United Nations A/C.6/72/SR.20

General Assembly
Seventy-second session

Official Records

Distr.: General
28 November 2017

Original: English

Sixth Committee

Summary record of the 20th meeting
Held at Headquarters, New York, on Wednesday, 25 October 2017, at 10 a.m.

Chair: Mr. Gafoor . . . . . (Singapore)

Contents

17-18852 (E)

The meeting was called to order at 10.10 a.m.

Agenda item 81: Report of the International Law Commission on the work of its sixty-ninth session (*continued*) (A/72/10)

1. **The Chair** invited the Committee to continue its consideration of chapters I to V and XI of the report of the International Law Commission on the work of its sixty-ninth session (A/72/10)

2. **Ms. Gerstman** (Israel) said that her country had been one of the first States to become a party to the Convention on the Prevention and Punishment of the Crime of Genocide and to adopt domestic legislation to that effect. Israel particularly appreciated the Commission's work to codify the law relating to crimes against humanity and was currently considering the adoption of a law that would explicitly address such crimes, in accordance with customary international law. Effective codification in respect of crimes against humanity would benefit the international community as a whole. However, possible mechanisms for enforcing the proposed treaty should be established with caution, since such mechanisms could be abused by States and other actors to advance political goals, rather than as a means to protect the rights of victims. They should be designed with due regard for the multiple enforcement mechanisms already in place, to guard against duplication of efforts and promote synergy. For Israel, universal adherence to any future treaty on the topic was a vital goal and one that would be facilitated by allowing for flexibility in States' implementation of the treaty.

3. The approach to the issue of reservations set out in the Special Rapporteur's report on the topic (A/CN.4/704), following general international law in that regard, was welcome, as was that reflected in the draft articles adopted by the Commission on first reading, which provided for flexibility in respect of binding dispute settlement mechanisms and opt-out provisions. Referring to the exclusion of the "political offence" exception, in draft article 13 (Extradition), paragraph 2, as grounds for not proceeding with an extradition request, she said that such an approach was in conflict with current extradition practice and that her delegation would recommend instead that States should be allowed to make an evaluation on a case-by-case basis. With respect to domestic criminal measures and other issues of extradition addressed by the draft articles, concerns raised by States in the context of universal jurisdiction should be taken into account, with reference in particular to appropriate criteria and safeguards for the application of such mechanisms. Her delegation appreciated the attention given in the Commission's commentary to crimes against humanity committed by non-State actors, in view of the increased involvement of non-State actors in the commission of such crimes.

4. Turning to the topic of provisional application of treaties, she said that the practice of Israel allowed such provisional application only in exceptional circumstances, such as cases where there was an urgent political or economic need to apply a treaty before its approval, which could entail lengthy internal requirements. Even then, such a step was subject to numerous procedural conditions, including the adoption of a specific decision by the Government approving the provisional application of the treaty in question. Following a review of its practice, Israel had recently decided to develop a unique procedure to allow the implementation of air services agreements with other countries prior to their signature and entry into force. However, that was not a case of provisional application per se, as provided for in article 25 of the Vienna Convention on the Law of Treaties, or at least not a classic example thereof. Under its new procedure, both parties would initial the agreement in order for Israel to establish and operate air services between the relevant countries. Following her Government's approval, the provisional application of the agreement began on the date of notification by both countries of the completion of their respective internal procedures required for such application. Her delegation would welcome information from other Member States regarding their practice in similar situations and also as to whether they had identified other fields calling for similar unique procedures.

5. With regard to the draft guidelines provisionally adopted so far by the Commission, Israel supported their development but had concerns about the wording of draft guideline 4 (Forms of agreement), which might be interpreted as allowing other States or entities to initiate the provisional application of a treaty — which might include obligations — without the consent of the relevant States. It was important to make it clear that a treaty could be provisionally applied only with the consent of all States affected by such provisional application.

6. **Mr. Joyini** (South Africa) said that, in an increasingly globalized world, there was an ever greater need for close cooperation among States and that the draft articles on crimes against humanity provided a mechanism to that end, in order to ensure accountability for such crimes. While international courts served an important role in that regard, it was essential, in keeping with the principle of complementarity, that States should remain the first line of defence in the investigation and prosecution of international crimes. As one of the States

that in 2013 had jointly called for a treaty on inter-State cooperation in the investigation and prosecution of such crimes, South Africa would have liked war crimes and genocide to have been included within the parameters of the draft articles. His delegation nevertheless supported them by and large, as adopted by the Commission on first reading, while remaining mindful of the need to keep them separate and distinct from the projected multilateral convention on mutual legal assistance and extradition for all serious international crimes.

7. The requirement in the draft articles that States should criminalize crimes against humanity under national laws had already been met by his country through its implementation of the Rome Statute of the International Criminal Court, which criminalized crimes against humanity, war crimes and genocide. On the question of extradition, the broad approach followed by South Africa under its Extradition Act of 1962 restricted extraditable offences to offences under criminal law and not under military law. His delegation therefore appreciated the fact that draft article 6 [5] required States to ensure that crimes against humanity were incorporated specifically into their criminal law. Paragraph 3 of draft article 9 [8] (Preliminary measures when an alleged offender is present) gave concern: it seemed to place a disproportionate burden on a State that had taken into custody a person alleged to have committed an offence under the draft articles in that it required that State to notify accordingly States that had established jurisdiction over the offence. As was acknowledged in the commentary, the State that had taken the alleged offender into custody might not be aware of which States were concerned. The current wording of paragraph 3 of the draft article was perhaps too unconditional for an obligation so dependent on circumstances.

8. While, because of legislation already in place, South Africa did not require a treaty in order to extradite or to engage in mutual legal assistance, his delegation appreciated that the draft articles might also serve for such purposes in the absence of a treaty for those States that did require such a treaty. Nevertheless, draft article 14, paragraph 8, aroused concern in that it made the draft annex to the draft articles applicable by default, in the absence of a treaty on mutual legal assistance, which otherwise would prevail. Given that mutual legal assistance was often arranged informally between States not bound by such a treaty, such States would thus be required to apply the draft annex; that would negate the purpose of an informal request.

9. The absence in the draft articles of any provision on dual criminality for either extradition or mutual legal assistance was explained by the stipulation in draft article 6 [5] (Criminalization under international law) that States should include crimes against humanity as offences under their domestic law, so that dual criminality would automatically exist. Since, however, the actual wording of that draft article required States to take the necessary measures to criminalize such acts, a case might arise of a State requesting extradition from a State that had not yet completed such criminalization in its domestic law. That did not mean, however, that dual criminality was required in such cases under South African law.

10. With regard to the principle of non-refoulement set out in draft article 5, and as already established by a ruling handed down by its Constitutional Court, South Africa did not allow extradition to countries where a person might be subjected to a crime against humanity. Furthermore, under its Extradition Act, according to a wording similar to that appearing in draft article 13 (Extradition), paragraph 9, a request for extradition could be refused in cases where the person concerned would be prosecuted, punished or prejudiced in the foreign State by reason of his or her gender, race, religion, nationality or political opinion. Lastly, on the question of whether to include references to immunity from jurisdiction and amnesty in the draft articles, it was important to take into account the intricacies of each situation and to guard against a blanket approach that could hamper the attainment of lasting stability.

11. **Mr. Martín y Pérez de Nanclares** (Spain) said that his delegation, while recognizing the importance of the topics on the Commission's agenda, continued to be concerned that their high number, which had practically doubled in some 10 years, made it difficult for them to be handled effectively in the reduced time available to it. His delegation was also deeply concerned that some draft articles had been adopted by a vote. The adoption of decisions by vote, which it was true had already occurred in the past, could create a split in the Commission and negatively impact its work. Its authority was consolidated when it proceeded by consensus. At least, any proposal under *lex ferenda* required the full Commission's agreement. States must know whether a proposal represented codification of existing international law (*lex lata*) or development (*lex ferenda*), particularly for sensitive topics. That was also true for draft articles, even though States could subsequently choose whether or not to include them in a treaty.

12. Spain fully supported the Commission's call for equal treatment to be given in its proceedings to the six official languages of the United Nations. Spain also agreed that set limits could not be placed on the length

of the Commission's documents; nevertheless, concision was a virtue.

13. On the topic "Crimes against humanity", the draft articles adopted by the Commission on first reading were appropriate and well balanced; his delegation continued to regret, however, that such important matters as military tribunals and the margin of appreciation of States were not covered. Draft article 5 (Non-refoulement) gave concern as it did not properly reflect the systematic nature of crimes against humanity. In keeping with the very definition of such crimes appearing in the draft articles, it was not enough that a person expelled, surrendered or extradited to another country should be in danger of being murdered, raped or tortured, for instance; such crimes were required to be committed in the context of a systematic attack against all or part of a civilian population. Furthermore, the reference in both paragraphs of the draft article to territory under the jurisdiction of another State could raise problems and might be better replaced by reference to the territory of another State. In draft article 12 (Victims, witnesses and others), paragraph 3 referred to cessation and guarantees of non-repetition as forms of reparation, of which, strictly speaking, they did not form a part, and it listed rehabilitation as though it were different from restitution or satisfaction, which were also cited as forms of reparation.

14. Paragraph 5 of draft article 14 (Mutual legal assistance) was disconcerting because it created the false impression that the draft articles were not self-executing; moreover, it added nothing new since it was obvious that States could conclude future agreements on legal cooperation, which possibility was in any case provided for in paragraph 7 of that draft article. His delegation welcomed the distinction made in the draft article between types of legal assistance that would always apply and subsidiary types of legal assistance that would apply in the absence of a specific treaty between the parties; the former would be listed in the draft articles and the latter would be included in an annex. The Drafting Committee's decision to eliminate original draft article 16 on federal State obligations was also worthy of support as the matter was already covered by article 29 of the Vienna Convention on the Law of Treaties. The decision to retain the settlement of disputes provision (draft article 15) was, however, more questionable, as the Commission usually left it to States to draft such clauses, where appropriate, and there did not seem to be any reason to include such a provision in the draft articles. That was also true of the reservations provision, which had been much debated in the Commission. As for the sensitive matter of amnesty, the proposed solution seemed reasonable: with or without a Secretariat study on the issue, the Commission would not easily be able to provide for all the possible complex situations that might arise in the future in the context of transitional processes.

15. Turning to the topic of the provisional application of treaties, he said that the draft guidelines provisionally adopted by the Commission, while appropriately covering the issues concerned, still needed to address other issues that were not satisfactorily dealt with by the provisions of the 1969 Vienna Convention on the Law of Treaties and the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations. His delegation trusted that the Commission would also address a number of other issues — some of them problematic — relating to provisional application, including the question of whether all treaties could be provisionally applied or whether in some cases provisional application was not possible for reasons of treaty content or the implications of such provisional application; whether the period of provisional application should be taken into account in determining the termination date of treaties of pre-established duration; and lastly, whether the termination of provisional application when not followed by the entry into force of a treaty produced effects *ex tunc* or *ex nunc*. The question of provisional application and reservations, discussed at the Commission's sixty-eighth session, also needed to be addressed. Moreover, draft guideline 7, but also in part draft guidelines 5, 9 and 10, called for a study of international practice and case law. The memorandum prepared by the Secretariat offered some useful avenues for the Commission.

16. His delegation did not agree with the assertion in paragraph (5) of the commentary to draft guideline 6 (Legal effects of provisional application) that the rules of the 1969 Vienna Convention on termination or suspension of the operation of treaties did not apply in respect of provisional application. The suspension of provisional application might be necessary in particular cases and there seemed to be no reason why the Vienna rules should then cease to apply. As for termination, that was addressed by the 1969 Convention only in general, as affecting a State's or international organization's relations with all other parties concerned by the provisional application of a treaty. A case might arise, however, where a State might wish to put an end to provisional application only in relation to another party, for instance because that party had flouted its obligations. There was no reason why that State would have to choose either to ignore that fact or to forgo the possibility of concluding the treaty so that its provisional application might thus be terminated?

17. Lastly, his delegation welcomed the inclusion of a reference to the rules of international organizations in draft guideline 9 (Internal law of States or rules of international organizations and observance of provisionally applied treaties), which had previously spoken only of States; however, the wording of the new paragraph 2 would be improved if "the rules of the organization" were replaced by "its rules".

18. **Mr. Smolek** (Czechia) said that his delegation generally supported the elaboration of a convention on prevention, prosecution and inter-State cooperation in respect of crimes against humanity. The endeavour went in the same direction as the joint initiative of Argentina, Belgium, the Netherlands, Senegal and Slovenia to elaborate a new treaty on mutual legal assistance and extradition concerning prosecution of the most serious international crimes: both undertakings were relevant and they were compatible with each other.

19. On the topic of provisional application of treaties, his delegation agreed with the substance of draft guidelines 5 and 8, on commencement and termination respectively, but was not convinced by the explanation given in paragraph 3 of the commentary to draft guideline 8 that it was not feasible to reflect in a single formulation all the possible legal arrangements that might exist with other States or organizations provisionally applying all or part of the same treaty. The Commission would do well to also address such situations, even if not necessarily in a single provision. His delegation likewise agreed with the content of draft guidelines 6 and 7: obligations under provisional application were nonetheless real legal obligations and, as such, entailed international responsibility.

20. His delegation welcomed the inclusion in the Commission's programme of work of the topic "Succession of States in respect of State responsibility" and supported the inclusion in its long-term programme of work of the topic "General principles of law". The topic "Evidence before international courts and tribunals" was, however, a questionable choice for inclusion in the Commission's programme of work, since the procedural issues in respect of evidence appeared to lie primarily within the competence of individual courts and tribunals. More arguments regarding the potential concrete contribution of that topic to State practice would be appreciated.

21. **Mr. Lefeber** (Netherlands) said that the draft articles on crimes against humanity, as adopted by the Commission on first reading, brought the work on the topic closer to the objectives identified in 2013. It was of crucial importance to establish national jurisdiction for such crimes and an obligation to investigate and prosecute or extradite alleged offenders. All too few States complied with existing obligations, in particular under the Rome Statute and the Geneva Conventions of 1949. A future convention would help to strengthen the legal framework for accountability and against impunity. The principle of complementarity was of key importance in that regard as it placed primary responsibility on States rather than on international bodies. His delegation accordingly welcomed the expanded provisions on mutual legal assistance between States, which was crucial for the effectiveness of the proposed convention.

22 While continuing to support the Commission's ongoing work on the topic, his delegation saw particular merit in the joint initiative led by Argentina, Belgium, the Netherlands, Slovenia and Senegal for a new treaty on mutual legal assistance and extradition, which would cover the crimes of genocide and war crimes, as well as crimes against humanity. At a preparatory conference for the opening of formal negotiations for such a multilateral treaty, which the Netherlands had hosted just recently, the overwhelming majority of participants, representing all continents and including States not parties to the International Criminal Court, had agreed that the definitions of the crimes in question were not to be renegotiated. The discussions on that occasion had clearly indicated the type of provisions preferred, which should draw on modern treaties on mutual legal assistance relating to other international or transnational crimes and should not preclude other provisions, including technical provisions that would meet the needs of practitioners. The initiative converged in some respects with the Commission's ongoing work on crimes against humanity but it also differed from it in important ways, notably in respect of its envisaged scope of application. The two initiatives were complementary and could be developed side by side; close cooperation would therefore be welcomed with the Commission in order to strengthen synergies and improve legal cooperation towards their shared goal of combating the most serious international crimes.

23. Turning to the topic of provisional application of treaties, he said that his delegation appreciated the efforts to keep the draft guidelines provisionally adopted so far by the Commission flexible and not overly prescriptive, as it was often necessary to take specific circumstances into account. While indeed there were some issues more suited to being addressed in the commentary, in particular the wide variety of possible legal arrangements, his delegation supported the Commission's decision and the reasons adduced, in the commentary to draft guideline 8 (Termination upon notification of intention not to become a party), not to

introduce a notice period for termination of provisional application similar to such provisions in respect of denunciation or withdrawal from treaties. His delegation nevertheless maintained its view that any obligations incurred through provisional application of a treaty, and hence through the application of *pacta sunt servanda*, did not end with termination of such application when it adversely affected third parties, including individuals, acting in good faith; it might require a transitional regime with respect to such obligations, or even their continuation, for such third parties.

24. His delegation noted with interest the proposed inclusion of the topic of general principles of law in the Commission's long-term programme of work and considered that further analysis was required of the question whether those principles must derive solely from domestic legal systems or could also be drawn from other sources, such as the international legal system. A widening of the scope of the topic to include an inquiry into the origins and historical development of the principles, as suggested in the syllabus of the topic annexed to the Commission's report, would give it added value. His delegation welcomed the attention to be given to the place of the principles within the international legal system and the analysis of whether they should be considered as a principal and autonomous source of international law. Further research into the legal character of general principles of law would likewise be welcome. His delegation would also support further analysis of whether general principles could arise and develop separately from customary international law.

25. Inclusion in the Commission's long-term programme of work of the topic of evidence before international courts and tribunals would also be welcome, in particular to eliminate the uncertainty faced by States in international judicial settlement procedures as to the required standard of evidence. However, and while the same standard of evidence should not necessarily apply to all international courts and tribunals, that should not prevent consideration of rules of evidence of general application or an attempt to find similarities between different dispute settlement mechanisms.

26. Furthermore, and while there were differences between cases of international dispute settlement where at least one State was involved and cases before international criminal tribunals in which an individual as opposed to a State was charged with a crime, the exclusion of all the practice and experience of the various international criminal tribunals in general was questionable, given that mutatis mutandis their practice might be relevant. For example, a case before the International Criminal Court concerning the crime of aggression would require the Court to establish the responsibility of a State for committing a wrongful act of aggression, even though it would still not be the State standing trial. Nor would his delegation support the exclusion of the practice of the various human rights monitoring bodies in individual complaint procedures simply because they were not courts; they operated in accordance with predetermined rules of evidence and influenced other international dispute settlement mechanisms. A more useful criterion to guide the direction of the topic was a question whether State responsibility was established in a particular international dispute settlement procedure and whether the procedure operated on the basis of standard or predetermined rules of evidence. Even without explicit rules, a dispute settlement mechanism could still operate on the basis of the same practice as developed over the years.

27. **Mr. Galli** (Croatia) said that his delegation welcomed the Commission's efforts to develop a global instrument for the prevention, prosecution and punishment of crimes against humanity, with due regard for relevant existing international initiatives. Accordingly, for the sake of the clarity and cohesion of international law and to prevent its further fragmentation, the definition of torture used in the draft articles on the topic should be the same as that appearing in, for instance, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment or, indeed, in the Commission's ongoing work on the topic "Immunity of State officials from foreign criminal jurisdiction". In exceptional cases, when it was found necessary to change existing definitions to accurately reflect new realities, the changes should be thoroughly analysed and explained. Otherwise, the well-established uniform terminology developed in the Commission's own work or in the work of any other relevant international body recognized by it should be used. Such an integrative approach was followed in the Commission's work on a number of topics currently under discussion and was in accordance with the recommendation contained in the report of the Study Group on fragmentation of international law (A/CN.4/L.682). Editorially, it would be preferable to insert the text of draft article 10 [9] (*Aut dedere aut judicare*) immediately after the text of draft article 5 (Non-refoulement) since the two draft articles were highly interdependent and represented the obverse and reverse sides of the same issue.

28. His delegation supported the work on the topic of peremptory norms of general international law (*jus*

cogens), on which it would welcome further discussion. With regard to the draft conclusions as proposed by the Special Rapporteur in his second report (A/CN.4/706), and again in the interests of greater clarity and consistency, further work was needed on the presumptions reflected in paragraphs 2 and 3 of draft conclusion 5 (*Jus cogens* norms as norms of general international law) to take into account the Commission's ongoing work on the topic of identification of customary international law and its proposed work on the topic of general principles of law.

29. The topic of succession of States in respect of State responsibility was of great interest to his delegation, which welcomed its inclusion in the Commission's programme of work. Croatia had recently been a party to a dispute before the International Court of Justice that had hinged on the very questions involved. While the Court had found that the criminal acts committed did not constitute genocide in that there had been no specific intent (*dolus specialis*) to commit genocide, it had not ruled on the questions of the attributability of individual criminal acts to States and succession of State responsibility in specific circumstances, which were at the very heart of the topic. His delegation therefore supported efforts to clarify the important issue of the questionability of general non-succession of State responsibility in modern international law; such clarification could fill gaps in international law by developing new norms, bearing in mind their subsidiary nature.

30. **Ms. Rolón Candia** (Paraguay) said that Paraguay was a party to a number of universal human rights instruments, including the Rome Statute of the International Criminal Court, in accordance with its firm commitment to the multilateral advancement of international human rights protection and the fight against impunity for the most serious crimes of concern to the international community, namely, crimes against humanity, genocide and war crimes. In that spirit, her country had approved a bill to ensure the effective implementation of the Rome Statute by applying the Court's jurisdiction over such crimes at the national level.

31. Her delegation supported the idea of transforming the draft articles on crimes against humanity into a binding legal instrument; it was essential that they should become part of international law, particularly international humanitarian law, international criminal law and international human rights law, thus underscoring the need to prevent such crimes and punish the perpetrators thereof, and promote inter-State cooperation in combating them. Since those crimes could be committed even in the absence of an armed conflict and without the specific intent required to establish the existence of genocide, mechanisms for such inter-State cooperation needed to be provided for in the draft articles, which were compatible with the Rome Statute and would contribute to the implementation of the principle of complementarity enshrined therein.

32. **Mr. Tupouniua** (Tonga) said that among several emerging legal issues and topics of international law that merited study, the legal implications of climate change on the ocean warranted careful consideration by the Commission. Climate change impacts were felt all over the world, both on land and in the ocean, where they included sea-level rise, ocean acidification and coral bleaching and were factors contributing to its deterioration. They were new and for that reason were ignored or inadequately addressed under existing international law. Such gaps in the law needed to be remedied. The potential impacts of climate change on States' rights to the ocean and its resources, maritime boundaries, coastal conservation measures, sovereignty, migration and various ocean-related activities were but a few of those to be considered. His delegation looked to the Commission to play a leading role in exploring various approaches to the topic and to produce recommendations or guidelines for its possible future treatment.

33. **Mr. Bagherpour Ardekani** (Islamic Republic of Iran) said that the Commission's work on the topic of crimes against humanity should be consistent with the relevant provisions of the Rome Statute of the International Criminal Court. In that connection, his delegation welcomed the fact that paragraphs 1 to 3 of draft article 3 (Definition of crimes against humanity) were modelled on article 7 of the Rome Statute. However, since other crimes under the Court's jurisdiction did not fall within the scope of the draft articles, the reference in paragraph 1 (h) of the draft article to "the crime of genocide or war crimes" as a replacement for the expression "any crime within the jurisdiction of the Court" used in article 7, paragraph 1 (h) of the Rome Statute should be removed. Furthermore, paragraph 4, which stated that the draft article was without prejudice to any broader definition provided for in any international instrument or national law, was not based on article 7 of the Rome Statute, and his delegation had serious doubts as to whether it served the purpose of the topic, namely the harmonization of national laws. It might also pave the way for the further fragmentation of international law.

34. Codification of international law in a given area should be based on a thorough review of State practice. In the Special Rapporteur's report (A/CN.4/704) and the

draft articles, significant attention was paid to the practice of international judicial organs, but not to the general practice and *opinio juris* of States, which were the main addressees of the draft articles. For instance, the provisions on criminalization under national law, extradition, mutual legal assistance, and protection of the rights and interests of victims and witnesses, and the omission in draft article 2 (General obligation) of the traditional qualifier "in time of war", which would have affirmed the notion that a nexus to armed conflict was required in respect of crimes against humanity, represented deviations from the rules of customary international law and failed to take account of State practice.

35. The widespread adherence of States to the United Nations Convention against Corruption hardly justified the Special Rapporteur's approach of modelling the draft articles largely on that Convention, since the two texts dealt with two distinct sets of crimes that were very different in nature. Draft article 2, which stated that crimes against humanity were "crimes under international law", was somewhat confusing, because the expression "crimes under international law" could include crimes such as corruption and transnational organized crime that had treaty-based definitions, whereas the definition of crimes against humanity was based on customary law. Furthermore, that formulation was not consistent with the fourth paragraph of the preamble to the draft articles, which stated that crimes against humanity were among "the most serious crimes of concern to the international community as a whole", an expression taken from the Rome Statute.

36. The peremptory norms of general international law (*jus cogens*), referred to in the third paragraph of the preamble, were the subject of ongoing discussion in the Commission, and the practice and *opinio juris* of States concerning their identification and effects remained unclear in some respects. Thus the question of the *jus cogens* character of the prohibition of crimes against humanity merited further study.

37. The obligation of States to prevent crimes against humanity, as currently set out in draft article 4 (Obligation of prevention), was too broad and left national systems very little freedom in administrative and procedural matters. More importantly, paragraph 1 (b) of the draft article provided that States were under an obligation to cooperate with relevant intergovernmental organizations and, as appropriate, other organizations. In its commentary, the Commission stated that "other organizations" included non-governmental organizations but did not mention the legal basis, if any, of such an obligation, or the practice of States in that respect. The issue should therefore be reconsidered.

38. With regard to draft article 13 (Extradition), his delegation did not support the exclusion of the dual criminality requirement, since it was a well-established principle in extradition cases that was upheld by numerous international instruments, notably the Rome Statute. Furthermore, with regard to paragraph 9 of the draft article, which referred to grounds for refusing extradition, the expression "membership of a particular social group" should be deleted, since it was open to a wide range of interpretations that would impede cooperation for the purposes of extradition.

39. No rationale had been specified for the idea of establishing a mechanism for monitoring a State's implementation of and compliance with a future convention on crimes against humanity; no such mechanism was provided for in conventions dealing with genocide and war crimes. Responsibility for determining whether acts amounted to crimes against humanity should rest with competent international judicial organs.

40. His delegation agreed with the Special Rapporteur's view that the draft articles should not address the issue of amnesties under national law. The prohibition of amnesties was not established as a rule of customary international law; nor was it reflected in international treaties. Furthermore, sometimes an amnesty was a practical solution that served the purposes of national reconciliation, stability and peace, particularly in post-conflict situations.

41. With regard to draft article 6 [5] (Criminalization under national law), his delegation was reluctant to support the provision in paragraph 8 that States should establish the liability of legal persons for crimes against humanity, since it went significantly beyond the well-established principle of individual criminal responsibility set out in article 25 of the Rome Statute. Moreover, the nature and elements of crimes against humanity differed substantially from those of the other acts referred to as a basis for the provision. The issue was better left to States to address in their national laws and decisions.

42. His delegation was not convinced that a new convention on crimes against humanity was needed. The problem of the inadequate implementation of existing instruments on the subject would not be resolved by codifying the same provisions in a new instrument or by expanding the concept of crimes against humanity and changing its nature and scope of application. His delegation therefore recommended that the Commission should opt for draft guidelines as the final form of its work on the topic.

43. With regard to the provisional application of treaties, the principle of consent that prevailed in international law, particularly in the law of treaties, was at the core of the topic. Draft guidelines were an appropriate form for the Commission's work on the topic, as they were flexible and non-binding. The provisional application of a treaty should not serve as a basis for restricting States' rights with regard to their future conduct in relation to that treaty. The exceptional nature of the provisional application of treaties and the variety of State practice resulting from different domestic laws in that area meant that a balanced approach was required. The rarity of domestic laws that provided for the provisional application of treaties should be taken into consideration.

44. His delegation had doubts about the inclusion in draft guideline 4 (Form of agreement) of resolutions adopted by international organizations as means or arrangements for agreeing to the provisional application of treaties, since most such resolutions were non-binding, and those that were adopted by vote did not reflect the consent of all States. Such a provision could jeopardize the well-established international law of treaties.

45. The draft guidelines and the commentaries thereto did not address certain problematic issues, including the formulation of reservations in the case of provisional application. Under article 19 of the Vienna Convention on the Law of Treaties, a State was entitled to formulate a reservation when signing, ratifying, accepting, approving or acceding to a treaty. Thus a State's provisional application of a treaty did not preclude its right to enter reservations to that treaty. Another matter not addressed was the variations in scope and subject matter among different treaties. For example, a distinction should be drawn between multilateral treaties and bilateral treaties: the latter could not, by their nature, be provisionally applied. The legal regime and modalities for the termination and suspension of provisional application also required further clarification. It was doubtful whether all the elements of the Vienna Convention could be applied by way of analogy to the provisional application of treaties. A comprehensive study of the Vienna Convention should therefore be carried out in order to determine which of its provisions applied to provisional application.

46. His delegation was not convinced that State practice supported the full application of the rules of international responsibility to the breach of an obligation arising from a treaty applied provisionally, irrespective of the content of the provisions applied. Since the raison d'être of the legal institution of the provisional application of treaties was to ensure wider acceptance of the treaty in question by States in respect of which the treaty had not yet entered into force, a stricter interpretation of the rules of international responsibility in such cases could make some signatory States reluctant to have recourse to provisional application; such States might prefer to apply the treaty provisionally in good faith and on a voluntary basis.

47. Noting that the Commission had decided to include the topic of evidence before international courts and tribunals in its long-term programme of work, he pointed out that one of the Commission's criteria for the inclusion of new topics was that they should be at a sufficiently advanced stage in terms of State practice to permit progressive development and codification. It was unclear what "State practice" meant in the context of evidence before international courts and tribunals, unless the evolving jurisprudence of such courts and tribunals was considered to reflect State practice. It was also not clear that standardizing the rules of evidence before different courts with diverse structures and areas of jurisdiction would be useful; it might even lead to further fragmentation. Every international or regional court had its own rules of procedure and functions based on its jurisdiction, competence and composition, and in each case the task of the judge was to come to a firm conclusion based on an examination of the evidence. Lastly, the most likely outcome of the Commission's work on the proposed topic was a guide for international courts and tribunals, which would be of little or no relevance to States and State practice.

48. **Ms. Hallum** (New Zealand) said that the Commission's work on the topic of crimes against humanity presented an opportunity to fill a gap in the international legal framework: the draft articles on the topic complemented the Rome Statute in that they focused on the promotion of inter-State cooperation and the adoption of national laws. Care was needed in order to ensure that any new obligations reinforced existing international law mechanisms, including by enhancing the complementarity regime of the Rome Statute. New Zealand supported the strengthening of cooperation in the prosecution of serious international crimes with a view to ending impunity for such crimes and preventing their recurrence. The country's current legal framework enabled it to receive and respond to extradition requests and to provide legal assistance on a reciprocal basis in such cases. Her delegation noted with interest the inclusion of a new draft article 5 (Non-refoulement), which extended the principle of non-refoulement to persons in respect of whom there were substantial grounds for believing that they might be subjected to a crime against humanity.

49. New Zealand strongly supported the taking by States of measures to ensure that crimes against humanity constituted offences under their national laws and measures to establish national jurisdiction over such offences. It also welcomed the obligation to protect victims of crimes against humanity and uphold their rights, as set out in draft article 12 (Victims, witnesses and others), and the fact that paragraph 3 of the draft article afforded States discretion to determine the appropriate form of reparation: in the aftermath of the commission of crimes against humanity, various scenarios could arise that required reparations to be tailored to specific circumstances.

50. On the topic of provisional application of treaties, New Zealand supported the draft guidelines provisionally adopted by the Commission but had some concerns about the current formulation of draft guideline 6 (Legal effects of provisional application), which provided that the provisional application of a treaty produced the same legal effects as if the treaty were in force, unless the treaty provided otherwise. That would undermine entry-into-force provisions, which were crucial to upholding parliamentary democracy and the rule of law in common-law systems.

51. Care must be taken to avoid interpreting the draft guidelines in such a way as to restrict States' ability to amend, suspend or terminate a treaty that was being provisionally applied, as established in existing international treaty law. The intention of the parties should determine whether the provisional application of a treaty produced the same legal effects as when the treaty was in force. Parties to a treaty should ensure that their intention was clear by addressing the issue in the text of the treaty or by recording their intention in another agreement.

52. It was clear from the comments made by other delegations that there was a wide variety of views on the issues at hand, no doubt arising from the varying constitutional requirements and practices of States. For that reason, her delegation joined others that had recommended that the Commission should conduct a comparative study of State practice with regard to the provisional application of treaties.

53. Her delegation supported the inclusion in the Commission's long-term programme of work of the topics "General principles of law" and "Evidence before international courts and tribunals". The Commission's work on the first of those topics would complement its previous work on the law of treaties and customary international law, and would itself be complemented by the Commission's analysis of the nature, scope and functions of general principles of international law under the topic "Peremptory norms of general international law (*jus cogens*)". The second new topic also had some merit, since the increasing number of factually complex international disputes meant that clear rules of evidence were important in order to establish facts and uphold the rule of law at the international level. However, the issues to be considered required further elaboration before work on the topic could proceed.

54. **Mr. Metelitsa** (Belarus), noting that his delegation's full statement would be made available on the PaperSmart portal and referring to the draft articles on crimes against humanity, said that draft article 1 (Scope) should include a reference to protection of victims, which would complement the focus on prevention and prosecution in the draft articles. In that connection, his delegation agreed with the representative of Spain that rehabilitation of victims should be accorded due importance in draft article 12 (Victims, witnesses and others). Draft article 5 (Non-refoulement), paragraph 1, stated that a person should not be returned to a State where he or she would be in danger of being subjected to a crime against humanity, whereas paragraph 2 referred to mass violations of human rights. For the sake of consistency, paragraph 2 should refer to the acts that were considered crimes against humanity under draft article 3 (Definition of crimes against humanity). Draft article 6 [5] (Criminalization under national law), paragraph 2, should be amended to reflect the fact that, under the criminal law of a number of countries, including Belarus, the three stages of commission of a crime were preparation, attempt and accomplishment. Lastly, in draft article 7 [6] (Establishment of national jurisdiction), the words "without prejudice to the applicable rules of international law" should be added to paragraph 3 so as to allay any concern about the undue exercise of extraterritorial jurisdiction.

55. Turning to the topic "Provisional application of treaties", he proposed that examples of other rules of international law applicable to provisional application, besides the Vienna Convention on the Law of Treaties of 1969 and the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations of 1986, should be added to paragraph (3) of the commentary to draft guideline 2 (Purpose). Draft guideline 4 (Form of agreement) should be amended to indicate that a declaration by a State through which the provisional application of a treaty was agreed must be in written form. The procedure for amending a provisionally applied treaty should be addressed in draft guideline 6 (Legal effects of provisional application) or the

commentary thereto; such an addition would greatly enhance the practical value of the draft guidelines. An indicative list of laws of fundamental importance, including national constitutions and the statutes of international organizations, should be added to draft guideline 10 (Provisions of internal law of States or rules of international organizations regarding competence to agree on the provisional application of treaties).

56. Draft guideline 11 (Agreement to provisional application with limitations deriving from internal law of States or rules of international organizations) should be clarified. National law could be used to limit provisional application only from a procedural point of view, not from a substantive point of view. It was therefore inappropriate to refer to article 45 of the Energy Charter Treaty in the commentary to the draft guideline.

57. Turning to the new topics included in the Commission's long-term programme of work, he said that its work on the topic "General principles of law" should be consistent with its work on the topics of *jus cogens* and the identification of customary international law. He noted the doubts expressed by some delegations about whether the topic "Evidence before international courts and tribunals" was appropriate for the Commission's consideration, particularly since each such court or tribunal established its own rules of evidence, which suggested that no general rules existed. However, the Commission could carry out useful work that would help reduce States' uncertainty with regard to evidence before international courts and tribunals. It could also consider the specific nature of evidence in different branches of law, such as international criminal law, international arbitration and investment disputes.

58. **Mr. Lippwe** (Federated States of Micronesia), referring to the topic "Provisional application of treaties", said that his delegation took note of the draft guidelines provisionally adopted by the Commission as well as the Commission's assertion in its general commentary that the draft guidelines reflected existing rules of international law. His delegation appreciated the relative brevity of the draft guidelines and the fact that the Commission had not made them overly prescriptive, thereby allowing States the flexibility to set aside, by mutual agreement, the normal practice of provisional application. From the outset of the Commission's consideration of the topic, Micronesia had stressed the importance of provisional application as a means to an end, or as a mechanism for fostering the speedy application of treaties. The draft guidelines rightfully encouraged that approach, as reflected in the general commentary.

59. His delegation noted with appreciation draft guideline 3 (General rule). As the Commission indicated in its commentary to the draft guideline, a State or international organization might provisionally apply a treaty, or a part of a treaty that had not entered into force for that particular State or international organization even if the treaty itself had entered into force. Having previously raised that matter as one of importance for the Commission to consider, his delegation appreciated the Commission's work in response.

60. Under draft guideline 6 (Legal effects of provisional application), when a State or international organization provisionally applied a treaty, that provisional application produced the same legal effects as if the treaty had been in force between the State or international organization and the other party or parties to the treaty. The phrase "in force" carried the same meaning in draft guideline 6 as it did in draft guideline 3, namely that when a State or international organization provisionally applied a treaty that had entered into force but that had not entered into force for that State or international organization, that provisional application produced the same legal effects as if that treaty had entered into force for that State or international organization. Such legal effects necessarily included rights as well as obligations for the party provisionally applying the treaty.

61. His delegation took note of draft guideline 7 (Responsibility for breach), which indicated that when a State or international organization provisionally applied a treaty or part of a treaty and subsequently breached one of its obligations arising from that provisional application, that State or international organization incurred international responsibility for that breach. The principle of provisional application should not be used to enjoy certain rights under a treaty while avoiding the obligations that came with those rights.

62. His delegation also took note of the careful balance struck in draft guideline 11 (Agreement to provisional application with limitations deriving from internal law of States or rules of international organizations) and the commentary thereto, where the Commission acknowledged that while a treaty might allow for its provisional application in a manner that was without prejudice to the internal laws or rules of a potential party to the treaty, such qualifications on the provisional application of the treaty must be sufficiently clear to all relevant parties from the outset. Such clarity would help to avoid the undesirable situation of a State or international organization invoking theretofore undisclosed internal laws or rules in an effort to offset its failure to discharge its obligations under a treaty it provisionally applied or to invalidate the provisional application altogether. It was possible, however, for the court of a State provisionally applying a treaty to render a

decision invalidating that State's ability to fulfil its obligations arising from its provisional application of the treaty, if not to invalidate the provisional application outright. In that situation, it was unclear whether the court's decision would be considered an "internal law" for the purposes of the draft guidelines. Nonetheless, draft guideline 11 provided a possible way to account for such a decision, in that the potential parties to a treaty could allow for its provisional application to be subject to internal judicial review. Draft guideline 10 might offer another option, provided the court held that the State's provisional application of the treaty was a manifest violation of the internal law of the State regarding its competence to provisionally apply the treaty and concerned a matter of fundamental importance for the State.

63. Micronesia proposed that the topic of the legal implications of sea-level rise should be included in the Commission's long-term programme of work. Sea-level rise affected virtually all States; it had the potential to shrink the maritime entitlements of coastal States due to receding coastal baselines, which in turn would affect food security, national defence and other important interests of those States as well as those of landlocked States that depended on resources extracted from those maritime areas. Receding baselines could also affect the drawing and permanence of maritime boundaries, which had implications for international relations as well as the orderly use of the oceans by public and private actors in the international community.

64. Sea-level rise also posed an existential threat to island States, particularly those with low-lying islands and atolls like Micronesia and its many fellow island States in the Pacific. It had already been blamed for the disappearance of a number of such islands in the Pacific. The implications of that phenomenon for the ability of a State to survive as a State were clear: when a State lost its geographical territory, it could not be considered a State under international law. That was not merely an academic argument; for Micronesia and other small island developing States, it struck at the heart of their ability to participate as full members of the international community.

65. Although there appeared to be no treaties or other international instruments that directly addressed the legal implications of sea-level rise, the Commission could conduct a fruitful study of those implications by examining a large number of international instruments with relevance to the topic, including major multilateral instruments widely accepted by the international community, such as the United Nations Convention on the Law of the Sea; the United Nations Framework Convention on Climate Change; human rights instruments protecting the rights of indigenous peoples and local communities to enjoy their coastal and maritime areas, particularly for sustenance, shelter, and cultural purposes; and instruments regulating the trade in endangered species in coastal and maritime areas potentially affected by sea-level rise. Mention should also be made of the current negotiations for a new international legally binding instrument to regulate the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, the sizes of which would likely be affected by the receding of coastal baselines due to sea-level rise.

66. Although the topic of the legal implications of sea-level rise might not be the sort of topic traditionally considered by the Commission, the Commission had stated explicitly in the report on the work of its sixty-ninth session (A/72/10) that it should not restrict itself to traditional topics, but could also consider topics that reflected new developments in international law and pressing concerns of the international community as a whole. The topic being proposed by Micronesia fit squarely into that rubric, as sea-level rise had emerged as a natural phenomenon commanding international attention over a number of decades. With that emergence had come an appreciation of the urgent need to address the causes of sea-level rise and account for its implications, including those of a legal nature. In that light, his delegation called on the Commission to include the topic in its long-term programme of work as soon as possible. It would subsequently be submitting a written proposal to that effect, in which it would explain in more detail how the Commission's study of the topic could contribute to the progressive development or codification of relevant aspects of the topic.

67. **Mr. Hirotani** (Japan) said that, despite suggestions that other multilateral forums had assumed a larger role in law-making, the International Law Commission, like the Sixth Committee, continued to have a major role in the development of international law, in accordance with their founding purpose under the mandate given to the General Assembly to encourage the progressive development of international law and its codification. One particular aspect of that role was the clarification of the basic principles of international law in order to avoid its fragmentation, which was accelerated by the continual introduction of new rules in the modern world. The Commission must at the same time study practical topics of real international concern, for which it was essential that States should provide it with adequate guidance. It would therefore be useful for the Committee to devote an entire session to the exploration of new topics to be addressed by the Commission.

68. With regard to one of the two new topics proposed for inclusion in the Commission's long-term programme

of work, “General principles of law”, it was important for the Commission to identify the nature and function of those principles through careful examination of State practice, international and domestic judicial decisions and relevant legal theories. It would be useful to courts, tribunals and practitioners of international law if the Commission could provide an illustrative list of such principles in the course of its work on the topic.

69. As for the other new topic, “Evidence before international courts and tribunals”, objective analysis and evaluation of the rules of evidence of the International Court of Justice and other international tribunals, if conducted in a practical spirit, would indeed contribute to consistent judgments and help to guard against the fragmentation of jurisprudence.

70. Turning to the topic of crimes against humanity, he said that such crimes remained one of the remaining issues in the fight against impunity. However, while a provision on the irrelevance to criminal responsibility of official position had been included in (draft article 6 [5]) of the draft articles adopted by the Commission on first reading, the question of immunity from prosecution and punishment had not been addressed. His delegation would closely follow future discussions on how to maintain consistency between those draft provisions and the regime of the International Criminal Court.

71. **Ms. O’Sullivan** (Ireland), referring to the draft articles on crimes against humanity adopted by the Commission on first reading, said that, in order to guard against any potential fragmentation in that area of law, it was important for the Commission to remain in communication with the convening States of the preparatory conference held the previous week in the Netherlands on the negotiation of a multilateral treaty for mutual legal assistance and extradition for domestic prosecution of the most serious international crimes.

72. Her delegation noted with interest the proposed inclusion in the Commission’s long-term programme of work of the topics of general principles of law and evidence before international courts and tribunals, while acknowledging the need to ensure that it had sufficient time to consider each topic fully, and that the Sixth Committee in turn had sufficient time to deliberate on it. Her delegation supported the proposed theme for the commemorative events to be held during the Commission’s seventieth session, “70 years of the International Law Commission — Drawing a balance for the future”. Those events would offer a unique opportunity to contemplate the Commission’s role in the future development of international law through an exchange with States on possible future topics.

73. **Ms. Piiskop** (Estonia) said that, while there was still no treaty on crimes against humanity that national laws, national judicial bodies and inter-State cooperation could build on in the fight against impunity, such crimes continued to be committed. The draft articles on that topic, as adopted by the Commission on first reading, were an important step in that direction and must serve the common goal of preventing such crimes and punishing their perpetrators. The Commission’s work to clarify the components of those crimes was a crucial element in that endeavour. The draft articles were appropriately formulated and well balanced, and the inclusion of a draft article (draft article 12) setting out States’ obligations towards victims, witnesses and others was welcome. However, in order for the rights of victims of crimes against humanity to be fully recognized, it was important to include a definition of the term “victim”.

74. Turning to the topic of provisional application of treaties, she said that her delegation would appreciate further development of the commentaries to provide more clarity on the legal effects and scope of provisional application. While not legally binding, the draft guidelines and the commentaries thereto should aim to reflect as thoroughly as possible the existing rules of international law. Moreover, it should not be overlooked that the provisional application of a treaty was decided upon ultimately by States, in accordance with their internal laws. Her delegation therefore looked forward to the analysis of the information contained in the memorandum on State practice (A/CN.4/707) and hoped that it would be supplemented by a comparative study of domestic laws and practice.

75. The proposed inclusion in the Commission’s long-term programme of work of the topic of general principles of law was welcomed by her delegation, which would appreciate clarification by the Commission as to their nature, scope and method of identification. As in the case of the topics “Law of treaties” and “Identification of customary international law”, the work could give a comprehensive insight into the three principal sources of international law. Its outcome should take the form of a set of draft conclusions with commentaries and not aim to be a catalogue of existing general principles of law.

76. **Mr. Sunel** (Turkey) said that the legal vacuum created by the absence of any global convention to prevent crimes against humanity and punish their perpetrators, as well as promote inter-State cooperation in that regard needed to be properly addressed. Turkey, for its part, had already criminalized crimes against humanity in its national law and supported international efforts to tackle such crimes. Since, by their very definition, crimes against humanity involved State

officials, they could, however, be exploited for political reasons. That risk was particularly embedded in draft article 7 (Establishment of national jurisdiction) of the draft articles adopted by the Commission on first reading, which encouraged States to exercise extraterritorial jurisdiction; that provision should therefore be further analysed and prudently drafted.

77. His delegation continued to have misgivings about the concept of *jus cogens*, as incorporated in the third preambular paragraph of the draft articles and explained in paragraph (4) of the commentary to the preamble. As used there, it did not coincide with the international community's common understanding of *jus cogens* in general or, in particular, with the Commission's ongoing work on the topic of peremptory norms. That preambular paragraph should be reviewed or indeed deleted.

78. Turning to draft article 3 (Definition of crimes against humanity), he said that key features of the definition of crimes against humanity contained therein, namely, that they should form part of a "widespread attack" or a "systematic attack" or an "attack directed against any civilian population" or be in furtherance of an "organizational policy to commit such an attack", as well as the criteria governing responsibility of military commanders and superiors contained in draft article 6 [5] (Criminalization under national law), were ambiguous and one of them could be regarded as synonymous with another, even by judicial authorities. Moreover, the case law of the International Criminal Court was evolving in that regard. Further discussion was therefore desirable on the fundamental issues, prior to consideration of other, mainly procedural matters, such as the provisions on mutual legal assistance.

79. In keeping with its position during the *travaux préparatoires* of the Rome Statute, his delegation, out of a concern about over-inclusiveness, maintained that "widespread" and "systematic" should be conjunctive and not disjunctive conditions. The addition of "[attack] directed against any civilian population", as in the Rome Statute, still failed to provide the necessary clarity. It might therefore be preferable for the two requirements of "widespread" and "systematic" to be accepted as two distinct elements, both of which must be met, rather than as alternatives. It had been argued that a major deviation from the definition in the Rome Statute might create a dilemma for the State parties, but if the concerns of non-State parties were disregarded, the former might embrace the new rules while the latter might opt out of them. Again, further discussion was required.

80. Paragraph 1 (h) of draft article 3 (Definition of crimes against humanity) had been taken verbatim from article 7 of the Rome Statute, but while that Statute had its own definition of genocide (article 6) and war crimes (article 8), the draft articles contained no definition of either, nor any explanation as to their meaning. The Commission should consider providing such a definition or referring in the draft articles to other legal sources having a bearing on the matter.

81. The incorporation into paragraph 8 of draft article 6 [5] (Criminalization under national law) of a modern and increasingly widespread approach to the possible establishment of liability of legal entities for criminal offences, which was also reflected in the national law of Turkey, was welcome, as was the flexibility provided for in that draft article. In paragraph 3 of draft article 12 (Victims, witnesses and others), his delegation was again pleased to note the flexibility offered by the words "as appropriate", but still considered further clarification necessary. Since, lastly, according to the general commentary, the drafting of final clauses on reservations and entry into force would depend on whether States decided to use the draft articles as a basis for a convention, it would be desirable for them to include a non-retroactivity clause.

82. Turning to the topic of provisional application of treaties, he said that, as in practice the ways that the terms relating to provisional application had been used had led to confusion, model clauses, supplementing the draft guidelines, could also contribute to the consistent use of terms. The draft guidelines could be a useful tool, but it was still up to individual States to determine whether or not their legal systems allowed provisional application. Some, including Turkey, were not legally able to provisionally apply treaties owing to constitutional provisions.

83. On the topic of evidence before international courts and tribunals, recommended for inclusion in the Commission's long-term programme of work, he noted the differences between all courts and tribunals in terms of jurisdiction and subject matter, and hence in their rules concerning evidence in particular, drawn up in response to the specific needs and circumstances of the States involved. For that reason, it did not seem feasible to attempt to determine ideal rules; ultimately, the content of the specific treaty establishing an international court or tribunal would be shaped by specific needs and circumstances. The topic might therefore not be useful in avoiding the fragmentation of procedural law. The other new topic proposed, "General principles of law", was, however, worthy of inclusion.

The meeting rose at 1.05 p.m.