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Chair: Mr. Manongi. (United Republic of Tanzania)

Contents

Agenda item 83: The scope and application of the principle of universal jurisdiction

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

Agenda item 83: The scope and application of the principle of universal jurisdiction (A/69/174)

1. **Mr. Gharibi** (Islamic Republic of Iran), speaking on behalf of the movement of Non-Aligned Countries, said that the principles enshrined in the Charter of the United Nations, particularly the sovereign equality and political independence of States and non-interference in their internal affairs, should be strictly observed in any judicial proceedings. The exercise by courts of another State of criminal jurisdiction over high-ranking officials who enjoyed immunity under international law violated the principle of State sovereignty; the immunity of State officials was firmly established in the Charter and in international law and must be fully respected.

2. The invocation of universal jurisdiction against officials of some member States of the Non-Aligned Movement raised both legal and political concerns. The Assembly of the African Union, which was committed to combating impunity, had, in its decision Assembly/AU/Dec.420 (XIX), reiterated its request that warrants of arrest issued on the basis of the abuse of the principle of universal jurisdiction should not be executed in any member State.

3. It was necessary to clarify which crimes fell within the scope of universal jurisdiction in order to prevent its misapplication; the Committee might find the decisions and judgments of the International Court of Justice and the work of the International Law Commission useful for that purpose. The Movement cautioned against unwarranted expansion of the range of such crimes and would participate actively in the work of the Working Group on the topic, including by sharing information and practices, with a view to ensuring the proper application of universal jurisdiction.

4. **Ms. O'Brien** (Australia), speaking also on behalf of Canada and New Zealand, said that the three countries recognized universal jurisdiction over the most serious crimes as a principle of international law that had first been established in relation to piracy but had since been extended to crimes such as genocide, war crimes, crimes against humanity, slavery and torture whose exceptional gravity made them a joint concern of the entire international community.

5. As a general rule, the primary responsibility for prosecution should rest with the State in which the crime had been committed, since it was often best placed to obtain evidence, secure witnesses, enforce sentences and deliver justice for victims. In certain circumstances, the exercise of jurisdiction on the basis of nationality might also be appropriate. Where a State was unwilling or unable to exercise jurisdiction, universal jurisdiction could be an important mechanism for holding perpetrators to account, eliminating safe havens and promoting the rule of law. National courts should exercise such jurisdiction in good faith and in a manner consistent with international law, including fair trial obligations.

6. Australia, Canada and New Zealand had incorporated universal jurisdiction over the most serious international crimes in their domestic legislation. They acknowledged those States that had done the same and encouraged others to follow suit. The establishment of such jurisdiction sent an unequivocal message to perpetrators and would-be perpetrators that grave violations of international humanitarian and human rights law would not be tolerated. The three delegations encouraged States to cooperate, including through the provision of mutual legal assistance, in order to ensure the effective investigation and prosecution of individuals responsible for grave crimes.

7. **Mr. Joyini** (South Africa), speaking on behalf of the African Group, said that the Group recognized that universal jurisdiction was a principle of international law intended to ensure that individuals who committed grave offences did not enjoy impunity and were brought to justice. Under the Constitutive Act of the African Union, the Union had the right to intervene, at the request of any of its member States, in situations of genocide, war crimes and crimes against humanity. African States had also adopted progressive human rights instruments, including optional protocols that permitted individuals to lodge complaints or grievances against their Governments, and they honoured their reporting obligations under United Nations human rights treaties.

8. However, abuse of universal jurisdiction could undermine efforts to combat impunity; it was therefore vital, when applying the principle, to respect other norms of international law, including the sovereign equality of States, territorial jurisdiction and the immunity of State officials. The International Court of

Justice had expressed the view that the cardinal principle of immunity of Heads of State should not be called into question. Some non-African States and their domestic courts had sought to justify arbitrary or unilateral application or interpretation of the principle on the basis of customary international law. However, a State that relied on a purported international custom must, generally speaking, demonstrate to the satisfaction of the International Court of Justice that the alleged custom had become so established as to be legally binding.

9. African and other like-minded States around the world were promoting the adoption of measures to end abuse and political manipulation of the principle of universal jurisdiction by judges and politicians from States outside Africa, including violation of the principle of the immunity of Heads of State under international law. The Group reiterated the request by African Heads of State and Government that arrest warrants issued on the basis of the abuse of universal jurisdiction should not be executed in any African Union member State, and noted that the African Union had urged its members, in its latest decision on the issue, to use the principle of reciprocity to defend themselves against the abuse of universal jurisdiction.

10. **Mr. Charles** (Trinidad and Tobago), speaking on behalf of the Caribbean Community (CARICOM), said that the discussion on the scope and application of universal jurisdiction should be informed by the principles set out in the Charter of the United Nations: respect for the sovereignty and territorial integrity of States, political independence, the rule of law and non-interference in the internal affairs of States. CARICOM supported the establishment of the Working Group to discuss the topic and pledged to actively engage in its deliberations.

11. Notwithstanding article 31 of the Vienna Convention on Diplomatic Relations, which provided for the immunity of diplomatic agents from the criminal jurisdiction of the receiving State, CARICOM supported the jurisdiction of the International Criminal Court, as set out in the Rome Statute, which established that no one was immune from prosecution for genocide, crimes against humanity, war crimes or the crime of aggression. Nonetheless, the Court's jurisdiction could be exercised only when a State was unwilling or unable to prosecute perpetrators under its domestic law.

12. The members of CARICOM remained committed to countering impunity; however, care must be taken to ensure that universal jurisdiction was exercised in a manner that was consistent with international law and the rule of law, fostered peace and security and ensured justice for victims. It was a complementary mechanism that should not replace the national jurisdiction of States and should apply only to those crimes that affected the international community. CARICOM reaffirmed its commitment to continue to work with all stakeholders with a view to ensuring the proper application of universal jurisdiction.

13. **Ms. Guillén-Grillo** (Costa Rica), speaking on behalf of the Community of Latin American and Caribbean States (CELAC), said that the member countries of CELAC attached great importance to the issue of the scope and application of universal jurisdiction, which should be examined in the light of international law and with particular attention to the applicable international norms. The Working Group on the topic had explored several points on which consensus existed and others that required further consideration. Discussions during the current session should focus on the elements addressed in the informal paper submitted by the Working Group to the Committee at the sixty-sixth session of the General Assembly (A/C.6/66/WG.3/1).

14. Universal jurisdiction, while exceptional in character, was an institution of international law, which therefore established the scope of its application and enabled States to exercise it. CELAC found it constructive that a number of Member States had affirmed that universal jurisdiction should not be confused with international criminal jurisdiction or with the obligation to extradite or prosecute (*aut dedere aut judicare*); they were different but complementary legal institutions that had the common goal of ending impunity. CELAC shared that understanding, which was consistent with human rights principles and the observance of the rule of law at the national and international levels. While it would be premature to determine the eventual outcome of the Working Group's discussions, the possibility of referring the topic to the International Law Commission for study should not be ruled out.

15. **Ms. Rodríguez Pineda** (Guatemala) said that the exercise of universal jurisdiction was legitimate in respect of certain serious international crimes so heinous that they were an offence against humanity as

a whole and when conventional jurisdiction could not be exercised. In such cases, all States had a responsibility to bring the perpetrators to justice. The International Criminal Court, though responsible for administering international justice, did not exercise universal jurisdiction, which remained particularly pertinent in cases where the Court's jurisdiction could not be invoked.

16. Universal jurisdiction was indirectly linked to, but also differed in certain respects from, the jurisdiction exercised by international tribunals, extraterritoriality, the obligation to extradite or prosecute, and the immunity of State officials from foreign criminal jurisdiction. Given the complexity of the issue and the inadequacy of the information gathered so far on States' views and practices, her delegation had joined others in submitting a proposal that the International Law Commission should be requested to prepare a study on the status of the principle in international law, which would provide a solid legal basis for consideration of its scope and application. The diversity of legal systems around the world created a risk of subjective interpretation of universal jurisdiction, and many countries lacked the capacity to try extraterritorial criminal cases; the Commission's involvement might be helpful on those issues. It would also prevent duplication of work, as the Commission was already considering important issues linked to universal jurisdiction in the context of its deliberations on the obligation to extradite or prosecute and the immunity of State officials. Furthermore, the Commission would be able to ensure that political considerations did not overshadow the legal issues.

17. **Mr. Elnor** (Sudan) said that the Committee was the most appropriate forum in which to discuss universal jurisdiction and to seek to reconcile the differing views of States, particularly with regard to its scope. The application of universal jurisdiction must be consistent with the principles established in international law and the Charter of the United Nations, in particular the sovereignty, sovereign equality and political independence of States and non-interference in their internal affairs. The General Assembly's work on the subject should focus on ensuring that those principles were respected and that universal jurisdiction remained a complementary mechanism rather than a substitute for national jurisdiction. Universal jurisdiction was not applied

consistently from one State to another; moreover, its unilateral and selective application by the national courts of certain States could lead to international conflict.

18. His delegation recalled the opinion of the International Court of Justice that the immunity granted to Heads of State and Government and other government officials under international law was beyond question. The African Union had also repeatedly reaffirmed that view in the outcome documents of the ordinary and extraordinary sessions of its Assembly, in the light of the increasing number of cases of politically motivated application of the principle of universal jurisdiction. It was important to continue discussing the question of universal jurisdiction with a view to achieving a common understanding of the concept and ensuring that it was applied in a manner consistent with its original objectives and not in the service of particular political agendas.

19. **Mr. Musikhin** (Russian Federation) said that his delegation recognized the potential of universal jurisdiction for combating impunity through the prosecution of individuals responsible for the most serious international crimes. A better understanding of the principle, its place in the system of international criminal justice and its relationship with other norms of international law would help to boost mutual trust. However, the legal parameters of the concept remained somewhat vague. Until consensus was reached, at least on the scope of universal jurisdiction and the conditions for its application, particular caution should be exercised, especially as there had been many cases in which unilateral application or abuse of the principle by national courts had caused complications in relations between States. Universal jurisdiction must therefore, in all cases, be exercised in accordance with the rules of customary international law, in particular those relating to the immunity of State officials.

20. His Government attached great importance to judicial independence; however, it considered it undesirable that court decisions should give rise to questions about the violation by a State of its international obligations. It should also be recalled that other, less controversial, tools could be used to combat impunity for the most serious international crimes. Appropriate treaty-based and other mechanisms for cooperation on criminal matters, such as legal assistance, information exchange, collaboration between

investigative authorities and law enforcement capacity-building, should be further strengthened.

21. His delegation was not opposed to continued discussion of the topic by the Committee. However, there was a persistent divergence of views, and it was unlikely that further progress could be made on the basis of the material currently at the Committee's disposal. Moreover, there was no realistic prospect of developing international standards and criteria for the application of universal jurisdiction; indeed, his delegation saw no practical benefit in doing so.

22. **Ms. Dieguez La O** (Cuba) said that the principle of universal jurisdiction should be discussed by all Member States within the framework of the General Assembly, with the primary aim of ensuring that it was properly applied. Her delegation reiterated its concern at the unwarranted, unilateral, selective and politically motivated exercise of universal jurisdiction by the courts of developed countries against natural or legal persons from developing countries, with no basis in any international norm or treaty. It also condemned the enactment by States of laws directed against other States, which had harmful consequences for international relations. Universal jurisdiction should not be used to diminish respect for a country's national jurisdiction or to question the integrity and values of its legal system. It should be considered exceptional and supplementary in nature.

23. The General Assembly's main objective with regard to universal jurisdiction should be the adoption of an international set of rules or, failing that, international guidelines in order to prevent abuse of the principle and thus safeguard international peace and security. Such rules should establish clearly under what conditions or within which limits universal jurisdiction might be invoked, as well as the crimes to which it should be applied. In her delegation's view, universal jurisdiction should be restricted to crimes against humanity and should be invoked only in exceptional cases where there was no other way to bring proceedings against the perpetrators and prevent impunity. The prior consent of the State in which the crime had been committed, or of the State or States of which the accused was a national, should also be obtained as a matter of utmost priority.

24. The principle of universal jurisdiction should be exercised by national courts in strict compliance with the principles enshrined in the Charter of the United

Nations, in particular the principles of sovereign equality, political independence and non-interference in the internal affairs of States. Its application should be limited by absolute respect for the sovereignty of States and should always be supplementary to their actions and national jurisdiction. Moreover, the absolute immunity granted under international law to Heads of State, diplomatic personnel and other incumbent high-ranking officials must not be called into question. Her delegation commended the efforts made by the Working Group to identify areas of consensus that could guide the Committee's work on the topic.

25. **Mr. Belaid** (Algeria) said that universal jurisdiction was an important instrument in combating impunity for serious crimes, provided that it was applied in good faith and in accordance with principles of international law, such as State sovereignty, territorial jurisdiction, the primacy of action by States in criminal prosecutions, the protective principle and, most of all, the immunity of incumbent Heads of State and Government. Universal jurisdiction should be a complementary mechanism and a measure of last resort; it could not override the right of a State's national courts to try crimes committed in the national territory.

26. His Government was concerned about the selective, politically motivated and arbitrary application of universal jurisdiction without due regard for international justice and equality. The International Criminal Court, throughout its 11 years of existence, had focused exclusively on African States while ignoring unacceptable situations in other parts of the world; that selectivity had been the main reason for holding the extraordinary session of the Assembly of the African Union in Addis Ababa in October 2013. In the light of the outcomes of that and other recent African Union meetings, his delegation supported the Committee's continued work on the scope and application of the principle of universal jurisdiction on the basis of respect for the sovereign equality and political independence of States.

27. **Mr. Heumann** (Israel) said that his country, along with many others, acknowledged the importance of combating impunity and bringing the perpetrators of the most serious crimes to justice. It was clear from the Secretary-General's reports on the topic that many States recognized that universal jurisdiction was supplementary and subsidiary to national jurisdiction

and was therefore to be used only as a last resort. At the same time, there were diverse views on the legal status and scope of the principle, as reflected in the inconsistent definitions in the national legislation of different States and the offences to which it was applicable in each State, including in some cases offences that lacked the basic characteristics inherent in the concept of universal jurisdiction under international law.

28. There was a wide understanding of the need to prevent abuse of the principle of universal jurisdiction by establishing appropriate safeguards in national legal systems, including requiring that criminal proceedings based on universal jurisdiction should be brought by a public prosecutor; that the approval of high-level legal officials should be sought for such proceedings; and that jurisdiction should be exercised only if the accused was present in the forum State and additional jurisdictional links existed.

29. **Ms. Soulama** (Burkina Faso) said that the application of universal jurisdiction had proved to be an effective way of combating impunity for the most serious crimes affecting the international community as a whole. Universal jurisdiction derogated from the traditional rules and principles of international law and was supplementary to the ordinary criminal jurisdiction of States. In view of the increasingly porous nature of frontiers, universal jurisdiction bypassed the requirement for the usual links necessary for jurisdiction, such as the place of commission of the crime, the nationality of the accused or the victim or harm to the interests of the forum State or its inhabitants, in order to prosecute perpetrators of such crimes wherever they might be.

30. While there were considerable divergences of opinion among States regarding the scope and application of universal jurisdiction, every effort should be made to reach a consensus and address the not unfounded concerns of some delegations. The principle should be applied in respect of the most serious international crimes, in other words, those that fell within the *jus cogens* category and were subject to and punishable under treaty law or customary international law. Such crimes included genocide, war crimes, crimes against humanity, piracy, slavery and human trafficking, hostage-taking and counterfeiting. The application of the principle should be based on a sufficiently clear and precise definition of the crimes in question and of the national means of implementation.

Once a consensus was reached on the crimes that were subject to universal jurisdiction, each State should adopt domestic legislation establishing procedures for the prosecution and punishment of the perpetrators.

31. In Burkina Faso, a law implementing the Rome Statute of the International Criminal Court had been adopted in 2010. As well as defining the crimes subject to that Statute, determining the relevant competent authorities and providing for punishment, it was also applicable to other crimes, such as those recognized in the 1949 Geneva Conventions and their Additional Protocols. The country's judges could therefore exercise universal jurisdiction in respect of the crimes listed in those instruments, which were unanimously recognized by the international community.

32. The broad range of opinions on the scope and application of the principle of universal jurisdiction should not prevent the international community from working to combat impunity at the international level on the basis of traditional principles and mechanisms of criminal jurisdiction. In that regard, the *aut dedere aut judicare* principle should complement the principle of universal jurisdiction with a view to overcoming the difficulties associated with the prosecution and punishment of international crimes. Judicial cooperation should also be encouraged.

33. **Mr. Luna** (Brazil) said that the aim of universal jurisdiction was to deny impunity to individuals responsible for serious crimes defined by international law which, by their gravity, shocked the conscience of all humanity and violated peremptory norms of international law. As a basis for jurisdiction, it was of an exceptional nature compared with the more consolidated principles of territoriality and nationality. Although the exercise of jurisdiction was primarily the responsibility of the territorial State in accordance with the principle of the sovereign equality of States, combating impunity for the most serious crimes was an obligation set out in numerous international treaties. Universal jurisdiction should be exercised only in full compliance with international law; it should be subsidiary to domestic law and limited to specific crimes; and it must not be exercised arbitrarily or in order to fulfil interests other than those of justice, namely political agendas.

34. A shared understanding of the scope and application of universal jurisdiction was necessary in order to avoid improper or selective application. In that

connection, his delegation welcomed the activities of the Working Group and supported an incremental approach in its discussions. The Working Group should continue to seek an acceptable definition of the concept and could also consider the kinds of crimes to which such jurisdiction would apply and its subsidiary nature. At the appropriate time, it should also consider whether the formal consent of the State where the crime had taken place and the presence of the alleged criminal in the territory of the State wishing to exercise jurisdiction were required. One of the most contentious issues was how to reconcile universal jurisdiction with the jurisdictional immunities of State officials. At the current stage of discussion, it would be premature to consider the adoption of uniform international standards on the matter.

35. Brazilian legislation recognized the principles of territoriality and nationality as bases for exercising criminal jurisdiction. Its courts could exercise universal jurisdiction over the crime of genocide and the crimes, such as torture, which Brazil had a treaty obligation to suppress. Under Brazilian law, it was necessary to enact national legislation to enable the exercise of universal jurisdiction over a specific type of crime; such jurisdiction could not be exercised on the basis of customary international law alone without violating the principle of legality.

36. The international community should strive to promote universal adherence to the Rome Statute of the International Criminal Court; achievement of that objective would probably render discussions on universal jurisdiction redundant. Meanwhile, efforts to achieve the shared objective of denying impunity to the perpetrators of serious international crimes should be maintained.

37. **Ms. Ntumba da Silva** (Democratic Republic of the Congo) said that in general States either had not provided in their domestic legislation for the exercise of universal jurisdiction or were reluctant to exercise it because of the lack of clear rules on how to apply it, the difficulties of effective prosecution and respect for the customary-law immunity of foreign officials in the exercise of their functions. Only a very few States had incorporated the principle in their domestic law, and they differed in the manner in which they applied it. Given that situation, it was highly probable that the principle of universal jurisdiction had been applied in a somewhat abusive manner.

38. The Working Group should therefore endeavour to establish clear rules that were consistent with the general rules of customary international law and would ensure uniformity in the application of universal jurisdiction. The limits on the jurisdiction of ad hoc tribunals and even of the International Criminal Court meant that universal jurisdiction had a key role to play in preventing impunity in cases of torture, war crimes, crimes against humanity and genocide. However, consensus was needed on several prerequisites if it was to be applied effectively and without causing international tension. For example, indiscriminate use of the prosecution aspect of the obligation to extradite or prosecute as a panacea to overcome the defects of the extradition regime amounted to an abuse of the principle of universal jurisdiction. Moreover, many States had not enacted domestic legislation criminalizing and providing for the prosecution of international crimes, a lack that in some cases hampered cooperation between States.

39. While the Criminal Code of the Democratic Republic of the Congo provided for the prosecution of the country's own nationals when they committed crimes abroad, there was no national law on universal jurisdiction. A way must be found to destroy the illusion that certain States or groups of States had a monopoly on the exercise of the principle to the detriment of others. In the recent past, a number of incumbent and former high-ranking officials of countries concentrated in the southern hemisphere had been the subject of criminal investigation by a judge exercising universal jurisdiction. If every State Member of the United Nations acted similarly, chaos would ensue. Order therefore needed to be restored. The question of immunities also complicated the application of universal jurisdiction. The judgment of the International Court of Justice in *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, a milestone in the history of international law, had shed valuable light on the grey areas surrounding the issue. Her delegation remained open to any proposal that would establish decisively and by consensus equitable legal criteria and modalities for the application of universal jurisdiction in order to prevent impunity.

40. **Mr. Ruiz** (Colombia) said that universal jurisdiction was a form of criminal jurisdiction and was prescriptive in nature. Traditionally, the grounds for a State's exercise of prescriptive criminal jurisdiction

had been provided for limitatively in international law. As the Permanent Court of International Justice had pointed out in the 1927 *S.S. "Lotus" (France v. Turkey)* case, the freedom of States to submit cases to their domestic criminal jurisdiction was limited by the rules created for that purpose by the international legal system. There were five recognized bases for the exercise of criminal jurisdiction: territoriality, active and passive personality, protection of the State and universal jurisdiction.

41. Universal jurisdiction was residual in nature, being exercised in respect of crimes presumed to have been committed in the territory of one State, by or against a national of another State, without posing a direct threat to the vital interests of the State exercising jurisdiction. The essence of the concept was therefore the legislative authority of a State to extend its prescriptive jurisdiction even in the absence of any national or territorial link with the crime in question. Under the Colombian legal system, the principle of universal jurisdiction was recognized as an exception to the territorial application of criminal law.

42. Universal jurisdiction existed for crimes established in either treaty law or customary law, an example of the former being the crime of apartheid as defined by the 1973 International Convention on the Suppression and Punishment of the Crime of Apartheid. Under customary law, the crimes of genocide, war crimes and crimes against humanity were subject to universal jurisdiction, as recognized by national and international courts and tribunals. However, it was an optional, not a compulsory, form of jurisdiction. It should also be distinguished from the obligation *aut dedere aut judicare* and from the jurisdiction of the International Criminal Court pursuant to the Rome Statute. Outside the scope of that Court, the principle of universality was limited to the power of States to investigate and prosecute individuals with a view to preventing impunity for grave violations of human rights and international humanitarian law. The Constitutional Court of Colombia had recognized that power of States, provided that the alleged perpetrators were in their territory, even if the crime had been committed elsewhere.

43. He reaffirmed his delegation's view that universal jurisdiction was subject to the same legal safeguards as any other form of jurisdiction, including the general principles *nullum crimen sine lege* and *nulla poena sine lege*. Proceedings instituted on the basis of

universal jurisdiction must comply with the principles governing the conduct of any criminal case, including the principle of legality and respect for officially recognized jurisdictional immunities, and with international human rights instruments such as the International Covenant on Civil and Political Rights and the American Convention on Human Rights.

44. **Mr. Horna** (Peru) said that universal jurisdiction was generally recognized as a valuable institution of international law for the purpose of combating impunity for particularly serious crimes. It could be applied as a last resort in the absence of other bases for jurisdiction, such as territoriality and active or passive personality, and required the individual in question to be present in the territory of the forum State. There were differences of opinion, however, on the crimes to which it applied; whether it derived from treaty law or customary law; the relationship between universal jurisdiction and the regime of immunities for State officials; the cooperation and assistance mechanisms available to facilitate its exercise, particularly in relation to extradition requests; and the question of whether a State could exercise such jurisdiction where not envisaged in its domestic law.

45. The application of universal jurisdiction in cases of piracy on the high seas had traditionally been accepted under customary international law and had subsequently been established under treaty rules; his delegation noted with interest the experience of one Member State in that regard. It would be useful to consider the possibility of applying universal jurisdiction to other crimes comparable to piracy that were committed outside the jurisdiction of coastal States.

46. With regard to the comments of the International Maritime Organization set out in the Secretary-General's report, he noted that Peru was a party to the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and the 1988 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf.

47. The Committee was the appropriate forum in which to consider the scope and application of universal jurisdiction. However, in order to make further progress, the possibility of requesting the International Law Commission to prepare a study on the topic should be considered.

48. **Mr. Zamora Rivas** (El Salvador) said that universal jurisdiction was based solely on the nature of the crime, without regard to where it had been committed or the nationality of the individuals involved. If it was to be an effective tool in the prevention of impunity for serious international crimes such as genocide, torture and crimes against humanity, it must be distinguished from other bases for jurisdiction, such as territoriality and personality; the jurisdiction of ad hoc or permanent international tribunals under the relevant treaties; and other legal institutions such as extradition. The primary responsibility for prosecution lay with the State in whose territory the crime had been committed, which was best placed to investigate and prosecute the crime and enforce any penalty. Universal jurisdiction should be exercised only as an exception, where the territorial State was unwilling or unable to take action. His delegation attached great importance to uniform application of the principle. Future discussion of the topic would benefit from a more in-depth study of specific issues such as the principles, rights and guarantees that should govern criminal proceedings conducted in accordance with the principle of universal jurisdiction, including compensation for victims, which was intrinsic to any concept of justice.

49. Universal jurisdiction was applicable under his country's Criminal Code to crimes committed by any person in a place not subject to Salvadoran jurisdiction if they affected legal rights that were internationally protected by specific agreements or rules of international law or if they entailed a serious breach of universally recognized human rights. Under the country's national law, universal jurisdiction was not restricted to a specific list of offences but could be applied to a variety of serious crimes that met the aforementioned criteria and constitutional requirements relating to the harm caused.

50. **Ms. Ismail** (Malaysia) said that her delegation welcomed the Working Group's efforts to clarify the scope and application of universal jurisdiction, notwithstanding the diversity of practices in different States. A clear definition of universal jurisdiction must be agreed upon before further progress could be made. Her delegation welcomed the comments submitted by Member States in that regard; however, there had not yet been a constructive discussion on the ultimate goal of the principle. A uniform view was imperative in order to avoid different standards of application in

different countries. Without proper safeguards, the application of universal jurisdiction could encroach on State sovereignty. Furthermore, international standards of due process must be respected at all times in order to protect the rights of the accused.

51. States should exercise caution when applying universal jurisdiction or enacting related legislation. The exercise of extraterritorial criminal jurisdiction must be based on enabling domestic law. In Malaysia, the Penal Code provided for extraterritorial jurisdiction in respect of terrorist offences, while another law empowered the courts to take jurisdiction over such offences. Further laws established extraterritorial jurisdiction in respect of offences such as trafficking in persons, computer crimes, aviation offences, money-laundering, communications- and multimedia-related offences, trade in strategic items and any offence that threatened Malaysia's security. The lack of such legislation in many States was an obstacle to the exercise of extraterritorial jurisdiction. In addition, difficulties in obtaining evidence from other States could impede prosecution in national courts, and many States' domestic legal systems lacked the capacity to investigate and prosecute extraterritorial criminal cases. Effective mechanisms for mutual legal assistance in criminal matters and extradition regimes were therefore needed. The issues of competing jurisdictions and the immunity of State officials should also be taken into consideration.

52. Her delegation remained hopeful that the International Law Commission would conduct an in-depth study of the topic of universal jurisdiction in the near future. In the meantime, a concrete proposal on the outcome of such a study should be drawn up, and the deliberations of the Working Group should be directed to that end.

53. **Mr. Galicki** (Poland), noting that the principle of universal jurisdiction was linked to the obligation to extradite or prosecute, said that, since the International Law Commission had decided to conclude its work on the latter topic, it was all the more important for the Committee to continue its consideration of the scope and application of universal jurisdiction. His delegation noted, however, that the Commission still had other topics on its agenda that were closely linked to universal jurisdiction, such as the immunity of State officials from foreign criminal jurisdiction and crimes against humanity.

54. In general, Poland applied the principle of territorial or personal jurisdiction, although it also applied the principle of universal jurisdiction in limited cases. His delegation welcomed the comments from States and international organizations set out in the Secretary-General's annual reports on universal jurisdiction, which helped facilitate the exchange of information and good practices. In the latest report, the Council of Europe stated that none of its conventions foresaw the establishment of universal criminal jurisdiction, although some of them called on States to ensure that their criminal courts had jurisdiction to judge a given conduct, while the European Court of Human Rights could only verify whether a State's application of universal jurisdiction in a specific case was in conformity with the rights and freedoms guaranteed by the European Convention on Human Rights. The International Committee of the Red Cross had identified more than 100 States that had established universal jurisdiction over serious violations of international humanitarian law in their national legal order; however, it believed that the conditions for opening criminal proceedings on that basis, or refusing to do so, should be clearly and precisely defined and should enable the principle of universal jurisdiction to gain in effectiveness and predictability rather than limit its application.

55. The Committee was right to concentrate on State practice in the application of universal jurisdiction, since only the existence of uniform practice could create a basis for recognition of the principle as a generally binding rule of customary international law. If such a rule were established, it would be a powerful tool for combating the most serious crimes that threatened all humanity.

56. **Mr. Sylla** (Senegal) said that, despite the divergence of views on the principle of universal jurisdiction, it was generally recognized as a tool for combating impunity for serious crimes that shocked the collective conscience, such as genocide, war crimes, crimes against humanity, piracy, slavery and trafficking in persons, and hostage-taking. However, unilateral interpretation of the principle by national courts could undermine the international legal system; it should therefore be applied in compliance with international law and the provisions of the Charter of the United Nations, in particular those relating to respect for the sovereign equality of States and non-interference in their internal affairs. Politicization could lead to

selective application, which would only weaken the principle and hinder the achievement of its aims. Moreover, evolving international jurisprudence and legal commentary showed that the immunity of high officials of a State from foreign criminal jurisdiction was not based on the notion of courtesy but was firmly grounded in international law.

57. It was vital to agree on a clear definition of the crimes that were subject to universal jurisdiction, the conditions that must be met for the equitable application of the principle, and a system for the international prosecution of perpetrators of serious crimes, irrespective of their nationality. The obligation to extradite or prosecute could serve as a complementary mechanism.

58. After lengthy proceedings before the Senegalese and foreign courts, the African Union had called on Senegal to prosecute the former President of Chad, Hissène Habré, on behalf of Africa, for crimes committed in Chad between 7 June 1982 and 1 December 1990. Senegal had amended its criminal law in 2007 in order to allow its national courts to hear cases of international crimes committed outside its territory, and the Extraordinary African Chambers had been set up in January 2013 within the Senegalese court system to try Mr. Habré. The proceedings demonstrated that Africa could be at the forefront of efforts to combat impunity.

59. Given the difficulty of reaching consensus on many aspects of the application of universal jurisdiction, it was legitimate to continue discussing the matter in the Committee. His delegation encouraged the Working Group established for that purpose to pursue its work in a spirit of openness and compromise.

60. **Ms. Aas** (Norway) said that the international community was united in its opposition to impunity for the most serious crimes. Universal jurisdiction was an important tool in that regard; it was now applied by many national jurisdictions and had gained standing as a principle of international criminal law. However, its scope was constantly evolving in the light of new treaties, State practice and the views of international tribunals and scholars, and differences of opinion persisted. Her delegation therefore cautioned against any attempt to reach consensus on a list of crimes to which universal jurisdiction applied; that would involve an unprecedented attempt to harmonize Member States' interpretation of their treaty obligations, which was not

the task of the General Assembly. The Committee should instead focus on procedural aspects of the application of universal jurisdiction.

61. All forms of jurisdiction, including universal jurisdiction, should be applied without bias or political interference so as to ensure that criminal justice systems were independent and impartial and high legal standards were maintained. A priority issue was how to ensure prosecutors' independence from political and other external influences. More specifically, it would be relevant to consider how prosecutorial discretion applied to cases that were subject to universal jurisdiction, including how and to whom competence to decide on the matter was bestowed within States; whether prosecutorial decisions were collegial or not; and to what extent a decision to prosecute a case on the basis of universal jurisdiction could be appealed.

62. The principle of complementarity set out in the Rome Statute meant that international prosecutions alone would never be sufficient to end impunity and achieve justice. At the same time, territorial States sometimes failed to investigate and prosecute the most serious crimes. Universal jurisdiction therefore had an important role to play in bringing the perpetrators to justice in the interests of all States. Her delegation looked forward to participating in the Working Group's deliberations on the matter.

63. **Mr. Tang** (Singapore) said that universal jurisdiction was generally recognized as a useful tool, but there was a divergence of views as to its scope and application. Given the sensitivity and complexity of the issues involved, his delegation favoured a step-by-step approach, starting with the identification of key points of consensus that could provide a basis for further discussion. One such point was that universal jurisdiction should be applied only in respect of particularly heinous crimes that affected the international community as a whole and where there was general agreement that its application was appropriate. His delegation appreciated the efforts made by the Chairman of the Working Group to compile a preliminary list of such crimes, which would serve as a useful starting point for discussions.

64. It was also widely accepted that, while States might rely on the principle of universal jurisdiction to criminalize certain acts under their domestic law, the principle was supplementary in nature and should be applied only when no State was able or willing to

exercise jurisdiction on the basis of territoriality or nationality. That approach would reduce the potential for abuse of the principle. Lastly, there was general agreement that universal jurisdiction should not be exercised to the detriment of other principles of international law, such as the immunity of State officials from foreign criminal jurisdiction, State sovereignty and territorial integrity.

65. **Mr. Makiza** (Congo) said that many States had adopted or revised national criminal legislation in order to allow their courts to exercise universal jurisdiction. However, differences between the rules in force in different countries hampered the application of the principle. The international community must therefore strive to reach consensus on a definition of universal jurisdiction and a list of crimes subject to it, which had traditionally included genocide, war crimes and crimes against humanity, but which might now be extended to serious violations of human rights and fundamental freedoms, acts criminalized under relevant treaties and economic crimes. Universal jurisdiction offered a real guarantee of justice in that it ensured the right to equality before the courts and accorded the utmost importance to the rights of victims.

66. As a party to the Rome Statute of the International Criminal Court, the 1949 Geneva Conventions and their Additional Protocols, and most of the human rights treaties, Congo affirmed its commitment to the principle that no one was above the law. It was taking the constitutional steps necessary to ratify those treaties to which it was not yet a party. It also stood ready to cooperate with all States and to prosecute or extradite the perpetrators of serious crimes present in its territory. It had concluded agreements on mutual legal assistance with many partners and had embarked on a major effort to incorporate international standards in its domestic law.

67. The principle of universal jurisdiction was widely recognized. However, the conditions for its application must be agreed on by all States. In that regard, the International Criminal Court was complementary to national criminal jurisdictions. Since States bore the principal responsibility for prosecuting the perpetrators of serious crimes, developing countries should be provided with assistance at the bilateral level or through the United Nations in order to build the capacity of their legal systems to deal with such cases. At the same time, his delegation denounced the abuse and selective application of the principle of universal

jurisdiction by the courts of certain countries, which were a discredit to them and created suspicion about their true motives.

68. It was also important to deal with the question of immunity, which should not be equated with impunity. Rather, it was connected with the fundamental principles of the sovereignty and independence of States. His Government would never encourage any authority to elude justice by hiding behind its functions or immunities. Under international law, Heads of State participated in the independence of the State of which they were the representative. That meant that the immunity enjoyed by an incumbent Head of State was linked not to that individual directly but to the State represented by him or her; it belonged not only to the system of diplomatic immunities but also to the system of State immunities. Lastly, the principle of *res judicata* must be respected when defining the principle of universal jurisdiction.

69. **Mr. Al-Sulaiti** (Qatar) said that universal jurisdiction was an important mechanism for ensuring the rule of law and equitable justice and combating impunity for serious violations of international law, international humanitarian law and human rights. Given the wide range of views on the topic among States, his delegation hoped that the Working Group would complete its task of identifying those points on which there was consensus and those that required further study and consultation.

70. Universal jurisdiction was an established principle of international law. It was complementary to international criminal jurisdiction, but shared the same objective of putting an end to impunity. Nonetheless, it was important to define the principle of universal jurisdiction and to clarify which crimes, beyond crimes against humanity, war crimes, genocide, gross violations of human rights and piracy, fell within its scope. His delegation looked forward to the Working Group's conclusions and recommendations in that regard.

71. While there was a need to bring the perpetrators of international crimes to justice, universal jurisdiction should be exercised in accordance with internationally agreed mechanisms, in good faith and in compliance with international law. In order to define the scope of universal jurisdiction, it was important to strike a balance between the progressive development of the concept and the need to uphold the principles

enshrined in the Charter of the United Nations, including the sovereign equality of States.

72. Serious violations of international law were occurring in various regions, including the Middle East; millions of people were being killed and displaced and peaceful citizens were being subjected to aerial bombardment, starved and terrorized simply for asserting their legitimate rights to freedom, dignity and self-determination. The perpetrators were exploiting lacunae in the international regime and the lack of international political will in order to continue committing their crimes with impunity. The scope of universal jurisdiction must cover such crimes and the perpetrators must be brought to justice in order to send a clear message that no one was above the law. That need was more urgent now than ever before.

73. **Ms. Loew** (Switzerland) said that universal jurisdiction helped to ensure that those guilty of the most serious crimes were brought to justice in cases where jurisdiction could not be exercised on any other basis. For that reason, Switzerland recognized and applied the principle in its own legal system; other delegations, however, tended to focus on the risks associated with it. That diversity of approaches among Member States had hindered progress in the Committee's discussions in recent years.

74. Given the juridical and technical nature of the topic, the possibility of involving the International Law Commission in the debate, as proposed by her delegation at the previous session, should be given serious consideration. The Commission could not only be mandated to consider the status of universal jurisdiction under international law as a whole, but could also help provide answers to more specific legal questions through an analytical study focusing on the exercise of universal jurisdiction by national courts in criminal proceedings, similar to the 2006 study on the fragmentation of international law. To that end, the Commission could draw on the final report completed at its most recent session on the obligation to extradite or prosecute (*aut dedere aut judicare*), since that principle was closely linked with the principle of universal jurisdiction. Her delegation stood ready to continue discussion of its proposal with other delegations.

75. **Ms. Kiernan** (United States of America) said that, despite the importance of the principle of universal jurisdiction and its long history as a part of

international law relating to piracy, basic questions remained concerning its exercise in respect of universal crimes. Her delegation encouraged the Committee to continue its work on the definition and scope of the principle. The practical application of universal jurisdiction, including the question of whether alternative bases for jurisdiction could be relied upon simultaneously; how States addressed competing jurisdictional claims by other States that might have a closer nexus to the criminal act in question; and whether and how national courts had addressed due process challenges, merited further examination.

76. Appropriate safeguards should be in place to ensure the responsible use of universal jurisdiction, where it existed. For some States, prosecution based on universal jurisdiction required the authorization of the Government or of a person designated by the Government. Her delegation would be interested to learn what other conditions or safeguards States had placed on the exercise of universal jurisdiction. It also noted with the interest the views of the International Committee of the Red Cross on procedural and evidentiary issues that might arise and would be interested in additional analysis of those issues. It would welcome more information on the practice of other States and looked forward to considering the issues in as practical a manner as possible.

77. **Mr. Thiratayakinant** (Thailand) said that the exercise of universal jurisdiction over serious crimes of international concern could be a valuable means of ending impunity in cases where national jurisdiction was not exercised. However, with the exception of piracy, there was still no consensus on the list of crimes subject to universal jurisdiction. As a result, States tended to define and apply the principle in accordance with their own domestic law. Persons committing serious crimes that did not fall within the scope of universal jurisdiction must nonetheless be brought to justice. At the very least, they should be prosecuted in the State in whose territory the crime had been committed or in the State whose nationals were the victims. A distinction should be drawn between the jurisdiction of international tribunals over treaty crimes such as genocide, torture and slavery and the jurisdiction of national courts over the crimes that customary international law recognized as being subject to universal jurisdiction, as well as between the obligation to extradite or prosecute as required by international treaties and the obligation to extradite or

prosecute as required by the application of the principle of universal jurisdiction. In that connection, his delegation welcomed the final report of the Working Group of the International Law Commission on the obligation to extradite or prosecute (*aut dedere aut judicare*).

78. Thailand was committed to ending impunity. As well as assuming jurisdiction in respect of piracy, its national courts exercised extraterritorial jurisdiction over certain crimes under treaties to which it was a party. Its Government also complied with the obligation to extradite or prosecute set out in such treaties and other bilateral agreements.

79. Notwithstanding the importance of bringing perpetrators of grave crimes to justice, the application of universal jurisdiction must be founded on a sound legal basis and should not be politically motivated. To be legitimate and credible, it must be consistent with other principles and rules of international law.

80. **Mr. Kohona** (Sri Lanka) said that the principle of universal jurisdiction, first developed as a means for maritime States to deal with piracy, had expanded to cover other egregious acts, such as war crimes, genocide and torture. Its implications for other principles such as the sovereign equality of States and the immunity of State officials, and the question of who was entitled to exercise universal jurisdiction and when, were still the subject of debate. Furthermore, the selective application of the principle had given rise to concern: the fact that the overwhelming majority of cases involved individuals from developing countries who were alleged to have committed acts in their own countries suggested that the principle had become a political tool. Its scope needed to be clarified in order to avoid its misapplication and abuse.

81. Domestic legal remedies, together with the obligation to extradite or prosecute, should take precedence. If the judicial mechanisms of the country where an alleged crime had occurred were already dealing with the case, universal jurisdiction should not be exercised by another country. A consensus-based framework for the scope and application of the principle would strengthen its legitimacy. To that end, a wide spectrum of inputs must be sought from the international community; his delegation looked forward to the contribution of the Working Group in that regard.

82. **Mr. Xiang** Xin (China) said that the principle of universal jurisdiction raised many political, legal and diplomatic questions and had significant implications for the development of international relations and the international order. His delegation therefore supported further in-depth discussions within the Committee and its Working Group with a view to clarifying the definition and objectives of the principle and minimizing any possible negative impact.

83. Universal jurisdiction was of a supplementary nature. In the interests of eliminating impunity for the most heinous international crimes, it could be exercised by a State that was neither the place where the crime had been committed nor the State of nationality of the suspect or the victim, and whose national security and major interests had not been jeopardized by the crime. However, a clear distinction must be made between universal jurisdiction and other types of jurisdiction in order to prevent overlap and conflict and to maintain the stability of the international legal system and inter-State relations.

84. Universal jurisdiction must be exercised in compliance with international law, including the Charter of the United Nations and principles such as non-violation of State sovereignty, non-interference in internal affairs and observance of the immunities enjoyed by States, State officials and diplomatic and consular personnel. Some delegations had suggested that the exercise of universal jurisdiction should meet certain specific conditions, for example, that the suspect should be present in the territory of the forum State and that the obligation to extradite or prosecute should be respected. Those proposals warranted serious study.

85. His delegation appreciated the Working Group's efforts to draw up a list of crimes to which universal jurisdiction might be applicable. However, except for an extremely limited number of serious crimes such as piracy on the high seas, there was no consensus as to what crimes might be included in that list. Universal jurisdiction should therefore be exercised with caution in order to prevent its abuse. The fact that some countries had amended their domestic legislation in recent years in order to limit the scope of application of universal jurisdiction demonstrated that the international community was reflecting seriously on the issue.

The meeting rose at 1 p.m.