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## Sixth Committee

### Summary record of the 5th meeting

Held at Headquarters, New York, on Wednesday, 14 October 2020, at 10 a.m.

*Chair:* Ms. Weiss Ma'udi (Vice-Chair) ..... (Israel)

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*In the absence of Mr. Skoknic Tapia (Chile), Ms. Weiss Ma'udi (Israel), Vice-Chair, took the Chair.*

*The meeting was called to order at 10 a.m.*

**Agenda item 77: Criminal accountability of United Nations officials and experts on mission (continued)**  
(A/75/217 and A/75/228)

1. **Ms. Philips-Umezurike** (Nigeria) said that her Government had sent special teams to sensitize Nigerian troops serving in peacekeeping missions regarding the implications of any untoward actions for themselves, Nigeria and the United Nations. In general, more targeted orientation and awareness campaigns were needed concerning the risks of irresponsible behaviour. Nigeria supported the referral of cases of alleged criminal conduct to the State of nationality of the official or expert concerned, for investigation and possible prosecution. States should report back to the Organization on the steps taken and adopt the necessary measures to prosecute their nationals for any offence committed while on mission, including by adapting their legislation to guarantee that jurisdiction could be exercised. Her Government was providing recreational facilities for Nigerian peacekeepers serving on missions abroad to boost morale and had approved a proposal to grant them regular leave to visit their families.

2. Victims of sexual exploitation and abuse should not be stigmatized; rather, they should be given the necessary care and support. Her Government had contributed to the United Nations trust fund in support of victims of sexual exploitation and abuse and called on other Member States to do the same. It was necessary to establish a working environment that was conducive to the prevention of sexual exploitation and abuse by increasing the participation of women, improving the welfare of personnel, investigating and prosecuting suspects in a timely manner and providing training programmes. Exemplary behaviour should be rewarded in order to encourage others, while bad behaviour should be punished without hesitation.

3. **Mr. Taufan** (Indonesia) said that service in a United Nations mission was a noble duty and should never be used to excuse or justify a wrongful act or crime. United Nations officials and experts on mission must adhere to the highest standards of conduct. If they committed violations, the law must take its course. In order to avoid gaps in jurisdiction or enforcement, Member States should equip themselves with the necessary legal tools, such as extradition and mutual legal assistance arrangements, to cooperate with other States on matters of criminal justice. The Indonesian Penal Code allowed for the establishment of criminal

jurisdiction over Indonesian nationals wherever they committed crimes. Furthermore, Indonesia cooperated with other States on extradition and mutual legal assistance on the basis of bilateral, regional and multilateral agreements or, in the absence of such agreements, on a case-by-case basis and in accordance with the principle of reciprocity.

4. Over the years, Indonesia had deployed more than 45,000 personnel to United Nations peacekeeping operations; currently, more than 2,800 Indonesian peacekeepers, including 158 women, were serving in a total of eight missions. They were equipped with relevant training materials, including on community engagement, human rights and prevention of sexual exploitation and abuse. The country's peacekeeping training centre provided training not only to Indonesian personnel but also to participants from other countries. Indonesia advocated stronger partnerships to improve training and capacity-building.

5. **Mr. Li Kai** (China) said that, in line with the policy of zero tolerance of crimes committed by United Nations officials and experts on mission, the Organization and its Member States should continue to take all measures necessary to crack down on such crimes and punish the perpetrators. Stronger preventive measures, such as predeployment and on-the-job training and supervision, were also needed to enhance professional ethics and standards of conduct. There should be greater cooperation between host countries and the countries of origin of officials and experts on mission, in particular with regard to extradition and legal assistance, and between Member States and the United Nations on the sharing of intelligence and information.

6. Under Chinese criminal law, China had jurisdiction over crimes committed by Chinese nationals outside its territory, including those serving as United Nations officials or experts on mission, and over acts established as crimes in international treaties to which it was a party, within the scope of its treaty obligations. China was a party to more than 20 multilateral conventions concerning judicial cooperation and had also concluded 169 bilateral treaties on the subject. Concerning countries with which it did not have bilateral or multilateral treaty relations, China cooperated on extradition and judicial assistance on a case-by-case basis and in accordance with the principle of reciprocity.

7. **Ms. Nguyen Quyen Thi Hong** (Viet Nam) said that United Nations peacekeepers and other personnel, while enjoying immunity in accordance with international law, must respect the laws of the host State and of their

country of nationality. Her Government supported the policy of zero tolerance for all criminal activities, including sexual exploitation and abuse, committed by United Nations officials and experts on mission. In order to ensure accountability, jurisdictional gaps must be addressed. States of nationality should take the primary responsibility for exercising jurisdiction over serious crimes committed by their nationals when serving as United Nations officials.

8. The inclusion in the Secretary-General's report (A/75/217) of the updated table on the nature of allegations and information received from States on all referrals was an important step towards ensuring the coordination of policies and procedures relating to the reporting, investigation, referral and follow-up of credible allegations of crimes. All States should take the necessary steps, including the adoption of national laws and the enhancement of international cooperation, to ensure criminal accountability. Viet Nam stood ready to cooperate with other States and the United Nations with regard to information-sharing, investigation and prosecution, in accordance with its national laws and relevant international commitments. No less important were preventive measures, such as raising awareness of the zero-tolerance policy and of the United Nations standards of conduct. In that connection, Viet Nam fully supported the continued efforts of the Secretary-General to provide predeployment, induction and refresher training for United Nations personnel.

9. **Ms. de Souza Schmitz** (Brazil) said that, for decades, United Nations officials and experts had been diligently performing their duties and striving to fulfil the purposes of the Organization in accordance with the Charter. Yet every crime committed by United Nations officials or experts on mission tainted the credibility of all other workers of the Organization and compromised their ability to cooperate with Governments and to interact with the population in the field. Her delegation welcomed the significant progress that had been made in addressing credible allegations of misconduct that might have been committed by United Nations officials or experts on mission. However, her delegation also endorsed the Secretary-General's call to address practical problems in the implementation of policies relating to the reporting, investigation, referral and follow-up of credible allegations of crimes.

10. All Member States should strive to overcome remaining legal challenges to asserting jurisdiction over crimes committed by their nationals when serving as United Nations officials or experts on mission. Member States whose domestic law did not envisage extraterritorial jurisdiction should put in place mechanisms to promote accountability for such crimes.

11. The instances of sexual violence, harassment, exploitation and abuse listed in the report of the Secretary-General (A/75/217) gave cause for serious concern. Her delegation reiterated its support for the zero-tolerance policy in cases of sexual exploitation, abuse and other criminal conduct, while stressing the need for strict observance of the rule of law. Preventive and repressive measures should be combined to forestall such crimes, and the victims must receive adequate support and protection.

12. Brazil was proud of the overall track record of its peacekeepers over more than 70 years serving under the United Nations flag and had strict protocols in place to deal with any possible misconduct. It reiterated its steadfast support for measures aimed at fighting impunity for serious crimes, including those committed by United Nations officials and experts on mission. Ensuring that credible allegations were properly investigated, perpetrators brought to justice and redress made available to victims was key to upholding the values that inspired the work of the United Nations.

13. **Ms. González López** (El Salvador) said that United Nations officials and experts made a significant contribution to the maintenance of international peace and security and to ensuring respect for human rights and fundamental freedoms. As a troop- and police-contributing country, El Salvador considered it essential to ensure the highest level of ethical conduct among personnel participating in peacekeeping missions and to take steps to ensure that applicable national and international laws were upheld. Before deployment, Salvadoran personnel were trained in human rights, international humanitarian law and United Nations codes of conduct. Such training continued to be provided despite the coronavirus disease (COVID-19) pandemic.

14. The immunities enjoyed by United Nations officials and experts on mission did not give them the right to violate the law of the host State. Her Government reaffirmed its commitment to cooperate with the host State in the investigation of offences or to use legal and procedural mechanisms to ensure that the personnel involved were prosecuted and punished in accordance with the national laws of El Salvador. It also stood ready to carry out prompt investigations of all misconduct committed by United Nations officials and experts in El Salvador, in compliance with the relevant rules. The laws of El Salvador provided that, if an offence took place wholly or partly outside the national territory or involved individuals connected with international organizations, prosecutors could form a joint investigation team with foreign or international entities.

15. As to the report of the Group of Legal Experts on ensuring the accountability of United Nations staff and experts on mission with respect to criminal acts committed in peacekeeping operations (see [A/60/980](#)), her delegation believed that the standardization of proceedings in criminal matters would be a complicated undertaking, particularly given that each State was entitled to exercise its own sovereignty. The draft convention proposed by the Group could provide a means to establish a standard for determining the jurisdiction of each and every State party and to fill gaps in national laws. El Salvador recognized the importance of fulfilling the duty to prevent, investigate and exercise jurisdiction over crimes committed by officials and experts on mission in order to preserve the image, credibility, impartiality and integrity of the United Nations.

16. **Ms. Lahmiri** (Morocco) said that her delegation fully supported the United Nations zero-tolerance policy on sexual exploitation and abuse, because a comprehensive, system-wide approach was needed in order to combat such acts committed by uniformed personnel, civilian staff and experts on mission, and to protect the credibility of the Organization and the trust placed in it. All United Nations system organizations should be supported in applying policies and procedures aimed at countering such acts.

17. In order to combat impunity, it was necessary to ensure cooperation and the exchange of information, in particular between the Organization and States whose nationals allegedly committed serious criminal offences while serving as United Nations officials or experts on mission. Any criminal offence committed by a United Nations official or expert on mission should be subject to thorough investigation and prosecution in the competent national courts of the State of nationality of the official or expert. Of course, for that to be possible, the United Nations must refer allegations of criminal conduct to the State of nationality in question. Moreover, punitive measures must be combined with preventive measures as part of a multidimensional and holistic approach. United Nations officials and experts must receive proper training, tailored to the local context, with a view to reducing the risk of any behaviour that might constitute an offence. Morocco, a major troop-contributing country, provided its troops with high-quality, comprehensive predeployment training, which included information on sexual exploitation and abuse, human rights and international humanitarian law.

18. Member States must combine efforts to ensure that offences committed by United Nations personnel did not go unpunished, in keeping with the universal principles

of fair trial, including the presumption of innocence, respect for the rights of the defence and victims' right of access to justice. On the other hand, when allegations against United Nations officials or experts were determined by a United Nations administrative investigation to be unfounded, the Organization must take appropriate measures to restore the credibility and reputation of such officials and experts.

19. **Ms. Monica** (Bangladesh) said that, in order to address the practical challenges in implementing the General Assembly resolutions on criminal accountability of United Nations officials and experts on mission, deeper engagement was needed, both between the United Nations and Member States and within the United Nations system itself. United Nations officials and experts deployed on missions bore a solemn responsibility to uphold the principles of the Charter and the image, credibility and integrity of the Organization. Any allegation of wrongdoing levelled against those individuals should be duly investigated in a transparent manner and must be proved beyond reasonable doubt before the imposition of penalties. Member States had a responsibility to cooperate with the Organization when such allegations were made against their nationals.

20. Bangladesh was currently the top troop-contributing country and maintained a policy of zero tolerance of misconduct. The Prime Minister of Bangladesh had been one of the first leaders to join the Secretary-General's circle of leadership on the prevention of and response to sexual exploitation and abuse in United Nations operations and had endorsed the collective statement issued by members of the circle in 2018 to reaffirm their continued personal commitment to support efforts to combat sexual exploitation and abuse across the United Nations system. In respect of its peacekeepers, Bangladesh had introduced both punitive and preventive measures, including predeployment training that covered the unique cultural settings in different field missions, systematic screening and oversight, and effective investigation and prosecution systems. Any allegations of misconduct, including sexual exploitation or abuse, were addressed promptly, and firm disciplinary action was taken against those individuals found guilty.

21. Bangladesh reaffirmed the centrality of the rights and protection of victims and had made a contribution of \$100,000 to the Secretary-General's trust fund in support of victims of sexual exploitation and abuse. It appreciated the work being done in the Democratic Republic of the Congo, Liberia and the Central African Republic, with the support of the trust fund, to rehabilitate victims and restore their dignity.

22. **Mr. Warraich** (Pakistan) said that, while there was no dispute among States concerning the need to ensure that United Nations officials and experts on mission who committed criminal offences were held accountable for their actions, their collective efforts to that end were falling short. As noted by the Secretary-General in his report (A/75/228), there was a need to ensure the coherence and coordination of policies and procedures within the United Nations system. The existing reporting mechanisms needed to be better harmonized in order to provide a more cohesive picture of the challenge at hand and the steps needed to address it.

23. The system for the referral of cases to Member States needed to be strengthened. It was clear from the table contained in the annex to the Secretary-General's report (A/75/217) that, in the vast majority of cases, no response was received from Member States to follow-up requests for information. The allegations in those cases should not be left unaddressed, particularly given that many of them involved grave crimes, including sexual exploitation and abuse. Although action had been taken by Member States in only 13 of 63 cases referred to them in 2019 and 2020, that still represented progress in comparison with previous years. The momentum should be sustained by drawing on best practices and lessons learned with regard to the sharing of information with Member States on wrongful acts allegedly committed by their nationals.

24. Legal gaps, including gaps in jurisdiction, should not be allowed to impede the course of justice. Technical assistance and support could strengthen the capacity of national institutions and criminal justice systems to bring perpetrators to account.

25. Pakistan fully subscribed to the policy of zero tolerance for crimes committed by United Nations officials and experts on mission. Its personnel had always adhered to the highest standards of professionalism, and it remained committed to enforcing strict discipline in cases of misconduct. Pakistan had been one of the first countries to sign the voluntary compact on preventing and addressing sexual exploitation and abuse, and its Prime Minister was a member of the circle of leadership on the prevention of and response to sexual exploitation and abuse in United Nations operations.

#### **Agenda item 81: Crimes against humanity**

26. **The Chair** said that the current item had been included in the agenda of the current session pursuant to General Assembly resolution 74/187, adopted following the Committee's consideration of the report of the

International Law Commission on the work of its seventy-first session (A/74/10), in order to continue to examine the recommendation of the Commission that an international convention be elaborated on the basis of the draft articles on prevention and punishment of crimes against humanity, adopted by the Commission in 2019 and set out in chapter IV of the report. No documentation had been issued under the agenda item.

27. **Mr. Molefe** (South Africa), speaking on behalf of the Group of African States, said that General Assembly resolution 74/187 reflected the collective will to prevent and punish the most serious crimes that affected the entire international community and shocked the conscience of humanity. The Group attached paramount importance to the fight against impunity for all crimes, in particular the most serious ones, and welcomed open discussions aimed at achieving consensus on the establishment of an effective legal framework for that purpose. For such an endeavour to be successful, the international community must act collectively and with respect for the cultural specificities and geographical realities of each State.

28. While the draft articles on prevention and punishment of crimes against humanity might constitute a basis for a future convention, the legitimate concerns of Member States must not be ignored, and there should be no attempt to impose legal theories or definitions derived from international agreements that did not enjoy universal acceptance. Similarly, the Group shared the view that, in order to combat impunity effectively, there was a need not only to establish an effective legal framework that enabled the prosecution of perpetrators, but also to develop and strengthen national capacities for investigation and prosecution. International assistance to developing countries was essential in that regard. An open, inclusive and transparent debate was needed, using all the time necessary for the proper evaluation of the draft articles.

29. **Ms. Popan** (Observer for the European Union), speaking also on behalf of the candidate countries Albania, Montenegro and North Macedonia; the stabilization and association process country Bosnia and Herzegovina; and, in addition, Georgia, the Republic of Moldova and Ukraine, said that crimes against humanity were among the most serious crimes of concern to the international community as a whole. It was the duty of the international community to prevent them and, when they occurred, not to let them go unpunished.

30. The draft articles on prevention and punishment of crimes against humanity reflected the call for further efforts to end impunity for the perpetrators of such crimes and to provide justice for the victims. The

European Union and its member States fully supported the initiative to elaborate a new convention on the basis of the draft articles, which would be a major step towards strengthening the international criminal justice system and closing gaps in international law. It would reinforce the legal framework for the criminalization of crimes against humanity and facilitate the investigation, prosecution and punishment of such crimes at the national level, while also providing a new legal basis for inter-State cooperation. Such a convention should preferably be elaborated by an international conference of plenipotentiaries.

31. The mutual legal assistance initiative, aimed at the adoption of a new convention on international cooperation in the investigation and prosecution of the crime of genocide, crimes against humanity and war crimes, was supported by all the States members of the European Union. It was complementary to the initiative to elaborate a convention on the basis of the draft articles on prevention and punishment of crimes against humanity. The adoption of both of the prospective new instruments would substantially contribute to the fight against impunity at the international level.

32. **Ms. Fielding** (Sweden), speaking on behalf of the Nordic countries (Denmark, Finland, Iceland, Norway and Sweden), said that crimes against humanity were among the most serious crimes under international law, and their prevention and punishment was the concern of the international community as a whole. Despite the fact that such atrocities were clearly prohibited under international law, civilian populations continued to be subjected to them, and perpetrators continued to act with impunity. The international community must redouble its efforts to prevent and punish such heinous crimes.

33. Among the core international crimes, only crimes against humanity lacked a convention. A convention based on the draft articles on prevention and punishment of crimes against humanity adopted by the International Law Commission could be of great practical relevance to the international community. It would strengthen the international criminal justice system and promote inter-State cooperation for the effective investigation of crimes against humanity. It could also contribute to strengthening national laws and criminal jurisdiction. The Committee had the opportunity to continue the important work of the Commission by agreeing on an ambitious resolution providing guidance on the way forward. There was substantial support for the Commission's recommendation that a convention be elaborated on the basis of the draft articles, either by the General Assembly or by an international conference of plenipotentiaries. That process must not be delayed.

34. **Mr. Marschik** (Austria) said that the draft articles on prevention and punishment of crimes against humanity constituted an important contribution to the development of international criminal law. His delegation concurred on the need to ensure accountability for the most terrible crimes and strongly supported the recommendation of the International Law Commission to elaborate a convention on the basis of the draft articles. A diplomatic codification conference would be the most suitable forum for that purpose; his Government was ready to consider hosting such a conference in Vienna. Although it would not be possible to convene such a conference during the COVID-19 pandemic, there was no need to delay discussion on the way forward.

35. Some delegations had previously requested more time for in-depth discussion of important issues, such as the implications of the "without prejudice" clause in draft article 2, paragraph 3; the conditions for the establishment of national jurisdiction for crimes against humanity; and the provision of procedural safeguards against politically motivated prosecutions. That was fully understandable. However, a clear timeline for the future consideration of such issues, without prejudgment of the outcome, was imperative in order to enable progress. An appropriate forum for consultation should be established; his delegation suggested an ad hoc committee for the intersessional period, with a specific mandate and timeline.

36. His delegation urged the Committee to find consensus on the way forward. A new convention on the prevention and punishment of crimes against humanity would be an excellent contribution to the global rebuilding effort after the COVID-19 pandemic.

37. **Mr. Verdier** (Argentina) said that his Government was among those that had submitted comments on the draft articles on prevention and punishment of crimes against humanity after their adoption on first reading by the International Law Commission in 2017. In particular, it had proposed that some of the definitions in the text be adjusted to reflect recent developments in international law and had emphasized the need for a provision obliging States to ensure that their national laws provided for the investigation and prosecution of crimes against humanity by civilian courts. It had also requested the inclusion of a provision prohibiting the granting of amnesties to those responsible for committing crimes against humanity and had pointed out the need for a definition of the term "victim". His delegation was pleased that the many comments submitted by States, international organizations and other entities had been taken into consideration in the second reading of the draft articles and particularly



welcomed the removal of the definition of “gender”, bearing in mind the evolution of international criminal law in the light of international human rights law.

38. Argentina was firmly committed to combating impunity for the most serious international crimes and believed that a legally binding international instrument on the topic would consolidate the legal framework of international criminal law. Argentina was one of the core group of States, together with Belgium, Mongolia, the Netherlands, Senegal and Slovenia, leading the mutual legal assistance initiative to promote the adoption of a new convention on international cooperation in the investigation and prosecution of the crime of genocide, crimes against humanity and war crimes. The initiative was currently supported by 75 States. Following successful preparations, a diplomatic conference had been scheduled for June 2020 but had been postponed owing to the COVID-19 pandemic. The core group aimed to hold the conference as soon as circumstances allowed.

39. **Mr. Khng** (Singapore) said that it was imperative that the international community work together to end impunity for the perpetrators of the most serious crimes of concern to the international community and to provide justice for victims. The draft articles on prevention and punishment of crimes against humanity and the commentaries thereto could help to strengthen accountability by providing useful practical guidance to States. His delegation was among those that had submitted written comments to the International Law Commission on the topic of crimes against humanity. It appreciated the Commission’s efforts to engage Member States but remained of the view that the draft articles could be improved or clarified in the manner proposed in its written comments. For example, it was his delegation’s understanding that draft article 7, paragraph 2, was intended to provide an additional treaty-based jurisdiction in respect of an alleged offender on the basis of presence alone when none of the other connecting factors were present. Therefore, jurisdiction under that paragraph could be exercised only in respect of nationals of States parties. That position should be expressly reflected in the text of the draft article.

40. His delegation had also read with interest the numerous written submissions made by others, which contained many valuable ideas but also demonstrated that there remained some divergence in views. His delegation looked forward to continued discussion of those matters and of the Commission’s recommendation that a convention be elaborated on the basis of the draft articles.

41. **Mr. Altarsha** (Syrian Arab Republic) said that it was important to ensure that mechanisms were in place to prevent and punish crimes against humanity in an equitable and balanced manner. In order to avoid interference in the internal affairs of States, care should be taken to eschew politicization or any practices that went beyond the scope of international law and the Charter of the United Nations. Although Member States agreed on the need to prevent and punish crimes against humanity, including the crime of aggression as defined in the Kampala amendments to the Rome Statute of the International Criminal Court, negotiations on the item had proved difficult, and there was still considerable divergence between the positions of Member States. While recognizing the role of the International Law Commission in codifying international law, his delegation believed that the Sixth Committee was the only forum in which agreement could be reached on the text of any convention on the topic of crimes against humanity. Moreover, the draft articles on prevention and punishment of crimes against humanity still did not allay many of the concerns raised by Member States, particularly with regard to such contentious issues as the International Criminal Court, whose role, prerogatives and contribution to the administration of justice remained controversial. In the light of the exceptional circumstances resulting from the COVID-19 pandemic, and in the interests of transparency, balance and effectiveness, the Committee should, at its current session, adopt a draft resolution on the item with only technical updates. In order to enable Member States to give thorough consideration to the draft articles, the draft resolution should include a paragraph providing that the item would be included in the provisional agenda of the seventy-seventh session of the General Assembly.

42. **Mr. Islam** (Bangladesh) said that, during its war of liberation in 1971, Bangladesh had endured crimes against humanity, genocide and war crimes; more than 3 million people had lost their lives. The International Crimes Tribunal of Bangladesh, established in 2010, had to date handed down 41 verdicts and convicted 12 individuals of crimes against humanity and genocide. Sadly, because of the atrocities unleashed by the Government of Myanmar on its own nationals in Rakhine State, hundreds of thousands had fled to neighbouring countries, including Bangladesh, which was currently hosting more than 1.1 million Rohingya. In order to achieve a sustainable resolution of the crisis, those crimes must be brought to an end and the perpetrators held accountable.

43. The prevention of crimes against humanity, which were among the most serious crimes of concern to the

international community, required national, regional and global efforts. States bore the primary responsibility for protecting their own people from genocide, war crimes, ethnic cleansing and crimes against humanity. If a State failed to fulfil that responsibility, the international community should cooperate to hold the perpetrators accountable. The situation in Rakhine State was a glaring case in point. The Security Council had the primary responsibility under the Charter of the United Nations for restoring and maintaining international peace and security, which were threatened by crimes against humanity. The Council should therefore play its part in preventing such heinous crimes from occurring in any part of the world. The International Criminal Court and other international legal bodies and tribunals could also play a greater role in ensuring justice and ending crimes against humanity.

44. Bangladesh was in favour of elaborating a United Nations convention on the basis of the draft articles on prevention and punishment of crimes against humanity, as recommended by the International Law Commission. The process of negotiating such a convention must be carried out in an inclusive and transparent manner. In order to achieve those aspirations, political will was required. Bangladesh remained committed to doing its part on the world stage to prevent crimes against humanity and sought the support of other Member States in that regard.

45. **Mr. Guerra Sansonetti** (Bolivarian Republic of Venezuela) said that the draft articles on prevention and punishment of crimes against humanity would serve as a good basis for the elaboration of a convention, provided that account was taken of the provisions of the Rome Statute concerning the criminalization and prosecution of crimes against humanity at the national level. His Government was committed to preventing, prosecuting, punishing and eliminating crimes against humanity and taking steps to combat impunity, bearing in mind the need for accountability and justice, in order to ensure the maintenance of international peace and security and preserve and strengthen the rule of law. It therefore condemned the crime of extermination that was being committed with impunity by the Government of the United States of America against the people of his country through the systematic application of unilateral coercive measures, in flagrant violation of the Charter of the United Nations and the rules of international law. It was a policy calculated to inflict maximum pain and suffering on the population, as openly acknowledged by the spokespersons of the United States Government themselves. Against the backdrop of the COVID-19 pandemic, when international solidarity and cooperation were called for, those measures had instead been

intensified. His Government's efforts to fight the disease were being undermined, and effective and timely access to medical equipment and treatment, food, fuel and other goods essential to the well-being and the very survival of the population was being impeded. The measures were cruel and inhumane, imposed by a criminal Government that was attempting to take advantage of a human crisis to advance its petty political agenda. Some 30 million Venezuelans were suffering collective punishment – an ongoing crime against humanity.

46. His delegation called upon all responsible members of the international community to redouble their efforts to prevent impunity for the perpetration of crimes against humanity and to strengthen their cooperation with a view to consolidating the progress made in the sphere of international criminal justice and possibly recognizing the prohibition of such crimes as a peremptory norm of international law. However, that would be possible only when an end was put once and for all to double standards and the politicization of human rights, which were repeatedly used to advance obscure interests, including neocolonial agendas for destabilization aimed at encouraging unconstitutional changes of government, including by force.

47. **Ms. Heusgen** (Germany) said that a new convention elaborated on the basis of the draft articles on prevention and punishment of crimes against humanity, in line with the recommendation of the International Law Commission, would complement treaty law on core crimes and foster inter-State cooperation with regard to the investigation, prosecution and punishment of such crimes. It would provide further impetus for the prevention of atrocity crimes and represent a milestone in the common fight against impunity.

48. Although the concept and definition of crimes against humanity were widely accepted, there was no international convention on such crimes, with the notable exception of the Rome Statute. It was important that all States, including those that had expressed reservations with regard to the International Criminal Court as an institution, had at their disposal a legal instrument aimed at preventing and punishing crimes against humanity at the national level. The draft articles did not provide for unusual or burdensome obligations on States; they belonged within the familiar framework of international cooperation on criminal matters.

49. The General Assembly, at the current session, had the important task of agreeing on a structured approach for future negotiations on a new convention on the prevention and punishment of crimes against humanity.



Her delegation concurred with the suggestions made by the representative of Austria concerning the convening of a diplomatic conference and the establishment of an ad hoc committee. It invited all Member States to engage in deliberations on how to move towards the adoption of a convention and hoped that agreement could be reached on a resolution that provided for concrete steps on the way forward.

50. **Mr. Rittener** (Switzerland) said that his Government fully supported the recommendation of the International Law Commission that a convention be elaborated on the basis of the draft articles on prevention and punishment of crimes against humanity. Such a convention would fill a gap in the existing international legal framework by providing a definition of crimes against humanity and setting out obligations with regard to prevention and punishment at the national level, thus reinforcing the primary responsibility of States on that score and contributing to the fight against impunity for the most serious crimes. It must also complement a possible general convention on mutual legal assistance in the prosecution of international crimes, avoiding duplications, not to mention contradictions. Switzerland was in favour of opening negotiations on a convention concerning crimes against humanity and encouraged all Member States to engage constructively in such an endeavour.

51. **Ms. González López** (El Salvador) said that crimes against humanity represented a complete disregard for human dignity and a violation of fundamental human rights. Under the law of El Salvador, crimes against humanity were not subject to statutory limitations, and domestic measures that might obstruct reparation to victims were prohibited. The national policy on prosecution of war crimes and crimes against humanity that occurred during armed conflict included guidelines on conducting effective investigations, ensuring access to justice for victims, establishing the truth and providing reparation.

52. Heinous violations of human rights must be prevented and punished both at the national level and through joint efforts by the international community. Her country was a party to various human rights instruments, including the International Convention for the Protection of All Persons from Enforced Disappearance. The conclusion of a convention on crimes against humanity would contribute to the criminalization of those acts, highlight the need to prevent and punish them, and help to harmonize national laws on the matter, thus fostering more effective inter-State cooperation on investigation, prosecution and extradition.

53. With regard to the draft articles on prevention and punishment of crimes against humanity, her delegation proposed that the definition of “enforced disappearance of persons” in draft article 2, paragraph 2 (i), be amended, in line with the International Convention for the Protection of All Persons from Enforced Disappearance and the Inter-American Convention on Forced Disappearance of Persons, to indicate that enforced disappearance could be perpetrated not only by States and political organizations but also by persons or groups of persons acting with the authorization, support or acquiescence of the State. A binding convention on crimes against humanity would help Member States to strengthen their national legal frameworks and would foster mutual legal assistance in relation to the investigation and prosecution of such crimes.

54. **Mr. Nagy** (Slovakia) said that many of the draft articles on prevention and punishment of crimes against humanity reflected customary international law. His delegation fully endorsed the recommendation of the International Law Commission that a convention be elaborated on the basis of the draft articles, either by the General Assembly or by an international conference of plenipotentiaries; it had a slight preference for the second option. Despite the concern expressed by the former Special Rapporteur for the topic of crimes against humanity about potential overlap between the draft articles and the mutual legal assistance initiative, Slovakia believed that the two initiatives were complementary, and that a diplomatic conference would allow States to ensure such complementarity between them. It therefore strongly encouraged other States not to use such concerns as a bar to the elaboration of a convention.

55. The international community should not allow the disruption caused by the COVID-19 pandemic to deflect it from its common goal of strengthening the international criminal law framework with regard to crimes against humanity. On the contrary, a strong response to current challenges, based on the purposes and principles of the United Nations, was needed. It was his delegation’s understanding that the recommendation to elaborate a convention on the basis of the draft articles on prevention and punishment of crimes against humanity was widely supported. His delegation was therefore willing to engage with all States to establish a clear mechanism and timeline for the convening of a diplomatic conference. A new convention on crimes against humanity would be an important addition to the tools available for the fight against impunity and would send a clear message that atrocities would no longer be tolerated.

56. **Ms. de Souza Schmitz** (Brazil) said that, since deciding to include the topic of crimes against humanity in its programme of work, the International Law Commission had been engaged in an extensive exercise involving not only its members, but also Governments and international and other organizations. Convinced of the need to address the existing gap in the international law framework, Brazil had been supporting that process since its inception, including by providing constructive comments on the draft articles on prevention and punishment of crimes against humanity. While noting with appreciation that the Rome Statute of the International Criminal Court had served as inspiration for much of the text, Brazil had proposed that the preamble to the draft articles should include a reference to the general prohibition on the use of force under international law. Although no such explicit reference had been included, her delegation welcomed the fact that, in the commentary to the preamble, the Commission had recalled the principles of international law embodied in the Charter of the United Nations, including the principle that States must refrain in their international relations from the threat or use of force.

57. A new convention on crimes against humanity would fill a gap in the international system. Unlike the Convention on the Prevention and Punishment of the Crime of Genocide and the Geneva Conventions and their Additional Protocols, which had entered into force before the existence of the International Criminal Court, the draft articles on prevention and punishment of crimes against humanity post-dated the establishment of the Rome Statute system. They must therefore serve to strengthen that system, including by prioritizing the Court's jurisdiction when the custodial State had no nexus with the crime, the suspects or the victim. The draft articles would also benefit from the addition of safeguards to prevent the abuse of the principle of universality, such as a provision giving jurisdictional priority to States with the closest links to the crimes.

58. Brazil joined the large number of States that favoured the elaboration of a convention on crimes against humanity on the basis of the draft articles. The Committee should agree on an inclusive and legitimate process for the drafting of a convention that could be universally ratified. Brazil was ready to engage in such an endeavour.

59. **Mr. Kanu** (Sierra Leone) said that his delegation supported the recommendation of the International Law Commission that a convention be elaborated on the basis of the draft articles on prevention and punishment of crimes against humanity. Such a convention, when added to the existing conventions on genocide and war crimes, would fill a gap in the law on international

crimes and would place an obligation on States both to develop their national laws and judicial systems and to cooperate with other States in the prevention, investigation and prosecution of crimes against humanity.

60. His delegation had offered substantive comments on the draft articles at the time of their adoption on first reading; some of its views, along with those of other States, had been incorporated in the text adopted on second reading. Further debate on substantive matters should take place in the context of intergovernmental negotiations. Given the broad support among Member States for the recommendation to elaborate a convention, the Committee must determine the modalities for the negotiations, perhaps by establishing a subsidiary body such as a preparatory committee or an ad hoc working group of the whole, and set a clear timeline for the process. The conclusion of a convention on crimes against humanity would bolster the fight against impunity for the worst crimes under international law.

61. **Mr. Mustafa Abuali Ahmed Mohammed** (Sudan) said that there was consensus regarding the noble objective of preventing impunity. That task was, in the first instance, the responsibility of national judicial institutions. At previous sessions, his delegation had made numerous comments concerning the draft articles on prevention and punishment of crimes against humanity. Further details concerning those comments could be found in his written statement, available in the eStatements section of the *Journal of the United Nations*. Notwithstanding the efforts made in compiling the draft articles, several of the provisions contained therein appeared to have been unduly lifted from other instruments upon which there was no consensus. In other cases, the meaning had been altered, resulting in an unwelcome lack of clarity. As a result, although there was no disagreement concerning the objective of preventing impunity for crimes against humanity, some of the draft articles were not suitable to serve as the basis of a convention intended to garner universal acceptance.

62. His delegation strongly supported any legal endeavour to prevent and prohibit grave crimes against civilians, including such vulnerable categories as women and children, achieve justice for victims, ensure accountability and prevent impunity. However, States were fully entitled to exercise jurisdiction in their own territory, and alternative mechanisms should be considered only if it was demonstrated, in accordance with agreed and non-politicized standards, that the State in question was unable or unwilling to exercise jurisdiction. In view of those points, Member States

needed more time to examine the draft articles before taking any further steps.

63. Since December 2018, positive developments had taken place in the Sudan, paving the way for a new political situation and a system grounded in the values of freedom, justice and the rule of law. A process was under way to consolidate a sustainable structure for civilian, democratic rule in which there would be no scope for impunity. His Government had established national mechanisms to strengthen the capacity to address grave crimes. It was continuing to develop and put in place effective arrangements to prevent genocide, war crimes, ethnic cleansing and crimes against humanity. It had also established a liaison agency for the responsibility to protect and, in May 2020, a mechanism for the protection of civilians, particularly in Darfur.

64. **Ms. Pelkiö** (Czechia) said that all States had a duty to hold accountable the perpetrators of crimes against humanity, which shocked the conscience of humankind. The draft articles adopted by the International Law Commission provided a legal framework for inter-State cooperation to that end. The prevention and punishment of crimes against humanity, unlike the prevention and punishment of the other core crimes under international law, were only partially provided for at the international level. A new convention would fill that gap. The draft articles represented a model of a modern criminal law treaty and were based on comprehensive research, with due account taken of other generally accepted criminal law instruments. Her delegation reiterated its support for the elaboration of a convention on the basis of the draft articles, which would help to put an end to impunity for crimes under international law.

65. **Mr. Elgharib** (Egypt) said that sufficient time should be allowed for all delegations to study the draft articles on prevention and punishment of crimes against humanity and ensure consistency with their national constitutions and laws; it would be unwise to rush into using them as the basis for a convention, or to convene an international conference for that purpose. At the previous session, many delegations, including his own, had expressed serious concerns regarding the content of the draft articles. In particular, draft article 7 (Establishment of national jurisdiction), draft article 9 (Preliminary measures when an alleged offender is present) and draft article 10 (*Aut dedere aut judicare*) enshrined the principle of universal criminal jurisdiction, on which the Committee had been unable to reach consensus, even though the item “The scope and application of the principle of universal jurisdiction” had been on its agenda for over a decade. States should be afforded more time to hold consultations and forge the necessary consensus.

However, owing to the COVID-19 pandemic, it would be difficult to engage in such consultations at the current session. A draft resolution should therefore be adopted with only technical updates, and further consideration of the item should be deferred to the following session.

66. **Ms. Guardia González** (Cuba) said that the draft articles would make a significant contribution to international efforts to prevent and punish crimes against humanity and would provide useful guidance to States that had not yet adopted national laws criminalizing them. Her delegation appreciated the efforts of the Special Rapporteur to take into consideration the range of domestic and regional approaches to the issue with a view to achieving international consensus. Nevertheless, it continued to believe that any convention on the subject should reflect the fundamental principle that primary responsibility for preventing and punishing serious international crimes rested with the State in whose jurisdiction the crimes had occurred. That principle should be set out in one of the draft articles, regardless of whether it was mentioned in the preamble. States had the sovereign prerogative to exercise, in their national courts, jurisdiction over crimes against humanity committed on their territory or by their nationals. No one was better placed to prosecute the perpetrators of such crimes than the State that had jurisdiction, whether on the basis of territoriality or of the nationality of the defendant or the victims, since, in those circumstances, due attention would be given to the interests of the victims, the rights of the defendant and other such considerations. Only when States were unable or unwilling to exercise jurisdiction should other mechanisms for prosecution be considered.

67. The Committee should continue to consider the topic in the light of the comments made by Member States, many of which still had concerns regarding substantive aspects of the draft articles. Such discussions would help to ensure that any future international convention based on the draft articles did not conflict with national laws on crimes against humanity, that it gained broad acceptance and that it took into consideration the diversity of national legal systems and the fact that not all States were parties to the Rome Statute. Such a convention must also be consistent with the existing norms and institutions of international criminal law and avoid the fragmentation of international law on the topic.

68. The binding force of international instruments derived from the consent of States to the process of formation of international law. The International Law Commission was not a legislative entity responsible for establishing norms of international law; its role was to document the areas in which States had formulated

norms that had implications for international law and to propose areas in which States might wish to consider the possibility of formulating such norms. In that regard, the elaboration of the draft articles had been an exercise not in the codification of customary international law, but rather in the progressive development of the law.

69. **Mr. Carvalho** (Portugal) said that his delegation supported the recommendation of the International Law Commission that a convention be elaborated on the basis of the draft articles on prevention and punishment of crimes against humanity. A diplomatic conference should be convened for that purpose as soon as possible; his delegation supported the suggestion made by previous speakers that an ad hoc committee be set up to discuss the matter. The General Assembly should make a decision in that regard at the current session. The convention being drafted under the mutual legal assistance initiative was complementary to the draft articles in that it was aimed at enhancing international cooperation in the investigation and prosecution not only of crimes against humanity but also of other serious international crimes. Both projects therefore deserved to be taken forward.

70. **Mr. Caballero Gennari** (Paraguay) said that, under the Constitution of Paraguay, the international protection of human rights was provided for; torture and cruel, inhuman or degrading punishment or treatment were prohibited; and the crimes of genocide, torture, enforced disappearance of persons, kidnapping and homicide for political reasons were imprescriptible. The draft articles on prevention and punishment of crimes against humanity filled a number of gaps and clarified a number of ambiguities in that area of international law. Paraguay reiterated its firm support for a global, legally binding convention on crimes against humanity based on the draft articles.

71. **Ms. Melikbekyan** (Russian Federation) said that Member States continued to hold starkly different views regarding the draft articles on prevention and punishment of crimes against humanity, in particular the recommendation of the International Law Commission concerning the fate of the text. The Chair of the Commission had previously stressed that the draft articles were intended to fill in lacunae in international law. The 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, to which the Russian Federation was a party, contained a definition of crimes against humanity and also obligated States to cooperate on matters of extradition. The Russian Federation was committed to prosecuting the perpetrators of crimes against humanity in accordance with its obligations under international law. Although far from all States were parties to the

1968 Convention, it had nonetheless been a very effective tool, particularly at the time of its adoption, when numerous Nazi and fascist criminals, whose acts had become the defining elements of crimes against humanity, had been at large around the world.

72. The draft articles contained many controversial elements that could impede cooperation among States in the prosecution and punishment of criminals. For example, there was a requirement to cooperate with international investigative and judicial mechanisms, yet the politicized nature of many such entities was well known. Furthermore, the definition of crimes against humanity used in the draft articles was based on the definition in the Rome Statute of the International Criminal Court, even though a number of countries were not parties to that instrument.

73. As part of a parallel initiative, a group of States had proposed the drafting of a convention on international cooperation in the investigation and prosecution of the crime of genocide, crimes against humanity and war crimes. There was significant overlap between that draft convention and the draft articles. A diplomatic conference to adopt the draft convention would have taken place earlier in the year but for the COVID-19 pandemic. In that light, and given the current uncertainty, the Committee might wish to delay launching a new and complex negotiation process concerning the draft articles and give States an opportunity to consider the wisdom of such a step and to examine the draft articles more closely.

74. **Mr. Hernandez Chavez** (Chile) said that his delegation supported the draft articles adopted by the International Law Commission, which would ultimately oblige States to take specific measures to prevent and punish crimes against humanity, and appreciated the fact that, in the drafting process, the Commission had taken account of the constructive comments of States. Chile had taken a number of measures to punish such crimes, including the adoption of a law criminalizing crimes against humanity, genocide and war crimes, which provided for prosecution, in line with the country's obligations under customary law and under treaties such as the Rome Statute to which his country was a party.

75. The draft articles struck a good balance between codification and progressive development of international law and accurately reflected the obligations derived from the customary prohibition of crimes against humanity, including the duty of all States to prevent and punish such crimes in a manner consistent with the Rome Statute, including the principle of complementarity. The draft articles also established new obligations, which were largely aimed

at promoting cooperation among States for the investigation and punishment of such crimes. The text was a valuable starting point for discussion among States; his delegation had some specific observations regarding, among other things, the definitions of crimes against humanity and of enforced disappearance.

76. Chile endorsed the basic aim of the draft articles, which was to strengthen international criminal law with a view to establishing individual accountability for the perpetrators of crimes against humanity, and supported the recommendation that they be used as the basis for a multilateral convention. Chile was open to the idea of the Committee recommending that an international conference of plenipotentiaries be convened for the purpose of elaborating such a convention.

77. **Ms. Abu-ali** (Saudi Arabia) said that it was important to ensure that the definitions set forth in the draft articles on prevention and punishment of crimes against humanity for such concepts as enslavement, torture and enforced disappearance were consistent with those used in the relevant United Nations conventions. Care should be taken to avoid introducing new definitions that could create uncertainty as to the interpretation of those terms. In draft articles 7 and 9, the concept of universal criminal jurisdiction was applied in an expansive manner. Given that the agenda item "The scope and application of the principle of universal jurisdiction" was still being debated by the Committee, it was important to examine the considerable variance in the approaches taken in the legal systems of Member States with regard to the prevention of impunity and to avoid deviating from the principles enshrined in the Charter of the United Nations and in international law, particularly the sovereignty, immunity and equality of States.

78. **Mr. Roughton** (New Zealand) said that crimes against humanity, along with genocide and war crimes, were the most serious crimes of concern to the international community as a whole. The draft articles on prevention and punishment of crimes against humanity reflected the recognition that the effective prevention and prosecution of such crimes required measures at the national level and also international cooperation, including with regard to extradition and mutual legal assistance. The elaboration of a convention based on the draft articles would complete the important exercise of codification of the law concerning crimes against humanity. A broad-based and inclusive dialogue must be conducted in order to determine the way forward. His delegation supported efforts to establish a road map for the negotiation of a convention.

79. **Ms. Nguyen Quyen Thi Hong** (Viet Nam) said that her Government was firmly committed to the prevention and punishment of crimes against humanity in accordance with international law, in particular the principles enshrined in the Charter of the United Nations, including respect for national sovereignty and non-interference in internal affairs. States must take the primary responsibility for preventing and punishing serious crimes, and no effort should be spared in building their capacity to fulfil that responsibility through international cooperation and mutual legal assistance. International criminal law mechanisms should be used only as a last resort.

80. Her delegation highly appreciated the work of the International Law Commission on the draft articles on prevention and punishment of crimes against humanity. However, the General Assembly and the Committee should carefully consider whether there was a need for a convention on the topic. Her delegation took note of the request of some Member States to conduct further comprehensive study of the draft articles and their compatibility with national laws and encouraged the Committee to continue the conversation with a view to reaching consensus and ensuring that an international convention, if developed, was implemented effectively.

81. **Ms. Lito** (United Kingdom) said that her delegation was grateful for the work of the International Law Commission on the topic of crimes against humanity, which had provided an opportunity for States to work together to fill a lacuna in the fight against the most serious crimes. In broad terms, the provisions of the draft articles on prevention and punishment of crimes against humanity were well founded in State practice and *opinion juris*, as reflected in relevant treaties such as the Rome Statute, in national legislation and in judicial decisions. Her delegation also specifically commended the Commission for improvements made to the draft articles, including making the wording more inclusive by removing the definition of "gender".

82. Her delegation supported the Commission's recommendation that States elaborate a convention on the basis of the draft articles, either within the framework of the General Assembly or at a diplomatic conference. There was sufficient consensus on the core provisions to suggest that a convention could successfully be negotiated. Such a convention could be a powerful tool to promote the accountability of perpetrators of atrocity crimes. Her delegation was disappointed that the Committee had not been able, at the previous session, to agree on a way forward and hoped that it would now agree on a concrete timetable for the opening of negotiations.

83. **Mr. Leal Matta** (Guatemala) said that, as a founding member of the group promoting the responsibility to protect, which had been established with a view to preventing war crimes, ethnic cleansing and crimes against humanity, Guatemala attached great importance to the protection of human rights. It was also a party to the Rome Statute of the International Criminal Court, which stood at the centre of the international system of justice. The firm commitment and support of the States parties to the Rome Statute was crucial in order to enhance the Court's capacity to ensure accountability, secure justice and compensation for victims, and help to prevent future crimes. His delegation was in favour of convening an intergovernmental conference to elaborate a convention on crimes against humanity, which would be an important contribution to international law in that area.

84. **Ms. Villalobos Brenes** (Costa Rica) said that it was important for all States, including those that had not yet ratified the Rome Statute, to have a legally binding international instrument on the prevention and punishment of crimes against humanity that served in particular to strengthen procedures at the national level. As mentioned in the general commentary to the draft articles on the topic, such a convention would fill a legal gap, in that there were international conventions on genocide and war crimes but not on crimes against humanity.

85. Some delegations had stated that, owing to concerns about certain aspects of the draft articles, the time was not yet ripe to negotiate a convention. However, outstanding issues could be addressed through a transparent and inclusive negotiation process in the context of a diplomatic or intergovernmental conference. Moreover, the International Law Commission, in the process of preparing the draft articles, had already taken into account the comments of Governments and international and non-governmental organizations, such as the recommendation by her delegation and others concerning the definition of the term "gender".

86. Every State was responsible for holding perpetrators accountable for crimes committed in its territory. Costa Rica shared the view that crimes against humanity must be criminalized in each State's domestic law so as to facilitate the prosecution of suspects at the national level. States should be obliged to carry out prompt, exhaustive and impartial investigations when there were reasonable grounds to believe that crimes against humanity had been committed or were being committed in any territory under their jurisdiction.

87. International cooperation among States, as well as cooperation with international organizations and United Nations mechanisms, was important in order to prevent and punish crimes against humanity. Legal assistance was vital, particularly in the case of fugitives from justice. Costa Rica supported the initiative to elaborate a new convention on international cooperation in the investigation and prosecution of the crime of genocide, crimes against humanity and war crimes. Such a convention would be complementary to a convention based on the draft articles on prevention and punishment of crimes against humanity, provided that there was consistency between the two instruments.

88. **Ms. Lee Hyunseung** (Republic of Korea) said that her country had been a staunch supporter of the International Criminal Court since its inception and had been actively engaged in the discussions on the draft articles on prevention and punishment of crimes against humanity. Given that there was currently no global convention on that subject, a new convention would complement existing treaty law.

89. The draft articles could form a basis for strengthening law enforcement cooperation among States, particularly in the absence of bilateral treaties on extradition or mutual legal assistance, and, if aligned with core legal instruments such as the Rome Statute, could help to maintain coherence and stability in the system of international criminal law. Additional consideration could be given to the relationship between the draft articles and other relevant international instruments, including the proposed new convention on international cooperation in the investigation and prosecution of the crime of genocide, crimes against humanity and war crimes. Her delegation supported efforts towards the elaboration of a convention on the basis of the draft articles, taking into consideration the opinions of other Member States, and looked forward to further discussions on how to move forward, including on consultation methods and procedures.

90. **Mr. Umasankar** (India) said that, in his delegation's view, crimes against humanity were already established as punishable offences under existing international instruments such as the Rome Statute. Even States that were not yet parties to the Rome Statute had national laws covering such offences. His delegation therefore saw no need for a convention focused on crimes against humanity. If the wider membership of the United Nations felt differently, the draft articles on prevention and punishment of crimes against humanity would need to be thoroughly examined, with full account taken of the comments of all Member States. One possible way forward would be to set up a working group of the Committee to continue

the discussion with a view to arriving at a consensus. A number of Member States, including India, shared the concern that the draft articles were not based on empirical analysis of international practice and had been prepared largely by analogy with the provisions of other conventions; they were neither new nor universal. The proposal to elaborate a convention on the basis of the draft articles was therefore premature.

91. **Ms. Mägi** (Estonia) said that her delegation appreciated the transparent process adopted by the International Law Commission in the preparation of the draft articles on prevention and punishment of crimes against humanity, which had allowed all interested stakeholders to participate in efforts to bolster the international criminal justice system. Estonia firmly supported the elaboration of a convention on the basis of the draft articles, preferably by an international conference of plenipotentiaries. Such a convention would fill a gap in treaty law and, alongside the relevant international treaties on genocide and war crimes, would strengthen the international criminal law system. It would also be consistent with the principle of complementarity set out in the Rome Statute of the International Criminal Court. Lastly, it would assist, inspire and oblige States to review their national laws and strengthen international cooperation to stand against the most serious international crimes and fight impunity.

92. **Mr. Arrocha Olabuenaga** (Mexico) said that the International Criminal Court was one of the mechanisms that was helping to put an end to crimes against humanity, genocide, the crime of aggression and war crimes. Mexico had been a supporter of the Court since its inception and was concerned about the number of withdrawals from the Rome Statute in recent years. Consideration should be given to measures that would help the Court to discharge its mandate with independence and impartiality, so as to bolster efforts to combat crimes against humanity and the other crimes within the Court's jurisdiction.

93. The draft articles on prevention and punishment of crimes against humanity built on the provisions of the Rome Statute and reflected relevant contemporary international law. The adoption of a convention based on the draft articles would help to fill a legal gap at both the national and the international levels. A substantive discussion involving all States must therefore be held in order to agree on a negotiation process with clear deadlines. His delegation hoped that such an agreement could be reached at the current session, without prejudging the outcome. Some delegations had legitimate substantive concerns about the draft articles. In his delegation's view, the appropriate forum for

addressing those concerns was an intergovernmental conference.

94. The Committee had the opportunity to break its pattern of inaction over recent decades with regard to draft articles referred to it by the International Law Commission. Progress on the topic of crimes against humanity would both advance the development of international criminal law and enhance the relationship between the Commission and the Committee.

*The meeting rose at 12.50 p.m.*