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Held at Headquarters, New York, on Wednesday, 21 October 2009, at 10 a.m.

Chairman: Mr. Benmehidi . . . . . (Algeria)

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The meeting was called to order at 10.15 a.m.

Agenda item 84: The scope and application of the principle of universal jurisdiction (*continued*)
(A/63/237 and Rev.1; General Assembly decision A/63/568)

1. **Mr. Saripudin** (Indonesia) said that the issue of universal jurisdiction should be addressed with caution as there were ambiguities and inconsistencies in its application that could undermine the fundamental principles of international law. Its application to heads of State or other State officials who possessed immunity under international law might have some legal and political ramifications. The distinction between the obligation to extradite or prosecute (*aut dedere aut judicare*) under international conventions and the principle of universal jurisdiction needed to be carefully considered. The application of such jurisdiction in an effort to combat impunity should also respect the principle of the sovereign equality of States. Primary responsibility for investigating and prosecuting serious crimes rested with the State where the crime had occurred; universal jurisdiction should be invoked only for a very limited range of offences and as a complementary mechanism. His delegation supported continued discussion of the issue by the General Assembly.

2. **Mr. Sadat Meydani** (Islamic Republic of Iran) said that the more frequent use and expansion of the scope of universal jurisdiction to include a wider range of crimes had often violated principles and established rules of international law, including the principle of the immunity of State officials from foreign criminal jurisdiction and, in some cases, the sovereign equality of States. Under international law, no State could exercise jurisdiction over crimes committed in the territory of another State unless it had a link with the offender or the offended or the crime was universally recognized (as in the case of piracy) or established in treaty law. That rule was derived from a basic principle established in the decision of the Permanent Court of International Justice in the "S.S. Lotus" case of 7 September 1927 (France v. Turkey), in which the Court had held that "the first and foremost restriction imposed by international law is that — failing the existence of a permissive rule to the contrary — it may not exercise its power in any form in the territory of another State".

3. As a first step in the effort to lessen controversy over the doctrine of universal jurisdiction and to avoid its misuse, a clear definition of the principle and its legal nature should be developed, the crimes to which it applied should be identified and the conditions for its application should be established. The so-called doctrine of universal jurisdiction was envisaged in a number of international treaties and the scope and necessary conditions for applying it should therefore be defined in accordance with those instruments. Furthermore, as some of the judges of the International Court of Justice had admitted in the case concerning the *Arrest Warrant of 11 April 2000*, universal jurisdiction in absentia was unknown in international law.

4. His country's Penal Code empowered Iranian courts to exercise criminal jurisdiction over crimes that were punishable under international treaties and could be prosecuted wherever the alleged perpetrators were found, but only if the suspects were present in the territory of Iran. Thus, the exercise of criminal jurisdiction by Iranian courts over international crimes would be subject to Iran's membership in the relevant international instruments and to the presence of the accused in Iranian territory.

5. The proper application of universal jurisdiction by national courts would meet the objective of ending impunity if it was applied neutrally, in good faith, without double standards and selectivity and, more importantly, if other rules of international law, in particular sovereign equality, non-interference in internal affairs and the immunity of State officials, were taken into account.

6. **Ms. Adams** (United Kingdom) said that universal jurisdiction was an important complement to, but was distinct from, the jurisdiction of international judicial mechanisms, including the International Criminal Court. International justice mechanisms had not been designed to prosecute all crimes within their jurisdiction; they could address only a small number of the most serious cases. Prosecution at the domestic level would therefore continue to be a vital component in the pursuit of justice for the victims of international crimes. The possibility of domestic prosecution by a third State helped ensure that perpetrators could not evade justice.

7. Universal jurisdiction should be exercised by States only in appropriate cases, in accordance with

international law. In the United Kingdom, such jurisdiction was provided for in national legislation were it was necessary in order to comply with international obligations, and safeguards existed to ensure that it was exercised responsibly. The evidence showed that prosecutions based on universal jurisdiction occurred rarely in practice. But even if it was used rarely, it was vital that universal jurisdiction should remain available to States as a weapon in the fight against impunity for the most serious international crimes.

8. **Mr. Debabeche** (Algeria) said that the principle of the sovereign equality of States must be paramount in any effort to combat impunity. There was no justification for taking measures, pursuant to an international instrument, against nationals of a State that was not a party thereto or for taking measures that violated customary international law. His delegation did not reject the principle of universal jurisdiction outright, but it felt that the concept needed to be further clarified, especially with regard to the types of crimes to which it applied and its scope of application. Such jurisdiction should be viewed as a last resort and the selective targeting of small, powerless States should be avoided. Only then would governments be willing to cooperate fully in international investigations and prosecutions.

9. **Mr. Yáñez-Barnuevo** (Spain), stressing the important role played by universal jurisdiction in combating impunity, said that since 1985, Spanish courts had been competent to try certain serious crimes committed outside the national territory by Spanish nationals or foreigners. In practical terms, the number of trials involving the application of universal jurisdiction by Spanish courts had increased over the past decade, but the immunity of Heads of State while in office had been respected in all such cases.

10. Parliament was considering an amendment to the relevant legislation with a view to rationalizing application of the principle of universal jurisdiction. Under that amendment, Spanish courts would be able to prosecute especially serious crimes committed anywhere in the world only as a last resort, if no international court or competent court in a third country was prosecuting or investigating the case and if the suspect was present in Spain or some of the victims were Spanish nationals. The provisions of relevant international treaties to which Spain was a party must always be taken into account.

11. While his Government supported the effort to put an end to impunity for serious international crimes, conflicts were inevitable in cases involving different courts, whether national or international. The United Nations should therefore develop a clear definition of the scope and application of the principle of universal jurisdiction, taking into account the studies conducted by prestigious organizations such as Princeton University, the Institut de Droit International and the International Law Association.

12. **Mr. Alday González** (Mexico) stressed that where a crime was established in international law, its commission was a matter of concern to the international community. States had the capacity and the duty to exercise universal jurisdiction over such crimes, based on the rules of international law. Those rules drew a distinction between universal jurisdiction and other types of jurisdiction, such as the extraterritorial application of national legislation or the criminal jurisdiction of international tribunals. In most cases, universal jurisdiction arose from international instruments in which it was expressly envisaged.

13. A number of delegations had argued that customary international law recognized and provided sufficient legal basis for universal jurisdiction. Mexico's approach to the issue was a cautious one since it was not always clear when a State was empowered to exercise universal jurisdiction under a customary norm. It might seem that if such a norm was invoked as a basis for the exercise of universal jurisdiction over crimes of serious international concern, it should first have been codified in an international treaty. A study of State practice in the area of universal jurisdiction could provide a basis for future discussion by the Committee. The Committee should, however, be careful to avoid overlapping with the work of the International Law Commission's discussion of the obligation to extradite or prosecute. While that obligation was treaty-based and could cover a wide range of crimes, the principle of universal jurisdiction entailed the exercise of State authority only as warranted by international law. The General Assembly should study the matter in depth; to that end, it would be useful to have a report or background document as a basis for the debate.

14. **Mr. Volodin** (Russian Federation) said that discussion within the General Assembly would undoubtedly help to lessen the ambiguity surrounding the question of universal jurisdiction. His delegation

shared the view that universal jurisdiction could be an effective means of bringing to justice those guilty of the gravest international crimes and of combating impunity for those crimes. It should not, however, be resorted to in violation of the generally accepted norms of international law, especially those relating to the immunities of State officials, or affect the stability of international relations.

15. His delegation fully subscribed to the principle of the independence of the judiciary. However, a violation of international law was just that, regardless of which branch of Government committed it. It was for the State's legal system to ensure that the various branches of Government cooperated in preventing violations of international obligations that might otherwise occur as a result of judicial decisions.

16. The legal issues relating to universal jurisdiction included the obligation to extradite or prosecute (*aut dedere aut judicare*) and the human rights obligations not to extradite accused persons to States in which they might be subject to the death penalty or to torture or other forms of inhuman or degrading treatment or punishment. States should not have to choose between violating the immunity of foreign officials by prosecuting them and committing a breach of human rights norms by extraditing them.

17. Attempts to apply universal jurisdiction to serving or former heads of State and other high-ranking officials had complicated inter-State relations. The African Union and the European Union had made constructive efforts to find mutually acceptable solutions which could underpin the practical work of domestic law enforcement agencies and courts. It was a matter of deciding how universal jurisdiction would be applied, including how the relevant authorities of different States should cooperate in practice, and of finding alternative means of prosecuting those guilty of international crimes. The problem of universal jurisdiction would become less acute as a result of the steps now being taken, and when the Committee reverted to the question at future sessions of the General Assembly, there would be additional State practice in the matter of which it could take account. It might also be appropriate to refer the question to the International Law Commission, which was currently dealing with two closely related topics.

18. **Ms. Schonmann** (Israel) said that the exercise of universal jurisdiction must be carefully regulated in order to ensure that it was applied in good faith and responsibly and that sufficient safeguards and filtering mechanisms were in place. Given the uncertainties and controversy regarding interpretation of the principle in different jurisdictions, the inconsistencies in State practice and the confusion between the notion of universal jurisdiction and other principles, such as the obligation to extradite or prosecute, it was necessary to focus on the definition and scope of universal jurisdiction as a prerequisite for consideration of its potential applicability. In light of the lack of uniformity in the interpretation and application of the concept, information on State practice would be helpful in identifying the relevant criminal offences and preventing the abuse or misapplication of the principle for political ends.

19. Despite widespread recognition of the principle of universality in counter-terrorism treaties which established the obligation to extradite or prosecute, in practice, the extradition or prosecution of terrorists was based predominantly on bilateral agreements rather than on those treaties, some of which had entered into force 30 or 40 years ago.

20. Israel recognized universal jurisdiction in respect of certain particularly heinous international crimes, both in its domestic law and in its ratification of international conventions. Due regard for effective justice dictated that such cases should be prosecuted in a jurisdiction which had extensive and significant links to the crimes committed. Hence, even the landmark prosecution of Nazi war criminal Adolf Eichmann, which was often cited by international scholars as an example of the exercise of universal jurisdiction, had not been conducted without jurisdictional links.

21. In order to ensure the credibility and, indeed, the legitimacy of universal jurisdiction, it was essential that proper safeguards should be in place in order to deter potential abuse, ensure due process guarantees and avoid, inter alia, proceedings conducted in the absence of the accused person. Under Israeli law, for example, all indictments based on extraterritorial jurisdiction required the approval of the Attorney General, who took the public interest into account in making a determination on the matter.

22. **Mr. Kafando** (Burkina Faso) said that the administration of justice at the international level was being called into question with increasing frequency amid accusations of the use of double standards. The

Group of African States had therefore called on the international community as a whole to consider the issue of universal jurisdiction, not in order to challenge that principle, but rather to examine it and, on the basis of State practice, to seek consensus on the manner in which it should be applied. Procedural disagreements relating to certain indictments had led some States to modify their laws in that area and to reject requests that were clearly motivated by considerations that were not legal in nature. International justice could not be administered effectively without the cooperation of all States and the current climate threatened to undermine the tenuous progress of the past.

23. While slavery, slave trading and piracy lay clearly within the scope of customary international law and were thus subject to universal jurisdiction, that was not the case for other crimes that were often prosecuted on that basis. For example, the universal obligation to prosecute crimes such as genocide, torture, war crimes and human rights violations was treaty-based and did not give rise to universal jurisdiction. Considering the increasing prevalence of those crimes, and of others such as acts of terrorism, hijacking of aircraft and crimes against humanity, the Committee should develop a clear definition of the scope and application of the principle of universal jurisdiction in such cases. The views of Member States should be collected in a report of the Secretary-General. At present, the Committee was the appropriate forum for considering the question; it would be premature to refer the matter to the International Law Commission.

24. **Mr. Webb** (United States of America) said that his delegation understood universal jurisdiction to mean the assertion of criminal jurisdiction by a State in respect of certain grave offences, where the State's only link to the crime was the presence in its territory of the alleged offender. Under that principle, jurisdiction was established regardless of where the offence took place, the nationality of either the victim or the perpetrator or the effect of the crime on the State exercising jurisdiction. Some criminal conduct fell within the scope of international conventions that expressly authorized the States parties thereto to assert criminal jurisdiction under the circumstances covered by the convention.

25. It would be beneficial to exchange information about the practice of Member States with regard to the assertion of universal jurisdiction. Under United States law, federal courts were empowered to assert jurisdiction over crimes of serious international concern, such as piracy, torture, genocide and terrorism, even in the absence of a significant link between the State and the crime in question. Typically, the courts were empowered to exercise such jurisdiction only where the alleged perpetrator was physically present in the United States. It would be interesting to learn how other Member States defined the term "universal jurisdiction" and how they had empowered their own domestic courts to exercise it prior to further consideration of the topic.

26. **Mr. Barriga** (Liechtenstein) said that any discussion of universal jurisdiction must start from the premise that the common goal was to end impunity for the worst crimes of international concern and that the perpetrators of such crimes must not go unpunished. The primary responsibility to prosecute them lay with the States on whose territory the crimes had been committed. However, in accordance with well-established principles of international law, other States — and particularly the State of nationality of the perpetrator or of the victims — were also entitled to investigate such crimes. In some situations, where those States were unwilling or unable to bring the perpetrators to justice, other States that had no direct connection to the crime should do so on the basis of universal jurisdiction, which was thus an important subsidiary tool for ensuring accountability for crimes such as genocide, war crimes, crimes against humanity and torture.

27. The scope of the principle of universal jurisdiction, as reflected in treaty law and customary international law, was clearly defined and he was not aware of any efforts to expand that scope. Universal jurisdiction was a specific, narrow concept that was only rarely applied. It should not be confused with other forms of jurisdiction involving more than one State, such as the passive personality principle, the application of which might lead to disagreement between the States involved. International law provided little guidance on how to resolve such conflicts in respect of the worst crimes of international concern, and there could be no generic answer to the question of which State had a more legitimate basis to prosecute. The issue became even more vexing where one State sought to investigate and prosecute a crime while another sought to prevent such proceedings, in particular where the case involved a person who might enjoy immunity under international law. If bilateral

consultations failed to yield a solution, the States concerned should strive to settle their dispute by peaceful means through appropriate settlement mechanisms. In that connection, his delegation reiterated its call for States to accept the compulsory jurisdiction of the International Court of Justice.

28. The Court was the institution best suited to rule on issues of criminal jurisdiction and of immunity, as evidenced by its judgment in the *Arrest Warrant* case. It was important to note, however, that in that case the Court had not concerned itself with the application of universal jurisdiction per se, but rather with the question of immunity and that, importantly, it had not ruled on the question of immunity from prosecution by international courts.

29. Some of the concerns expressed in the current debate related to the work of the International Criminal Court, which did not act on the basis of universal jurisdiction but on the basis of jurisdiction delegated by States parties or of a Security Council referral. His delegation believed that the Court provided a response to concerns of political selectivity that were sometimes raised with respect to national efforts to combat impunity. As a geographically balanced international institution, it held the best promise of applying the law in an equitable manner, without regard to political considerations.

30. His delegation was interested in pursuing the dialogue on universal jurisdiction and believed that the International Law Commission should also be asked to make a contribution on the matter, especially as it related to its current work on the topic of the obligation to extradite or prosecute (*aut dedere aut judicare*).

31. **Mr. Bugingo Rugema** (Rwanda) said that his delegation was fully cognizant of the clear distinction between universal jurisdiction as exercised by a State and the jurisdiction of the international courts and ad hoc tribunals. It did not intend to use the present forum to challenge the legality of the principle of universal jurisdiction, but rather to ensure that it was not misused for political or other ends. The issue had both a legal and a political dimension, and both deserved consideration.

32. Universal jurisdiction was vital to the fight against impunity. Many of the masterminds of the 1994 Rwanda genocide remained at liberty around the world, enjoying impunity; few had been brought to justice under universal jurisdiction. At the same time, arrest warrants and indictments had been issued under the principle of universal jurisdiction against some of the very people who had put a stop to the genocide. Those cases exemplified the abuses that had prompted the African Union's request that the matter be brought before the United Nations.

33. The majority of the witnesses in one of those cases had subsequently recanted their testimony and had even accused the judge of fabricating some of their statements, while one key witness had since been accused of involvement in the planning and execution of the genocide. In another case, arrest warrants had been issued against 40 high-ranking Rwandan military officials for the unfortunate deaths — in different places and under different circumstances over a period of almost 10 years — of nationals of the issuing State on the grounds that the territorial State had refused to permit an investigation. In fact, investigations had indeed been carried out, both by those who had issued the warrants and by the United Nations, although the results remained shrouded in mystery and had not led to any indictments. Moreover, the first six pages of the indictment constituted an effective denial of the Rwanda genocide, which had been recognized by the United Nations.

34. Those cases were examples of the way in which judicial processes had been manipulated for political objectives. It was to be hoped that the Committee's consideration of the matter would address the inherent ambiguities, such as the precise definition and applicability of the principle of universal jurisdiction, the scope of the crimes subject to such jurisdiction and the question of who was entitled to immunity. The Secretary-General should be asked to prepare a report on the topic, incorporating the views of Member States.

35. **Mr. Kpayedo** (Togo) said that while the principle of universal jurisdiction was designed to prevent impunity for serious crimes such as genocide, crimes against humanity and torture, it was necessary to draw a clear distinction between the competence of international criminal courts and the exercise of universal jurisdiction by individual States on the basis of their national legislation. The African States' commitment to combating impunity was evidenced by the Constitutive Act of the African Union, which gave the Union the right to intervene in a Member State in respect of grave crimes. However, every precaution must be taken in order to avoid abuse, double standards and misuse of the principle of universal jurisdiction for

political ends. An in-depth study should be undertaken by a competent body in order to clarify the relevant issues and ensure transparent application of the principle, with due regard for the sovereign equality of States and the immunity of their leaders under customary international law.

36. Universal jurisdiction should be seen as a complement to the work of domestic courts, which should be the first line of defence against impunity. With that in mind, Togo had embarked upon a sweeping programme to modernize its justice system by strengthening the independence and efficiency of the judiciary, ensuring that the Administration was subject to the law, enhancing legal predictability and improving access to justice. In addition, a truth and reconciliation commission had been established in order to investigate the acts of political violence that had taken place in the country between 1958 and 2005.

37. **Ms. Zainul Abidin** (Malaysia) observed that the principle of universal jurisdiction appeared to provide a utopian solution for combating impunity and ensuring that justice actually was served. However, the exercise of universal jurisdiction by States seemed to have been skewed by considerations other than the pursuit of justice, and it was therefore necessary to establish clear parameters for its application. It was clear from the Committee's discussion thus far that all delegations understood the principle of universal jurisdiction to be based on the notion that certain crimes were so harmful to international interests that States were entitled — and even obliged — to prosecute the perpetrator, regardless of the location of the crime or the nationality of the perpetrator or the victim. But there were conflicting ideas about what crimes should be subject to such jurisdiction and what exemptions, if any, should exist. Hence, the Committee needed to determine the scope of the principle and to address the issues of immunity and amnesty. In so doing, it should distinguish between mandatory universal jurisdiction arising from a treaty obligation, and permissive universal jurisdiction arising primarily from customary international law.

38. **Mr. Badji** (Senegal) said that the exercise of universal jurisdiction could have disastrous consequences for international relations in the absence of a clear definition of the concept and specific rules for its application. The Committee's discussion should lay the groundwork for arriving at a common understanding of the basis, scope and applicability of the principle. With regard to scope, although universal jurisdiction had originally applied only to piracy, it was now widely accepted that customary law authorized its exercise for crimes against humanity, war crimes and torture. While the Geneva Conventions and other treaties provided for the exercise of universal jurisdiction with respect to such crimes, its application outside the framework of those treaties was controversial and needed clarifying.

39. The principle of universal jurisdiction was an exception to the traditional rules of territorial jurisdiction, active and passive personality and protective jurisdiction recognized under conventional international law, and while such jurisdiction might be exercised in order to bring the perpetrators of particularly serious crimes to justice, it did not apply to all international crimes. Moreover, it could not be applied in contravention of the norms and standards of international law, in particular with regard to the immunities accorded to State officials under customary international law. The judgment of the International Court of Justice in the *Arrest Warrant* case upheld that view; universal jurisdiction was subject to the principles of international law, particularly with respect to immunity from jurisdiction.

40. The prosecution of perpetrators of serious crimes should not depend on their country or region of origin. The double standard sometimes seen in universal jurisdiction cases attested to the political considerations that could underlie its application. Obviously, politicization and selectivity could only weaken the principle of universal jurisdiction and make its objective harder to achieve. Recent developments underscored the need to regulate its application in order to prevent abuse, maintain the sovereign equality of Member States and safeguard international peace and security.

41. **Mr. Adeyemi** (Nigeria) said that Nigeria, like most African countries, had demonstrated its unflinching support for the rule of law and the development of the international criminal justice system, believing them to be crucial to international peace and security and thus to economic growth and development. That belief had formed the basis for Nigeria's relationship with the international community, including its peaceful resolution of a maritime boundary dispute with a sister African country.

42. With regard to the issue under discussion, his delegation believed that it was essential to establish guidelines for the application of universal jurisdiction in order to forestall its abuse. To that end, it would be helpful if the Secretary-General would prepare a comprehensive report on the subject, drawn from views submitted by Member States, to form the basis for further discussion during the sixty-fifth session of the General Assembly.

43. **Mr. Zappala** (Italy) said that although his delegation had some reservations about the goals of the current debate, it welcomed the opportunity to engage in an open discussion that might help to dispel doubts as to the scope and application of the principle of universal jurisdiction. Originally, the notion of universal jurisdiction had merely been descriptive of the process whereby national judicial authorities exercised civil or criminal jurisdiction over foreigners for acts carried out against other foreigners outside the territory of the forum State. That form of universal jurisdiction had often been based on a unilateral transformation of national values into so-called "universal values" and had been rightly challenged by leading thinkers of the eighteenth century.

44. Over time, that picture had changed: prosecutors and judges instituting proceedings under universal jurisdiction normally did so on the basis of specific rules enshrining common values that were reflected in and protected by a set of international treaties and rules of customary international law. Some of those rules not only authorized States to prosecute and punish alleged offenders, irrespective of their nationality and of the place where the crimes had been committed, but obliged them to do so.

45. Of course, there might be abuses in the application of universal jurisdiction, such as the opening of proceedings for offences that did not constitute international crimes. In the absence of specific mechanisms, diverging views as to whether specific acts were subject to universal jurisdiction should be examined on a case-by-case basis. They should be treated like any other inter-State dispute and handled accordingly: bilaterally and on the basis of the applicable dispute resolution rules.

46. Universal jurisdiction had always been intended to be a tool in the fight against impunity. The alleged risks of abuse and judicial chaos should be considered in light of past experience, which showed that the real risk was continued impunity.

47. **Mr. Nega** (Ethiopia) affirmed his delegation's support for the Assembly of the African Union decisions on the issue of universal jurisdiction. The current debate was crucial in order to reach common ground concerning the scope and application of that principle. His Government was committed to combating impunity and its domestic law provided for the exercise of universal jurisdiction over certain crimes under clearly defined conditions. However, his delegation deplored the unregulated and arbitrary use of such jurisdiction and, in particular, the growing trend among some national courts outside of Africa to invoke the principle as a basis for issuing arrest warrants against African dignitaries, a practice sometimes influenced by ulterior motives which had led to misunderstanding and confusion. The issuance of indictments and warrants of arrest against senior officials, without regard for their functional immunity, undermined the principle of the sovereign equality and independence of States. In their exercise of jurisdiction, States must respect the immunities granted under international law.

48. A clear distinction should be made between the legal and the political issues surrounding the principle of universal jurisdiction. The General Assembly should deal with political aspects of the matter in plenary session, while the Committee should focus on legal aspects and on preparing guidelines and uniform standards limiting the scope and application of the principle. The Committee should remain seized of the matter.

49. **Ms. Millicay** (Argentina), speaking in exercise of the right of reply, said that her delegation reserved the right to express its position in due course with respect to a matter, mentioned by the representative of Israel, which directly concerned her country.

The meeting rose at noon.