



**General Assembly**

Seventy-fifth session

Official Records

Distr.: General  
8 February 2021

Original: English

---

**Sixth Committee**

**Summary record of the 11th meeting**

Held at Headquarters, New York, on Tuesday, 3 November 2020, at 3 p.m.

*Chair:* Mr. Skoknic Tapia ..... (Chile)

**Contents**

Agenda item 87: The scope and application of the principle of universal jurisdiction

---

This record is subject to correction.

Corrections should be sent as soon as possible, under the signature of a member of the delegation concerned, to the Chief of the Documents Management Section ([dms@un.org](mailto:dms@un.org)), and incorporated in a copy of the record.

Corrected records will be reissued electronically on the Official Document System of the United Nations (<http://documents.un.org/>).

20-14685 (E)



Please recycle



*The meeting was called to order at 3.05 p.m.*

**Agenda item 87: The scope and application of the principle of universal jurisdiction (A/75/151)**

1. **Mr. Ghorbanpour Najafabadi** (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, in particular 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 the 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 respected. The invocation of universal jurisdiction against officials of some States members of the Non-Aligned Movement raised both legal and political concerns.

2. Universal jurisdiction provided a tool for prosecuting the perpetrators of certain serious crimes under international treaties. However, it was necessary to clarify several questions in order to prevent its misapplication, including the range of crimes that fell within its scope and the conditions for its application; 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.

3. The Movement would participate actively in the work of the working group on the topic. The discussions therein should be aimed at identifying the scope and limits of the application of universal jurisdiction; consideration should be given to establishing a monitoring mechanism to prevent abuse. Universal jurisdiction could not replace other jurisdictional bases, namely territoriality and nationality. It should be asserted only for the most serious crimes and could not be exercised to the exclusion of other relevant rules and principles of international law, including State sovereignty, the territorial integrity of States and the immunity of State officials from foreign criminal jurisdiction.

4. In the view of the Non-Aligned Movement, it was premature at the current stage to request the International Law Commission to undertake a study on the topic of universal jurisdiction.

5. **Mr. Molefe** (South Africa), speaking on behalf of the Group of African States, said that the scope and application of the principle of universal jurisdiction had been included in the agenda of the General Assembly since its sixty-third session at the request of the Group,

which had been concerned about the abusive application of the principle, particularly against African officials. However, in the period of more than 10 years since then, very little progress had been made. It was in the interests of all States to agree on how to address the abuse and misuse of the principle of universal jurisdiction.

6. While the Group respected the principle of universal jurisdiction, which was enshrined in the Constitutive Act of the African Union, it was concerned about the indictment of African leaders and other senior officials, who were entitled to immunity under international law, by non-African judges. African States had engaged constructively in the work of the Committee and the relevant working group with a view to clarifying the scope and application of the principle. The Committee could and must take steps to address the propensity of non-African States to invoke the principle of universal jurisdiction in cases involving Africans outside the multilateral processes, without the consent of African States, and without applying the cooperation safeguards of the international system. The Group had evidence, however, of the use of the principle in Africa with the consent and cooperation of the African States concerned, and in line with their commitment to end impunity for atrocity crimes. Consent and cooperation, when regulated within the multilateral system, could help to limit the abuse and misuse of the principle of universal jurisdiction. Furthermore, universal jurisdiction must be complementary to the national jurisdiction of the country concerned and must not be applied in a manner inconsistent with the principles of international law, including sovereignty, non-interference in the internal affairs of States, sovereign immunity and diplomatic immunity.

7. **Ms. Fielding** (Sweden), speaking on behalf of the Nordic countries (Denmark, Finland, Iceland, Norway and Sweden), said that States had the primary responsibility for investigating and prosecuting international crimes within their jurisdiction, yet such crimes continued to be committed with impunity. In that context, the exercise of universal jurisdiction, which was becoming established as a fundamental principle of criminal law at the national and international levels, could serve as an effective mechanism to ensure accountability and provide justice for victims. All States should assist courts at the national and international levels in prosecuting international crimes. Domestic prosecutions based on universal jurisdiction played an important role in the fight against impunity; for example, several cases relating to atrocities in Syria had been brought on the basis of universal jurisdiction in the courts of Germany and Sweden against individuals linked to State and non-State actors.

8. Some delegations had expressed concern about the potential abuse of the principle of universal jurisdiction. The Nordic countries continued to caution against developing an exhaustive list of crimes to which universal jurisdiction would apply. Any form of misuse of prosecutorial powers would be of grave concern. The Nordic countries called upon States to adopt national laws, in line with the Rome Statute of the International Criminal Court, so as to ensure the direct prosecution of the most serious crimes of concern to the international community and establish a more effective framework for cooperation with international courts.

9. The International Criminal Court played an important role in combating impunity for the most serious crimes. As a court of last resort, it was intended to complement, not replace, national courts. The Court provided an avenue for prosecution when States did not exercise jurisdiction. Other bodies at the international level, such as the International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011, the independent international fact-finding mission on Myanmar, the Independent Investigative Mechanism for Myanmar and the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/Islamic State in Iraq and the Levant, might be helpful for criminal proceedings before national, regional and international entities that had or that might have jurisdiction in the future. The contributions of such bodies and other possible future mechanisms could shape the application of the principle of universal jurisdiction.

10. **Ms. Maille** (Canada), speaking also on behalf of Australia and New Zealand, said that universal jurisdiction was a well-established principle of international law applicable to the most serious international crimes, such as piracy, genocide, war crimes, crimes against humanity, slavery and torture. Those acts were established as crimes under customary international law; some of them were also codified in international legal instruments such as the Rome Statute. It was in the interest of the international community to prevent such crimes and hold the perpetrators accountable.

11. As a general rule, the primary responsibility for investigating international crimes and prosecuting the perpetrators rested with the State in which the crime was committed or the State of nationality of the perpetrator. Those States were in the best position to ensure that justice was done, given their access to evidence, witnesses and victims and their ability to enforce

sentences. They were also best placed to make victims and affected communities feel that justice had been served. However, universal jurisdiction was an important complementary mechanism in cases where the territorial State was unwilling or unable to exercise jurisdiction. In such circumstances, all States should, in compliance with their international obligations and their national laws, help national and international courts to prosecute the perpetrators of serious international crimes by, for example, offering mutual legal assistance.

12. Australia, Canada and New Zealand had all incorporated the principle of universal jurisdiction into their domestic laws, allowing for the domestic prosecution of certain crimes that had not taken place in their respective territories. They encouraged Member States that had not already done so to incorporate universal jurisdiction into their domestic law. They also welcomed recent decisions by prosecutors to bring new cases under the principle of universal jurisdiction, such as the prosecutions in Sweden and Germany for crimes committed in Syria. Such efforts were particularly important in cases in which the International Criminal Court did not have jurisdiction. Australia, Canada and New Zealand reiterated their willingness to work constructively with other States to ensure that the perpetrators of grave international crimes did not receive safe haven anywhere in the world.

13. **Ms. Tan** (Singapore) said that the principle of universal jurisdiction was based on the recognition that some crimes were of such exceptional gravity that their commission shocked the conscience of all humanity. Every State had the right to prosecute the perpetrators of such crimes. In that regard, the principle was not and should not be the primary basis for the exercise of criminal jurisdiction by States. Rather, it should be invoked only as a last resort and only in situations where no State was able or willing to exercise jurisdiction based on the other established grounds, such as territoriality and nationality.

14. The principle of universal jurisdiction should be applied only to particularly grave crimes that affected the international community as a whole. In order to determine whether a crime was subject to such jurisdiction, State practice and *opinio juris* must be examined thoroughly. That would help to guard against any unjustified application or extension of the principle. Universal jurisdiction could not be exercised in isolation from, or to the exclusion of, other applicable principles of international law, including the immunity of State officials from foreign criminal jurisdiction, State sovereignty and territorial integrity.

15. As a principle of customary international law, universal jurisdiction should be distinguished from the exercise of jurisdiction provided for in treaties or the exercise of jurisdiction by international tribunals constituted under specific treaty regimes. Each had their own specific set of juridical bases, rationales, objectives and considerations, all of which had to be borne in mind.

16. **Mr. Altarsha** (Syrian Arab Republic) said that the disparities in application of the principle of universal jurisdiction posed an imminent threat to the stability of the global system, making it impossible to fulfil the aims of universal jurisdiction: achieving justice and fighting impunity without discrimination. States were not being held accountable for flagrant violations of international law, and there was no process to build confidence or transparency among States, whether at the United Nations or in bilateral or multilateral relations more generally.

17. The core task entrusted to the Sixth Committee was to defend the concept of justice and protect the principles of law from political whims, which were evident in the conduct of certain Member States. Syria therefore continued to reject the suspicious or ill-considered tendencies of certain Member States to broaden the scope of universal jurisdiction in a politicized and unjust manner. A case in point was the so-called International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011, whose establishment clearly contravened Article 12 of the Charter of the United Nations, in that the prerogative to establish such a body rested not with the General Assembly, but solely with the Security Council. The so-called Mechanism was thus an illegal body: its establishment had taken place without reference to the Council and had been neither requested nor consented to by the State concerned, namely the Syrian Arab Republic.

18. His Permanent Mission had addressed several letters to the Secretary-General or to the President of the General Assembly (A/71/799, A/72/106, A/73/562 and A/74/108), all of which exposed the serious legal flaws in General Assembly resolution 71/248, by which the Mechanism had been established. Owing to those flaws, the so-called Mechanism could not be considered a subsidiary body established by the General Assembly. It could not be granted any legal status or personality, and had no capacity to conclude agreements with Member States and other entities. Accordingly, any information or evidence collected, consolidated, preserved and analysed by the Mechanism would be ineligible for

future criminal proceedings, especially given that its mandate had not been defined in terms of place and time or made subject to any restrictions or standards consistent with the Charter or the established rules of conduct of the Organization. His Government's rejection of the Mechanism was based also on its experience of other politicized and biased mechanisms that had been established in order to target his country politically and militarily.

19. Rather than being wasted on an illegal Mechanism, the financial and human resources of the Organization would be better allocated to building solidarity in order to combat the coronavirus disease (COVID-19) pandemic, which had exposed vulnerabilities in the global order. Those Governments that boasted of having funded the illegal Mechanism should desist from such skewed conduct and assume responsibility within the framework of their national criminal jurisdiction by making their mea culpas and immediately taking back their contemptible foreign terrorist fighters and their families. Otherwise their behaviour would amount to amoral political hypocrisy. His delegation was confident in its defence of the role and standing of Syrian legal and judicial institutions. Sooner or later, the approach that had been applied to the Syrian Arab Republic would also be applied, unjustifiably, to numerous other States; but fallacious premises would lead only to fallacious conclusions.

20. **Mr. Umasankar** (India) said that the principle of universal jurisdiction, which allowed a State to bring criminal proceedings in respect of certain crimes, irrespective of the place of commission and the nationality of the perpetrator or the victim, constituted an exception to the general criminal law principles requiring a territorial or nationality link with the crime, the perpetrator or the victim. It was justified by the need to prevent the perpetrators of grave crimes that affected the international community as a whole from obtaining safe haven or from using loopholes in general criminal law to escape prosecution.

21. The applicability of universal jurisdiction to the crime of piracy formed part of customary international law and was also codified in the United Nations Convention on the Law of the Sea. A careful analysis of State practice and *opinio juris* was needed in order to identify the existence of a customary rule of universal jurisdiction over a particular crime. Treaty obligations to extradite or prosecute should not be understood as, or used to infer the existence of, universal jurisdiction. Treaty-based jurisdiction was conceptually and legally distinct from universal jurisdiction proper. Every effort must be made to avoid misuse of the principle, given the

lack of clarity on the question of which crimes were subject to universal jurisdiction.

22. **Ms. Ponce** (Philippines) said that universal jurisdiction, as a generally accepted principle of international law, was considered a part of Philippine law. For her country, as a rule, jurisdiction was territorial in nature, such that universal jurisdiction was an exception arising from an imperative need to preserve international order. It allowed any State to assert criminal jurisdiction over certain offences, even if the act occurred outside its territory and even if the perpetrators or victims were not its nationals. Because universal jurisdiction was exceptional, its scope and application must be limited and clearly defined. Immunity of State officials, in particular, must be preserved. The unrestrained invocation and abuse of universal jurisdiction would only undermine the principle. The offences to which it applied must be confined to violations of *ius cogens* norms deemed so fundamental to the existence of a just international order that States could not derogate from them, even by agreement. The rationale was that the crime was so egregious that it was considered to have been committed against all members of the international community, such that every State had jurisdiction over it.

23. The process of defining the scope and application of the principle of universal jurisdiction should be State-led and should remain within the purview of the Sixth Committee, rather than being referred to the International Law Commission or any other body.

24. **Mr. Guerra Sansonetti** (Bolivarian Republic of Venezuela) said that the crimes for which universal jurisdiction could be invoked needed to be clearly established at the international level and limited to those that, because of their seriousness, were of concern to the international community as a whole. States had an obligation to exercise their criminal jurisdiction in order to hold the perpetrators of such crimes to account. Universal jurisdiction should be exercised by recognized international courts and should remain complementary to the actions and national jurisdiction of States. It was therefore applicable only to prevent impunity in cases in which national courts were unable or unwilling to exercise their jurisdiction.

25. Universal jurisdiction should be exercised in strict compliance with the principles enshrined in the Charter of the United Nations, in particular sovereign equality, political independence and non-interference in the internal affairs of States. It should not be used to undermine respect for a country's national jurisdiction or the integrity and values of its legal system; nor should it be used selectively for political ends in violation of

the norms and principles of international law. His delegation therefore noted with concern the efforts of a coalition of States to promote, in violation of the principles of the Charter, the establishment of independent fact-finding mechanisms intended to replace subsidiary bodies of the national justice systems of States. Far from ensuring that the perpetrators of international crimes were brought to justice, the establishment of such mechanisms against the will of States formed part of a strategy of "regime change" that had caused suffering, chaos and destruction around the world.

26. His Government was committed to combating impunity and ensuring accountability and justice, particularly in cases involving crimes against humanity, in order to maintain international peace and security and strengthen the rule of law. The working group of the Sixth Committee should continue to examine closely the scope and application of the principle of universal jurisdiction.

27. **Mr. Simcock** (United States of America) said that, despite the long history of the issue of universal jurisdiction as part of international law relating to piracy, basic questions remained about how it should be exercised in relation to universal crimes and about the views and practices of States relating to the topic. His delegation had always participated in the discussions on a number of important issues regarding universal jurisdiction, such as its definition, scope and application, and wished to continue exploring the issue in as practical a manner as possible.

28. **Ms. González López** (El Salvador) said that the principle of universal jurisdiction played a key role in combating impunity for serious international crimes. El Salvador had a solid legal framework for the application of the principle in respect of acts affecting rights that were internationally protected by specific agreements or norms of international law and acts involving a serious violation of universally recognized human rights. Specifically, under article 10 of the Criminal Code, universal jurisdiction was regulated as an independent principle whose application did not depend on the place where the crime was committed or on the individuals involved. One national court judgment referred to the definition set out in the Princeton Principles on Universal Jurisdiction, according to which certain crimes were so harmful to international interests that States were entitled, and even obliged, to bring proceedings against the perpetrator, regardless of where the crime was committed or the nationality of the perpetrator or the victim. In another judgment, it had been stated that crimes against humanity, which shocked the moral conscience of

humanity, were subject to universal jurisdiction. A policy had also been put in place establishing criteria and guidelines for the investigation and prosecution of war crimes and crimes against humanity committed during the armed conflict and enabling victims to seek justice, truth and reparation. The national legal framework and case law thus provided the foundation for the application of universal jurisdiction, in line with the various international legal instruments for the protection of human rights to which El Salvador was a party and which, in accordance with the Constitution, formed part of national law.

29. **Mr. Mlynár** (Slovakia) said that universal jurisdiction had been established as a firm principle of international criminal law for decades, first in relation to piracy and subsequently in relation to other crimes of concern to the international community as a whole, namely, crimes against humanity, war crimes, genocide and torture. The inclusion of the concept in article 5 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and in draft article 7 of the draft articles on prevention and punishment of crimes against humanity provided strong evidence of its existence and acceptance.

30. His delegation hoped that a more detailed legal debate on universal jurisdiction would help to alleviate the sensitivities associated with the principle. The consideration by the International Law Commission of the topic "Universal criminal jurisdiction", which was currently on the Commission's long-term programme of work, would promote the objective, unpoliticized examination of the topic.

31. The application of universal jurisdiction complemented well-established jurisdictional links based on territoriality or personality by helping to prevent impunity in situations where alleged perpetrators had evaded the States having territorial or personal jurisdiction. In the absence of a truly universal framework for mutual legal assistance and of universal acceptance of the Rome Statute of the International Criminal Court, universal jurisdiction remained a guarantee against impunity. The development of a treaty on mutual legal assistance or of a convention on the prevention and punishment of crimes against humanity would not strip the principle of universal jurisdiction of its relevance or narrow the scope of its application. Such instruments would complement the application of universal jurisdiction and the strengthening of the Rome Statute system to create a strong legal framework aimed at ensuring accountability.

32. **Ms. de Souza Schmitz** (Brazil) said that her delegation welcomed the establishment of a working

group on the topic of the application of the principle of universal jurisdiction and reiterated the need for an incremental approach to the discussion. The working group's first task should be to find a consensual definition of universal jurisdiction and a shared understanding of the scope of its application, so as to prevent the selective use or misuse of the principle. Universal jurisdiction could be a tool for the prosecution of individuals alleged to have committed serious crimes that violated peremptory norms of international law. The exercise of jurisdiction irrespective of the link between the crime and the prosecuting State was an exception to the principles of territoriality and nationality; States with such a link had primary jurisdiction. The exercise of universal jurisdiction should also be limited to specific crimes and must not be arbitrary or designed to satisfy interests other than those of justice. The working group would also need to consider other questions, such as the crimes that would trigger the universality principle, the need for the formal consent of the State with primary jurisdiction, the need for the presence of the alleged offender in the territory of the State wishing to exercise universal jurisdiction, the relationship between universal jurisdiction and other norms, such as the principle of *aut dedere aut judicare*, and the compatibility of universal jurisdiction with the immunity of State officials. Member States would need to be flexible on those matters in order to make progress.

33. In Brazil, the exercise of criminal jurisdiction was based on the principle of territoriality, although the active personality and passive personality principles were also taken into consideration. Universal jurisdiction could be asserted by the national tribunals in relation to genocide and crimes such as torture that Brazil had undertaken to repress through treaties or conventions. National legislation was also required in order to exercise universal jurisdiction or to bring charges for an action or omission considered a crime under international law. Universal jurisdiction could therefore not be exercised over a crime under customary international law alone, because the lack of specific legislation to that end would result in a violation of the principle of legality.

34. Lastly, although there was a distinction between universal jurisdiction and the exercise of criminal jurisdiction by international tribunals, both were aimed at denying impunity to the perpetrators of serious international crimes, and they should be complementary to each other.

35. **Mr. Kanu** (Sierra Leone) said that his delegation remained concerned that, after more than a decade of discussions in the Committee on the current agenda item, very little progress had been made, despite the

increase in State practice based on the universality principle. In order to advance further, it would be beneficial to separate the legal issues from the policy concerns. For that reason, his delegation welcomed the decision of the International Law Commission to add the topic “Universal criminal jurisdiction” to its long-term programme of work; the Committee could benefit from a comprehensive study of the legal issues by the independent experts in the Commission, who had undertaken not to address policy issues that fell within the purview of States. The alternative was a loss of interest in the topic in the Committee.

36. On the basis of the informal working paper prepared by the Chair of the working group of the Committee on the topic (A/C.6/66/WG.3/1) – which, while not binding, represented a shared understanding of the issues of interest to all delegations – Sierra Leone offered three practical suggestions. First, the working group should take up at least one policy question each session, such as the role and purpose of universal jurisdiction. The views of States on the question could be compiled and used as a basis for further discussions, on a without-prejudice basis. Second, the Committee should mandate the Secretary-General to carry out a review of the material he had collected on State practice and of the whole debate on the topic in the Committee over the past 10 years, so as to identify the specific issues on which there was broad agreement and those on which there were divergences of opinion. The Secretary-General could also identify the general trends in the debate, without reaching firm conclusions. Third, it might be useful if the International Law Commission produced a report addressing the question, set out in the non-paper submitted by Chile (A/C.6/66/WG.3/DP.1), of what was meant by the concept of universal jurisdiction, what it included and did not include, and whether it was considered to be a principle under international law. Such a report could help to focus the substantive discussions in the Committee and the working group, without prejudging the outcome, which was a matter for States. His delegation hoped that those suggestions would help build confidence among delegations and even offer a useful model for more dynamic interaction between the Committee and the Commission, while respecting the spheres of competence of each body.

37. More detailed comments on those issues could be found in his written statement, available in the eStatements section of the *Journal of the United Nations*.

38. **Mr. Elsadig Ali Sayed Ahmed** (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 the scope of the principle. In view of the lack of consensus, States attempted to apply the principle in accordance with their own domestic law, which could only lead to international crises. The relevant reports of the Secretary-General should be analysed and discussed objectively in order to determine the best way forward, avoid encroaching on State sovereignty and ensure that universal jurisdiction was not applied arbitrarily or for political purposes – a concern that the African Union had raised on numerous occasions.

39. His delegation considered universal jurisdiction to be a secondary jurisdiction exercised when no other court with stronger jurisdictional ties (such as territoriality or nationality) could try an alleged offender. Under Sudanese law, universal jurisdiction could be exercised in two situations: whenever a treaty binding on the State provided for such jurisdiction, and whenever a treaty binding on the State provided for an obligation to extradite or prosecute. The exercise of universal jurisdiction was subject to a number of conditions: the alleged offender must be present on the national territory, must not have been extradited to another competent jurisdiction, must not have been finally sentenced in the country where the offence was committed, and must not be in the process of being extradited to the requesting State. The offence must be criminalized both in the Sudan and in the State where it was committed. As a general rule, the State in which a crime took place (the territorial State) and the State of nationality of the perpetrator (the State of nationality) bore the primary jurisdiction and responsibility over the perpetrators. Nonetheless, each State should prohibit serious crimes under its domestic law and exercise effective jurisdiction over those crimes when they were committed on its territory or by its nationals.

40. Universal jurisdiction could not replace jurisdiction based on territoriality or nationality, and should be restricted to the most serious and heinous of crimes; on no account should its scope be expanded to cover lesser crimes, nor should it be invoked in isolation from the other relevant principles of international law, such as sovereignty, territorial integrity and the immunity of State officials from foreign criminal jurisdiction.

41. More detailed comments on those issues could be found in his written statement, available in the eStatements section of the *Journal*.

42. **Ms. Pelkiö** (Czechia) said that universal jurisdiction was an important tool for ensuring that crimes under international law did not go unpunished. It was in the interest of all States to bring the perpetrators to justice, regardless of where the crime was committed,

as the crimes in question violated universal values and peremptory norms of international law. In addition, numerous treaties provided for the obligation to prosecute and punish those responsible for such crimes. The exercise of universal jurisdiction not only ensured that perpetrators were held accountable but also provided justice for victims and strengthened respect for international law. The principle of universal jurisdiction had been incorporated into the domestic law of Czechia.

43. Universal jurisdiction was a generally recognized principle of international law. The question of its scope and application was a purely legal one, and discussions should not be burdened by the political considerations that inevitably came into play in the debates of the Committee. Her delegation had therefore proposed that the issue be referred to the International Law Commission, which could allocate adequate time to the matter and draw on its other relevant work. The Commission itself had, at its seventieth session, noted the lack of meaningful progress by the Committee and had decided to include the topic “Universal criminal jurisdiction” in its long-term programme of work. Referring the issue of the scope and application of universal jurisdiction to the Commission would not only further the debate in the Committee but also demonstrate the Committee’s commitment to strengthening its interaction with the Commission. The Committee would still retain final responsibility for the treatment of the topic.

44. **Mr. Molefe** (South Africa) said that universal jurisdiction was important for ensuring accountability, particularly as movement between States increased. While there were numerous examples of the successful application of universal jurisdiction, such as the Hissène Habré case, practical challenges were often encountered. Moreover, the potential for abuse remained a reality, and it was therefore imperative that those applying universal jurisdiction did so with the correct reasons in mind, namely to ensure accountability for perpetrators, and not for political motives. Efforts should be made to overcome such challenges, including in the context of the working group.

45. South Africa regretted the stagnation of the discussions on universal jurisdiction. It might be necessary to consider whether there were alternative approaches that the Committee could employ in order to move the topic forward.

46. **Mr. Abd Aziz** (Malaysia) said that an in-depth legal analysis of the principle of universal jurisdiction should be conducted in order to find common ground among all Member States. The Committee should also analyse the reasons for the minimal response from

Member States to requests for information on the scope and application of universal jurisdiction, the relevant applicable international treaties and their national legal rules and judicial practice. The Committee had been attempting to achieve consensus on the definition, scope and application of universal jurisdiction for over a decade. Input from the International Law Commission would therefore be useful in order to guide the Committee’s debate.

47. **Ms. Weiss Ma’udi** (Israel), recalling her delegation’s remarks on the agenda item at the seventy-fourth session, said that it was of critical importance to combat impunity and to ensure that the perpetrators of the most serious crimes of international concern were brought to justice. At the same time, her Government shared the concern that, all too often, actors attempting to advance political agendas used the principle of universal jurisdiction to file spurious complaints in jurisdictions that had no connection, or a tenuous connection, to the incident in question. Such complaints not only undermined the principles of sovereignty, subsidiarity and comity, but sometimes even had an adverse impact, unnecessarily, on diplomatic relations. To maintain the integrity of domestic judicial procedures, it was crucial to ensure that, alongside legislation that enabled the use of universal jurisdiction, States enacted legislative, regulatory or policy safeguards to prevent abuse of the principle.

48. Given the continued divergence of views among States, it was premature for any decisions to be reached regarding core issues such as a possible list of crimes in respect of which universal jurisdiction could be exercised, the legal status of the principle or the conditions for its application. In addition, identifying State practice in relation to universal jurisdiction presented a major challenge because the majority of the relevant legal data – including information about the basis for the disposition of complaints, whether a complaint had also been filed in a State with closer jurisdictional links, and whether a complaint had been dismissed on jurisdictional grounds – remained confidential. There was thus a significant risk that reliance on publicly available information, which was the only information available to the International Law Commission, would result in an inaccurate picture of State practice and provide a precarious basis for proper legal analysis. It would therefore be preferable for States to continue their deliberations on the topic within the Committee. The decision of the International Law Commission to include the topic “Universal criminal jurisdiction” in its long-term programme of work was counterproductive and premature and lacked the requisite consensus, since it had not been supported by

a significant number of Member States in the context of the Committee.

49. **Mr. Elgharib** (Egypt) said that universal jurisdiction should be a complement to, rather than a substitute for, national jurisdiction. Recourse to it should be limited to cases in which the States where such crimes were committed were unwilling or unable to exercise jurisdiction. States exercising universal jurisdiction should refrain from abusing the principle or using it for political purposes.

50. The exercise of universal jurisdiction should be limited by general international law and customary international law and, above all, by respect for the principles of sovereignty of States, non-interference in their internal affairs, the immunity of Heads of State and Government and high-level officials, and diplomatic immunity.

51. It might be useful for the Committee to focus its discussions on areas where there was agreement among delegations, such as international cooperation and the consent of the State in which the crime was committed, both of which were key components for the dispensing of criminal justice on the basis of the principle of universal jurisdiction.

52. His delegation was of the view that the topic should not be moved to the current programme of work of the International Law Commission until the Sixth Committee and its working group had arrived at a consensus.

53. **Ms. Guardia González** (Cuba), affirming her Government's firm commitment to the fight against impunity for crimes against humanity, said that the principle of universal jurisdiction should be discussed by all Member States within the framework of the General Assembly. Her delegation was concerned about 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 politically motivated laws directed against other States, which had harmful consequences for international relations.

54. The General Assembly's main objective with regard to universal jurisdiction should be the development of a set of international rules or guidelines in order to prevent abuse of the principle and thereby safeguard international peace and security. Universal jurisdiction should be exercised by national courts in strict compliance with the principles of sovereign equality, political independence and non-interference in

the internal affairs of other States. Universal jurisdiction should not be used to diminish respect for a country's national jurisdiction or for the integrity and values of its legal system, nor should it be used selectively for political ends in disregard of the rules and principles of international law. The exercise of universal jurisdiction should be limited by absolute respect for the sovereignty of States. It should be exceptional and complementary in nature, and should be invoked only in cases in which there was no other way to bring proceedings against the perpetrators and prevent impunity. Moreover, the absolute immunity granted under international law to Heads of State, diplomatic personnel and other high-ranking officials must not be called into question, nor should long-standing and universally accepted international principles and norms be violated under the cover of universal jurisdiction. Lastly, the principle should be applied only to crimes against humanity.

55. **Mr. Giret Soto** (Paraguay) said that Paraguay recognized in its Constitution the fundamental principles of international law and the existence of a supranational legal order that, on a basis of equality between States, protected human rights and under which statutory limitations did not apply to crimes such as torture, genocide, enforced disappearance, abduction and politically motivated murder. Under the country's Criminal Code and in accordance with the principle of universal jurisdiction, the jurisdiction of national courts extended to acts committed abroad against legal goods enjoying universal protection, and in accordance with obligations arising from international treaties to which Paraguay was a party. The domestic law implementing the Rome Statute distinguished national from universal jurisdiction, specified the limits of national jurisdiction and established the penalties for crimes against humanity, genocide and war crimes.

56. Universal jurisdiction, subject to the principles of complementarity and good faith, was critical to ensuring that the perpetrators of crimes against humanity and systematic violations of human rights were brought to justice, thereby preventing impunity. It could only be exercised in accordance with the principles of the Charter of the United Nations and guided by the principles of international law.

57. **Mr. Proskuryakov** (Russian Federation) said that his country was committed to combating impunity for the most serious crimes under international law. The report of the Secretary-General (A/75/151) showed once again that there was a wide range of views on universal jurisdiction, the crimes to which it applied, which legal instruments provided for it, and the ways in which it was exercised. States should refrain from arbitrary application of the principle. There were many cases in

which the unilateral use of universal jurisdiction had led to serious difficulties in relations between States. The exercise of universal jurisdiction must accord with States' obligations under international law, in particular those relating to the immunity of State officials. Furthermore, there were other tools for combating crime besides universal jurisdiction. In that connection, it was important to strengthen treaty-based mechanisms for criminal justice cooperation, such as legal assistance, information exchange and cooperation between investigative bodies.

58. There had been no significant progress in the debate on the agenda item over the past year. Given the continued differences of opinion among States, it was questionable whether there was a real prospect of convergence of their positions and of developing uniform standards and criteria for the exercise of universal jurisdiction.

59. **Mr. Ly** (Senegal) said that universal jurisdiction was one of the main tools for preventing and punishing serious violations of international law. Senegal had incorporated the principle into its domestic legal system through the 2007 law implementing the Rome Statute of the International Criminal Court, which give the Senegalese courts jurisdiction over cases involving genocide, crimes against humanity and war crimes, as well as acts of terrorism, and through the 2018 law to combat money-laundering and the financing of terrorism. In addition, Senegal was a party to several international instruments dealing with matters that might give rise to the exercise of universal jurisdiction. Such jurisdiction must be exercised in good faith, not selectively, and in line with the principles of international law.

60. The principle of universal jurisdiction should be regarded as complementary. A State's domestic courts had the primary responsibility for carrying out investigations and prosecutions of crimes committed by its nationals in its territory or in other places under its jurisdiction. Universal jurisdiction should thus be exercised only when States could not or would not investigate and prosecute the alleged perpetrators of crimes. Any conditions attached to the application of universal jurisdiction must be aimed at improving its effectiveness and predictability rather than restricting the possibility of bringing perpetrators to justice. It was therefore important to reach a consensus on the definition of the principle and its scope of application. Given the significant disparities between national laws in that regard, it would be useful for the international community to come up with a specific text that would help to harmonize those laws, or at least achieve a measure of convergence between them.

61. His delegation was in favour of the Sixth Committee continuing its deliberations on the conditions for the exercise of universal jurisdiction in order to avoid the political difficulties created by its application. However, a satisfactory outcome was possible only if the legal aspects of the principle were elucidated, and only the International Law Commission was in a position to take on that task. His delegation therefore welcomed the inclusion of the topic "Universal criminal jurisdiction" in the Commission's long-term programme of work.

62. **Mr. Ramde** (Burkina Faso) said that the principle of universal jurisdiction embodied the moral duty of all humanity to combat impunity and was often the only way for the victims of the worst crimes to achieve justice. Burkina Faso had reaffirmed its commitment to the principle by including it in the Criminal Code adopted in 2018 and revised in 2019. A law establishing the procedures and competent authorities for implementing the Rome Statute of the International Criminal Court in Burkina Faso had also been adopted. Furthermore, Burkina Faso was a party to several international instruments that provided for a general obligation to extradite or prosecute, including those on torture, enforced disappearance and international humanitarian law.

63. In order for universal jurisdiction to be applied effectively, gaps in national laws should be filled not only through bilateral agreements but also through effective multilateral mechanisms for judicial cooperation and mutual assistance in criminal matters. Furthermore, the Committee should aim to harmonize disparate national laws by means of a multilateral instrument.

64. In order to preserve consensus on the scope and application of universal jurisdiction, it should be exercised only in respect of the most serious international crimes, including terrorism and the financing of terrorism, genocide, war crimes, crimes against humanity, slavery, torture and trafficking in persons, and in compliance with fundamental principles of international law, such as the sovereign equality of States, non-interference in their internal affairs and the immunity of State representatives.

65. **Mr. Arrocha Olabuenaga** (Mexico) said that his country was committed to building capacity at both the national and international levels to combat impunity for crimes that were of concern to the international community as a whole. It was necessary for States to have legal certainty as to the circumstances in which they could exercise universal jurisdiction. His delegation welcomed the decision of the International

Law Commission to include the topic “Universal criminal jurisdiction” in its long-term programme of work and hoped that it would be moved to the current programme of work as soon as possible, particularly given that the Commission’s debate on a number of topics was nearing conclusion.

66. It was important to draw a distinction between the principle of universal jurisdiction – whereby States had authority to try certain crimes in their domestic courts, without the need for a link to the victim, the perpetrator or the place in which the crime had been committed – and the principle of extradite or prosecute (*aut dedere aut judicare*), which was an obligation on States in the case of crimes to which they did have a link of territoriality or active or passive nationality. The principle of universal jurisdiction was expressly established in the Geneva Conventions of 1949 with respect to war crimes and the United Nations Convention on the Law of the Sea with respect to piracy, while the principle of *aut dedere aut judicare* was reflected in international treaties relating to genocide, torture, forced disappearance and attacks against civil aviation and maritime navigation.

67. National courts must retain the primary responsibility for exercising jurisdiction. Only in cases in which a State was unwilling or unable to act and in which the International Criminal Court also lacked jurisdiction should the international community take action on the basis of universal jurisdiction. Such an approach would ensure respect for sovereignty and the principle of non-interference in the affairs of other States, while also closing the impunity gap.

68. His delegation would continue to work to establish a clear legal framework for the exercise of universal jurisdiction in the interests of combating impunity. It was important not to lose sight of the fact that, beyond political and legal considerations, it was the possibility of offering justice and reparation to the victims of the most serious crimes that was at stake.

69. **Ms. Nguyen Quyen Thi Hong** (Viet Nam) said that the principle of universal jurisdiction must be defined and applied in conformity with the principles enshrined in the Charter of the United Nations and international law in general, including sovereign equality, non-interference and the immunity of State officials from foreign criminal jurisdiction. Universal jurisdiction should be exercised only in respect of the most serious international crimes, including war crimes, genocide and crimes against humanity, and should be used only as a last resort and as a complement to other bases of jurisdiction involving a stronger link to the crime, such as territoriality. Furthermore, it should be exercised by

a State only in cases in which the alleged perpetrator was present in its territory and after consultation with the State in which the crime had occurred and the State of nationality of the person concerned about the possibility of extraditing the person to one of those States for prosecution, subject to the principle of dual criminality.

70. Given that there were still divergent views among States regarding the definition, scope and application of the principle of universal jurisdiction and the list of crimes to which it should apply, it would be advisable to develop common standards or guidelines, in which special emphasis should be placed on the need to apply the principle in good faith and in an impartial manner. Relevant decisions and judgments of the International Court of Justice and the work of the International Law Commission could serve as useful resources for the Committee’s discussion.

71. Universal jurisdiction was an important instrument for combating international crimes and fighting impunity. The Penal Code of Viet Nam provided for universal jurisdiction for certain crimes, in accordance with the international treaties to which Viet Nam was a party.

72. **Ms. Abu-ali** (Saudi Arabia) said that the principle of universal jurisdiction had been formulated with the laudable objective of fighting impunity, particularly for grave crimes, including crimes against humanity. In view of the diversity of State practice with regard to the application of the principle, it was important to examine the laws and measures enacted by Member States. The principle should be invoked only in specific situations, namely in respect of grave crimes and when the territorial State was unwilling or unable to exercise jurisdiction. Its application should not go beyond the principles enshrined in the Charter of the United Nations and international law. Nor should universal jurisdiction be invoked to undermine the principles of State sovereignty, non-interference in the internal affairs of States and the equality of States. Any recourse to universal jurisdiction without regard for those fundamental points would politicize the principle.

73. **Ms. Bade** (Germany) said that her delegation agreed that the primary responsibility to investigate and prosecute crimes rested with the territorial State. At the same time, universal jurisdiction was an effective and proportionate tool of customary international law for pursuing accountability for the most serious crimes of international concern. While Germany would prefer the Security Council to refer situations involving such crimes to the International Criminal Court more frequently, it found value in having a domestic legal

framework that allowed it to play its part in achieving accountability.

74. Since 2002, German prosecutors had been able under domestic law to exercise universal jurisdiction in respect of the crimes of genocide, crimes against humanity and war crimes committed outside Germany, regardless of the nationality of the victim or the perpetrator. However, there was no provision for the criminal liability of companies or other legal persons, and immunity *ratione personae* might need to be taken into account. Furthermore, in order to be tried before a German court, a defendant must be present in Germany; trials in absentia were not permitted in the German legal system.

75. Special police and prosecution units had been set up to investigate international crimes. An investigation had been under way since 2011 concerning crimes against humanity and war crimes committed by members of the Syrian regime, including the alleged use of chemical weapons. There were also several cases being tried before German courts regarding torture in Syrian prisons and crimes committed by members of Da'esh. For example, a trial of two members of the intelligence services of the Syrian Arab Republic for crimes against humanity had commenced in April 2020; one of the defendants was charged with overseeing the torture of more than 4,000 persons in a prison close to Damascus. In addition, a foreign national had been extradited to Germany to face charges of genocide committed against the Yazidi community in Iraq.

76. German prosecutors were currently conducting more than 100 investigations regarding international crimes. The message was clear: those who committed atrocities could not feel safe and would eventually be held accountable.

77. **Ms. Banaken Elel** (Cameroon) said that universal jurisdiction should be exercised with an abundance of caution. Her delegation was concerned by the idea that universal jurisdiction should be applied to any serious crime committed abroad, irrespective of the place of commission and the nationality of the perpetrator or the victim. The attribution to the forum State of primary responsibility for prosecuting and punishing the perpetrator was an infringement of State sovereignty. It was important to avoid the abuse or misuse of the principle of universal jurisdiction. There was not yet widespread *opinio juris* concerning the principle, and a number of States were persistent objectors to it.

78. In order for it to remain credible, the principle of universal jurisdiction should complement, not replace, national jurisdictions, and it should be invoked only for the most serious crimes and atrocities and not be used

for political ends. For universal jurisdiction to apply, the power of the State to establish jurisdiction must be solidly based on international law, and not solely on the national laws of the State invoking it. Another State could not claim jurisdiction unless the State in which the crime had been committed demonstrated that it was neither willing nor capable of carrying out an investigation or prosecution. There could be a prescription that a State claiming universal jurisdiction should first obtain the consent of the State in which the crime had been committed and the State having a nationality link with the crime.

79. Cameroon was waging war against impunity at all levels and was a party to several instruments that applied the principle of universal jurisdiction. At the international level, it was a party to the Geneva Conventions of 1949 and their Additional Protocols, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. At the regional level, Cameroon was a member of the African Union which, under its Constitutive Act, reserved the right to intervene in a member State in cases of genocide, war crimes or crimes against humanity. Cameroon was also a party to the Protocol on the Statute of the African Court of Justice and Human Rights, a veritable platform for combating impunity. At the domestic level, it was keen to promote judicial cooperation in respect of crimes to which universal jurisdiction applied. Under its Criminal Code and Code of Criminal Procedure, national courts had jurisdiction to hear cases concerning certain offences, regardless of the nationality of the perpetrators or the victims.

80. There was general agreement as to the essence of the principle of universal jurisdiction, but little agreement as to the manner of its application. It should therefore be invoked only in strict conformity with international law.

81. **Mr. Li Kai** (China) said that the concept of universal jurisdiction had political, legal and diplomatic dimensions. Notable differences of opinion remained between countries on whether and how to apply universal jurisdiction to crimes other than piracy, and national practices and *opinio juris* on the issue varied widely. Most situations that had been invoked as examples of the exercise of universal jurisdiction concerned "extradite or prosecute" provisions in relevant international treaties or the exercise of extraterritorial jurisdiction. In those cases, the State exercising jurisdiction had links to the perpetrator or the offence. Thus, they did not concern true universal jurisdiction.

82. In recent years, courts in some countries had exercised extraterritorial jurisdiction, which was neither consistent with international law nor widely accepted. There were even examples of frivolous, politically motivated litigation and violations of the immunity of State officials from foreign jurisdiction. Such cases were nothing but abuses of universal jurisdiction and breaches of international law that served only to destabilize international relations.

83. The scope and application of the principle of universal jurisdiction had been included in the agenda of the Committee to ensure that countries defined universal jurisdiction in a prudent manner and guarded against abuses, in order to prevent the destabilization of international relations. A State establishing and exercising universal jurisdiction must comply with the purposes and principles of the Charter of the United Nations and the basic principles of international law, such as sovereign equality of States and non-interference in the internal affairs of States, and respect the rules of immunity recognized under international law.

84. In view of the major differences of opinion between countries and the difficulty in reaching consensus, China suggested that the Committee seriously consider whether it was worthwhile to continue discussion of the topic.

85. **Ms. Villalobos Brenes** (Costa Rica) said that universal jurisdiction was a principle of international law that had been accepted and applied since the end of the Second World War; it had been incorporated into the Geneva Conventions and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in the form of an obligation to extradite or prosecute the perpetrators of the crimes in question. Complementary mechanisms such as the International Criminal Court and ad hoc tribunals had also been put in place for cases in which there was no political will or institutional capacity at the national level to secure justice for victims. However, the Rome Statute of the Court had not yet attained universality, and the tools that the United Nations had at its disposal had been thwarted in recent years by differences within the Security Council, which had led to uncertainty, frustration and potential impunity. In those cases, universal jurisdiction was the best option for prosecuting the perpetrators of atrocity crimes.

86. In order to comply with international law, countries should adopt national laws that allowed them to make exceptions to the principle of territoriality. Costa Rica had provided in its Criminal Code for the possibility of prosecuting the perpetrators of crimes

referred to in treaties that it had signed or in the Criminal Code, such as acts of terrorism and the financing of terrorism, genocide, the slave trade and trafficking in women and children, and violations of human rights and international humanitarian law, irrespective of the place of commission of the crime or the nationality of the perpetrator. In a recent case, the Constitutional Court had established that the imperative to prosecute and punish the perpetrators of the most serious crimes, such as those involving human rights violations, prevailed over the constitutional principle of territoriality.

87. Although there was general acceptance of the need for universal jurisdiction, there was no agreement as to its scope and application, and the COVID-19 pandemic had prevented the working group from making progress during the intersessional period. The Committee must work towards producing common regulations that would facilitate international cooperation to achieve the fair and effective exercise of universal jurisdiction and, more importantly, to ensure justice for victims.

88. **Ms. Langerholc** (Slovenia) said that universal jurisdiction was a well-established principle of international law aimed at combating impunity and protecting the rights of victims of the most serious crimes of concern to the international community as a whole. It should meaningfully contribute to sustainable peace in conflict situations.

89. There remained a need to clarify the scope and application of universal jurisdiction and to distinguish it from extraterritorial jurisdiction exercised on the basis of, for example, active or passive personality or the protective principle. Universal jurisdiction applied only to the most serious crimes under international law, such as war crimes, genocide, crimes against humanity, slavery, torture and piracy. However, the international community should not limit itself by establishing an exhaustive list of crimes to which the principle would apply. Further consideration should also be given to the issue of immunities in connection with the principle of universal jurisdiction.

90. Universal jurisdiction was a complementary mechanism, and its legitimacy and credibility were best ensured through responsible application in good faith, without abuses or selectivity, and in accordance with the Charter of the United Nations and international law. Close cooperation between the States concerned was of paramount importance, and the highest judicial standards must be upheld in any proceedings brought on the basis of universal jurisdiction.

91. It was important to strengthen mutual legal assistance and cooperation between States with a view to improving the effectiveness of the investigation and

prosecution of crimes on the basis of universal jurisdiction. The exercise of universal jurisdiction by national courts entailed specific challenges, such as witness participation and the collection of evidence in the context of inter-State cooperation. Argentina, Belgium, Mongolia, the Netherlands, Senegal and Slovenia were working towards the adoption of a new convention on mutual legal assistance and extradition in cases of genocide, crimes against humanity and war crimes. A total of 75 States from all regions, including States that were not parties to the Rome Statute of the International Criminal Court, supported that initiative, and her delegation invited all States to join it. The diplomatic conference for the adoption of the convention had had to be postponed owing to the COVID-19 pandemic, but a new date would be announced in due course.

92. **Ms. Ighil** (Algeria) said that the abuse and misuse of the principle of universal jurisdiction, particularly without regard for the requirements of international justice and equality, affected the credibility of international law and the fight against impunity and undermined attempts to dispense global justice. Universal jurisdiction should be exercised in good faith and with due respect for the principles of international law, in particular the sovereign equality of States, non-interference in their internal affairs, political independence and the immunity of Heads of State and Government. It should be considered a complementary mechanism and a measure of last resort that could not replace the jurisdiction of national courts.

93. Her delegation took note of the decision by the International Law Commission to include the topic “Universal criminal jurisdiction” in its long-term programme of work but was of the view that the Sixth Committee should continue to examine the scope and application of universal jurisdiction through the working group established for that purpose, and that referral of the issue to the Commission would be premature at the current juncture. The Committee should focus in its deliberations on considering clear rules for the application of universal jurisdiction and its scope and definition.

94. **Ms. Townsend** (United Kingdom) said that her delegation understood universal jurisdiction to refer to national jurisdiction established over a crime irrespective of the alleged place of perpetration, the nationality of the alleged perpetrator, the nationality of the victim, or other links between the crime and the prosecuting State. Universal jurisdiction should be distinguished from the jurisdiction of international judicial mechanisms established by treaty, including the International Criminal Court, and from the

extraterritorial jurisdiction enjoyed by States under their domestic laws. It was also distinct from the jurisdiction established under treaties that provided for an “extradite or prosecute” regime.

95. There were practical constraints on delivering justice through the exercise of universal jurisdiction. The primacy of the territorial approach to jurisdiction reflected the fact that the authorities of the State in whose territory an offence was committed were generally best placed to prosecute that offence, as it was easier for them to secure the evidence and witnesses necessary for a successful prosecution. There were only a small number of offences over which the courts of the United Kingdom could exercise jurisdiction when there was no apparent link to the country. Details of those offences were referred to in her country’s contribution to the report of the Secretary-General (A/75/151).

96. The lack of consensus concerning the nature, scope and application of universal jurisdiction indicated that it would be premature to take a definitive stance on the crimes in respect of which universal jurisdiction should be exercised or on a methodology for determining such crimes. The question of whether universal jurisdiction or another form of extraterritorial jurisdiction should apply to particular crimes should be addressed collaboratively by States, as had been done so far through treaties. Her delegation doubted whether the issues faced by States in relation to universal jurisdiction would best be addressed by the International Law Commission.

97. **Mr. Changara** (Zimbabwe), noting that deliberations on the agenda item had somewhat stalled, said that Member States should engage constructively to clarify the definition, scope and application of the principle of universal jurisdiction and to reach agreement as to which crimes should be subject to it. Universal jurisdiction should be exercised with the consent of, and in cooperation with, the relevant national judicial institutions. It should also be exercised in a cautious manner to avoid creating tension between States. The misapplication of the principle against African officials raised questions regarding its selective use in violation of the Charter of the United Nations.

98. Universal jurisdiction should be exercised in good faith and with due respect for the basic principles of international law, including the sovereign equality of States, non-interference in their internal affairs and political independence. It was a mechanism of last resort, to be used only in cases in which national courts were unable to act. Its scope and application should be consistent with the territorial jurisdiction of States and the immunity granted to Heads of State and Government

and other senior officials under customary international law.

99. International criminal law did not operate in isolation; it required cooperation between States, law enforcement organizations and judicial institutions. The credibility and legitimacy of universal jurisdiction hinged on the provision of effective redress and justice through the objective application of uniform rules.

100. At the international level, Zimbabwe was a party to the Geneva Conventions; at the continental level, its position on universal jurisdiction was informed by the Constitutive Act of the African Union, under which the Union had the right to intervene in a member State in respect of war crimes, genocide and crimes against humanity.

101. **Mr. Taufan** (Indonesia) said that there was general agreement that universal jurisdiction was crucial for addressing certain types of crimes. However, there were differences in State practice with regard to the definition, scope and application of the principle. Under its Penal Code, Indonesia could assert criminal jurisdiction over heinous crimes, such as piracy and hijacking, regardless of where they took place and the nationality of the perpetrators or the victims.

102. Cooperation between States on legal and criminal matters was critical to the application of universal jurisdiction. Without such cooperation, no investigation or prosecution could take place. It was important to distinguish between universal jurisdiction and the obligation to extradite or prosecute, which in many instances was more specific in scope, as enshrined in agreements between States. Universal jurisdiction should be exercised in accordance with due process of law and only as a last resort in cases in which a State that had jurisdiction was unable or unwilling to prosecute.

103. **Mr. Awassam** (Nigeria) said that the principle of universal jurisdiction was a key means of preventing impunity, promoting respect for the rule of law and punishing individuals in leadership positions responsible for the most appalling crimes and atrocities. Increasingly, the perpetrators of such crimes were escaping prosecution by relocating from the territories where they had committed the crime. It was therefore imperative that all States adopt laws and measures to enable the prosecution of such persons wherever they were apprehended, under the principle of universal jurisdiction.

104. As a signatory to the Rome Statute of the International Criminal Court, Nigeria had contributed much to the development of the principle of universal

jurisdiction. It was working with other States parties to ensure that the Court applied the principle equitably and in a practical fashion, especially in cases where it could have an impact on a State's political stability.

105. The principle should, however, be used only as a last resort. It should not be used where cooperation with the State where the crime had been committed was possible, especially through agreements on extradition and mutual legal assistance. Powerful States must not use it to impose their domestic legal systems on their less powerful counterparts by depriving them of prosecutorial authority.

106. His delegation reiterated its concern about the uncertainty surrounding the application of universal jurisdiction and called on the international community to adopt measures to end the abuse and political manipulation of the principle. It also appealed to the international community to address the constructive criticism of all parties concerned and to allay their fears through targeted messaging, awareness-raising and possible modification of the application of the principle. Greater cooperation between Member States was essential to ensuring that the principle was applied without bias or political motivation.

107. **Mr. Panier** (Haiti) said that, although universal jurisdiction had been considered a fundamental principle of international law since its inclusion in the Geneva Conventions of 1949, there was still no consensus on it within the community of States: while it could serve as a tool to combat impunity, it could also be used as a means of domination or of interference in the internal affairs of States.

108. There could be no justification for the most serious crimes, such as genocide, crimes against humanity and war crimes. In order to prevent impunity for such crimes, the exercise of universal or extraterritorial jurisdiction by foreign courts might be necessary, but it should be a last resort in the event of shortcomings in the judicial system of the country in which the crime had been committed. The principle of universal jurisdiction should not be used to justify any form of judicial imperialism, nor should it be abused for political purposes or applied in such a way as to undermine the fundamental principle of State sovereignty.

109. Haiti commended those States that had already harmonized their domestic laws with international legal instruments relating to universal jurisdiction and was working to do the same. Reform of its judicial system was under way, including a certification process for judges, which would be stepped up in the coming year with a view to making the judicial system more credible, efficient and trustworthy. A new Criminal Code had

been published in June 2020 and would shortly be followed by a new Code of Criminal Procedure. Nonetheless, the principle of universal jurisdiction remained the subject of debate in Haiti: the extradition of Haitian nationals was prohibited under domestic law, and the Constitution provided that no Haitian national could be deported or forced to leave the national territory for any reason.

110. It was clear that many States remained concerned about the scope and application of the principle of universal jurisdiction. His delegation hoped that the debate in the Committee would help to forge a consensus and to clarify the ambiguities surrounding the issue.

111. **Archbishop Caccia** (Observer for the Holy See) said that there was a shared duty to ensure that those responsible for the most serious crimes were held accountable. At the same time, core principles of international relations, such as the sovereign equality of States, non-interference in their internal affairs and the immunity of State officials, must be safeguarded. Clear rules for the exercise of universal jurisdiction should be established, based on due process, subsidiarity and respect for the jurisdictional privileges of States. The application of the principle should be limited to the gravest crimes, namely genocide, crimes against humanity and war crimes. Impunity for those crimes was unacceptable, and the perpetrators should not be given safe haven.

112. Universal jurisdiction should be applied in a manner consistent with the rule of law and the fundamental principles of criminal justice, including *nullum crimen sine lege*, *nulla poena sine lege*, due process and the presumption of innocence. In accordance with the principle of subsidiarity, a State with national or territorial jurisdiction should be given the first opportunity to investigate grave crimes and, if appropriate, prosecute the perpetrators. Universal jurisdiction should apply only as a mechanism of last resort when the States with the primary connection to the crime or the perpetrator were either unwilling or unable to prosecute. Even then, a State asserting universal jurisdiction must possess a clear connection to the facts or the parties concerned, such as the presence in its territory of the accused or the victims. Universal jurisdiction should not be invoked to justify prosecutions in absentia, “forum shopping” or unwarranted interference in the internal affairs of other States.

113. Traditional defences based on the functional immunity of public officials should not apply for the most serious crimes, which could never be construed as

acts of State. At the same time, the immunity *ratione personae* of the highest official of the State, while that official was in office, should be preserved as a precondition for the orderly conduct of international affairs and for any mediation or peacebuilding efforts.

114. His delegation encouraged the working group in its efforts to find common ground on those issues, assisted by the reports of the Secretary-General on the topic, which should in particular identify those crimes in respect of which Member States’ laws already permitted them to initiate prosecutions on the basis of universal jurisdiction; what conditions were applicable in such cases; and instances in which universal jurisdiction had been used as a basis for prosecution in each Member State.

*The meeting rose at 6 p.m.*