that the inclusion of an indefinite element in the criminal law document creates certain challenges both for convincing decision-makers to sign the convention, and on later implementation stage.

• While Belarus fully supports the definition of the "slavery", given by the Commission in draft article 2 paragraph 2 subparagraph c, we submit that it would not be imprudent to single out the crime of human trafficking as a separate corpus delicti of the crime against humanity, given that this phenomenon fully meets the criteria of crimes against humanity. We also note, that serious changes occurred after the adoption of the Rome Statute the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention against Transnational Organized Crime was adopted in 2000.

• Guided by the concept of legal clarity, we remain unconvinced of the necessity of inclusion of paragraph 3 into draft article 2. In our opinion, the concept of emergence of precise definitions in international customary law demands additional research and more fundamental conceptualization. In our understanding, after the would-be convention will enter into force, well-established principles of hierarchy between treaties and customary international law, as well as various treaties between themselves and with national legislation, would come into play. Belarus considers that the quality of the document presented by the Commission requires at least taking it as a standard for national legislations and creating international custom.

• Our delegation strongly opposes the departure by the Commission in the commentary 41 from the definition of "gender" under the Rome Statute of the International Criminal Court. This issue is extremely sensitive, and we believe that we should stick to internationally agreed definitions in order to ensure the universality of the future convention. We cannot take note of the relevant comments of the Commission, but note that none of the sources cited (the International Committee of the Red Cross, HRC special rapporteurs, experts, etc.) reflects the position of the states as the main subjects of international law.

• In article 3, we believe that paragraph 1, which refers to the obligation of states not to participate in the crimes against humanity, should either be deleted or re-drafted, based on the following grounds.

• First, the current wording of article 3 paragraph 1 does not distinguish physical persons as subjects of criminal responsibility, and states, being subject to responsibility under international law. There is no doubt that the state is not the subject of the crime and therefore cannot participate in the committing of the crime. As stated in the verdict of the Nuremberg Tribunal, "crimes are committed by men, not by abstract entities". It is understandable that this approach was followed by the conventions on genocide and war

crimes, which do not contain provisions that states should not commit acts regulated by such conventions. This is due to the purposes of concluding such treaties - the prevention and suppression of international crimes through establishing legal and institutional bases for that work, as well as international cooperation of competent national agencies in criminal matters.

• Belarus believes that the elimination of the dispositive element ("if the state deems it appropriate") from article 7, paragraph 1 (b) and (c), would contribute to a more effective prevention of impunity for crimes against humanity. We proceed from the assumption that the as broad as possible list of the grounds for exercising jurisdiction - based on a treaty are correlated with the seriousness of crimes against humanity. As an alternative, the use of

different approaches to the establishment of jurisdiction will be taken into account to some extent, while maintaining the overall focus of the text on the maximum effectiveness of the criminal prosecution of persons who have committed crimes against humanity.

• We propose that Article 8 be amended as follows: "Each state shall ensure that its competent authorities conduct a prompt, thorough and impartial investigation of crimes against humanity".

• We propose that article 9, paragraph 1, should read as follows: "Any state in whose territory a person suspected of having committed any offence covered by the present draft articles is located shall detain that person or take other legal measures to ensure his or her presence. Detention and other legal measures, including criminal prosecution or the decision to extradite or transfer, must comply with the law of that state.".

• We propose that Article 10 be amended as follows: "The State in whose territory the alleged offender is located, unless it extradites or transfers that person to another state or to a competent international criminal court or tribunal for the purpose of criminal prosecution, shall take its decision in the same manner as in the case of any other offence of a serious nature under the law of that state".

• In order to avoid subjective interpretation in the article 11 paragraph 3, we consider it appropriate to specify the purpose of granting the rights referred to in paragraph 2 of this article to ensure the protection of the rights of the alleged offender.

• We have some doubts about the expediency of including in the draft article 12, paragraph 3, forms of reparation characteristic for the relations of subjects of international law, such as satisfaction, guarantees of non-repetition.

• The objectives of the future convention would be facilitated by the inclusion in article 13, paragraph 4, of mandatory rather than dispositive wording regarding the use of the draft articles as a legal basis for extradition.

• Article 14, paragraph 6 we propose to read as follows: "Without prejudice to national law, the competent authorities of a state may, without prior request, transmit information relating to crimes against humanity to the competent authority of another state".

- The obligation to cooperate with international mechanisms under article 14, paragraph 9, should, in our view,

into force of the Charter. In other cases, in our understanding, the rules of the Vienna Convention on the Law of Treaties governing the rights and obligations of third States under treaties are fully applicable. We support the Commission's approach that the issue should ultimately be considered in the context of the relationship between treaty norms and norms of customary international law.

• Belarus shares the Commission's conclusions in the commentary to conclusion 7 on the need for the consent of the vast majority of states from different regions, legal systems and cultural traditions in order for a norm to be recognized as peremptory. We believe that this important observation should be transferred from the commentary directly to draft conclusion 7, perhaps revealing its contents somewhat. It is obvious that the recognition of the norm by all subjects of international law without exception is practically impossible. On the other hand, it is wrong to talk about the sufficiency of recognition by the overwhelming majority of states, which will not take into account the position of dozens of other states.

• In the draft conclusion 10 regarding the relationship between treaties and peremptory norms of international law it addresses an extremely important and promising issue for further elaboration. In this context, the provocative question arises, whether it would be worthwhile to "go beyond" the Vienna Convention on the Law of Treaties to some extent? Undoubtedly, this is a very authoritative document, but it seems that the Commission is capable of more than preparing comments, albeit qualitative, to the certain provisions of the Convention. With regard to peremptory norms of international law, it might be worth investigating the historical evolution of the concept before the adoption of the Vienna Convention. With regard to the draft conclusion, it would seem more appropriate for our delegation to speak not of the treaty as a whole, but of its specific provisions, which are null and void or become so as a result of conflict with a peremptory norm of international law. In the future, the issue should be subject to consideration in the context of the divisibility of treaty provisions. This position is based on the importance of the stability of treaty relations and the principle of good faith, which implies, inter alia, that in concluding a treaty, states do not intend to violate existing international law, including peremptory norms until proven otherwise.

• Based on the above considerations, our delegation does not support paragraph 1 of draft conclusion 11. It seems that the nullity of a treaty as a whole should be questioned only when its object and purpose contradict a peremptory norm of international law. In other cases, as in the example of the Treaty between the Netherlands and the Saramak community cited by the Commission in the commentary to the previous conclusion, it would be

correct to talk about the non-application of a specific norm that is contrary to the peremptory norm, but is not a necessary condition for the fulfillment of the remaining provisions of the treaty. Belarus sees no obstacle to the revision of the presumption of the total nullity of a treaty formulated in the Vienna Convention, some rules of which contradict the peremptory norm of

state in the official name of the treaty to which the Republic of Belarus is a party - " The Agreement between the Russian Federation, the Republic of Belarus, the Republic of Kazakhstan and the Kyrgyz Republic on deepening

- With regard to two topics that the Commission intends to propose to the General Assembly for inclusion in the long-term program of its work, we have some doubts.
- Firstly, in relation to both topics, we are not convinced that they meet the urgent needs of the world community as a whole.
- Secondly, with regard to reparations, the initiator of the discussion of the topic himself admits that this topic is of a singular and diverse nature,