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The scope and application of the principle of universal jurisdiction

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Report of the Secretary-General prepared on the basis of comments and observations of Governments

Summary

The present report has been prepared pursuant to General Assembly resolution 64/117, by which the Assembly requested the Secretary-General to prepare a report on the basis of information and observations received from Member States on the scope and application of the principle of universal jurisdiction.

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Contents

I. Introduction

1. The present report has been prepared pursuant to General Assembly resolution 64/117, by which the Assembly requested the Secretary-General to prepare a report on the scope and application of the principle of universal jurisdiction, on the basis of information and observations from Member States, to be submitted before 30 April 2010.

2. Section II gives an overview of comments made by Governments on their general understanding of and certain orientations regarding the subject. Section III, together with the relevant tables found at the end of the report, focuses on specific information on the scope and application of universal jurisdiction, on the basis of relevant domestic legal rules, applicable international treaties, and judicial practice, in accordance with the resolution. Section IV contains a synopsis of issues raised by Governments for possible discussion, together with specific comments.

3. Responses were received from: Armenia, Australia, Austria, Azerbaijan, Belarus, Belgium, the Plurinational State of Bolivia, Bulgaria, Cameroon, Chile, China, Costa Rica, Cuba, Cyprus, the Czech Republic, Denmark, El Salvador, Estonia, Ethiopia, Finland, France, Germany, Iraq, Israel, Italy, Kenya, Kuwait, Lebanon, Malaysia, Malta, Mauritius, the Netherlands, New Zealand, Norway, Peru, Portugal, the Republic of Korea, Rwanda, Slovenia, South Africa, Sweden, Switzerland, Tunisia and the United States of America.

II. General observations

A. Context

4. In their observations, some Governments situated the subject within the general rubric of jurisdiction in international law, generally understanding universal jurisdiction to encompass, for purposes of the present subject, “universal criminal jurisdiction” and noting that jurisdiction was closely linked to principles of international law relating to sovereignty and territorial integrity. In particular, the sovereignty of States implied that within its own territory, a State could exercise prescriptive and enforcement (or prescriptive/legislative, adjudicative/judicial and enforcement/executive) jurisdiction to the exclusion of other States. The competence to do so — an important element of State sovereignty — was commonly understood as jurisdiction. As a general rule, the exercise of such competence was limited to the territory of the State. However, the territoriality of criminal law was not an absolute principle; international law did not prohibit a State from exercising jurisdiction extraterritorially. In this connection, attention was drawn to the various bases for establishing criminal jurisdiction: (a) the territorial principle (including subjective and objective territoriality); (b) the nationality (“active personality”) principle; (c) the passive personality principle; (d) the protective principle; and then (e) the universal principle.

5. For some Governments, it was important that jurisdiction, irrespective of its basis, was only exercised, in good faith, and consistently with other principles and rules of international law. While perpetrators of serious crimes should be properly and genuinely investigated, prosecuted and punished, it was considered essential that the goal of ending impunity did not in itself generate abuse or bring about

conflict with other existing rules of international law. Such an approach was necessary to enhance the rule of law, meaningfully contribute to peace among nations and ultimately bring justice to victims.

6. It was observed that the State in which a crime occurred (the territorial State) and the State of nationality of the perpetrator (the State of nationality) would generally have primacy, in the fight against impunity, over persons, acts or things. As such, each State should proscribe serious crimes under its domestic law, and exercise effective jurisdiction over such crimes when committed on its territory or by its nationals. It was argued that the territorial State was often best placed to obtain evidence, secure witnesses, enforce sentences, and deliver the "justice message" to the accused, victims and affected communities.

7. Governments also highlighted that one of the major achievements in international law in recent decades had been the shared understanding that there should be no impunity for serious crimes. International cooperation was constantly being strengthened and new measures taken to ensure that perpetrators of such crimes were brought to justice. These efforts had led to concrete outcomes, giving practical recognition to international criminal jurisdiction, as well as to prosecutions based on universal jurisdiction.

8. As regard the former, attention was drawn to the establishment of ad hoc criminal tribunals, of a diverse variety, as well as to the Rome Statute of the International Criminal Court. While support was expressed for such arrangements, noting that the international criminal justice system afforded a range of complementary mechanisms not only to end impunity but also to maintain international peace and security, it was acknowledged by some Governments that such bodies had their own jurisdictional and practical limitations.

9. At the same time, it was recognized that serious crimes of international concern still went unpunished within the scope of territorial or national jurisdiction, including by alleged perpetrators becoming fugitives across borders, heightening, in part, the importance and resurgence of universal jurisdiction. In their comments, several Governments affirmed their commitment to promoting accountability and viewed universal jurisdiction as constituting an essential jurisdictional instrument in the fight against impunity. It was underlined that universal jurisdiction should be exercised in accordance with recognized rules of international law, not least those providing fundamental rights and guarantees for the accused. It was considered equally important that judicial independence and impartiality be safeguarded to ensure that the principle of universal jurisdiction was not manipulated for political ends.

B. Rationale

10. It was observed in some comments that doctrinally the rationale for universal jurisdiction was based on the idea that certain crimes were so serious that they affected the whole international community, or that the crimes in question were universally condemned or were harmful to international interests, with the result that States were obliged to bring proceedings against the perpetrators. The nature or exceptional gravity of such crimes rendered their suppression a joint concern of the international community. Consequently, every State had the right to exercise its jurisdiction to prosecute the perpetrators.

11. In a sense, universal jurisdiction was viewed as an additional complementary mechanism in the collective system of criminal justice. It ensured that a State would take action, on behalf of the international community, where a serious crime of international concern had been committed, and other States which had jurisdiction were unable or unwilling to act, and where international courts and tribunals lacked the jurisdiction or practical means to prosecute the perpetrators. While the invocation of universal jurisdiction by national courts was viewed as a rarity, it was suggested that this was not because of lack of regard to the seriousness of the crimes concerned but rather an indication of prosecutorial preference to ground jurisdiction on other mandatory bases. The point was made that there was an element of subsidiarity to universal jurisdiction, which did not obtain in the classic types of extraterritorial jurisdiction.

C. Definition

12. In their comments, several Governments offered their understanding of the meaning of universal jurisdiction. Of the definitions presented, there were several variations, although they substantially alluded to the same notion embracing the irrelevance of proof of a nexus with the forum State when determining competence. In some examples, reference was made to the general prescriptive assertions of universal jurisdiction as being: (a) the jurisdiction to try serious crimes committed abroad irrespective of the law of the locality where the offence took place and of the nationality of the perpetrator or the victim; (b) the competence to exercise criminal jurisdiction over those individuals responsible for the most serious crimes of international concern regardless of where the conduct occurs; (c) the authority to bring criminal charges against an individual under the national law of any State regardless of the nationality of, or the State in which, the individual committed the crime; (d) the possibility of criminal prosecution for the commission of a serious crime, regardless of where it was committed, the nationality of the accused or the victim, or any other link between the crime and the State where prosecution takes place; or (e) the legal principle allowing or requiring a State to bring criminal proceedings in respect of certain crimes irrespective of the location of the crime and the nationality of the perpetrator or the victim.

13. In other situations, the focus was on the nature of the crime. Universal criminal jurisdiction was one, based solely on the nature of the crime regardless of the nexus between the place of commission of the crime, the alleged perpetrator and the country of prosecution. It was also defined deductively by excluding the other bases for establishing jurisdiction, in which case universal jurisdiction implied a criterion for the attribution of jurisdiction that was recognized by international law whereby States may prosecute certain international crimes without having to prove a jurisdictional link, either (a) to the territory where the crime was committed, the nationality of the perpetrator or the nationality of the victims; or (b) regardless of the location in which the offence took place, the nationality of either the victim or the perpetrator, or the effect of the crime on the State exercising jurisdiction.

14. In yet some other instances, the focus was narrower and specific to the enforcement or adjudicatory aspects of jurisdiction, referring to (a) the ability of a national judge to bring proceedings and rule on certain crimes committed on foreign soil, by foreign nationals and against foreign nationals; or (b) the ability of a court to exercise its jurisdiction even in the absence of a link between the case and the

forum State, such as territory, nationality of perpetrator or victim, or infringement upon the fundamental interests of the State.

15. In some comments, the point was made that national legislation attributed extraterritorial jurisdiction in relation to certain offences, usually in relation to the implementation of international agreements containing obligations to criminalize certain acts and ensure that offenders were prosecuted or extradited. Although these agreements were often described as creating "universal jurisdiction", it was considered that the extraterritorial jurisdiction assumed pursuant to such instruments was different from universal jurisdiction in that limits remained on the circumstances in which jurisdiction might be exercised. In particular, the exercise of jurisdiction was limited to criminal acts having some link with the forum State.

D. Distinctions drawn in respect of universal jurisdiction

16. In this connection, comments were also made drawing a distinction between universal jurisdiction that was absolute, unlimited or unconditional and universal jurisdiction that was conditional or limited. The former, inter alia, allowed for the exercise of universal jurisdiction in criminal proceedings by default or in absentia, without the perpetrator being present in the territory of the forum State. The latter applied once one or several conditions for the reasonable exercise of extraterritorial jurisdiction would have been fulfilled, the common factor being the presence of the alleged offender in the territory of the forum State. Additional considerations, based on the specificities of a national jurisdiction, included the prohibition of extradition of the alleged offender to the territorial State or State of nationality, or the need for a specific request or consent of a duly designated authority. Some Governments stressed that, as a general rule, universal jurisdiction within their jurisdiction could only be exercised when the perpetrator was present in their territory at the time when formal legal proceedings were initiated.

17. In another instance, attention was drawn to a distinction between universal legislative jurisdiction, which may be exercised through the enactment of a domestic law and universal contentious jurisdiction concerning the investigation and trial of accused persons. It was noted that the former was prevalent and more acceptable in State practice and was generally a sine qua non for subsequent investigation and trial. On the other hand, a court could in principle also found its jurisdiction, directly on the basis of international law, to exercise universal contentious jurisdiction without relying in any way on domestic legislation.

E. Universal jurisdiction and *aut dedere aut judicare*

18. Observations were made by some Governments cautioning against confusing universal jurisdiction with the obligation to extradite or prosecute (*aut dedere aut judicare*). As a general matter, it was noted that universal jurisdiction was a basis for jurisdiction only and did not itself imply an obligation to submit a case for potential prosecution. In that sense, universal jurisdiction was quite distinct from the obligation to extradite or prosecute, whose implementation, according to some comments, was subject to conditions and limitations set out in a particular treaty containing the obligation.

19. Universal jurisdiction involved a criterion for the attribution of jurisdiction, whereas the obligation to extradite or prosecute was an obligation that was discharged once the accused was extradited or once the State decided to prosecute an accused based on any of the existing bases of jurisdiction.

20. Stemming from the above, divergent conclusions were drawn in the comments. On the one hand, the point was made that, on a closer examination of relevant treaties, it was misleading to assert that universal jurisdiction was established by treaty in all instances, in particular for offences such as terrorism and drug trafficking, where there was an obligation to extradite or prosecute. State parties to such treaties were under a mandatory duty, as a treaty obligation, to establish criminal jurisdiction on the basis of the territoriality or nationality principle, and, even where there was a discretion, the instruments in question founded jurisdiction on the basis of the passive personality principle, the protective principle, or because the offences were committed by a stateless person who had habitual residence in the State in question. The obligation to extradite or prosecute could be established in a treaty for any type of crime, without such crimes necessarily being subject to universal jurisdiction. Thus, although, under the relevant treaty, there was an obligation on a State party where an offender was found to prosecute or extradite an offender, the jurisdictional basis arose from the obligation to criminalize the treaty offences and establish jurisdiction on the basis of established grounds as specified in the treaty. The principle of *aut dedere aut judicare* did not in itself establish universal jurisdiction for that particular treaty-based offence.

21. On the other hand, it was noted that the obligation to prosecute or extradite was inextricably linked to universal jurisdiction, particularly when the latter is understood in its conditional or limited sense, as quasi-universal. While universal jurisdiction was a legal principle, it could also be an obligation as a result of a treaty. States parties to a treaty that included an *aut dedere aut judicare* obligation should incorporate universal jurisdiction into their legislation, without prejudice to the possibility of judicial bodies in monist States exercising jurisdiction on the direct basis of international law. Moreover, by being party to a treaty incorporating *aut dedere aut judicare*, a State may exercise jurisdiction, as appropriate, even if it was entirely unconnected to the crime itself. Depending on the facts of the case, if the State was not in a position to extradite such individual, the right to exercise jurisdiction could become an obligation as a result of the *aut dedere aut judicare* provision, since as State party, it would be under obligation to prosecute. On this basis, it was noted, for example, a number of universal counter-terrorism instruments, for instance, the 1997 International Convention for the Suppression of Terrorist Bombings, provided the obligation to prosecute on condition of non-extradition. In this context, it was also considered useful to note that most of the universal counter-terrorism conventions excluded from their scope offences committed exclusively within a single State, where the offender and the victims were nationals of that State, the alleged offender was found in the territory of that State, and no other traditional basis for another State to assert jurisdiction would apply.

22. Some other treaties oblige States parties to establish their jurisdiction, even universal jurisdiction, and to prosecute the perpetrators of crimes covered by these treaties, whether or not there has been a request for extradition by another State. States were at liberty to extradite suspects, however, if they did not wish to prosecute them. This type of *aut dedere aut judicare* obligation was found, in

particular, in the Geneva Conventions of 1949, in the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the 2006 International Convention for the Protection of All Persons from Enforced Disappearance.

F. Universal jurisdiction and international jurisdiction

23. Some Governments distinguished universal jurisdiction from international criminal jurisdiction. While sharing the same aim of ensuring that perpetrators of certain crimes do not enjoy impunity, the two were complementary but not interchangeable. Whereas States exercise universal jurisdiction, international criminal jurisdiction pertained to international tribunals. It was observed that the granting of jurisdiction over certain crimes to international judicial bodies did not constitute a legal basis for a State to establish universal jurisdiction over such crimes.

24. Nevertheless, a number of comments drew attention in particular to the relationship between universal jurisdiction and the Rome Statute of the International Criminal Court. For some Governments, the legitimacy of universal jurisdiction in their countries was borne out by the measures deployed at the domestic level to ratify and implement the Rome Statute, including steps taken to establish universal jurisdiction as a basis for asserting jurisdiction, in respect of clearly defined crimes of international concern and providing the means of enforcement allowing the national courts to exercise jurisdiction over such crimes.

25. The point was made that universal jurisdiction may be exercised not only by States but also by international criminal tribunals and other criminal justice bodies.

G. Universal jurisdiction and *jus cogens* norms

26. It was suggested that greater attention should be paid to the relationship between universal jurisdiction and acts concerning prohibitions or acts which had a *jus cogens* character. In particular, it was necessary to determine whether crimes whose prohibition rose to the level of *jus cogens* were subject to the exercise of universal jurisdiction, and whether such jurisdiction was optional or compulsory. It was pointed out that crimes under the Rome Statute, which also invoked the application of universal jurisdiction, had a *jus cogens* character.

H. Crimes under customary international law concerning which universal jurisdiction may be invoked

27. Some Governments also cited examples of crimes in relation to which universal jurisdiction may be invoked. Under customary law, it was noted, it was generally understood that universal jurisdiction applied to piracy. To prevent impunity and to deny them safe havens, pirates were considered *hosti humanis generis*. Universal jurisdiction for piracy had been reaffirmed by the 1982 United Nations Convention on the Law of the Sea.

28. Some Governments observed that customary law also extended universal jurisdiction for other crimes such as slavery, genocide, war crimes, crimes against

humanity, crimes against peace, and torture, while some others additionally mentioned the prohibition against apartheid. The nuanced position in some other comments was that although universal jurisdiction extended to serious crimes of international concern, such as genocide, war crimes and crime against humanity, the exercise of jurisdiction in other cases was based on treaty or statute and accordingly only binding on parties thereto. It was nevertheless recognized that certain States enacted domestic law to claim extraterritorial jurisdiction over such crimes and premised the legality of such legislation on the basis of universal jurisdiction.

III. Scope and application of universal jurisdiction on the basis of the relevant domestic legal rules, applicable international treaties, and judicial practice

29. In their comments on the applicable legal rules, some Governments provided general information on the constitutional and other basis for the application of international law within the domestic legal order, as well as specific information on rules applicable for establishing jurisdiction generally and, in some cases, universal jurisdiction in particular.

A. Constitutional and other domestic legal framework

30. In the occasional comments on this point, Governments revealed varied practice, although broadly drawing on the dichotomy between indirect and direct applicability of international law in the domestic sphere. In some instances, it was noted that there was a different treatment accorded based on the source of the obligation: customary international law was generally considered to be part of the law of the States concerned (unless it was inconsistent with the Constitution or Acts passed by the legislature). This in itself opened the possibility, at least theoretically, for universal jurisdiction in relation to an international crime, under custom, being exercisable domestically (e.g., South Africa). In respect of treaty obligations, some Governments noted that in order to have effect in domestic law, international obligations would have to be incorporated either through legislation (e.g., Australia, Belarus, South Africa), including the adoption of legislation regulating the procedural conditions for implementation of the principle (e.g., Belarus), or by application of the common law (e.g., Australia).

31. On such basis, it was noted that, *ratione materiae*, serious crimes of international concern, including genocide, war crimes, crimes against humanity, piracy, slavery and torture were comprehensively criminalized under domestic law. Moreover, appropriate authorities were accorded the legal authority to investigate and prosecute such crimes, including on the basis of universal jurisdiction (e.g., Australia). Indeed, it was indicated that it would be the act incorporating the crimes in question into domestic law that would provide the basis for jurisdiction, and not necessarily the principle of universal jurisdiction as such (e.g., South Africa).

32. In cases of direct applicability, there was no constitutional requirement for additional domestic legislation to be passed in order to implement any treaties to which the States concerned were party, even though in some instances specific

legislation was passed in practice (e.g., the Republic of Korea). It was noted that some constitutions expressly provided that treaties to which the State concerned was party formed part of domestic legislation (e.g., Peru) or that duly concluded and promulgated treaties and generally recognized rules of international law would have the same effect as the domestic law (e.g., the Republic of Korea) or that any agreements approved or ratified by the President of the State had greater authority than national laws (e.g., Tunisia). Thus, the absence of an express provision on universal jurisdiction, would not prevent the courts from it on that basis, since, in accordance with the constitutional framework, treaties and customary international law incorporating universal jurisdiction had the same standing within the particular jurisdiction as the constitution or domestic law (e.g., Republic of Korea, Peru, Tunisia). In other situations, international instruments in question became part of domestic law when they had entered into force on the domestic plane, in accordance with their provisions and of the constitution (e.g., El Salvador), namely, once a decree of ratification was issued by the legislature to ensure entry into force of a particular treaty and the domestic application of its provisions (e.g., El Salvador). Accordingly, the authority to exercise universal jurisdiction, even outside the legislative basis in domestic law, was stated as extant and viable by virtue of an international normative framework for obligations assumed that authorized some States to observe the principle, especially in relation to war crimes, consistent with obligations under the Geneva Conventions of 1949 (e.g., El Salvador).

33. Some Governments indicated that international human rights instruments had constitutional status within their domestic legal order and that, if they contained rights more favourable than those contained in the constitution such rights applied in preference to those in the constitution (e.g., the Plurinational State of Bolivia, Costa Rica) or that the constitutions in question provided that laws relating to the rights and liberties recognized by those constitutions would be interpreted in accordance with the international human rights norms and international human rights treaties ratified by the States concerned (e.g., Peru). To that end, it was asserted that, once the State had become party to certain human rights instruments, the principle of universal jurisdiction could be inferred from such instruments, for example, in cases of systematic and widespread practice of torture, forced disappearance of persons, genocide or apartheid (e.g., the Plurinational State of Bolivia).

B. Criminal regulatory framework

34. The most extensive information was provided in relation to the criminal law regulatory framework. It was noted, at least in one case, by a Government that its courts had universal jurisdiction over any crime falling within the category of international or cross-border crimes, such as genocide, war crimes, crimes against humanity, torture, money-laundering, piracy and drug trafficking (Rwanda). In another instance, it was noted that universal jurisdiction was not enshrined in the law, while observing further that domestic legal rules and judicial practice had not adopted the principle (Lebanon). In most cases, however, references were made to penal or criminal codes, codes of criminal procedure and specific legislation which had given effect to international obligations, as providing the basis for the exercise of universal jurisdiction. As a general caveat, it should be noted that there were occasions in which references were made to legislation which had general attributes of extraterritoriality in respect of particular offences.

1. Penal or criminal codes, codes of criminal procedure or criminal law

35. There were cases where issues concerning the application of universal jurisdiction, usually along side other bases of jurisdiction, were provided for, either expressly or impliedly, in their domestic penal codes (e.g., Austria, the Plurinational State of Bolivia, Bulgaria, Cameroon, Costa Rica, Estonia, El Salvador, Ethiopia, Iraq, Israel, Malaysia, Norway, Peru, Slovenia, Sweden, Switzerland), including the military penal codes (e.g., Switzerland), the Penal Law (e.g., Israel), criminal codes (e.g., Armenia, Australia, Azerbaijan, Belarus, Belgium, the Czech Republic, Cyprus, Denmark, Finland, Germany, Italy, Malta, the Netherlands, Portugal, Slovenia, the Republic of Korea) or codes of criminal procedure (e.g., Armenia, Belarus, Belgium, Cameroon, France, Germany, Iraq, Norway, Sweden, Tunisia), or the criminal law (e.g., China) or acts on powers of judiciary, such as courts acts (e.g., Mauritius) or Courts of Judicature Act (e.g., Malaysia).

Material scope of enabling provisions

36. As in the case of the constitutional framework, the comments revealed varied practice, demonstrating a range of enabling provisions with respect to the scope *ratione materiae*, which can broadly be presented into two overlapping categories, sometimes within the same jurisdiction. The various formulations generally cast jurisdiction as exercisable in respect of (a) a crime against international law; or (b) an international crime specified in domestic legislation, or a crime specified in a treaty, to which the State had adhered.

A crime against international law

37. In some situations, under the codes, criminal jurisdiction was exercised in regard to offences against international law (e.g., Belgium, Ethiopia) or the codes specified such crimes (e.g., Azerbaijan, Belarus, Belgium, Cameroon, Estonia, Malta, Netherlands, Norway), for example, piracy, genocide, crimes against humanity, grave violations of the Geneva Conventions of 1949 or other violations of international humanitarian law committed in international or non-international armed conflict. In other cases, the codes defined a “crime against international law” or “an international crime” by expressly mentioning the crimes in question or by reference, for example, to the commission of any act which was contrary to international humanitarian law under international treaties adhered to by the State concerned (e.g., Costa Rica) or more broadly to a serious violation of a treaty or an infraction of a generally recognized principle or tenet relating to international humanitarian law concerning armed conflicts. This formulation invoked the possibility of treaties, as well as customary international law concerning international humanitarian law being applicable in the determination of whether a “crime against international law” had been committed (e.g., Sweden).

38. In some cases, the exercise of universal jurisdiction for genocide was implied from a general provision that accorded the exercise of universal jurisdiction over offences where the least severe punishment prescribed was imprisonment for four years or more (e.g., Sweden).

39. In some other situations, comments were made that reforms of the codes were under way, which would then include a specific chapter on crimes against international law, including genocide, crimes against humanity and war crimes (e.g., the Plurinational State of Bolivia) or to ensure full compliance with the Rome

Statute (e.g., Costa Rica, Sweden, Switzerland), including definitions of crimes contained therein (e.g., Costa Rica).

International offence specified in domestic legislation or international offence specified in international treaty, to which the State is a party

40. In some examples, the codes applied universal jurisdiction in respect of specific crimes as stipulated in the codes (e.g., Iraq). Thus, the codes conferred jurisdiction over certain crimes, irrespective of the nationality of the perpetrator or victim or where the offences were committed (e.g., Armenia, Australia, Austria, Azerbaijan, Belarus, Cameroon, Iraq), or the codes contained a general provision that universal jurisdiction may be accorded by special legislation (e.g., Italy).

41. There were also situations in which jurisdiction was expressly extended by the codes to any offence concerning which the States in question had a right or an obligation to prosecute under a treaty or under other applicable rules of international law (e.g., Austria, Azerbaijan, Belarus, Belgium, Bulgaria, Cameroon, China, Costa Rica, Cyprus, the Czech Republic, Denmark, Estonia, Ethiopia, Finland, Germany, Israel, Italy, Malta, Norway, Peru) or in relation to offences which affected property internationally protected by specific agreements or rules of international law or seriously undermined universally recognized human rights (e.g., El Salvador). Additionally, the codes, on some occasions, would require that an international agreement be incorporated into domestic law and the provisions of the treaty should give national courts the jurisdiction to prosecute and sentence the person suspected of committing the offences addressed in the treaty. In practice, in the latter case, the jurisdiction of the courts was limited by the need to incorporate into domestic law the international agreements giving jurisdiction to the national judges (e.g., France). Thus, in accordance with a treaty which was referred to in the code, any person who committed one of the crimes listed in the code would be prosecuted in the courts of the forum State (e.g., France). In yet some other cases, further provisions on the application of the enabling rules were issued by decree (which would set out a detailed list of crimes to which the law could be applied on the basis of universal jurisdiction, as well as of treaties providing the legal basis thereof) (e.g., Finland).

42. Through such provisions, States concerned were also able to implement their treaty obligations, including the Rome Statute, resolutions or decisions of the Security Council or decisions and directives of other international institutions to which they were members (e.g., Denmark).

43. Moreover, specific laws had been passed to give effect to United Nations resolutions relating to counter-terrorism (e.g., South Africa), or establishing international criminal tribunals for certain serious crimes committed in particular territories, in which case universal jurisdiction was limited *ratione materiae*, *ratione temporis* and *ratione loci* (e.g., France).

44. In other related situations, although universal jurisdiction was not as such provided for, and there was a general tendency to rely on territorial jurisdiction, the codes nevertheless provided that it would apply to crimes which the State was required by treaty to punish, even if they were not committed within the territory or that the territorial jurisdiction would apply subject to the exceptions laid down in international law. It was understood that such provision left open the possibility of applying the universal principle in accordance with international treaties or agreements ratified by the State (e.g., Armenia, the Plurinational State of Bolivia) or

to crimes which were so grave and directed at the interests of the State or affect the rights and freedoms of its nationals (e.g., Armenia).

The range of offences proscribed in domestic codes

45. The domestic codes provided for a wide range of crimes; these included a general specification concerning a crime against international law or an international crime specified in domestic law, or treaty to which the State concerned was party (e.g., Ethiopia) or to any criminal act that the State concerned had a right or an obligation to prosecute under agreements with foreign States or under other applicable international law (e.g., Norway). In some cases, the classification was more specific, covering such crimes as piracy; slavery and associated offences; fiscal offences; genocide; crimes against humanity; crimes against peace; war crimes; torture; apartheid and discrimination; terrorism-related offences; safety of United Nations and associated personnel; offences against State symbols and State representatives; offences against public morals, or exploitation; and crimes concerning computer and communications fraud.

46. **Table 1** contains a list of crimes as contained in various codes as mentioned in the comments by Governments.

2. Specific legislation

47. In some jurisdictions the proscribed conduct or the application of universal jurisdiction was the subject-matter of specific legislation. In some comments, it was clarified that the general principle was that the courts had territorial jurisdiction, unless the law expressly provided for extraterritorial jurisdiction, hence the need for specific legislation (e.g., Mauritius).

48. Some Governments made general statements that there were a number of statutes that provided for jurisdiction where the only tangible link to the particular crime was the alleged presence of the perpetrator in their territory (e.g., the United States).

The range of offences proscribed by the specific legislation

49. Governments indicated that specific legislation had been passed in relation to such crimes as piracy; genocide; crimes against humanity; torture; war crimes, including war crimes against persons, war crimes against private property and other rights, war crimes against humanitarian operations and emblems, war crimes concerning illegal methods of war, and war crimes concerning illegal means of war; terrorism-related offences; offences concerning mercenary activities; and crimes relating to narcotic drugs and psychotropic substances. Reference was also made to legislation to implement the Rome Statute.

50. **Table 2** contains an indication of specific legislation, based on information submitted by Governments.

3. Applicable international treaties

51. In their comments Governments mentioned a number of international instruments as relevant to the subject, with some noting that the treaties incorporated *aut dedere aut judicare* provisions which they were bound to implement. In some instances, it was clarified that the international instruments

defined crimes falling under the scope of the Penal Code (e.g., Bulgaria). In other instances, Governments refrained from presenting a list, noting that the list of treaties which embodied universal jurisdiction was extensive (e.g., Denmark). The observation was also made that the Government concerned was not bound by any treaty related to the principle of universal jurisdiction (e.g., Lebanon).

52. The instruments referred to were of a universal, regional or bilateral nature, covering such areas as piracy, genocide, international humanitarian law, international criminal law, torture, apartheid, acts of terrorism, narcotic drugs and psychotropic substances, corruption, money-laundering and transnational organized crime, the safety of United Nations and associated personnel, enforced disappearances, the non-applicability of the Statute of limitations, road transportation offences, as well as extradition and mutual assistance in criminal matters.

53. **Table 3** contains a list of the treaties referred to, on the basis of information by Governments, including treaties containing *aut dedere aut judicare* provisions.

4. Customary law

54. Some Governments noted that they accepted that customary international law permitted the exercise of universal jurisdiction over the most serious crimes under international law, which included genocide, crimes against humanity, war crimes, torture, piracy (e.g., Belgium, Malta, Slovenia), and slavery or trafficking in persons (e.g., Belgium), while in some other instances it was noted that there was a subset of crimes such as piracy, genocide and torture, for which the authority to exercise universal jurisdiction derived, at least in part, from a recognition of the offence as a universal crime under customary international law (e.g., the United States). Other Governments noted that universal jurisdiction under customary law existed only with regard to piracy (e.g., China, Malaysia).

5. Judicial and other practice

55. In some instances, it was noted that there had been no cases of application of universal jurisdiction (e.g., Armenia, the Plurinational State of Bolivia, Chile, the Czech Republic, El Salvador, Estonia, Kenya, Malta, Peru, Slovenia), that no prosecutions had been pursued under legislation providing for universal jurisdiction (e.g., New Zealand), that the courts rarely exercised it (e.g., Republic of Korea), or that no one had been convicted since the legislation containing crimes for which universal jurisdiction would be asserted entered into force (e.g., Azerbaijan, the Netherlands). It was also noted that there had been no cases in which extradition had been requested on the basis of universal jurisdiction (e.g., Peru).

56. In a 2008 judgement, the Constitutional Court of **Peru**, in a general reference to the exercise of universal jurisdiction, said that “it is a jurisdiction that does not take into account the nationality of perpetrator or victims, or the place where the crime was committed, when determining the competence of a given State’s courts to prosecute acts considered to be contrary to the interests of mankind as a whole”.

57. **Belgium** reported that to date, four trials relating to acts committed during the 1994 genocide in Rwanda had been held before the Brussels Assize Court in 2001, 2005, 2007 and 2009. These cases were opened wholly or partly on the basis of the universal jurisdiction of Belgian courts and their investigation went smoothly

because of very close cooperation between the Belgian and Rwandan judicial authorities. In addition, several dozen cases concerning grave violations of international humanitarian law were still at the stage of information-gathering or investigation and could, in the years to come, lead to new trials. However, only some of these cases were based on the universal jurisdiction of Belgian courts, the suspect being present in Belgian territory.

58. In February 2003, a piracy case was tried in the Shantou Municipal Intermediate People's Court in **China**. During the trial, the Court ascertained that 10 Indonesians had hijacked a Thai oil tanker off Malaysia and had been apprehended by Chinese police while disposing of the stolen goods in Chinese territorial waters. In accordance with article 9 of the Criminal Law of China, the Court exercised the jurisdiction prescribed for the aforementioned crime on the basis of the United Nations Convention on the Law of the Sea and the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, both ratified by China, and convicted and sentenced the accused in accordance with the provisions of Chinese criminal law.

59. In one 1995 case in the Supreme Court in **Denmark**, the accused, present in Denmark when the charges against him were raised, was accused of having committed in Croatia serious violence against fellow inmates in a camp for war prisoners, in which the accused was exercising limited authority. The acts were held to be punishable under the Third and the Fourth Geneva Conventions. In accordance with the relevant provisions of the Criminal Code, the violations were subject to the jurisdiction of Denmark. As such it was obliged under the relevant conventions to exercise criminal jurisdiction. The defendant was sentenced to eight years' imprisonment and was subsequently expelled.

60. In **France**, there were some ongoing cases, three of which involved acts of torture committed in Algeria, Cambodia and the Republic of the Congo. In relation to Cambodia, in January 2010, an Investigation Chamber of the Paris Court of Appeal handed down a ruling approving the pursuit of investigations for a case concerning acts of kidnapping followed by acts of torture and disappearance, committed in Cambodia between 1975 and 1979.

61. There were also 15 cases ongoing in France concerning acts committed in Rwanda in the context of laws passed to implement the statutes of the international criminal tribunals for Rwanda and for the former Yugoslavia; 14 of these cases were before the High Court of Paris, while the remaining one was before the Army Tribunal of Paris, since members of the French military were implicated.

62. **Rwanda** noted that in 2006, a French judge issued arrest warrants for nine Rwandan officials, including President Paul Kagame, linking them to the killing of Rwanda's former President, whose plane crashed in 1994. In the view of Rwanda, this was an odd indictment by any legal standard and constituted abuse of universal jurisdiction, pointing out that the judge, for example, did not consider alternative theories, did not visit Rwanda, did not conduct any investigation of his own, concocted evidence later denied by his own witnesses, and used evidence of fugitives from the genocide in Rwanda. Rwanda noted that, in the meantime, a large number of suspects of genocide who were subject of international arrest warrants, were in France; instead of using universal jurisdiction to try such persons, the judge had elected to indict the leadership of Rwanda.

63. Under the Criminal Code of the **Netherlands**, its courts have universal jurisdiction over the crime of piracy. On that basis, a case against suspected pirates arrested off the coast of Somalia was currently pending.

64. In one 1984 case in the **Republic of Korea**, reported as relevant to universal jurisdiction, a group of Chinese nationals hijacked a Chinese domestic aircraft in flight; after inflicting gunshot wounds on several flight attendants, they forced the plane to land at a regional airport of the Republic of Korea. The Supreme Court ruled that, while jurisdiction primarily belonged to the State of registration, considering articles 1, 3, 4 and 7 of the 1970 Convention for the Suppression of Unlawful Seizure of Aircraft, the forum State could also claim concurrent jurisdiction since the hijacked aircraft landed on its territory. Accordingly, a domestic Special Criminal Law, the Aircraft Navigation Safety Act, was deemed applicable to the foreign hijackers. Even though the court's ruling made no explicit mention of universal jurisdiction, it was the guiding principle that led the court to assert jurisdiction in this case.

65. In the *F. N.* case in **Switzerland**, a 2000 ruling of the Military Court of Appeal and a 2001 decision of the Military Court of Cassation, the accused, F. N. (a national of Rwanda), was convicted by the Swiss military courts of war crimes committed in Rwanda against foreign nationals.

C. Conditions, restrictions or limitations to the exercise of jurisdiction

1. General considerations

66. In their comments, some Governments also highlighted conditions, restrictions or limitations to the exercise of jurisdiction either generally or in respect of universal jurisdiction. It was observed that the legitimacy and credibility of the principle of universal jurisdiction was best ensured by its responsible and judicious application, noting in particular that legislation and judicial practice, in the context of universal jurisdiction cases, generally accorded respect to other principles of international law, as well as recognized that it was a mechanism of last resort, which should, as a matter of policy, respect the priority of States with primary jurisdictional links.

67. There were also general assurances that the constitutional guarantees and international norms and standards for the protection of human rights would be respected and the rights of the accused assured (e.g., Costa Rica, Slovenia), including the guarantees against double jeopardy (e.g., Belarus, Slovenia). Moreover, the usual excuses, defences of criminal responsibility would apply irrespective of the basis of jurisdiction (e.g., Australia).

68. Some comments emphasized that the applicability of the penal provisions was subject to the limitations of international law (e.g., Norway). It was noted that if a binding agreement, statute or regulation for some reason restricted the scope of application of the criminal law of a State, their provisions would apply and restrict the scope of application of the domestic law, on the basis of generally recognized rules of international law (e.g., Finland, Norway). In other instances, the implementing legislation would provide the necessary limits (e.g., Italy).

Absolute and conditional universal jurisdiction

69. In some situations, drawing upon the distinction between absolute and conditional universal jurisdiction, it was noted that certain crimes were subject to absolute universal jurisdiction, while others were subject to conditional universal jurisdiction. However, no clear patterns were discernible. For example, it was noted that crimes concerning fiscal matters and the crime of terrorism were subject to absolute universal jurisdiction, while conditional universal jurisdiction was required for crimes such as genocide, crimes against humanity, war crimes, incitement to war and recruitment of mercenaries. (e.g., Portugal). Yet in other instances, the reverse situation was true: crimes such as genocide, crimes against humanity, war crimes and torture were designated as "unrestricted", meaning that absolute universal jurisdiction would apply (e.g., Australia); while in another category of cases, such as sexual servitude, deceptive recruiting for sexual services, trafficking in persons and debt bondage, the exercise of jurisdiction depended on whether the accused was a national, a resident or a body corporate of the State concerned (e.g., Australia).

Broad prosecutorial discretion

70. It was noted in some comments that, even in cases where States had the authority to assert universal jurisdiction, irrespective of whether custom or treaty recognized such authority, States had broad prosecutorial discretion in determining whether to assert it in a specific case. This was increasingly reflected in State practice, where appropriate safeguards had been applied so as to ensure a careful and responsible exercise of universal jurisdiction and to prevent its abuse for political ends. It was also noted that there were often prudential or other reasons why States would refrain from exercising such jurisdiction, including, as appropriate, deferring to a State on whose territory the crime was committed. Since such crimes in particular injure the community where they had been perpetrated, the bulk of the evidence would usually be found in that territory, and prosecution within the territorial State may contribute to the strengthening of rule of law institutions in that State.

71. Moreover, in some jurisdictions, there was a general guarantee that the State had control over prosecutions, since prosecutions were brought by prosecutors and not by private parties, who were barred from filing criminal complaints with the courts, or such prosecutions were subject to consent of a duly designated authority. In some cases, prosecution was only instituted when required in the public interest (e.g., Denmark, Norway) or if the interests of the State concerned were affected (e.g., Austria). Under some legislations, the public prosecutor would assess whether an indictment should or should not be initiated. Such an assessment included the consideration of whether a successful prosecution would entail disproportionate difficulties, costs, or time constraints or whether there were mitigating circumstances that would make the indictment, if proceeded with, unreasonable (e.g., Denmark). In some instances, the law provided for several grounds which may justify a decision not to initiate proceedings or a decision on inadmissibility taken either by an indictment division, at the behest of a federal prosecutor (for example that the complaint was manifestly unfounded; the facts cited in the complaint did not correspond to the classification of offences set forth in the relevant code; the complaint could not result in an admissible case), or directly by a federal prosecutor (where it was apparent from the specific circumstances of the case that, in the interests of the proper administration of justice and in respect for international

obligations of the State concerned, the case should be brought either before international courts, or before the court in the place where the acts were committed, or before a court of the State of which the perpetrator was a national or of the place where he could be located, in so far as such court demonstrated the attributes of independence, impartiality and equity which accorded, in particular, with the relevant international commitments of the States concerned) (e.g., Belgium).

72. Further, it was noted that prosecutors had the power to suspend court proceedings at any stage where continuation would be seriously detrimental to the State or would be in conflict with overwhelming public interests (e.g., Germany).

73. In cases of concurrent jurisdiction, the legitimate interest of the forum State in exercising jurisdiction would often be balanced against the interests of other States in retaining jurisdiction, taking into such consideration all relevant facts of the case, as well as evidence of the state of international law at the time the specific jurisdictional issue arose (e.g., Denmark).

2. Specific conditions, restrictions or limitations

Seriousness of offence

74. In some countries, universal jurisdiction was reserved for serious crimes (e.g., Switzerland) or restricted to particular crimes as so specified and not to any other crimes (e.g., Iraq).

Jurisdictional link

75. The application of universal jurisdiction, in some jurisdictions, was contingent upon the fact that no other jurisdiction has a stronger jurisdictional link, or upon the establishment of jurisdictional link to the forum State, such as nationality or residence or presence of the perpetrator or victims on the territory (e.g., South Africa, Tunisia). In some cases, the requirement of a "close link" (e.g., domicile, ordinary residence, asylum-seekers or refugees) attached to specific crimes, such as war crimes (e.g., Switzerland), although it was also noted that such a requirement may have to be abandoned as a consequence of obligations assumed under the Rome Statute (e.g., Switzerland).

76. In certain countries, prosecution was subject to the presence of the alleged perpetrator in the territory of the State asserting jurisdiction at the time the proceedings were initiated (i.e., the person was arrested or found in the territory) (e.g., Austria, Cameroon, the Czech Republic, Denmark, France, Malaysia, the Netherlands, Norway, Slovenia, South Africa, Switzerland, the United States), or prosecutors would decide not to proceed if the alleged perpetrator was not present or his presence was not to be expected (e.g., Germany). Presence was linked to specific crimes (e.g., Cameroon, the Republic of Korea), including piracy, human trafficking, slave trade or drug trafficking (e.g., Cameroon), or financing of terrorism, money-laundering and crimes against the safety of maritime and air traffic (e.g., Tunisia).

77. In some instances, trials in absentia were prohibited (e.g., Costa Rica) or avoided (e.g., Israel), as contrary to constitutional guarantees of due process (e.g., Costa Rica), while in some jurisdictions the presence of the accused during the conduct of the trial was generally required (e.g., Australia, Malaysia).

Consent or authorization of an appropriate authority

78. Several Governments noted that, as a general rule, a criminal case concerning an offence committed abroad would not be tried unless there was an order from a Prosecutor-General (e.g., Finland), some direction from the Office of the Public Prosecutor (e.g., Cameroon, the Czech Republic, Germany) or the Director General of Public Prosecutions (e.g., Norway) or (written) consent or authorization of the Attorney-General (e.g., Australia, Israel, New Zealand), or the Minister of Justice (e.g., Iraq, Malta). In exercising discretion as to whether a prosecution should proceed, it was observed that regard may be had to a variety of matters, including considerations of international law, practice and comity, prosecution action that was being, or might be brought, in a foreign country (e.g., Australia) and other matters of public interest (e.g., Australia, Israel).

Ne bis in idem

79. It was noted, in some cases, that universal jurisdiction may properly be applied only to cases where the accused had not been tried for the same offence, at either the national or the international level or, at least account would be taken of penalties already imposed abroad for an offence concerning which universal jurisdiction applied (e.g., El Salvador). Moreover, it was indicated that an offender may not be prosecuted if a definitive judgement of guilt or innocence had been pronounced by a foreign court, if a sentence had been served in full or if the conviction had been legally overturned (e.g., Ethiopia, Iraq). It was also noted that persons convicted of crimes falling within the scope of universal jurisdiction may be accorded credit for time already served abroad, whether under arrest, in detention or in prison (e.g., Iraq). Further, the offender would not be subjected to a more severe punishment than that stipulated under the law of the State on whose territory the crime was committed (e.g., the Czech Republic, Slovenia).

80. In some countries, double jeopardy did not apply where there was a determination that it was an international crime or where the judgement rendered abroad was not based on a request from the forum State (e.g., Finland) or if, subject to the permission of a designated authority, the act was not punishable in both States at the time an act was committed, it was considered a criminal offence according to the customary rules and principles recognized by the international community (e.g., Slovenia).

Double criminality

81. In some jurisdictions, there was a requirement for double criminality (e.g., Austria, Cameroon, Denmark, Slovenia, Tunisia). For an act to be punishable in the forum State, it should also be punishable under the law in force on the territory where it was committed (e.g., the Czech Republic). However, there were other countries where double criminality did not apply (e.g., Iraq) or did not apply with respect to certain crimes such as torture (e.g., Cameroon), genocide, terrorism, piracy, crimes against humanity, war crimes, ecocide, the production or proliferation of weapons of mass destruction and the application of prohibited methods of war (e.g., Armenia, Slovenia), financing of terrorism and money-laundering (e.g., Tunisia).

Extradition or surrender and mutual request for assistance

82. In a number of situations, there were linkages to the general regime for extradition and mutual assistance in criminal matters. On that basis, there were instances in which it was observed that there was a general prohibition of extradition of nationals (e.g., Armenia, Azerbaijan, Tunisia) or when there were serious reasons to believe that a person if extradited could be subjected to torture (e.g., Armenia) or the death penalty (e.g., Azerbaijan), unless assurances were given that the death penalty would not be carried out (e.g., Armenia). The imposition of certain sentences, including the death penalty (e.g., Azerbaijan, Costa Rica, Malta) or life imprisonment, could serve as an impediment to extradition or surrender (e.g., Costa Rica).

83. In some cases, a prosecution would proceed, in the exercise of universal jurisdiction, if the perpetrator was not extradited or surrendered (e.g., Austria, Azerbaijan, Cameroon, the Czech Republic, Denmark, Portugal, Slovenia, Switzerland), including to the International Criminal Court (e.g., Costa Rica, Malta). It was also noted that extradition for purposes of prosecution or serving a prison term would have to be founded on an international treaty (e.g., Belarus, Portugal, Tunisia), warrant (e.g., Portugal) or reciprocity (e.g., Belarus, Tunisia). Moreover, for a request for extradition to be effected, the offence should be punishable with imprisonment for a period surpassing a certain threshold or, if the offence was punishable with the death penalty, such a penalty should obtain in both the requesting and the requested State (e.g., Malaysia). In some cases, for purposes of extradition, offences of universal jurisdiction provided for by international conventions already ratified are considered ordinary law offences (e.g., Cameroon).

84. Some Governments reported that a request for mutual assistance would be founded if the offence to which the request related was serious, the requesting State had jurisdiction, and the offence met the double criminality requirements (e.g., Malaysia).

Jurisdiction applied subject to cumulative conditions

85. Some Governments indicated that jurisdiction was established once several cumulative conditions were met, such as: (a) presence of the alleged offender within the jurisdiction; (b) double criminality; (c) a request by an appropriate authority; (d) there was no extradition request or the request was denied; and (e) the offence in question carried an established minimum of a number of years of sentence (e.g., Austria, Cameroon, the Czech Republic, Denmark, Italy, Portugal, Slovenia, Switzerland).

86. In some instances, the conditions were weighed generally in favour of the perpetrator; and would not be prosecuted (a) if he had already served the sentence imposed on him in the foreign country or if it was decided in accordance with an international agreement that the sentence imposed in the foreign country was to be served in the forum State; (b) if the perpetrator had been acquitted by a foreign court or if his sentence had been remitted or the execution of the sentence had fallen under the statute of limitations; or (c) if according to foreign law, the criminal offence concerned may only be prosecuted upon the complaint of the injured party and such complaint had not been filed (e.g., Slovenia).

Pardons and amnesties

87. Some Governments indicated that penal law reforms were under way which would necessitate that pardons or amnesties would not be applicable to international crimes or crimes committed against persons or property protected by international law as defined in their domestic codes (e.g., Costa Rica).

Immunity

88. Some Governments noted that to the extent that the exercise of jurisdiction with reference to some provisions in their codes was limited by applicable international law, the immunity of State officials and diplomatic immunity would be implicated (e.g., Denmark).

89. Some Governments noted that, when ratifying the Rome Statute, the issue arose regarding the applicability of the Statute to persons enjoying immunity under their constitutional framework, and it was advised that relevant constitutional chambers had considered that the existence of such an immunity did not prevent the simultaneous introduction of proceedings in the International Criminal Court along with immunity and impeachment proceedings in domestic courts (e.g., Costa Rica).

Non-application of the political exception clause

90. In some instances, it was noted that the political exception clause did not apply to certain offences such as terrorist crimes (e.g., Tunisia) or that there were reforms which would entail that serious crimes as listed in the domestic codes (corresponding to crimes under the Rome Statute) would not be considered political crimes or ordinary crimes related to political crimes or crimes for which punishment was being sought for political reasons (e.g., Costa Rica).

91. In other cases, it was noted that the discretion whether or not to try an accused who committed a political offence abroad in the forum State vested in the Minister of Justice. Noting, however, that the true rationale for such a rule was to protect the interests of the State, it was considered doubtful that international crimes could be characterized as political offences within the meaning of the laws concerned (e.g., Italy).

Non-application of the statute of limitations

92. Some Governments provided information about the non-application of the statute of limitations to the criminal prosecution of persons who commit certain crimes proscribed under their laws (e.g., Azerbaijan, Belarus), including under the constitution (e.g., the Plurinational State of Bolivia). Such crimes included genocide (e.g., Belarus, the Plurinational State of Bolivia), crimes against peace, war crimes and crimes against humanity (e.g., Azerbaijan, Belarus, the Plurinational State of Bolivia), treason (e.g., the Plurinational State of Bolivia), terrorism, financing of terrorism (e.g., Azerbaijan).

93. In some other countries, reforms were under way to effect changes that would provide for the non-application of the statute of limitations for certain crimes (e.g., Costa Rica).

3. Judicial and other practice

94. **Belgium** noted that the application of the Act of 16 June 1993, transposing into its law the system of suppression established by the Geneva Conventions of 1949 and the Additional Protocols of 1977, as extended to the crime of genocide and crimes against humanity by an Act of 10 February 1999, and according absolute universal jurisdiction in order to suppress the most serious crimes affecting the international community, in practice gave rise to a number of problems. These derived from the combined application of several provisions, namely the possibility of initiating proceedings in absentia, initiating a case by instituting civil indemnification proceedings before an examining magistrate, and the exclusion of immunities as an obstacle to prosecution. This broad field of application entailed a politicization of the law, which was considered improper. Moreover, the entry into force of the Rome Statute necessitated a reduction in the extraterritorial sphere of jurisdiction of Belgian courts so that they would not routinely enter into potential competition with the International Criminal Court, in the application of complementarity. Accordingly, the Act of 16 June 1993 was repealed by the Act of 5 August 2003. However, the Act of 5 August 2003 left intact the substantive law of the 1993 and 1999 Acts. Moreover, the rules on the jurisdiction of Belgian courts were still broad, as a result of an adaptation of the general law of extraterritorial jurisdiction to the realities of modern international crime. At the same time, the Act of 5 August 2003 modified the procedure for applying to Belgian courts by providing that prosecutions, including investigations, could be undertaken only at the request of the federal prosecutor, who assesses the complaints made. The procedure of instituting civil indemnification proceedings was abandoned, with the exception of cases where an offence was perpetrated wholly or partly in Belgium or where the alleged perpetrator of an offence was Belgian or resided primarily in Belgium. When he received a complaint, the federal prosecutor referred it to the examining magistrate for investigation. Furthermore, in order to take into account the jurisprudence of the International Court of Justice in the *Case concerning the Arrest Warrant of 11 April 2000*, the Act of 5 August 2003 included in the preliminary chapter of the Code of Criminal Procedure the principle of respect for the rules of international treaty and customary law in respect of immunity from jurisdiction and execution.

95. In the **Czech Republic**, attempts had been made to apply the *aut dedere aut judicare* obligations in practice without success, usually on account of failure by the requesting State to provide sufficient evidence for prosecuting the alleged offender in the requested State, following the denial of extradition or by reason of application of the statutes of limitations.

96. Also in the Czech Republic, in another case, upon being denied an extradition request for execution of sentence, the requesting State successfully requested that the Czech Republic take over such execution of sentence.

97. In a 1998 case in **Denmark**, the Prosecutor General considered the scope of the Criminal Code, following a report by a group of nationals of Chile, resident in Denmark, to the police accusing the former President of Chile, Augusto Pinochet, of having ordered, designed, or upheld a regime, in which the applicants had been exposed to arrest, torture and degrading treatment in Chile during the years 1973 to 1988. At the time of the police notification, the former President was in the United Kingdom.

98. After thorough consideration of, inter alia, the preparatory works of the relevant provisions of the Criminal Code, the Prosecutor General concluded that Denmark lacked jurisdiction in the specific case, owing to the fact that the alleged perpetrator had not been present in the territory at the time when formal legal proceedings would otherwise have been initiated against him. This understanding of the relevant provisions of the Criminal Code was subsequently upheld by the Ministry of Justice.

99. In **Finland**, a case was currently pending before the District Court; the accused was residing in Finland and was arrested as his name had appeared on a list of suspects published by the authorities of the State of his nationality. It was found that the person concerned could not be extradited under the law of Finland, and therefore he was charged in Finland, on the basis of universal jurisdiction.

100. In **France**, two individuals were convicted on the basis of "quasi-universal" jurisdiction: (a) In a 2005 ruling, the Court of Assizes of the Gard sentenced Ely Ould Dah, a national of Mauritania, to 10 years' imprisonment and 15,000 euros in damages and interest for each of his victims, for acts of torture committed in Mauritania between 1990 and 1991. The conviction led to an application before the European Court of Human Rights, with the applicant, relying on article 7 of the European Convention on Human Rights (no penalty without law), alleging that he had been prosecuted and convicted in France for an offence committed in Mauritania, whereas he could not have foreseen that French law would override Mauritanian law. In a 2009 decision, the European Court of Human Rights concluded that France had not misinterpreted the legality principle guaranteed in article 7; (b) In a 2008 ruling, the Court of Assizes of the Bas-Rhin convicted Khaled Ben Said, a national of Tunisia, to eight years' imprisonment for having ordered, while he was Police Commissioner, the torture of a Tunisian woman at the police station in Jendouba in 1996. The Office of the Public Prosecutor, which had requested acquittal, has appealed the decision and the appeal was still pending before the Court of Assizes of Meurthe-et-Moselle.

101. In the **Netherlands**, several cases were brought in recent years under the international crimes legislation applicable prior to the entry into force of the 2003 International Crimes Act. Besides, two cases against Dutch nationals were premised on universal criminal jurisdiction, the defendants — one Congolese, three Afghan and two Rwandan nationals — being present in the Netherlands in each case.

102. In 2006, an attempt was made in **New Zealand** to bring a private prosecution under section 8 (1) of the International Crimes and International Criminal Court Act against Moshe Ya'alon, a former Israeli general who was visiting New Zealand. An arrest warrant for him was issued by a District Court judge in Auckland. Pursuant to the Act, the consent of the Attorney-General was necessary in order to proceed with the prosecution. The Attorney-General declined to give his consent on advice that the evidence against the general was insufficient to warrant a prosecution. The prosecution was permanently stayed by the Attorney-General, and arrest warrants were extinguished on 28 November 2006 (*Wakim v. Ya'alon*, District Court, Auckland).

103. Although the **United States** had not conducted fully a comprehensive review of its practice, it was aware of few examples of prosecutions based solely on the principle of universal jurisdiction, where there was no other link between the United

States and the offence charged except that the alleged offender was present before the court.

104. In 2003, the United States district court in Hawaii convicted a Chinese national of stabbing a Chinese captain and first officer of a Taiwanese-owned, Seychelles-flagged, all Chinese-crewed fishing vessel, while in international waters. After the fishing vessel made its way into United States waters, the defendant was indicted under the United States statute implementing the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (18 U.S.C. § 2280).

105. In two other cases, although United States law would have permitted prosecution based solely on the principle of universality and the offenders' presence in the United States, alternative bases for jurisdiction were invoked.

106. In 1998, Ramzi Yousef was convicted of a number of charges relating to his role in the 1993 bombing of the World Trade Center in New York City and conspiracy to bomb a series of United States commercial airliners in South-East Asia in 1994 and 1995. Among the many charges against him for his role in plotting and executing attacks on the United States, Yousef also was convicted of placing and causing the detonation of a bomb aboard Philippines Airlines Flight 434, while en route from Manila to Japan. In the final analysis, the appellate court determined that the protective principle provided the basis for United States jurisdiction.

107. In 2008, a United States court convicted Charles "Chuckie" Taylor, Jr., son of former Liberian President Charles Taylor, of torture and related crimes committed in Liberia between 1999 and 2003 under his father's regime. Although the United States torture statute (18 U.S.C. § 2340A) provides jurisdiction regardless of the nationality of the offender based on the offender's presence in the United States, Taylor was also a United States citizen.

IV. Nature of the issue for discussion

108. In their comments and observations, some Governments expressed their views on the nature of the issue. Some comments focused on the positive and negative aspects of universal jurisdiction in terms of its scope and application. On the positive side, it was noted that the perpetrators of heinous crimes were prosecuted in various jurisdictions, sending a clear signal that the perpetrators of such crimes will not be accorded safe havens. It also served to complement international jurisdiction. On the negative side, it was noted that universal jurisdiction may be invoked selectively, on the basis of political motivations, to target particular individuals and was thus prone to abuse. Moreover, it was suggested that its application tends to be expensive, time-consuming, and inefficient.

109. Some Governments expressed their continuing concerns as to the application of universal jurisdiction, particularly when used selectively or arbitrarily, without due regard to requirements of international justice and equality. The unwarranted use of universal jurisdiction could have negative consequences for the rule of law at the international level, as well as in international relations. It was stressed 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 the internal affairs of States, as well as the immunity of high-level officials under international law, should be scrupulously respected in judicial proceedings. Indeed, the comment

was made that to the extent that there was no clear permission under international law, the unilateral exercise of universal jurisdiction against foreign officials by the judicial organs of a State violated the principle of sovereign equality of States, and constituted a breach of international law, engaging the responsibility of a State.

110. Several Governments acknowledged that the exercise of jurisdiction on the basis of universal jurisdiction was controversial in doctrine and in practice, observing that there were divergent views on the type and range of crimes for which it could be invoked, as well as the requirements and the conditions for the exercise of universal jurisdiction. In particular, there was no universally accepted and clear definition of universal jurisdiction, fostering a continuing debate on such issues as (a) the crimes concerning which universal jurisdiction would apply; (b) whether the presence of an accused in the State exercising jurisdiction was always required; (c) whether some "connecting link" with the State seeking to invoke such jurisdiction was necessary.

111. It was recognized in some comments that the fight against impunity was a common goal shared by States; opening up discussions on universal jurisdiction would enable Governments to better appreciate the scope of the principle in international law. While expressing a willingness to participate in discussions on the subject, some Governments expressed a preference for a cautious approach. It was also noted that the subject was not entirely new in the work of the Sixth Committee, it having been addressed indirectly in connection with other items, including the work of the International Law Commission on the Draft Code of Crimes Against the Peace and Security of Mankind and on the topic "The obligation to extradite or prosecute (*aut dedere aut judicare*)". Moreover, in recent years, the question had been taken up in depth by the International Law Association (London, 2000), the Institute of International Law (Krakow, 2005) and the International Association of Penal Law (eighteenth Congress, held in Istanbul, 2009). Accordingly, in addressing the subject it would be necessary to take into account any such previous and ongoing work.

112. Procedurally, it was suggested that a working group of the Sixth Committee be established to identify the similarities in how States treated universal jurisdiction, based primarily on the information they provided in response to General Assembly resolution 64/117.

113. On the other hand, it was pointed out that, from a long-term perspective, consideration of the subject should be entrusted to the International Law Commission. The Commission was already considering the topic "The obligation to extradite or prosecute (*aut dedere aut judicare*)", which was closely and inextricably linked to universal jurisdiction.

114. Some Governments made more specific comments:

Belgium

It might be interesting to study the subsidiary nature of universal jurisdiction in more detail, particularly by comparing subsidiarity with the principle of complementarity (the basis for intervention by the International Criminal Court).

Chile

The main points to be taken into consideration when determining the scope and application of universal jurisdiction were:

(a) The explicit recognition that, in matters relating to criminal jurisdiction, the principle of territoriality prevailed. Hence, as a general rule, it was the courts in the State in which the crime was committed that should first assume jurisdiction to investigate and punish crimes against humanity, war crimes and genocide;

(b) In order for universal jurisdiction to apply, a State's competence to establish its jurisdiction and prosecute an individual must have a solid basis in international law — usually in the form of a treaty;

(c) Universal jurisdiction cannot be based exclusively on the domestic legislation of the State seeking to exercise it, unless such jurisdiction is also based on a source of international law;

(d) A State cannot proceed to exercise its jurisdiction unless the State in whose territory the crime was committed has demonstrated that it was unwilling to carry out the investigation or prosecution, or was unable to do so.

Cuba

(a) The application of universal jurisdiction should serve as an extension of the domestic jurisdiction of each State. A declaration by a particular State that its domestic courts assumed responsibility for trying and judging the perpetrator should prevent any application of universal jurisdiction;

(b) The possibility should be considered that, when a State wishes to claim the application of universal jurisdiction, it should first obtain the consent of the State in which the violation took place and of the State of nationality;

(c) What crimes serve as the basis for applying universal jurisdiction should be specified, together with facts justifying its application. Such crimes should be restricted to crimes against humanity, and the application of universal jurisdiction should be invoked only under exceptional circumstances and when it has been recognized that no other means to bring criminal action against the perpetrators exist.

Kuwait

(a) The international community should take into consideration the need to conduct an exhaustive investigation, taking into account the practice, into mechanisms for applying universal jurisdiction in the light of international realities, starting possibly with studying and understanding the scope and nature, as well as the circumstances under which it will be applied, and the extent to which application was possible in the absence of such mechanisms;

(b) Universal jurisdiction should, as a general principle, be attached to the Rome Statute, and not applied to any crime other than the crimes covered by that Statute or to crimes covered by particular instruments;

(c) The international community, through the United Nations, should firmly establish universal jurisdiction through an international convention or instrument in

that regard, with a view to universally systematizing the rules, measures, procedures and means of implementation relating thereto.

Peru

(a) The fact that the various bases for establishing jurisdiction existed side by side could lead to disputes between States wishing to bring an accused before their courts. Accordingly, consideration should be given to setting an order of preference for the criteria for the attribution of jurisdiction based on the most appropriate venue;

(b) To avoid making generalizations as to the application of universal jurisdiction, the relevant individual crimes should be studied, to assess how each was dealt with in international law (custom and treaty);

(c) For each crime so identified, there should be an examination of whether the exercise of universal jurisdiction was optional or compulsory, bearing in mind the source of law (custom or treaty).

Rwanda

(a) In order to avoid any misuse and misunderstanding, and to reach the goal of effective exercise of universal jurisdiction, there should be, at the sixty-fifth session of the General Assembly, an attempt to define universal jurisdiction in terms of crimes falling under its application. This should be done by defining the crimes with a clear set of penalties in accordance with procedure to be followed by domestic law;

(b) In order to avoid politically motivated prosecutions (i) forum States should only take cases where justice, as opposed to political leverage, was determined to be the sole reason for the process; (ii) there should be special scrutiny of claims perceived to be "taking sides" in connection with an ongoing conflict, primarily of a political nature; (iii) although no precise guideline was possible, some consideration should be given to the cost of trials to public order outweighing their benefits to combating impunity;

(c) The 2001 Princeton Principles on Universal Jurisdiction should be incorporated: (i) crimes subject to universal jurisdiction include piracy, slavery, war crimes, crimes against peace, crimes against humanity, genocide, and torture (Principle 2); (ii) the application of universal jurisdiction to the crimes listed above was without prejudice to its application to other crimes under international law (Principle 2); (iii) once out of office, Government officials, including heads of State, should not be immune from prosecution based on the defence that they were acting in an official capacity (Principle 5); there should be no statute of limitations on the prosecution of these crimes (Principle 6); blanket amnesties generally were inconsistent with a nation's obligation to hold individuals accountable for these crimes (Principle 7);

(d) The other aspects of the Princeton Principles should also be incorporated: (i) a State shall exercise universal jurisdiction in good faith and in accordance with its rights and obligations under international law (Principle 1); (ii) in exercising it, a State and its judicial organs shall observe international due process norms, including but not limited to those involving the rights of the accused and victims, the fairness of the proceedings, and the independence and impartiality of the judiciary (Principle 1);

(iii) in its exercise, a State or its judicial organs shall ensure that a person who is subject to criminal proceedings shall not be exposed to multiple prosecutions or punishment for the same criminal conduct (Principle 9); (iv) a State shall refuse to entertain a request for extradition based on universal jurisdiction if the person sought is likely to face a death penalty sentence or to be subjected to torture or any other cruel, degrading, or inhuman punishment or treatment, or if it is likely that the person sought will be subjected to sham proceedings in which international due process norms will be violated (Principle 10);

(e) There must be a system of review whereby an aggrieved person can appeal to another judge or another tribunal to review the decision of a judge issuing an international arrest warrant. The review process could be before a court of national, regional or international jurisdiction;

(f) In all circumstances, the opinion of the International Criminal Police Organization (INTERPOL) should be sought on whether an international arrest warrant should be issued on the basis of evidence available and where INTERPOL itself had not issued or advised that an international arrest warrant should be issued, no State should otherwise feel obliged to respect an arrest warrant issued by individual judges in individual States Member of the United Nations.

Table 1
List of crimes mentioned in the comments by Governments, concerning which universal jurisdiction (including other bases of jurisdiction) is established by the codes

Crime[a]		*State*
Piracy		Belarus, Cameroon, Cyprus, Netherlands
Slavery and associated offences		Australia, Austria, Cameroon, Iraq
Fiscal offences:	Forgery and alteration of money, sale or uttering counterfeited and altered currency and securities	Azerbaijan, Cameroon, Cyprus, Czech Republic, Finland, Italy, Portugal, Germany, Tunisia
	Manufacturing and possession of forgery tools, weights and equivalent objects	Czech Republic, Portugal
	Unauthorized production of money	Czech Republic
	Credit certificate and sealed value	Portugal
Genocide		Armenia, Australia, Belarus, Belgium, Bulgaria, Costa Rica, Czech Republic, Estonia, Finland, Malta, Norway
Crimes against humanity		Australia, Azerbaijan, Belarus, Belgium, Bulgaria, Costa Rica, Estonia, Finland, Malta, Norway

Crime[a]	*State*
Attacks on humanity	Czech Republic
Crimes against the security of humankind	Belarus
Crimes against peace	Azerbaijan, Belarus, Bulgaria
Aggression	Estonia
Propaganda for war	
Preparation of aggressive war	Czech Republic
War crimes:	Australia, Azerbaijan, Belarus, Belgium, Bulgaria, Czech Republic, Costa Rica, Estonia, Finland, Malta, Norway, Sweden, Switzerland
Using prohibited means of combat and unlawful warfare, war cruelty, persecution of a population, plundering in the war area	Czech Republic
Production, stockpiling or distribution of prohibited instruments of war	Belarus
Manufacture and distribution of prohibited weapons	Estonia
Violation of the laws and customs of war	Belarus, Bulgaria, Costa Rica, Norway
Inaction or issuance of a criminal order in time of armed conflict	Belarus
Application of prohibited methods of war	Armenia
Application of prohibited methods of war	
Torture	Australia, Azerbaijan, Czech Republic, Finland, France
Other inhuman and cruel treatment	Czech Republic
Apartheid and discrimination against a group of people	Bulgaria, Czech Republic
Violation of measures necessary for application of international sanction	Estonia
Ecocide	Armenia, Belarus
Production, proliferation or use of weapons of mass destruction	
Offences involving nuclear energy, explosives or radiation or endangerment	Germany, Finland

Crime[a]		*State*
Offences related to chemical weapons		Finland
Offences related to biological weapons		
Use of mines		
Offences against international security or State security		Estonia, Tunisia
	Sabotage or disruption of international means of communication and transportation	Czech Republic, Iraq
	Espionage	Czech Republic
	Treason	Cyprus
Terrorism-related offences:		Austria, Azerbaijan, Belgium, Cameroon, Finland, France, Malaysia
	Terrorist attacks/bombings	Czech Republic, Finland, France
	Terror	Czech Republic
	Financing of terrorism	Azerbaijan, Finland, France
	Hijacking of aircraft	
	Maritime piracy	Azerbaijan, Finland, France, Tunisia
	Air piracy	Austria, Finland, France, Tunisia
	Hostage-taking	Azerbaijan, Finland
	Offences/attacks against air or sea traffic	Germany
	Terrorism-related attacks on internationally protected persons or organizations	Azerbaijan, Finland
	Violence at airports, fixed platforms	Finland, France
	Crimes involving radioactive materials	Azerbaijan
	Nuclear terrorism	Finland, France
Attacks against air or sea traffic		Germany

Crime[a]		*State*
Offences related to United Nations and associated personnel		Finland
Fiscal interests and acts of corruption		Belgium, France
Organized crime		Austria
Money-laundering		Cameroon
Participation of illegal associations		Ethiopia
Offences against the personality of the State, State symbols or State representative:		Italy
	Misuse of internationally acknowledged symbols and signs and State coat of arms	Czech Republic
	Forgery of the State seal	Cameroon, Tunisia
	Misuse of a flag and ceasefire	Czech Republic
	Assaulting a parliamentary official	Czech Republic, Norway
	Crimes against “national independency and integrity”	Portugal
Narcotic drugs and psychotropic substances and drug-related crimes		Austria, Azerbaijan, Cameroon, Cyprus, Ethiopia, Finland, Germany, Iraq
Offences against morality of exploitation:	Human trafficking	Austria, Azerbaijan Belarus, Belgium, Finland, Germany
	Trafficking in women and minors	Belgium, Ethiopia, Iraq
	Forced or child marriage	Norway
	Extortive abduction	Austria
	Non-respect for certain rules applicable to the activities of marriage bureaux	Belgium
	Genital mutilation/sexual mutilation of females	Belgium, Norway
	Obscene or indecent publications	Ethiopia, Germany
	Obscene or indecent performances	Ethiopia

Crime[a]	*State*
Offences concerning computer and communications fraud	Portugal
Subsidy fraud	Germany
Offences against the course of the rule of law	Portugal
Electoral crimes	
Offences relating to toxic wastes	Cameroon, Portugal
Enforced disappearance	France (legislation on jurisdiction pending)
Certain road offences	France

[a] This includes crimes in relation to international agreements which give rise to proceedings before some jurisdictions under the codes (e.g., France), as well as crimes concerning which the application of the Criminal Code has been extended by Decree (e.g., Finland).

Table 2
Specific legislation relevant to the subject, based on information submitted by Governments

Category	*Legislation*	*Country*
Piracy	Crimes Act	Australia
	Courts of Judicature Act	Malaysia[a]
	Courts Act (for offences committed on the high seas)	Mauritius
	Crimes Act	New Zealand
	18 U.S.C. § 1651	United States
Fiscal and monetary offences	Act on Prevention of Procuring Money for the Purpose of Threatening the Public	Republic of Korea
Genocide	Crime of Genocide (prevention and punishment) Law	Israel
	Code of Crimes against International Law	Germany
	International Crimes Act 2003	Netherlands
	Law 31/2004	Portugal
	18 U.S.C. § 1091	United States

Category	*Legislation*	*Country*
Torture	Law No. 498	Italy
	International Crimes Act	Netherlands
	18 U.S.C. § 2340A (Torture)	United States
Crimes against humanity	Code of Crimes against International Law	Germany
	International Crimes Act	Netherlands
	Law 31/2004	Portugal
War crimes	Nazi and Nazi Collaborators (Punishment) Law	Israel
	Code of Crimes against International Law	Germany
	International Crimes Act	Netherlands
	Geneva Conventions Act	New Zealand
	Law 31/2004	Portugal
Apartheid	Act No. 2116	Plurinational State of Bolivia
Terrorism-related offences	Crimes (Ships and Fixed Platforms) Act	Australia
	Law No. 107	Italy
	Law No. 342	Italy
	Prevention of Terrorism Act	Mauritius
	Law 52/2003	Portugal
	Act on Punishment for Damaging Ships and Sea Structures	Republic of Korea
	Civil Aviation Offences Act	South Africa
	Nuclear Energy Act	
	Protection of Constitutional Democracy Against Terrorist and Related Activities Act	
	Law No. 75/2003, as revised and supplemented by Law No. 65/2009	Tunisia

Category	*Legislation*	*Country*
	18 U.S.C. § 32 (Destruction of aircraft or aircraft facilities); 18 U.S.C. § 37 (Violence at international airports)	United States[b]
	18 U.S.C. § 112, 878, 1116 (Protection of foreign officials, official guests, and internationally protected persons)	
	18 U.S.C. § 831 (Prohibited transactions involving nuclear materials)	
	18 U.S.C. § 1203 (Hostage-taking)	
	18 U.S.C. § 2280 (Violence against maritime navigation)	
	18 U.S.C. § 2281 (Violence against maritime fixed platforms)	
	18 U.S.C. § 2332f (Bombings of places of public use, government facilities, public transportation systems and infrastructure facilities)	
	49 U.S.C. § 46502 (Aircraft piracy)	
Offences concerning mercenaries	Mercenary Activities (Prohibition) Act	New Zealand
	Law 31/2004	Portugal
	Regulation of Foreign Military Assistance Act	South Africa
Implementation of the International Criminal Court and other tribunals	International Crimes Act	Kenya
	Act No. 95-1/1995 (International Tribunal for the Former Yugoslavia and International Criminal Tribunal for Rwanda	France
	Code of Crimes against International Law	Germany
	International Crimes and International Criminal Court Act	New Zealand
	Crimes Act	

Category	*Legislation*	*Country*
	Act on Punishment, etc., of Crimes under Jurisdiction of the International Criminal Court	Republic of Korea
	Implementation of the Rome Statute of the International Criminal Court Act	South Africa
	Draft law on implementation of the Rome Statute of the International Criminal Court, No. 920/2008	Plurinational State of Bolivia
	Pending bill to implement the Rome Statute	Mauritius
	Pending Act on International Crimes and an amendment to the Penal Code	Sweden
Shipping offences	Merchant Shipping Act	Mauritius
	Act on Punishment for Damaging Ships and Sea Structures	Republic of Korea
Crimes relating to drugs and narcotic and psychotropic substances	Act on Special Cases concerning the Prevention of Illegal Trafficking in Narcotics	Republic of Korea
	Dangerous Drugs Act	Mauritius
Money-laundering	Law No. 75/2003, as revised and supplemented by Law No. 65/2009	Tunisia

[a] Malaysia noted that in respect of offences concerning trafficking in persons, computer crimes, money-laundering, the extraterritorial jurisdiction of the Courts was provided for under the respective laws.

[b] The United States noted that broad criminal jurisdiction for some of these (terrorism-related) crimes may also reflect customary international law based on relevant State practice and *opinio juris*.

Table 3
Relevant treaties which were referred to by Governments, including treaties containing *aut dedere aut judicare* provisions

I. Universal instruments[a]

Piracy	Convention on the High Seas, 1958	New Zealand, Tunisia
	United Nations Convention on the Law of the Sea, 1982	Chile, China, New Zealand, Tunisia
International humanitarian law	Convention for the Amelioration of the Condition of the Wounded and Sick of Armies in the Field, 1929, and the Geneva Convention relative to the Treatment of Prisoners of War, 1929	Plurinational State of Bolivia
	Geneva Conventions of 1949	Armenia, Plurinational State of Bolivia, Cameroon, Chile, China, Republic of Korea, New Zealand, Malta, Slovenia, Tunisia
	Additional Protocols of 1977	
	Protocol I	Armenia, Cameroon, Chile, China, Czech Republic, Republic of Korea, New Zealand, Slovenia, Tunisia
	Protocol II	Armenia, Cameroon, Czech Republic, New Zealand, Tunisia
	Convention for the Protection of Cultural Property in the Event of Armed Conflict, 1954, and the First Protocol of 1954	China
	Second Protocol of 1999 to the Convention for the Protection of Cultural Property in the Event of Armed Conflict	Slovenia
Genocide	Convention on the Prevention and Punishment of the Crime of Genocide, 1948	Armenia, Czech Republic, Malta, South Africa
International criminal law	Rome Statute of the International Criminal Court, 1998	Bulgaria, Plurinational State of Bolivia, Mauritius, New Zealand, South Africa, Sweden

Torture	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984	Armenia, Plurinational State of Bolivia, Bulgaria, Cameroon, China, Czech Republic, Republic of Korea, Malta, Slovenia, South Africa, Tunisia
Apartheid	International Convention on the Suppression and Punishment of the Crime of Apartheid, 1973	Armenia, Plurinational State of Bolivia, China
Acts of terrorism	Convention on Offences and Certain Other Acts Committed on Board Aircraft, 1963	Armenia, Bulgaria, South Africa
	Convention for the Suppression of Unlawful Seizure of Aircraft, 1970	Armenia, Bulgaria, China, Republic of Korea, Slovenia, South Africa, United States
	Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971	Armenia, China, Republic of Korea, Slovenia, South Africa, United States
	Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, 1988	Armenia, China
	Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988	Armenia, China, Republic of Korea, Slovenia, South Africa, United States
	Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 1988	
	Convention on the Physical Protection of Nuclear Material, 1980	Armenia, China, Republic of Korea, Slovenia
	Convention on the Marking of Plastic Explosives for the Purpose of Detection, 1991	Armenia
	Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, 1973	Armenia, China, Republic of Korea, Slovenia, South Africa, United States
	International Convention against the Taking of Hostages, 1979	Armenia, Bulgaria, China, Republic of Korea, Slovenia, South Africa, United States

	International Convention for the Suppression of Terrorist Bombings, 1997	
	International Convention for the Suppression of the Financing of Terrorism, 1999	
	International Convention for the Suppression of Acts of Nuclear Terrorism, 2005	Armenia, China, Slovenia, South Africa
Narcotic drugs and psychotropic substances	Single Convention on Narcotic Drugs, 1961	Republic of Korea
	Protocol of 1972 amending the Single Convention on Narcotic Drugs	China, Republic of Korea
	Convention on Psychotropic Substances, 1971	
	United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988	
Corruption and transnational organized crime	United Nations Convention against Transnational Organized Crime, 2000	China, Slovenia
	United Nations Convention against Corruption, 2003	China, Republic of Korea
	Optional Protocol of 2000 to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography	China
Safety of United Nations and associated personnel	Convention on the Safety of the United Nations and Associated Personnel, 1994	China, Republic of Korea, Slovenia, Tunisia
Enforced disappearances	International Convention for the Protection of All Persons from Enforced Disappearance, 2006	Armenia, Tunisia
Non-applicability of the statute of limitations	Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, 1968	Armenia, Plurinational State of Bolivia

[a] In some situations a general comment was made that the States concerned were party to multilateral international treaties to combat such crimes as terrorism, illicit traffic in narcotic drugs and psychotropic substances, genocide, destruction of a population, apartheid, slavery, war crimes, hijacking of an aircraft, hostage-taking, crimes against internationally protected persons, piracy, smuggling, counterfeiting of currency or securities or sale of counterfeit currency or securities, environmental pollution, etc. (eg., Azerbaijan).

II. Regional instruments

Terrorism and money-laundering	Organization of African Unity Convention on the Prevention and Combating of Terrorism, 1999	South Africa
	European Convention on the Suppression of Terrorism, 1977, and the Protocol of 2003 amending the Convention	Armenia
	Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, 2005	
Enforced disappearances	Inter-American Convention on Forced Disappearance of Persons, 1994	Plurinational State of Bolivia
Extradition and mutual assistance	European Convention on the Transfer of Proceedings in Criminal Matters, 1972	Armenia
	European Convention on Extradition, 1957	Armenia, Czech Republic, South Africa
	Two Additional Protocols of 1975 and 1978 to the European Convention on Extradition	Armenia
	Convention on the Transfer of Sentenced Persons, 1983	
	European Convention on Mutual Assistance in Criminal Matters, 1959, and the Additional Protocol of 1978	
	Commonwealth of Independent States (CIS) Convention on Extradition of Persons Sentenced to Imprisonment for Serving Further Sentence	
	CIS Convention on Extradition of Offenders with Mental Disorders to another State for Compulsory Treatment	
	CIS Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters, 1993	Armenia, Belarus

III. Bilateral instruments

Extradition and mutual assistance in criminal matters	Also mentioned were bilateral agreements on extradition, and on legal assistance in criminal matters	Armenia, Czech Republic, South Africa