Commission. As some of them have pointed out, this rule is a controversial theory as substantial questions are not clearly answered. For example, such as whether the existence of the persistent objector thwarts the establishment of a rule in question as customary international law, or this rule simply hampers the application of customary rule to the persistent objector. We deem further deliberation is required on this matter with concrete examples of general practice in order to substantiate the rule.

As to the role of resolutions of international organizations, the Japanese delegation agrees with the conclusion of the Commission that resolutions adopted by an international organization may provide evidence for establishing the existence and content of a rule of customary international law. At the same time, as several members of the Commission suggested, the evidentiary value of such resolution should be dependent on other corroborating evidence of general practice and opinio juris. With regard to judicial decisions, we as practitioner, frequently refer to decisions of international courts, particularly the International Court of Justice, for analyzing whether the nature of some rule could be categorized as customary international law or not. This universal practice of international lawyers should be taken into account.

We understand that the Special Rapporteur intends to complete a first reading of the draft conclusions and commentaries by the end of the next session. The Commission might consider spending sufficient time in order to develop a useful practice pointer. We hope the constructive discussion will continue in a prudent manner.

Crimes against humanity

Mr. Chairman,

Now, I would like to turn to the topic of "Crimes against humanity". The delegation of Japan would like to commend the Special Rapporteur, Mr. Sean Murphy for his extensive work in drawing up the comprehensive first report and draft articles therein. We duly note the draft articles provisionally adopted by

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the Commission; namely draft articles from 1 to 4. Here, I would like to address several points.

To begin with, the delegation of Japan acknowledges the importance of
the current work initiated by the Special Rapporteur, namely filling the legal gap of obligations of prevention and punishment of crimes against humanity, as Japan puts great importance in fighting against impunity of the most serious crimes of concern to the international community as a whole. Whereas the Rome Statute establishing the International Criminal Court regulates "vertical relationships" between the Court and its States Parties, it does not prescribe any obligations regarding adoption of national laws of crimes against humanity or inter-state cooperation on these crimes. Japan recognizes that the current work, which will create "horizontal relationships" among states and regulate inter-state cooperation, will lead to strengthening the effort of the international community for preventing those crimes and punishing its perpetrators.

Secondly, the delegation of Japan is of the view that the current work should avoid any legal conflicts with the obligations of states arising under the constituent instruments of international courts or tribunals, including the ICC. We take note that the definition of crimes against humanity is verbatim text of Article 7 of the Rome Statute. Indeed, the language of Article 7 is an appropriate basis for defining the crimes, considering that the said article has been accepted by more than 120 States Parties of the Rome Statute.

We also note that the scope of the present draft articles only apply to the prevention and punishment of crimes against humanity. In doing so, the current work addresses the inter-state cooperation on the prevention, investigation, extradition and prosecution. We consider it would contribute to the realization of the principle of complementarity under the Rome Statute, not to arise any legal conflicts with the ICC regime. We are looking forward to hearing further discussion in the Commission on scope of immunity or jurisdictional matters in relation to the Rome Statute in the next session.

The delegation of Japan sincerely hopes that, as the fighting against impunity of most serious crimes requires coordinated action by the international community, deliberation of this topic will be continued in the Commission in a

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cooperative and constructive manner.

Thank you, Mr. Chairman.

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