of that term revealed the Commission to be somewhat lacking in humility, since it could only embark on the formulation of a draft convention at the request of the General Assembly, which had asked it to draw up what might become a convention on crimes against humanity, in other words, a set of draft articles that the General Assembly itself might transform into a draft convention for submission to States.

24. Above and beyond the formal aspect of the distribution of responsibilities between the Commission and the General Assembly, there was a substantive issue: the Commission’s approach would not be the same if it was formulating draft articles or a draft convention, or even a convention. In the first instance, the Commission would seek to fulfil as well as possible its dual mission of codification and progressive development, whereas in the second, a distinction between the two would not need to be drawn—or if it was, it would be drawn differently. The negotiation of conventions allowed States, and States alone, to lay down rules without having to justify their origins or to determine whether they were derived from codification or progressive development, because they were, in a sense, in a position to “legislate”. But given that the views that 23 States had expressed on the subject seemed to be so very divided, it would be difficult to argue that the General Assembly had requested the Commission to draw up a convention or a draft convention.

25. Moreover, the subject of crimes against humanity was a very sensitive one at the political level, partly because of the way in which the Convention on the Prevention and Punishment of the Crime of Genocide and especially the Rome Statute of the International Criminal Court had been applied, and partly because many States had expressed fears about the danger that a convention on crimes against humanity might weaken the regime established by the Statute. That in no way signified that the topic was not suitable for the work of the Commission, but the latter needed to be aware of the context in which its work took place and must make sure not to establish a regime that paralleled that of the Statute in every particular, obliging States to choose between the two.

26. When he stated in paragraph 12 that in building a network of cooperation, on the basis of what he called the convention on crimes against humanity, “sanctuary would be denied to offenders, thereby—it [was] hoped—helping both to deter such conduct *ab initio* and to ensure accountability *ex post*”, the Special Rapporteur was repeating, word for word, the arguments put forward at the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court. But the Commission’s efforts might weaken the regime of the Rome Statute of the International Criminal Court if they established or were perceived as establishing a parallel regime under which certain States could opt out of the application of the Statute and conclude bilateral arrangements on crimes against humanity, while supporting a regime of universal jurisdiction that enabled them to prosecute nationals of other States parties for crimes against humanity. Under such a system, only the most powerful States would be able to carry out the functions that in principle were accorded to all States parties, and

universal jurisdiction would be transformed into a political instrument. The Special Rapporteur and the Commission must allay the concerns raised by such a prospect.

27. Recalling the position he had outlined in an earlier discussion, he said that the report under consideration was in large part based on the assumption that all States would adhere to a future convention on crimes against humanity, whereas nothing suggested that this would be the case: even if such a convention came into being, States would in no way be obliged to accede to it. The related arguments that were used to justify the need for a convention on crimes against humanity were thus not relevant. In terms of methodology, it was strange that the Special Rapporteur had gone ahead and drafted two articles without first defining the scope of the text. That omission must be remedied, because the Commission could not move forward efficiently in its work without knowing where it was going or what the boundaries of the topic were. Another question that needed to be resolved was whether the rules contained in the Convention on the Prevention and Punishment of the Crime of Genocide were to be incorporated, *mutatis mutandis*, in the draft articles. While the basis for the general obligation to prevent was well laid out in the first report, that of the obligation to punish was less so: it seemed to flow primarily from article 1 of the Convention on the Prevention and Punishment of the Crime of Genocide and article 1 of the 1985 Inter-American Convention to Prevent and Punish Torture.

28. In any event, the obligation to prevent, as set out in draft article 1, was a composite obligation, as were all obligations of conduct. It was based, not on the performance of a single act, but on a set of legal acts and facts, or even on practice. Thus, since it was not an obligation of result, the question was whether the State’s responsibility might be entailed, given that the State would have fulfilled an obligation of conduct, yet had been unable to prevent the commission of a crime against humanity. The reasoning used by the Court of Justice of the Economic Community of West African States in its ruling in *SERAP v. Federal Republic of Nigeria* provided elements of a response. In that case, the Court had considered that the obligation of conduct set out in article 24 of the African Charter on Human and Peoples’ Rights required the State party to take all possible measures to preserve the quality of the environment, and that it was on the basis of an analysis of the environment and a whole set of objective factors that the State could be deemed to have fulfilled that obligation. It was thus not sufficient for the State to have taken legislative, administrative and other measures to protect the environment: those measures had to have effects and give rise to concrete results, which had not been the case there. The defendant State could therefore not exonerate itself of its responsibility for the damage caused to the environment on the grounds that the petroleum industry had not acted in accordance with the texts in force. That example showed that the obligation of conduct could to a certain extent be transformed into an obligation of result, *a fortiori* in the case of crimes against humanity.

29. Turning to draft article 1, he said that the words “Each State Party confirms that” should be deleted and the sentence slightly revised to read: “Crimes against humanity, whether committed in time of peace or in time

of war, are criminal acts under international law which each State Party undertakes to prevent and punish.” Paragraph 2 should be merged with paragraph 1, with some modifications. The text would read: “To this end, each State Party shall take effective legislative, administrative, judicial or other measures to prevent crimes against humanity from being committed in any territory under its jurisdiction.” As for paragraph 3, it should be amended based on article 2 of the draft articles on the responsibility of States for internationally wrongful acts.¹²⁶

30. For draft article 2, the Special Rapporteur had done well to reproduce verbatim the content of article 7 of the Rome Statute of the International Criminal Court. He considered the points made by Mr. Forteau and others concerning paragraph 2 to be well taken, although paradoxically, the addition they had proposed raised other issues: what would happen if the definition of crimes against humanity in a national law covered offences that were not so deemed by other States or to which they had objected during negotiations on a possible future convention on crimes against humanity? Under such circumstances, how would it be possible to meet the obligation to cooperate or to refer a matter to the competent authorities of a State if its laws did not cover the offence in question and it could not invoke the convention on the matter? In other words, what would happen if the presumed perpetrator of an offence that constituted a crime against humanity under the legislation of one State was in the territory of another State whose legislation did not cover such an offence? The Commission needed to take such questions into consideration in order to arrive at the definition to be incorporated in draft article 2.

31. With those remarks, and particularly with his proposal that a draft article on the object or the scope be included in the Special Rapporteur’s next report, he endorsed the referral of the first two draft articles to the Drafting Committee.

32. The CHAIRPERSON, speaking as a member of the Commission, congratulated the Special Rapporteur on his well-researched first report, which provided a survey of the development of the concept of crimes against humanity under international law, canvassing case law, international instruments and the literature. Paragraphs 10 to 15 of the first report set out convincing reasons for working on a convention on crimes against humanity. On the question of whether the topic should be expanded to include updating existing conventions on genocide and war crimes, his view was that the Commission should retain its focus on a global convention on prevention, punishment and inter-State cooperation with respect to crimes against humanity, which the Special Rapporteur identified as a key missing piece in the current framework of international law. Such an instrument would help in deterring perpetrators and ensuring their accountability with respect to crimes against humanity. It would also provide for more effective inter-State cooperation on prevention, investigation, prosecution and extradition for such crimes.

¹²⁶ The draft articles adopted by the Commission and commentaries thereto are reproduced in *Yearbook ... 2001*, vol. II (Part Two) and corrigendum, pp. 26 *et seq.*, paras. 76–77. See also General Assembly resolution 56/83 of 12 December 2001, annex.

33. He supported the broad outlines of the convention’s content, as set out in paragraphs 13 to 14 of the first report, although in his view, the various antiterrorism conventions, which had been widely ratified, should be used as a model. He shared the views of other members who considered that the Commission should not broaden the scope of the convention by including provisions on universal jurisdiction, the prohibition of amnesties or immunity, but should rather base itself on the provisions of earlier conventions concerning jurisdiction and scope.

34. Turning to draft article 1, he said he shared the views of Mr. Park and others who had pointed out that the three paragraphs it contained dealt with different issues which should more appropriately be separated into independent articles, and that the purpose or scope of the convention should be addressed at the beginning of the text. He likewise supported the proposal to replace the word “war” with “armed conflict”. Regarding paragraph 2 on prevention of crimes against humanity, a provision based on the recent antiterrorism conventions would be more suitable and effective. It should require States to cooperate, *inter alia*, by “taking all practicable measures, including, if necessary, adapting their national law, to prevent and counter preparations in their respective territories for the commission within or outside their territories of the offences set forth in article 2” and also to take measures “to prohibit in their territories illegal activities of persons, groups and organizations that encourage, instigate, organize, knowingly finance or knowingly provide technical assistance or information or engage in the perpetration of those offences”.

35. On draft article 2, he said that, like other speakers, he took the view that the Commission should not seek to change the language of article 7 of the Rome Statute of the International Criminal Court. He did not believe there was any need to include an explicit provision in the text or in the commentary in order to ensure uniformity in the interpretation of draft article 2 and article 7 of the Statute, since the Special Rapporteur proposed including an article on settlement of disputes relating to the interpretation or application of the convention. Furthermore, the objective of uniform interpretation would be more easily achieved by following the model provided by UNCITRAL, which compiled and made available through its database called CLOUT (Case Law on UNCITRAL Texts) judgments from courts around the world that courts could consult whenever a dispute relating to any of the UNCITRAL conventions was before them.

36. He thanked the Special Rapporteur for the tentative road map for the future programme of work and took note of his intention to complete the first reading of the complete set of draft articles by 2018 and a second reading by 2020. Finally, he expressed his support for sending the two draft articles to the Drafting Committee.

37. Mr. MURPHY (Special Rapporteur), summing up the discussion on his first report, said that he would, first, address some general points that arose during the debate; second, cover possible changes to the two draft articles prompted by the debate; third, offer some thoughts about the commentary to the draft articles; and fourth, deal with points raised about the future workplan.

38. A common position among all the members of the Commission was that there was already a legal framework for dealing with crimes against humanity, in various places: in the Rome Statute of the International Criminal Court; in the statutes of the various *ad hoc* and special international courts and tribunals; in some treaties devoted to certain egregious acts, such as enforced disappearance, where references were made to crimes against humanity; in prior instruments of the Commission, such as the 1996 draft code of crimes against the peace and security of mankind;¹²⁷ and in the national laws of many countries. As such, he agreed with Ms. Escobar Hernández that the project should be seen as complementing other efforts. However, it was also commonly acknowledged, at least by members of the Commission, that a convention on crimes against humanity could help to fill certain gaps in the current legal framework.

39. Differences of view had been expressed as to which gaps were the most important. Some members, such as Mr. Hmoud and Mr. El-Murtadi Suleiman Gouider, had stressed the importance of encouraging States to adopt national laws on crimes against humanity. Others, such as Mr. Tladi and Mr. Šturma, had emphasized the need for inter-State cooperation, believing that States were already able to adopt national laws if they wished to do so, and that discrepancies among those laws were not critical and were perhaps even inevitable. In his view, the Commission did not need to reach agreement on the most important aspects of the project: indeed, when Governments adopted a convention, there might be no consensus on which parts of the convention were the most important. Rather, the Commission should simply strive to include provisions in the draft articles that it thought would be useful, effective and likely to meet with acceptance by States.

40. Several members, including Mr. Wako, Mr. Kamto and Mr. Hassouna, had stressed the need to avoid any conflicts with the Rome Statute of the International Criminal Court. He fully shared that view and would be sensitive to that issue throughout the work on the project. Other members had noted, and again, he agreed, that the work had to take into account the Commission's other projects, such as those on immunity and on *jus cogens*.

41. Some members, such as Ms. Escobar Hernández, Mr. Murase and Mr. Kamto, had raised doubts, or at least questions, about whether the Commission could or should approach the topic openly as an effort to draft a convention. Several other members—Mr. Gómez Robledo, Mr. Kittichaisaree, Mr. Nolte, Mr. Valencia-Ospina, Mr. Tladi, Sir Michael Wood, Mr. Niehaus and Mr. Kolodkin—had responded that the Commission had a mandate to do so. He himself thought it was clear that the Commission could—if it wished—formulate “draft articles” that might ultimately form the basis for a convention. Indeed, article 23 of the Commission's statute provided that, at the completion of its work on a topic, the Commission might, *inter alia*, recommend to the General Assembly that it either “recommend the draft to [Member States of the United Nations] with a view to the conclusion of a convention” or “convoke a conference to conclude a convention”. Furthermore, since 1992, topics had

been included in the Commission's programme of work in accordance with a procedure by which the topic proposal was to indicate the advantages and disadvantages of preparing a report, a study or a “draft convention”. In 2011, when refining its working procedures, the Commission had recommended that “[a] preliminary indication as to the final form of the work undertaken on a specific topic (draft articles which might be embodied in a convention, declaration of principles, guidelines, expository study with conclusions and recommendations, etc.) should, as far as possible, be made at an early stage by special rapporteurs or study groups, subject to review and later adjustment as the work develops”.¹²⁸ With that in mind, the topic he had proposed in 2012, and which had been adopted by the Commission in 2013, had been quite explicit: paragraph 3 of the syllabus said that the objective for the topic was to “draft articles for what would become a convention on the prevention and punishment of crimes against humanity”.¹²⁹ Government reactions to that proposal in 2013 and 2014 had been largely positive, and the General Assembly had taken note of the topic in the resolutions on the reports of the work of the Commission at its sixty-fifth and sixty-sixth sessions,¹³⁰ that it had adopted in 2013 and 2014. The Commission could thus proceed to develop “draft articles” that would ultimately be used for a convention.

42. Mr. Tladi and Mr. Murase had asked whether the project entailed codifying customary international law or progressively developing international law. As for all of the Commission's projects, there was a mixture of the two, but his own feeling was that much of what would be included in the draft articles—such as provisions on extradition or on mutual legal assistance—did not entail the codification of existing rights and obligations under customary international law. Consequently, the Commission would often have to analyse treaties on matters other than crimes against humanity to see if they served as useful models for crafting the draft articles, but not for the purpose of codifying existing custom.

43. Of course, it was for the General Assembly to decide what to do with what the Commission submitted to it. Responding to Mr. McRae, he said that in paragraph 15 of the first report, he had meant solely to say that if the Commission recommended that the General Assembly adopt the draft articles as a convention, ultimately it was up to the General Assembly to decide whether to do so. When the General Assembly took its decision, the Commission would find out whether the scope that the Commission had set for the project—which, as Mr. Tladi had noted, did not cover genocide or war crimes—was the optimal choice.

44. Turning to the proposed draft articles, he said that every member that had spoken had indicated that they should be referred to the Drafting Committee. At the same time, most members had ideas for improvements to the draft articles that would significantly inform the final result.

¹²⁸ *Yearbook ... 2011*, vol. II (Part Two), p. 177, para. 383.

¹²⁹ See *Yearbook ... 2013*, vol. II (Part Two), annex II, p. 93, para. 3.

¹³⁰ See General Assembly resolution 68/112 of 16 December 2013, para. 8, and General Assembly resolution 69/118 of 10 December 2014, para. 7.

¹²⁷ *Yearbook ... 1996*, vol. II (Part Two), pp. 17 *et seq.*, para. 50.

45. The main elements of draft article 1 seemed to have met with approval, and there had been several very helpful suggestions for improvements, both in its structure and in its language. With respect to structure, some members—beginning with Mr. Park and supported by Mr. Kittichaisaree, Mr. McRae, Mr. Šturma and Mr. Hassouna—thought that draft article 1 was unbalanced in the way that it purported to address both prevention and punishment, and that it might be broken up into separate articles. With respect to language, some members viewed the phrase “Each party confirms” as antiquated or unhelpful, and saw the term “war” as being inferior to the term “armed conflict”. Other members did not favour restricting the scope of paragraph 2 through the current reference to territory. The use of the word “party” in both paragraphs 1 and 2 struck several members as premature at the current stage. Mr. Kolodkin and Mr. Nolte had suggested that the obligation to prevent be qualified by a reference to international law, while Mr. Hmoud and Mr. Gómez Robledo felt that, with respect to prevention, reference should also be made to the possibility of cooperation among States. Several members had indicated uncertainty as to which obligations were referred to in paragraph 3. Lastly, Mr. Park, Mr. Kamto and Mr. Murase had suggested that the first article should be one on “Scope”.

46. He would not respond to all of the ideas expressed, except to say that he found many of them quite persuasive. He therefore intended, if the Commission decided to refer the draft articles to the Drafting Committee, to suggest that draft article 1 should be transformed into a “Scope” article, containing a single sentence reformulating the current draft article 1, paragraph 1. It would simply indicate that the draft articles applied to the prevention and punishment of crimes against humanity, which were crimes under international law, whether they were committed during armed conflict or not. He would then suggest that the current paragraphs 2 and 3 be combined into a separate draft article focused solely on prevention. That draft article would contain no reference to territory, would include a reference to international law and would tie the words “no exceptional circumstances” more closely to the State’s obligation to prevent crimes against humanity.

47. Some members had urged that the references to “prevention” should be more explicit regarding the exact obligations of the State. He believed that a combination of language drawn from the Convention on the Prevention and Punishment of the Crime of Genocide and the Convention against torture and other cruel, inhuman or degrading treatment or punishment could achieve that objective—using the text of and jurisprudence on the first instrument, while referring to the various types of measures identified in the second. The commentary accompanying the draft article would explain in even greater detail the meaning of the obligation: it obligated the State itself not to commit the acts in question; it obligated the State to use its influence to encourage other States and non-State actors not to commit them; and it obligated the State to cooperate with other States toward those ends.

48. Turning to draft article 2, he said that virtually all the members that had commented on it had agreed that such a definition was necessary, with Mr. Murase being the lone exception. Further, virtually all the members that addressed

the issue had agreed that draft article 2 properly replicated article 7 of the Rome Statute of the International Criminal Court, and that it would not be wise to reopen the debate that had led to the definition contained therein. Such views were expressed by Ms. Escobar Hernández, Mr. Hmoud, Mr. Forteau, Mr. Nolte, Mr. Caffisch, Mr. Valencia-Ospina, Sir Michael Wood, Mr. Wisnumurti, Mr. Šturma, Mr. Niehaus, Mr. Kolodkin, Mr. Petrič, Mr. Kamto, Mr. Singh and Mr. Vázquez-Bermúdez. A few members had suggested that the Commission should not feel wedded to article 7 of the Statute, and that it could entertain improvements to the definition contained therein. However, the dominant view—which he shared—was against doing so.

49. Mr. Park had first raised the idea of adding a provision to draft article 2, which Mr. Forteau had proposed should read: “This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.” That language, which came from article 1, paragraph 2, of the Convention against torture and other cruel, inhuman or degrading treatment or punishment, had been replicated to one degree or another in several human rights treaties, as well as in the Rome Statute of the International Criminal Court. Sometimes referred to as a “saving clause”, the basic idea was that the definition set forth in the treaty did not affect a “wider” definition that might exist in other international instruments or in national law. Thus, the definition in the treaty operated as a floor for States, but not as a ceiling—States could adopt a national law with a broader definition of crimes against humanity. Mr. Forteau’s proposal had been supported by Mr. Hmoud, Mr. Caffisch, Mr. Saboia, Sir Michael Wood, Mr. McRae, Mr. Petrič, Mr. Hassouna and Mr. Wako, but not by Mr. Kolodkin and Mr. Singh. Mr. Kolodkin had expressed concern that such a provision would be tantamount to inviting States to add new elements to the definition of crimes against humanity that would not be appropriate, and that allowing such additional elements might impede inter-State cooperation. He understood Mr. Kolodkin’s concern but thought, on balance, that such a saving clause was an appropriate means of recognizing that States might have laws that contained higher standards than those that appeared in the definition, or might develop higher standards over time. Consequently, he would propose in the Drafting Committee that such a clause be included in draft article 2. Mr. Nolte, supported by Mr. Wako, had suggested that a provision might also be included calling upon States to take into account the case law of the International Criminal Court. Like Sir Michael, he agreed generally with the sentiment of that suggestion, but he was inclined to go along with Mr. McRae’s idea of addressing the point in the commentary, a solution to which Mr. Nolte, as he understood it, was agreeable.

50. As to the commentary that might be drafted to accompany the draft articles, he agreed with Ms. Escobar Hernández and Mr. Saboia about avoiding the adjective “State-sponsored” before “torture”. In response to Mr. McRae, he said that when he referred to “treaty regimes” in his first report, it should be understood to mean just “treaties”, although he admitted to being an admirer of Stephen Krasner’s work. In any event, all such points had been duly noted and would provide guidance in crafting the commentary. Sir Michael Wood had asked how

much of the detail contained in the first report might be incorporated into the commentary. Much of the first report consisted of background information that did not directly relate to the draft articles, and hence would not make its way into the commentary. The key question might be how much of the analysis of case law relating to the definition of crimes against humanity should be included in the commentary. As Sir Michael had noted, that analysis was useful today, but it would become progressively outdated and hence might not be useful over the long term. Much depended on whether such information would be helpful in informing States about the meaning of the definition for when they decided whether to use the draft articles to create a new convention, when they decided whether to ratify such a convention and when they took the steps necessary to render the convention operational under national law. When States went through those processes, some of the persons involved might be unfamiliar with the meaning of “crimes against humanity”, and would benefit from the analysis. Hence, if detailed commentary was helpful in the short term as States went through those steps, then he favoured such detail. If a detailed commentary was unnecessary, then he was not in favour of the detail. He was attracted to Sir Michael’s idea about keeping the detail in for the purpose of a first reading, but then reconsidering the matter on second reading. In the meantime, States might provide guidance to the Commission as to whether such detail was of use to them.

51. Mr. Hmoud and Mr. Hassouna had made several important suggestions for issues that might be addressed in the commentary, and he welcomed them. At the same time, he stressed that the analysis of the meaning of the various terms set forth in article 7 of the Rome Statute of the International Criminal Court was intended simply to provide a short account of how international courts, principally the International Criminal Court, had interpreted those terms to date. The analysis avoided controversial issues and “freezing” the law by reaching any definitive conclusions.

52. As for the future work on this topic, several members had made suggestions on issues that could be addressed in future reports. They included: the obligation to extradite or prosecute (*aut dedere aut judicare*); whether an obligation to submit to prosecution might be fulfilled through the use of military courts or military law (Mr. Nolte); mutual legal assistance (Mr. Hmoud and Mr. Tladi); fair treatment of the defendant (Mr. Petrič); the treatment of refugees who were thought to have committed crimes against humanity (Mr. Forteau and Mr. Vázquez-Bermúdez); the relationship of rights under the future convention with rights under other conventions, including the Rome Statute of the International Criminal Court (Mr. Park); cooperation mechanisms between States and international organizations (Mr. Park); victims’ and witnesses’ rights, including reparations (Mr. Park and Mr. Šturma); whether the future convention addressed crimes that had occurred prior to the convention’s entry into force (Mr. Park); double criminality (Mr. Murase and Mr. Forteau); statutes of limitations (Mr. Petrič); training and educating officials (Mr. Valencia-Ospina); whether amnesty or immunity should be permitted (Mr. Park, Mr. Valencia-Ospina, Mr. Saboia and Mr. McRae); whether reservations should be permitted (Mr. Gómez Robledo and Mr. Saboia); and dispute settlement (Mr. Park and Mr. Vázquez-Bermúdez).

53. Several members had expressed interest in the issue of universal jurisdiction. He expected to propose a draft article on the type of jurisdiction that a State must be able to exercise in joining a convention on crimes against humanity. He did not anticipate engaging in a broad study of universal jurisdiction, but he did plan on analysing the approach taken to jurisdiction in treaties that addressed international and transnational crimes. The Commission would no doubt have a robust discussion of that issue when the time came.

54. Mr. Nolte had asked what was the Commission’s “level of ambition” for the project. The ambition might be minimal: the draft articles might say very little, thereby making them easy for States to accept. At the other end of the spectrum, the text might be incredibly progressive in placing extensive, unfamiliar and burdensome obligations upon States, thereby making it difficult to accept. His own view was that the Commission should aim for the middle of the spectrum and develop a useful, meaningful and effective series of draft articles that States and civil society would welcome because they were neither devoid of meaning nor loaded with unattainable aspirations. Because the issue was difficult to discuss in the abstract, Mr. Nolte had suggested that consultations among members be organized, and he himself thought that was an excellent idea. He was thinking of convening an informal meeting in July 2015, during which all interested members could discuss issues that could be addressed in the draft articles.

55. Various members had also made suggestions for the preamble to the draft articles, such as to state that the prohibition of crimes against humanity was *ius cogens* or to emphasize the importance of the Rome Statute of the International Criminal Court. He would be gathering up such ideas over the course of the work and would propose a preamble in time for the first reading.

56. As to the timetable for completing the project, on which Mr. Kittichaisaree, Sir Michael and Mr. Hassouna had urged him to move faster than his proposed schedule, he agreed that completing the work as rapidly as possible was highly desirable; indeed, the comments by Mr. Petrič and Mr. Niehaus about the recent commission of crimes against humanity were poignant reminders that there were tremendous consequences in not addressing those crimes energetically. He accordingly intended to move the project along rapidly, while not sacrificing quality in favour of speed. It was only a well-crafted series of draft articles that was likely to attract the attention of States and that, over the long term, would help stop the atrocities.

57. In conclusion, he said he hoped that, in the light of the views expressed by members, the Commission would be in a position to send the two draft articles to the Drafting Committee.

58. The CHAIRPERSON thanked the Special Rapporteur for his summing up and said that if he heard no objection, he would take it that the Commission wished to refer the two draft articles to the Drafting Committee.

It was so decided.

The meeting rose at 12.45 p.m.