

Sixth Committee

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Crimes against humanity [78]

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Oral Report of the Co-Facilitators

Ms. Anna Pála Sverrisdóttir (Iceland)

Ms. Sarah Zahirah Ruhama (Malaysia)

Mr. Edgar Daniel Leal Matta (Guatemala)

Mr. Chair,

I have the honour to commence the oral report of the co-facilitators for the resumed session of the Sixth Committee at seventy-seventh session of the General Assembly, which was held from 10 to 14 July 2023, in accordance with General Assembly resolution 77/249, in order to continue the work on agenda item 78 “crimes against humanity”, and in particular the draft articles on prevention and punishment of crimes against humanity, as prepared by the International Law Commission. In line with the working arrangements approved at the opening meeting of our session, held on Monday this week, the co-facilitators will now jointly present an oral report of the deliberations held both during the plenary and informal meetings at this year’s resumed session of the Sixth Committee. The report is intended as an informal record of the proceedings, for the convenience of delegations, and is being presented entirely under our responsibility. It will also help inform the Chair’s Summary that will be included in the written summary to be prepared and adopted at next year’s resumed session.

Our task at this session was to “exchange substantive views, including in an interactive format, on all aspects of the draft articles, and to consider further the recommendation of the Commission contained in paragraph 42 of its report on the work of its seventy-first session for the elaboration of a convention by the General Assembly or by an international conference of plenipotentiaries on the basis of the draft articles.” In accordance with the programme of work agreed to on Monday, the Sixth Committee organized its substantive consideration of the draft articles according to five clusters of provisions, grouped by theme. Our report today will accordingly be arranged by each such thematic cluster. In addition, as was also agreed, this year’s consideration of the recommendation of the Commission was undertaken on the basis of a briefing presented by the Secretariat.

As co-facilitators, we are extremely satisfied with the incredibly rich and substantive debate that was held this week. This bodes well for our future work on this agenda item. However, this also means that it was simply not possible to record every single view that was expressed, in the short time available to us, while also keeping this report to a manageable length. Accordingly, with the able assistance of the Secretariat, we have tried to capture the main issues and themes raised during the deliberations, while also recording, where possible, the key proposals and positions of delegations. I wish to recall that the deliberations during the plenary meetings will also be recorded in the official summary records of the Sixth Committee.

The way we intend to proceed this afternoon is that each one of us will present on the respective thematic cluster or clusters we were responsible for, starting with thematic cluster 1.

Thematic cluster 1 – Introductory provisions (preamble and Article 1)

Mr. Chair,

Thematic cluster 1 concerns the “Introductory provisions”, namely the preamble, which comprises 10 paragraphs, as well as draft article 1. It was discussed at our thirty-seventh to thirty-ninth meetings, on Monday and Tuesday, 10 and 11 April, as well as in the informal meetings.

Throughout the debate on thematic cluster 1, a number of delegations recalled their support for an eventual international convention based on the draft articles. Delegations discussed whether a gap existed in the international legal framework that a possible convention might address. Several delegations expressed the view that a comprehensive convention on crimes against humanity would fill a gap in the existing legal framework, given the existence of similar conventions relating to genocide and war crimes but none dedicated to crimes against humanity. Some noted the potential for a convention to facilitate inter-State cooperation, including technical assistance, with respect to crimes against humanity, which would distinguish a convention from existing instruments. Other delegations did not consider there to be gap, citing the existence of various instruments and tribunals, and requested further substantiation of its existence. Additionally, several delegations considered that a convention would be premature.

A number of delegations recalled that, as decided in resolution 77/249, the purpose of the discussion in the resumed session was not to prejudge the final decision on the recommendation of the International Law Commission but rather to exchange substantive views on the draft articles and to consider further that recommendation of the Commission. The need to build trust among Member States that a potential

convention would not prejudice to principles of State sovereignty and non-intervention and regarding the relationship between a convention and the International Criminal Court was emphasized.

In the discussion of the **draft preamble**, delegations recalled the role of preambles in the interpretation of treaties, as reflected in article 31 of the 1969 Vienna Convention on the Law of Treaties (VLCT). Several delegations welcomed the draft preamble and considered that it appropriately reflected the context and objectives of the draft articles. Delegations noted that several of its paragraphs drew inspiration from the respective preambles of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention) and the Rome Statute of the International Criminal Court (Rome Statute). The importance of having a streamlined and coherent preamble was noted. Some delegations called generally for the reformulation of the preamble.

Mr. Chair,

Delegations expressed support for the reference in **paragraph 1** of the preamble to the shocking nature of crimes against humanity. It was proposed to strengthen the text by recognizing the persistence of the commission of such atrocities. The emphasis in **paragraph 2** on the relationship between justice and accountability for crimes against humanity and peace and security was welcomed. It was suggested that the paragraph 1 could be made more inclusive by referring to “people” rather than “children, women and men”.

The reference to the principles of international law embodied in the Charter of the United Nations contained in **paragraph 3** was welcomed. A number of delegations considered that the paragraph could be improved by specifying individual principles of international law. The prohibition of the threat of use of force and the principles of sovereign equality and of non-intervention in the internal affairs of other States were raised. Reference to the interests of justice was also proposed. Several delegations highlighted the importance of avoiding political abuse of the concept of crimes against humanity and double standards. It was noted that the paragraph did not address the immunities of States and State officials, and it was proposed to delete the specific reference to the Charter to address this. It was also suggested that the best way to avoid politicization would be to maintain the current, general text of the paragraph.

A number of delegations welcomed the recognition in **paragraph 4** of the peremptory nature of the prohibition of crimes against humanity. Some of them recalled that the International Law Commission, in its work on peremptory norms of international law (*jus cogens*), had characterized the prohibition of crimes against humanity as such a norm. The reservations expressed by some States regarding this work were also noted. A number of delegations recalled that norms characterized as being peremptory in nature must meet the criteria for the identification of such norms, and some delegations considered that further

study was necessary in that respect. It was noted that the paragraph did not imply that all provisions of the draft articles reflected peremptory norms of international law.

Mr. Chair,

Delegations generally agreed with the statement in **paragraph 5** of the preamble that crimes against humanity were among the most serious crimes of concern to the international community as a whole. The emphasis on the prevention of such crimes was welcomed. Delegations also expressed support for the emphasis in **paragraph 6** on ending impunity for crimes against humanity. The need for a balance between prevention and punishment was emphasized.

Several delegations welcomed the reference to the definition of crimes against humanity in article 7 of the Rome Statute in **paragraph 7** of the preamble and highlighted the importance of the consistency between a possible convention on crimes against humanity and the Rome Statute, to avoid fragmentation of international law. A number of delegations did not support a reference to the Rome Statute, as it did not enjoy universal adherence and therefore could impair universal acceptance of a future convention. It was proposed to replace the word “considering” by “noting.” Differences of views concerning the definition of crimes against humanity at the time of the negotiation of the Rome Statute were recalled. Other delegations recalled the work of the International Law Commission and the extensive negotiations that led to the adoption of the Rome Statute. It was proposed that the paragraph could expressly refer to this history. A number of delegations emphasized that the draft articles concern all States, whether or not parties to the Rome Statute. It was suggested that it might also be appropriate to refer to the work of previous tribunals, including the Nuremburg and Tokyo tribunals.

With respect to **paragraph 8** of the preamble, several delegations expressed support for its reflection of the primary responsibility of the State to prevent and punish crimes against humanity. It was suggested that the paragraph could express the point more clearly. Several delegations affirmed that States have an obligation to exercise their criminal jurisdiction over such crimes. A number of delegations considered that the duty to exercise criminal jurisdiction should be limited to cases where there is a clear nexus between the forum State and the crime. The importance of the complementarity principle was highlighted. The need for States to have the necessary legislative, administrative and judicial tools to fulfil their responsibility was also emphasized.

Delegations expressed appreciation for the focus in **paragraph 9** of the preamble on the rights of victims and witnesses. A number of delegations expressed interest in expanding the text to reflect a survivor-centred approach. Some also suggested the inclusion of references to the right to redress, including material and moral damages, and the right to truth. With respect to the rights of alleged offenders, it was

suggested that these should be understood in light of the International Covenant on Civil and Political Rights. It was also proposed that the rights of victims and witnesses and those of alleged offenders would be better addressed in separate paragraphs.

Delegations welcomed the emphasis of **paragraph 10** on horizontal cooperation between States in the implementation of measures at the national level. It was suggested that the paragraph could use stronger phrasing referring to a requirement to cooperate, drawing from the Genocide Convention. A reference to investigations was also proposed. The role of intergovernmental organizations in the fight against impunity was also noted.

Delegations raised other considerations that might be added to the preamble, including the need to integrate a gender perspective and the importance of taking into account the perspectives of indigenous peoples.

Mr. Chair,

Allow me to now turn to **draft article 1**, which specifies the scope of the draft articles. Delegations generally welcomed its dual focus on the prevention and punishment of crimes against humanity. Several delegations considered the provision acceptable in its current form. A number of delegations noted that the provision was similar to article 1 of the Genocide Convention, and it was proposed that the provision could be reformulated to make explicit that crimes against humanity were prohibited.

Some delegations noted that matters not falling within the scope of the convention would continue to be regulated by customary international law. Others requested examples of such matters. The importance of not affecting the law concerning the prohibition of genocide and war crimes, as well as international humanitarian law more generally, was noted.

A number of suggestions were made with respect to draft article 1. Those included adding the words “by States” after the words “prevention and punishment”, in order to add legal precision to the provision and to emphasize that the draft articles were concerned with horizontal cooperation between States. It was also suggested to rephrase the paragraph so as to focus on prevention and punishment of crimes against humanity or refer to crimes against humanity more broadly. It was queried whether the provision should also refer explicitly to the prohibition of crimes against humanity.

A clear statement that the draft articles could not be construed as authorizing an act of aggression or the resort to the use of force inconsistent with the Charter was called for, as was a reference to sovereignty and non-intervention along the lines of article 3 of Additional Protocol II to the Geneva Conventions of 1949. References to capacity-building and the transfer of proceedings to an international jurisdiction in

accordance with the complementarity principle were also proposed. A reference to the non-retroactivity of the draft articles, in line with general international law, was suggested. The need to clarify whether and which reservations would be permitted was also highlighted.

This concludes my summary of the debate on Cluster 1.

Thematic cluster 2 – Definition and general obligations (Articles 2, 3 and 4)

Mr. Chair,

Thematic cluster 2 deals with the definition and the general obligations, contained in draft articles 2, 3 and 4. It was discussed at the thirty-ninth and fortieth meetings, held on Tuesday, 11 April, as well as in the informal meetings.

Allow me to begin with **draft article 2**.

Further to debate on cluster 1 and, in particular, on the preamble, the central question discussed by delegations was the fact that draft article 2 was modeled after article 7 of the Rome Statute of the International Criminal Court. A number of delegations reiterated the importance of avoiding fragmentation of international law and ensuring consistency, coherence and legal certainty with the Rome Statute. Other delegations reiterated their concerns, while noting that many States were not parties to the Rome Statute and the definition of crimes against humanity in draft article 2 was too broad. In that connection, it was also reiterated that the Rome Statute was not a universally accepted treaty. It was stated that using article 7 of the Rome Statute as a starting point for draft article 2 was reasonable and it did not in any way affected the obligations of States that were not parties to the Rome Statute. Several delegations stated that article 7 of the Rome Statute, and consequently draft article 2, reflected customary international law and thus any changes to the definition contained therein should be approached with caution. Other delegations expressed the view that article 7 of the Rome Statute did not reflect customary international law because it was not representative of the practice of States. The historical evolution of the definition of crimes against humanity was reiterated by delegations. A suggestion was made to incorporate certain aspects of the International Criminal Court's Elements of Crimes into draft article 2 for clarity. I also wish to mention that delegations gave examples of national laws and regional treaties regarding crimes against humanity.

Mr. Chair,

Delegations presented their own interpretations of several of the terms contained in draft article 2, as well as raised questions for delegations' consideration. For example, the phrases contained in the *chapeau* of draft article 2 "widespread or systematic attack", "civilian population" and "knowledge" were referred to in the debate. With regard to the phrase "widespread or systematic attack", an interesting discussion took place on the word "or" and whether the attack should be widespread **and** systematic, with delegations expressing differing views on that aspect. It was also suggested that the reference to "civilian population" ought to be further discussed. It bears recalling that delegations exchanged views on whether the definition of crimes against humanity required a nexus to an armed conflict. It was stated that the wording "civilian population" provided indicators that crimes against humanity could only be committed in the context of an armed conflict. Regarding the reference to "knowledge" in the *chapeau*, a number of delegations expressed the view that intention should be one of the elements of the *mens rea*. Further discussion was considered to be needed regarding the mental element of the crime.

Regarding paragraph 1(c), several delegations stressed that the term "enslavement" merited further analysis and discussion. The view expressed was that "slave trade" should be considered a crime against humanity.

A number of delegations supported the omission of a definition of the term "gender", contained in **paragraph 1(h)**, from the provision, stating in particular that the definition contained in the Rome Statute had become obsolete. Other delegations stated that it was preferable to retain the definition of gender provided for in the Rome Statute, as it was unambiguous and constituted agreed language. It was stressed that although there were difficulties clarifying the term, guidance on how to define it was still needed.

Regarding **paragraph 1(k)**, several delegations expressed concern with the potential misuse of the phrase "other inhumane acts of a similar character", highlighting that such phrase should be interpreted narrowly and might be in contradiction with the principle of *nullum crimen sine lege*. Other delegations supported the provision, considering it useful for the implementation of the draft articles at the national level.

Mr. Chair,

On **paragraph 2**, a number of suggestions were made to refine certain definitions contained therein, such as "forced pregnancy", "enslavement", "persecution" and "enforced disappearance of persons", so as to align them with treaties and recent jurisprudence. It was also suggested that the "policy" element

contained in the definition of the term “attack directed against any civilian population” merited further analysis and discussion.

Turning to **paragraph 3**, a number of delegations supported the “without prejudice” clause contained therein. It was noted that it afforded States the flexibility to provide in their own national laws a definition that was broader and went beyond the definition contained in draft article 2. In that connection, the commentary to draft article 2 was recalled, which explained the scope of paragraph 3. Some delegations, however, stated that the “without prejudice” clause could result in confusion and legal uncertainty and expressed a preference to omit it from the provision. I also wish to record that an interesting debate took place regarding the normative value of the commentaries adopted by the Commission.

Several suggestions were made for other underlying acts to be potentially added to draft article 2, such as “forced marriage”, “unilateral coercive measures against civilians”, “terrorism”, “economic and mineral exploitation and environmental degradation”.

Mr. Chair,

Turning to **draft article 3**, general support for the provision was expressed by a number of delegations. I wish to mention that several delegations highlighted that the obligations of States not to engage in and to prevent and punish crimes against humanity, as provided for in draft article 3, were in line with the jurisprudence of the International Court of Justice. Regarding **paragraph 1**, it was stated that the obligation implied an obligation for States not to engage in acts that constitute crimes against humanity through their own organs as well as through persons over which States had control and their conduct was attributable to a State. Opposing views were expressed as to whether the explicit inclusion of paragraph 1 in the draft article was necessary.

Regarding **paragraph 2**, delegations welcomed the twofold dimension of the paragraph, covering both the obligations to prevent and to punish conduct that amounted to crimes against humanity. It was stated that the obligation to prevent crimes against humanity reflected customary international law. It was questioned whether the qualifier “which are crimes under international law” was needed.

On the obligation of prevention, I wish to point out that several delegations emphasized that such obligation was one of conduct, rather than of result, and required States to employ all means reasonably available to them to prevent crimes against humanity. It was emphasized that the primary responsibility to prevent such crimes remained under the responsibility of the State where the acts were committed. Moreover, it was stressed that the breach of the obligation only occurred where crimes against humanity

had been committed. The view was expressed that the obligation of prevention should be considered one of due diligence.

A number of delegations supported the application of the general obligations contained in draft article 3 both in times of armed conflict and at peacetime. It was suggested that guidance on how armed conflict affected the constituting elements of the obligations of prevention and punishment merited further analysis and discussion.

On **paragraph 3**, several delegations welcomed the clarification in the text that no exceptional circumstances whatsoever might be invoked as a justification for crimes against humanity. In that connection, some delegations emphasized the application of international humanitarian law as *lex specialis*.

Mr. Chair,

Allow me to now turn to **draft article 4**, which was considered by a number of delegations to be inspired by similar or analogous provisions contained in several treaties (for example, the Genocide Convention, the Convention on Enforced Disappearances and the Convention against Torture), as well as recognized by international jurisprudence. In that connection, the International Court of Justice judgment in the case of the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro) was recalled. Several delegations expressed support and welcomed the reference to international law in the *chapeau*.

I wish to mention that a number of delegations raised questions with regard to the scope of the obligation of prevention.

Regarding **paragraph (a)**, some delegations suggested the inclusion of concrete examples of preventive measures in the draft article, following the precedent of relevant provisions contained on existing conventions, such as the Convention against Torture and the Convention on Enforced Disappearances. Other delegations suggested changes to the text to narrow the material and territorial scope of the obligation. The view was expressed that the ways and means to prevent international crimes fell within the national jurisdiction of States, and broad terminology such as “or other appropriate preventive measures” was considered to impose a too over-stretched obligation upon States. It was suggested that the applicability of the obligations indicated in paragraph (a) in a situation of *de facto* control merited further analysis.

Mr. Chair,

Lastly, on **paragraph (b)**, the intention to foster international cooperation was welcomed by several delegations, and some delegations expressed support for the reference to international organizations. I note however that doubts were expressed as to whether the paragraph was too broad. In that connection,

suggestions were made to narrow the scope of application of the provision. It was also suggested that the relationship between paragraph (b) and draft articles 9 and 14 ought to be further discussed.

Mr. Chair,

This concludes my summary of the debate on cluster 2. Thank you.

Thematic cluster 3 – National measures (Articles 6, 7, 8, 9 and 10)

Mr. Chair,

Thematic Cluster 3 is concerned with national measures as reflected in draft articles 6, 7, 8, 9 and 10. The cluster was discussed at the forty-first and forty-second meetings, held on Wednesday, 12 April, as well as in the informal meetings.

It was noted that the provisions under Cluster 3 are key to the effective prevention and deterrence of crimes against humanity.

Delegations exchanged views on **draft article 6**, concerning criminalization of crimes against humanity under national law. Various delegations considered that draft article 6 was a key provision creating the obligation of States to include crimes against humanity under domestic law, and that such a provision could help to bridge existing *lacunae*. The view was expressed that draft article 6 offered a good basis and could help States where existing laws cover isolated conduct like murder or torture, but where the incorporation of international standards requires additional steps. Having a duty to incorporate such conduct could assist the prosecution of crimes against humanity at the local level. It was also noted that domestic laws could go beyond customary rules in the regulation of such crimes.

Some States expressed the view that only the first paragraph of draft article 6 should be retained, as the text went beyond the Genocide Convention. Another view expressed was that the act and title of a crime should not be confused. While the acts should be penalized, the exact title or name of the crime need not be uniform, so as to allow some flexibility for States.

Other delegations were of the view that no customary rule obliging States to penalize crimes exists, and that the text of the draft article should be written in a recommendatory manner. A delegation also noted that divergence in national laws does not preclude States from engaging in a future convention.

Turning to paragraph 2, concerning the **forms of participation** in the perpetration of the crimes, a number of delegations noted that States address this point in different ways in their domestic laws. Some delegations proposed that a future convention should refer to direct and indirect forms of liability, while noting that States may take different approaches to the prosecution of conspiracy, common purpose or other forms of criminal responsibility, and that States should be given flexibility. Several delegations proposed to take into account other forms of responsibility including incitement, conspiracy, planning and financing.

On **paragraph 3**, several delegations agreed with the inclusion of **command responsibility**. There was a suggestion to introduce an element of effective control of the superior, and to broaden the scope to cover persons effectively acting as superiors or commanders. The view was expressed that the phrase “if they knew, or had reason to know” captured the meaning that the superior should have known of the conduct and should have been able to take action to prevent it. It was mentioned that it could be difficult to determine whether a commander had knowledge or took all necessary measures. Another view expressed was that the phrase “having a reason to know” in the case of a commander was vague for a criminal provision, and it was suggested that the formulation used in Additional Protocol II to the 1949 Geneva Conventions could be used, thus requiring that the persons “had information which should have enabled” the prevention of the crime, to avoid a risk of objective liability.

Turning to **paragraphs 4 and 5**, delegations generally concurred that while holding an official position would not exclude criminal responsibility, paragraph 5 should have no effect on the procedural **immunity of foreign State officials**, namely heads of State, heads of government and ministers of foreign affairs, which are regulated by treaty and customary international law. Delegations exchanged views in relation to the need to incorporate an express provision referring to immunities of State officials, some delegations supported such idea, others considered that it was regulated under another body of law. Other delegations emphasized that the question of immunities in paragraph 5 concerned immunities at the domestic level that could create procedural barriers for the prosecution of State officials.

A delegation added that such immunities of State officials should be taken without prejudice to the obligation to cooperate with international tribunals like the International Criminal Court. Reference was made to the need to follow the ongoing work of the International Law Commission on the topic and to retain consistency between the immunity of State officials and the draft articles. It was mentioned that the draft articles do not contemplate a situation where persons can be coerced to perpetrate such conduct.

In relation to **paragraph 6**, delegations expressed support for the **non-application of the statute of limitations** for the prosecution of crimes against humanity. The view was expressed that the text should include an explicit provision for States to take necessary measures in domestic law so as to ensure that

crimes against humanity would be tried by civil tribunals, and excluded from the jurisdiction of domestic military tribunals, as only civil courts could guarantee the right to an impartial judgment and due process. Several delegations noted a need to include an express prohibition on the grant of amnesties that could prevent the prosecution of crimes against humanity. The view was expressed that draft article 6 should not require States to amend national laws to include the non-application of statutes of limitations.

On paragraph 7, concerning the appropriate penalties, several delegations expressed the view that there could be no death penalty for crimes against humanity. Other delegations expressed the view that there existed no universal prohibition of the death penalty under customary international law. Some delegations mentioned that procedural safeguards had been put in place in domestic legislation, preventing the transfer of individuals to jurisdictions where they could be subject to the death penalty.

A view was expressed suggesting that there could be specific provision made for indicating that commander status would have no impact on the sentencing or the penalty. It was also noted that the penalties for the perpetration of crimes against humanity should evaluate the crime, the severity of the crime and the context of the commission of the crime.

Turning to the question of **liability of legal persons in paragraph 8 of draft article 6**, it was noted that there existed no universally recognized principle of criminal liability of legal persons. Some delegations considered that criminal liability was not intended to cover legal persons. The view was expressed that the inclusion of criminal liability of legal entities could serve as a barrier for States joining the future convention. Other delegations considered that the principle reflected in the paragraph was key and that the text of a possible convention should elaborate on the analysis of liability broadly, also taking into consideration administrative, criminal and civil liability.

Mr. Chair,

Delegations also exchanged views on **draft article 7** concerning the establishment of national jurisdiction. Various delegations welcomed that the draft article provides for a wide range of jurisdictional basis to limit gaps in the prosecution of crimes against humanity. Some delegations welcomed the inclusion of additional ground in subparagraphs 2 and 3, noting that the text of the draft article would not exclude broader jurisdictional bases under national law. Another view expressed was that only paragraph 1 related to existing law and paragraphs 2 and 3 addressed universal jurisdiction which was still being discussed by the Sixth Committee. Other delegations considered passive jurisdiction, as reflected in draft article 7, paragraph 3, to be optional.

It was noted that draft article 7 only requires States to establish a jurisdictional basis, but does not actually oblige them to exercise such jurisdiction. A view was also expressed that paragraph 3, was not clear enough and it merited being clarified. Reference was also made to the need to have a link between the State exercising jurisdiction and the alleged crimes committed by the accused. Some delegations considered that draft article 7 could only apply to the nationals of States parties to the future convention.

The view was expressed that such a text should not be misused to exercise jurisdiction following political considerations and to avoid extraditing the accused to States that would have grounds to exercise jurisdiction for the alleged crimes committed. Another proposal was to limit the text of draft article 7 to follow the wording of the Genocide Convention. Another delegation proposed to include a conference of the parties or a body where States can meet and discuss issues that they have including procedural safeguards and concurrent jurisdiction.

Mr. Chair,

On **draft article 8 concerning the investigation of crimes against humanity**, delegations referred to the need to have investigations conducted in good faith, and that sham, delayed and misleading investigations should not be qualified as investigations under the draft article in an eventual treaty. Some delegations welcomed the inclusion of draft article 8 considering that the investigation described therein was not a criminal investigation as such, but only one focusing on the possible commission of crimes against humanity. It was mentioned that the effectiveness of the investigation also depended on the capacity of the State, as well as cooperation with other States.

Various States voiced the need to have a more detailed discussion of the possibility of overlaps of jurisdiction between two States where their investigations are ongoing against the same accused. The view was expressed that it would be preferable for crimes to be investigated in the State where they occurred, as it could be the State where the authorities could have more chance to collect and preserve evidence for the investigations. Delegations also called for further discussion on certain terms, such as the scope of the relevant “reasonable grounds” needed prior to taking persons into custody, and the application of immunities.

Mr. Chair,

Let me now turn to comments made by delegations with respect to **draft article 9** concerning preliminary measures.

Several delegations noted the importance of draft article 9 in facilitating the prosecution of the alleged offender and combating impunity. It was noted that the provision together with draft article 7

constituted the prerequisite for the implementation of the obligation to prosecute or extradite (*aut dedere aut judicare*), as contained in draft article 10, which I will address later on. Some delegations welcomed the text of this draft article and recalled that it was based on similar provisions contained in other international instruments, in particular the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Several general proposals were made with a view to refining the text of the draft article. The need to introduce safeguards in the text of this provision in order to prevent its abuse for political purposes was emphasized. A delegation noted that the risk of political abuse of prosecution was not contingent on the existence of a future convention. In the absence of a convention, States could theoretically make broad jurisdictional claims over crimes against humanity with a view to exercising such jurisdiction. The possibility of such a situation justified incorporating uniform standards and procedural safeguards in the future convention.

The view was expressed that the provision could be reformulated in order to make it more appropriate for criminal justice systems in common law States, which applied the adversarial approach. It was also proposed to further consider the text in light of other obligations States may have under various international agreements. In particular, some delegations expressed the view that the provision should not affect the application of the rules of international law on immunity.

Delegations reiterated that any legal measures directed against an alleged offender should not be arbitrary and would need to comply with internationally recognized fair trial standards. It was also noted that any provisional detention measure imposed in accordance with the draft article should be of a fixed and reasonable duration. A proposal was made to include in **paragraph 1 of draft article 9** a reference to the fair treatment obligations of alleged offenders, as provided for in draft article 11.

As regards **paragraph 1 of the draft article 9**, a proposal was made to emphasize in the text that any provisional measure should be conditional on a request from a competent jurisdiction or the existence of judicial proceedings against the alleged offender. It was further proposed to expand the paragraph by providing further detail on the considerations that should inform a State's decision to take an alleged offender into custody.

With regards to **paragraph 3 of draft article 9**, it was questioned whether the words "as appropriate" were fitting, as they appeared to give excessive discretion to the investigating State. It was further recalled that some States had previously expressed concerns regarding the obligation to "immediately notify", as contained in paragraph 3 of draft article 9, and observed that such obligation should be interpreted in light of the circumstances of a particular situation.

A proposal, raised in connection with draft article 8, to give jurisdictional priority to the State where a crime had taken place or to the State of nationality of the alleged offender was reiterated. Accordingly, the wording of the **final sentence of paragraph 3 of the draft article** was considered unsatisfactory, since it tied the exercise of jurisdiction to the “intention” of a State where a suspect was present, even in the absence of any territorial or personal jurisdictional link.

Mr. Chair,

I will now move on to comments made by delegations with respect to **draft article 10** concerning the principle of *aut dedere, aut judicare*.

Several delegations welcomed this provision and recalled the importance of the principle of *aut dedere, aut judicare* in combating impunity. The view was expressed that draft article 10 created *erga omnes* obligations. Several delegations recalled that similar provisions were contained in multiple widely ratified international instruments, as well as in national law. It was noted that the Hague formula, also used in various international instruments, could be used as a source of inspiration for shaping the text of this draft article.

Some delegations noted that draft article 10 was linked to and should be read together with paragraph 2 of draft article 7. On the other hand, the view was expressed that draft article 10 rendered paragraph 2 of draft article 7 unnecessary and the removal of the latter provision was proposed.

A view was expressed that the obligation to prosecute should be interpreted in a way that would respect **prosecutorial discretion**. At the same time, some delegations considered it unacceptable for a State to stall or conduct sham proceedings with the sole aim of shielding the alleged offender.

According to another view, draft article 10 should be interpreted in light of the jurisprudence of the International Court of Justice, in particular the 2012 judgement in the *Questions relating to the obligation to prosecute or extradite (Belgium v. Senegal)* case. It was noted that with respect to crimes against humanity the obligation to prosecute should be considered primary in relation to the obligation to extradite the alleged offender. At the same time, it was noted that the obligation to extradite could become primary where there was a stronger jurisdictional link, in particular territorial, in a third State.

It was also noted that the implementation of draft article 10 should be consistent with other relevant international obligations of a concerned State. In particular, it was noted that the obligation in draft article 10 should have no effect on the procedural immunity of foreign State officials. Accordingly, it was proposed to amend the draft article so as to include an absolute obligation to extradite the alleged offender, who was also a foreign State official, where his or her immunity had not been waived.

The view was expressed that the draft article should not be interpreted as allowing for the exercise of universal jurisdiction over crimes against humanity.

It was also proposed to adjust the text of the draft article to reflect the fact that the obligation contained therein should not be considered fulfilled in case of the extradition of the alleged offender for an unlawful act other than a crime against humanity.

Some delegations welcomed reference to **competent international criminal courts and tribunals**. It was proposed that the word “tribunals” should be understood as encompassing hybrid criminal courts. It was also noted that the surrender of the alleged offender to an international tribunal was recognised but not required and should be dependent on the recognition of the jurisdiction of such tribunal by a State concerned. Other delegations proposed to remove the reference to international criminal courts and tribunals. It was noted that the draft articles dealt with horizontal cooperation among States, while relations with international tribunals went beyond the scope of the principle of *aut dedere, aut judicare* and should be addressed separately.

It was also recalled that the International Law Commission’s commentary to the draft article discussed the potential **impact of an amnesty** granted by one State on proceedings before the courts of another State, but the text of the provision was silent on the issue. Several delegations observed that amnesties were incompatible with the prevention and prohibition of crimes against humanity.

Mr. Chair,

I wish to recall here that a request was made, with respect to draft articles 8, 9 and 10, to clarify the situation of alleged offenders who already have been the subject of genuine investigation or other proceedings by their State of nationality.

Thematic cluster 4 – International measures (Articles 13, 14 and 15 (and annex))

Mr. Chair,

Thematic Cluster 4 relates to international measures, as detailed in draft articles 13, 14 and 15 and the annex. The cluster was discussed at the forty-second and forty-third meetings, held on Wednesday and Thursday, 12 and 13 April, as well as in the informal meetings.

Mr. Chair,

I will first address general comments made by delegations with respect to **draft article 13** concerning extradition. Delegations recalled that extradition was an important legal tool in the fight against impunity and emphasized the importance of this draft article for inter-State cooperation in the punishment of crimes against humanity. A link between this draft article and drafts articles 7, 9, 10 and 11 was noted.

Some delegations welcomed the fact that the text of the draft provision was derived from widely accepted provisions of the United Nations Convention against Corruption and the United Nations Convention against Transnational Organized Crime. At the same time, the view was expressed that those instruments should not be used as a basis for the draft articles, since crimes against humanity were of a different nature and required more specific approach. Relatedly, a proposal was made to follow the pattern of a similar provision contained in the Genocide Convention, which gave more discretion to States in defining extradition arrangements.

The need to reflect States' obligations to respect bilateral and regional agreements was noted. It was also recalled that provisions of draft article 13 should not be interpreted as requiring States to extradite their nationals. It was welcomed that the issue of multiple requests for extradition was not dealt with in detail in the draft articles and was left to the discretion of States.

Mr. Chair,

Several delegations proposed the inclusion of new paragraphs in the text of draft article 13. A proposal was made to introduce additional safeguards, in particular with regard to the possibility of extradition to a State where the alleged offender could be tried by an extraordinary tribunal or could face capital punishment. Relatedly, it was proposed to specify that no extradition could take place to a State where the alleged offender would face unfair trial.

Furthermore, a proposal was made to introduce a reference to channels used for extradition requests, in particular central authorities of a State. It was also proposed to consider including the institute of preventive detention, as well as the simplified extradition procedure on the basis of consent of the alleged offender.

Mr. Chair,

I will now address several proposals with respect to the individual paragraphs, made with a view to further refining the draft article.

A proposal was made to merge **paragraphs 1 and 2** of draft article 13.

With regards to **paragraph 2**, a clarification of the phrase “the offences covered by the present draft articles” was requested, since it implied only offences under national law, which would be in line with the equivalent provision in the United Nations Convention against Corruption.

A proposal was made to rework the text of **paragraphs 2 and 3** of the draft article, so to reflect the text of relevant provisions of the United Nations Convention against Corruption more closely.

Several delegations welcomed the clarification contained in **paragraph 3** of the draft article that all offences listed by the draft articles were extraditable and that there was no exception for political offences. At the same time, this paragraph was seen as being excessively prescriptive and as hampering the ability of States to examine an extradition request. Furthermore, a call was made for more careful consideration of paragraph 3, as there was no similar provision in either the United Nations Convention against Corruption or the United Nations Convention against Transnational Organized Crime.

The view was expressed that **paragraph 4** of the draft article established a significant tool for international cooperation. In terms of another view, the paragraph did not correspond to existing international law standards or national legislation.

With respect to **paragraph 5** of draft article 13, the view was expressed that additional clarifications were necessary. **Subparagraph (b)** was considered as going beyond the existing rules on the matter. It was also emphasized that the information indicated in **paragraph 5** of the draft article should be provided upon the deposit of a ratification instrument.

A request was made to revisit **paragraph 8** of the draft article, as provisions of national law should not be used to alter existing international obligations of States. It was also noted that the paragraph could be seen as lowering the evidentiary standards and prioritizing urgency over the quality of the investigation.

It was recalled that there was no comparable provision to **paragraph 9** of the draft articles in either the United Nations Convention against Corruption or the United Nations Convention against Transnational Organized Crime. Therefore, a more careful consideration of it was considered necessary.

Several delegations expressed their support for **paragraph 11** of the draft article and reiterated that no one should be prosecuted or punished on account of any ground indicated in the paragraph. At the same time, it was noted that the list of impermissible grounds was broader than that found in the relevant provisions of the United Nations Convention against Corruption and the United Nations Convention against Transnational Organized Crime. Accordingly, a question was raised whether broadening the scope was necessary. It was further argued that the list of impermissible grounds should be limited and exclude

grounds that lack universal acceptance. According to one view, paragraph 11 contradicted paragraph 3 of the draft article.

A proposal was made to introduce the reference to “a State of nationality of the accused” in **paragraph 12** of the draft article.

Several delegations noted that there was no obligation to extradite the alleged offender under draft article 13. At the same time, it was recalled that pursuant to **paragraphs 12 and 13** the requested State was required to give due consideration to the extradition request and, where appropriate, consult with the requesting State. It was further observed that in case of refusal of extradition of the alleged offender, obligations of a State to submit the case to its own competent authorities, as contained in draft article 10, were applicable.

Mr. Chair,

Allow me to now turn to **draft article 14**, which was considered by several delegations to contain a comprehensive framework in matters of mutual legal assistance. A number of delegations supported the approach of the International Law Commission to draw inspiration from the mutual legal assistance framework contained in the United Nations Convention against Corruption and the United Nations Convention against Transnational Organized Crime. Some **delegations were of the view that the draft article** should not seek to encompass all mutual legal assistance issues that might arise during the investigation and prosecution of crimes against humanity. In that connection, the view was expressed that the mutual legal assistance provision in the Convention on the Prevention and Punishment of the Crime of Genocide was a better model for the draft article. It was stated that a high level of detail might have an adverse impact on States’ ability to accede to a potential convention.

A number of delegations observed that the provision did not affect the obligations of States under existing treaties on mutual legal assistance and recalled **the commentaries of the International Law Commission in that respect. Other delegations raised questions regarding the commentaries and noted that aspects thereof required further clarification.** Several delegations indicated that they would provide textual proposals in writing later this year.

Mr. Chair,

Turning to specific comments on each paragraph of draft article 14, a suggestion was made to add the phrase “without prejudice to domestic law” before the word “State” in **paragraph 1**.

On **paragraph 2**, it was stated that the approach taken regarding “legal persons” could be misleading and implied that a future convention on the basis of the draft articles would oblige its States

parties to adopt national legislation on the criminal liability of legal persons. A suggestion was made to clarify that a legal person could be held responsible according to the criminal, civil or administrative spheres under national law.

Regarding **paragraph 3**, the importance of the testimony of survivors in the process of building cases against alleged offenders was emphasized. It was stressed that the questioning of witnesses by videoconference merited further consideration.

On **paragraph 7**, regarding the relationship between the draft article and other legal instruments, the insertion of a “without prejudice” clause concerning the applicability of national law was suggested.

On **paragraph 9**, a number of delegations expressed concerns about the reference to agreements or arrangements with international mechanisms that are established by the United Nations or by other international organizations to collect evidence with respect to crimes against humanity. Concerns were also expressed with respect to the commentaries by the International Law Commission on this paragraph.

Regarding **the annex**, it was stated that it could be used both as a model law and as a cooperation framework. Some delegations were of the view that a more detailed text was warranted, as was more clarity on the relevant commentaries. In particular, further discussion was considered to be needed regarding the “designation of a central authority”, the establishment of a monitoring mechanism, technical guidance and capacity-building, and related fiscal matters.

Mr. Chair,

Lastly, I wish to recall that several delegations emphasized that the material scope of draft article 14 and its annex differed widely from the “MLA initiative” and that the draft articles and the “MLA initiative” complemented each other.

Mr. Chair,

Let me now turn to draft article 15 concerning dispute settlement. A number of delegations welcomed the inclusion of a dispute settlement provision, with some highlighting the two-step approach referring the dispute to the International Court of Justice or arbitration if negotiations had failed. It was noted that the draft article did not include a time limit on the negotiations and that there was no enforcement mechanism. Some delegations considered that such structure could provide flexibility for States.

Some delegations expressed the view that the compulsory jurisdiction of the International Court of Justice would be the strongest path to promote accountability for crimes against humanity and solve

disputes concerning the interpretation of a future convention on crimes against humanity. Another view was expressed that the draft article reflected a standard dispute settlement clause, similar to that contained in the United Nations Convention Against Corruption or the United Nations Convention against Transnational Organized Crime.

Some delegations stated that they did not support paragraph 3, which allowed States to opt-out of the dispute settlement mechanism as it would weaken the provision. It was mentioned that while the text was based on the United Nations Convention Against Corruption, the gravity of crimes against humanity merited a stronger dispute settlement mechanism along the lines of the Genocide Convention, where disputes shall be submitted to the International Court of Justice.

It was noted that the consideration of this provision had to be in conjunction with the discussion on whether reservations to a future convention would be allowed. A suggestion was made to omit paragraphs 3 and 4 of this draft article. Another suggestion was to include a reference to any other means of dispute settlement in paragraph 2, such as those enlisted in article 33 of the United Nations Charter.

Other delegations stated that draft article 15 reflected a careful balance. A view was expressed that the draft article ensured the right of the parties to choose the means to settle their disputes and could have a positive influence on the accession and ratification of a future convention.

Various delegations expressed the view that a monitoring mechanism of a future convention would be desirable, and reference was made to examples analyzed in the memorandum by the Secretariat prepared for the International Law Commission during its consideration of the topic “Crimes against humanity”. A proposal was made to discuss a possible monitoring mechanism in light of the lessons learned from the Human Rights Committee and the Committee against Torture.

Thematic cluster 5 – Safeguards (Articles 5, 11 and 12)

Mr. Chair,

Thematic Cluster 5 concerns the **safeguards provisions**, in draft articles 5, 11 and 12. The cluster was discussed at the forty-third and forty-fourth meetings, held on Thursday, 13 April, as well as in the informal meetings.

Throughout the discussions on cluster 5, delegations expressed support for the inclusion of the safeguards provisions in the draft articles. Several delegations indicated that the safeguards provided for

constituted minimum standards and suggested adding additional guarantees for persons concerned with more safeguards based on well-established international and regional legal mechanisms. Other delegations highlighted the need to balance the desire for detail with the universal aspirations of a convention.

Mr. Chair,

In the discussion of **draft article 5**, a number of delegations expressed appreciation and support for the explicit reference to the principle of *non-refoulement*. Reference was made, in support of the principle, to several international conventions dealing with refugee law, international humanitarian law, and international human rights law, both at the global and regional levels, as well as to applicable rules of customary international law. It was observed that the draft article reflects an understanding widely shared by the international community and thus it was suitable for inclusion in a future convention on crimes against humanity. The view that draft article 5 reflected a peremptory norm of international law (*jus cogens*) was also expressed.

However, several delegations while recognizing the principle of *non-refoulement* nonetheless expressed reservations as to the inclusion of the principle in the draft article. It was stated that the principle was, strictly-speaking, not part of international criminal law, but related mainly to international human rights law and there was no consensus or clear State practice as to whether it applied equally to crimes against humanity. Several delegations also maintained that the application of the principle would soften the national measures to prevent and punish crimes against humanity, and could pave the way for abuses and politicization of extradition and mutual legal assistance by States. Thus, further deliberation on the inclusion of this draft article and possible redrafting or deletion of the draft article were suggested by some delegations.

Other concerns raised were that the reference to “*non-refoulement*” in the title and the use of the formulation in the 1951 Refugee Convention could lead to a misunderstanding that the provisions are being limited to only refugees or asylum seekers. The lack of clarity regarding its relationship with draft article 13 (11) was also raised.

Finally, a number of suggestions were made with respect to the two paragraphs of draft article 5. As for **paragraph 1**, the concern was expressed regarding the lack of clarity as to how to determine the existence of “substantial grounds for believing that he or she would be in danger of being subjected to a crime against humanity”. It was suggested that the standard established by human rights treaty bodies and international courts would apply.

Delegations also indicated that the term “surrender” in paragraph 1 should be re-examined as it referred to the act of delivering a person to an international court or tribunal which went beyond inter-State cooperation. It was further suggested that the risk of genocide, war crimes and torture shall be also included as grounds for applying the non-refoulement principle.

As for **paragraph 2**, it was pointed out that it was necessary to refine the reference to “consistent pattern of gross, flagrant or mass violations of human rights or of serious violations of international humanitarian law”, particularly with regard to the expression “consistent pattern”. It was then suggested to either add the expression “according to international standards” at the end of the sentence or adopt alternative drafting. It was also suggested that the expression “as appropriate” be introduced.

Mr. Chair,

During the discussion on **draft article 11**, delegations expressed support for the draft article and underscored that it reflected important principles recognized by international and regional human rights instruments. It was indicated that references to fair trial guarantees would be an important element of any future convention on crimes against humanity and the right to fair trial constituted an essential component of the implementation of the obligation to punish crimes against humanity.

A number of delegations welcomed the specific reference of the draft article to “at all stages of the proceedings” and “fair trial” and emphasized that the rights of the persons concerned should be guaranteed in accordance with the highest international standards.

While it was maintained that the draft article did strike the right balance, some delegations proposed to strengthen the draft article by providing greater guarantees and with a view to bringing it closer to the fair trial guarantees provided for in the Rome Statute of the International Criminal Court. It was also suggested that the draft article could be clearer and more effective by specifying which rights are to be guaranteed under applicable national or international law. A more specific proposal in this regard was to include protection against arbitrary arrest or detention, and refer to the rights to liberty and security of the accused and detained.

Concerns raised during the discussion included that the draft article does not indicate the consequences of failing to ensure fair treatment for the persons concerned, nor does it set a time frame to guarantee the realization of the rights provided for in paragraph 2. The necessity to clearly state that the draft article in no way modifies international humanitarian law was also expressed.

Delegations also made comments on and proposed suggestions to the three paragraphs of draft article 11. It was indicated that by resorting to the formulation of the Rome Statute, **paragraph 1** would

benefit from more precision. It was also suggested to give the broadest interpretation to paragraph 1 so that the guarantees provided by the draft article would cover all the stages of the proceedings.

The consistency of **paragraph 2** with the 1963 Vienna Convention on Consular Relations was noted by some delegations. However, it was also suggested that the paragraph be amended to reflect that it is the right of States, rather than individuals, to exercise their right to visit their nationals. A question regarding how the process indicated in this paragraph would work in practice was raised.

Furthermore, the addition of “the Vienna Convention on Consular Relations, 1963” as another source to paragraph 3 was suggested. Concerns about the clarity of the content of paragraph 3, including with regard to the terms of enjoyment of the guarantees provided for in paragraph 2 were also raised.

Mr. Chair,

As regards **draft article 12**, several delegations recalled that the rights of victims, witnesses and others had increasing prominence in international criminal law. Delegations noted that the reports and testimony of victims and witnesses were necessary for successful prosecutions. The centrality of the protection of victims’ rights to the legitimacy of prosecutions was also emphasized. Accordingly, a number of delegations welcomed the inclusion of draft article 12. Several delegations expressed appreciation for its breadth, including of the categories of persons protected by the provision. Other delegations questioned the need for the provision and expressed a preference for leaving the matter to national law.

Several delegations highlighted the importance of allowing States a degree of flexibility in the protection of the rights of victims, witnesses and others, thus allowing for effective implementation in their national legal systems. Some delegations considered draft article 12 to be sufficiently broad to accommodate such concerns. The desire for international minimum standards with respect to such rights was expressed.

Delegations discussed whether the provision should include a definition of “victim” or whether the question should be left to national law. The definitions of “victim” in the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law annexed to General Assembly resolution 60/147 and in Rule 85 of the Rules of Procedure and Evidence of the International Criminal Court were raised as potential models. Calls to adopt a definition that extended to witnesses of atrocities and children born of sexual violence were made.

Mr. Chair,

Turning to **paragraph 1**, the ability of anyone to make a complaint that crimes against humanity are being or have been committed, reflected in its **sub-paragraph (a)**, was welcomed. It was noted that the commentary to the paragraph explained that this included legal persons, for example, religious groups and non-governmental organizations. It was proposed to clarify that the scope of a State's obligation under the sub-paragraph was limited to the scope of its jurisdiction.

With respect to **sub-paragraph (b)**, it was proposed to specify that ill-treatment related to physical and psychological well-being, as well as dignity and privacy, in the text of the provision. It was also suggested that adding the words "as appropriate" would clarify the scope of actions envisaged by the sub-paragraph. The importance of taking into account the age, gender and health of victims was emphasized, particularly in the context of sexual and gender-based violence and violence against children. The importance of the availability of legal aid to victims was also highlighted.

With respect to **paragraph 2**, a number of delegations stressed the importance of ensuring that the voices of victims and survivors were heard. The need to address practical issues concerning witnesses, including the cooperation of third States where witnesses might be located, was raised.

With respect to **paragraph 3**, a number of delegations welcomed the provision for the rights of victims of crimes against to reparation for material and moral damages. Several delegations noted that the list of forms of reparation in the provision was non-exhaustive, allowing for reparations tailored to the circumstances of each individual case. Some delegations suggested that the text should specify that the availability of reparations in civil proceedings could meet the requirements of the paragraph. Some delegations expressed doubt whether the provision should provide for moral damages, preferring to leave the scope of available damages to national law. Several delegations also emphasized the need to ensure respect for the immunities of States and their property.

Further distinction between the obligations of States and of offenders to make reparations was requested, and some delegations called for clarification of the scope of the obligation in the case of a State exercising its jurisdiction on the basis of passive personality or universal jurisdiction. The view was expressed that only the State on whose territory a crime occurred had jurisdiction to consider compensation.

A number of delegations recalled the importance of reparations to restorative justice and the prevention of further crimes. The importance of victims' rights to information and to the truth were also emphasized.

Several delegations welcomed the recognition of reparations on a collective basis. The absence of reparations to date for the transatlantic slave trade and other crimes against humanity related to colonialism was decried.

Finally, the addition of a fourth paragraph based on article 4, paragraph 1, of the International Covenant on Civil and Political Rights was suggested.

Overall, several delegations expressed interest in further discussion of draft article 12 and improvements to its text. A number of delegations expressed their support for a victim-centred approach to accountability for crimes against humanity. The importance of including the gender perspective and including indigenous peoples was also recalled, and a specific reference to the rights of children was suggested.

This concludes my summary of the debate on Cluster 5.

Recommendation of the International Law Commission – Briefing by the Secretariat

Mr. Chair,

I turn now to the question of the recommendation made by the Commission contained in paragraph 42 of its report on the work of its seventy-first session for the elaboration of a convention by the General Assembly or by an international conference of plenipotentiaries on the basis of the draft articles. As was indicated earlier, in accordance with the programme of work adopted at the beginning of our resumed session, the Sixth Committee decided to request a briefing from the Secretariat, in lieu of a debate, which will instead be scheduled at next year's resumed session.

The Secretariat provided the requested briefing at the forty-third meeting of the Sixth Committee, on 13 April 2023, during which time it provided some general remarks about the Commission's authority to make recommendations before discussing the recommendation being considered by the Committee. It also sought to contextualize the recommendation within the overall history of the Commission's recommendations since its establishment. The briefing was followed by a questions and answers segment at both the forty-third and forty-fourth meetings, held on the same day. The text of the briefing has been made available to all delegations, both by email and on the website of the Committee and will be reflected in an official document of the Committee.

Conclusion

Mr. Chair,

This concludes our co-facilitators report for the present resumed session of the Sixth Committee.

Let me take this opportunity, on behalf of the co-facilitators, to thank you all for your support, cooperation, professionalism, and understanding during our co-facilitation. As many have noted, this has truly been an extraordinary, resumed session of the Sixth Committee. Our gathering this week is borne out of the collective importance we attach to the topic under the agenda. Our fight to end crimes against humanity must unite, and not divide us. We have had a truly enriching debate at this resumed session, and we look forward to continuing this work together after this very promising start.

We would be remiss not to express our great appreciation to the Secretariat of the Sixth Committee to the Codification Division, especially Huw, Arnold, Carla, Douglas, Huaru, Alexey, Paola and Raissa for all their support and assistance. Our gratitude also goes to the excellent and hardworking interpreters, meeting coverage section summaries writers, conference officers, documents officers, press officers and all technical staff for their efficient services.

Finally, I have been asked to inform delegations that the written version of this oral report will be circulated to all delegations and made available on the website.

Thank you.