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### **The scope and application of the principle of universal jurisdiction**

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### **Report of the Secretary-General**

#### *Summary*

The present report has been prepared pursuant to General Assembly resolution [73/208](#), by which the Assembly requested the Secretary-General to prepare a report on the basis of information and observations received from Member States and relevant observers, as appropriate, on the scope and application of universal jurisdiction, including, where appropriate, information on the relevant applicable international treaties and their national legal rules and judicial practice.

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\* [A/74/50](#).



## I. Introduction

1. The present report has been prepared pursuant to General Assembly resolution [73/208](#), on the basis of comments and observations submitted by Governments and observers. It contains a summary of such comments and observations received since the issuance of the report of 2018 ([A/73/123](#) and [A/73/123/Add.1](#)) and should be read together with that and prior reports ([A/65/181](#), [A/66/93](#) and [A/66/93/Add.1](#), [A/67/116](#), [A/68/113](#), [A/69/174](#), [A/70/125](#), [A/71/111](#) and [A/72/112](#)).

2. In accordance with resolution [73/208](#), section II of the present report, together with tables 1 to 3, is focused on specific information regarding the scope and application of universal jurisdiction on the basis of relevant national legal rules, applicable international treaties and judicial practice. Information received from observers is provided in section III. Section IV contains a synopsis of issues raised by Governments for possible discussion.

3. Responses were received from Bahrain, Belarus, Bulgaria, Cyprus, El Salvador, Finland, Germany, Iraq, Mali, Qatar, Republic of Moldova, Sierra Leone, Turkey and Ukraine.

4. The International Maritime Organization and the International Committee of the Red Cross also submitted responses.<sup>1</sup>

5. The complete submissions are available on the website of the Sixth Committee of the General Assembly ([www.un.org/en/ga/sixth/](http://www.un.org/en/ga/sixth/)).

## II. Scope and application of universal jurisdiction on the basis of relevant national legal rules, applicable international treaties and judicial practice: comments by Governments

### A. Basic legal rules

#### 1. Relevant national legal rules<sup>2</sup>

##### **Bahrain<sup>3</sup>**

6. Bahrain reiterated that the principle of universal jurisdiction was recognized in article 9 of its Criminal Code, as an exception to the fundamental principle of territorial application of the Code, by the extension of its application to crimes committed abroad by any foreigner who is in Bahrain and for whom an extradition request has not been accepted (see section II.B below).

7. Bahrain further reported that it is committed to applying international norms that are peremptory in nature and international provisions that enshrine the principle of universality once it has ratified such provisions and they have become part of its internal law.

<sup>1</sup> The United Nations Environment Programme (UNEP) submitted a “nil” return (for previous comments submitted by UNEP, see [A/72/112](#)).

<sup>2</sup> Table 1 contains a list of crimes concerning which universal jurisdiction is established by various codes, as mentioned in the comments by Governments. Table 2 contains specific legislation relevant to the subject, based on information submitted by Governments.

<sup>3</sup> For previous comments submitted by Bahrain, see [A/73/123](#).

**Belarus<sup>4</sup>**

8. Belarus reported that the principle of universal jurisdiction is reflected in article 6 of its Criminal Code. Foreign nationals or stateless persons not permanently residing in Belarus are held responsible under the Code for serious crimes and very serious crimes committed abroad and directed against the interests of Belarus (art. 6, para. 2). Serious crimes are premeditated crimes punishable by a maximum term of imprisonment of 12 years (art. 12, para. 4), while very serious crimes are premeditated crimes punishable by a term of imprisonment exceeding 12 years, life imprisonment or the death penalty (art. 12, para. 5). Irrespective of the law in force in the territory where the act was committed, the Code also applies to certain specific crimes (see tables 1 and 2 below) and other crimes prosecutable on the basis of a treaty to which Belarus is a party (art. 6, para. 3; see table 3 below). Exemption from responsibility and punishment on the grounds of the expiry of the statute of limitations does not apply in the case of crimes against peace, crimes against the security of humankind or war crimes (arts. 83–85). The list of such crimes includes all crimes set forth in article 6, paragraph 3, of the Code, except trafficking in persons and other crimes prosecutable on the basis of a treaty to which Belarus is a party.

**Bulgaria<sup>5</sup>**

9. Bulgaria reiterated comments made previously regarding the principle of universal jurisdiction as governed by article 6 of its Criminal Code (see section II.B below). Bulgaria further reported that the treaties to which it is a party do not directly invoke the principle of universal jurisdiction, but some enshrine the principle *aut dedere aut judicare* (the obligation to extradite or prosecute) (see table 3 below).

**Cyprus<sup>6</sup>**

10. Cyprus reiterated comments made previously regarding section 5 (1) (e) of its Criminal Code and national laws ratifying international conventions. Cyprus further stated that the principle of universal jurisdiction is also applicable by virtue of a law extending the jurisdiction of domestic courts for the purposes of trying certain terrorist offences.

**Finland<sup>7</sup>**

11. Finland reiterated comments made previously regarding the provisions on universal jurisdiction contained in its Criminal Code. Finland also reported that, under chapter 1, section 7, of its Criminal Code, robbery, aggravated robbery, extortion, aggravated extortion, forgery and aggravated forgery had been added to the offences over which Finland exercises universal jurisdiction if such offences were carried out for the purpose of committing an offence listed in chapter 34 (a) (terrorist offences). Finland further reported amendments to chapter 34 (a) regarding, inter alia, aggravated damage to data, aggravated interference with communications, aggravated interference in an information system, offences related to radiological weapons and committed with terrorist intent, and travelling with the purpose of committing a terrorist offence (see tables 1 and 2 below).

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<sup>4</sup> For previous comments submitted by Belarus, see [A/65/181](#) and [A/70/125](#).

<sup>5</sup> For previous comments submitted by Bulgaria, see [A/65/181](#), [A/73/123](#) and [Add.1](#).

<sup>6</sup> For previous comments submitted by Cyprus, see [A/73/123](#).

<sup>7</sup> For previous comments submitted by Finland, see [A/65/181](#), [A/67/116](#), [A/71/111](#) and [A/72/112](#).

**Germany**<sup>8</sup>

12. Germany reiterated comments made previously regarding its Code of Crimes against International Law (see section II.B below).

**Iraq**<sup>9</sup>

13. Iraq reported that article 13 of its Penal Code (Act No. 111 of 1969) provides that the provisions of the Code are applicable to any person present in Iraq who has committed or has been an accessory to a crime abroad involving the sabotage or disruption of international means of communication and transportation, or trafficking in women, children, slaves or drugs (see section II.B below).

**Mali**

14. Mali reported that universal jurisdiction was incorporated into its domestic law, in particular through articles 29 and 32 of the 2001 Criminal Code, article 24 of the 2013 Code of Criminal Procedure, and articles 16 and 17 of the 2012 Trafficking in Persons and Smuggling of Migrants Act.

**Qatar**

15. Qatar reiterated the examples of its national law related to universal jurisdiction: Law No. 3 (2004) promulgating the Counter-Terrorism Act; Law No. 4 (2010) promulgating the Anti-Money-Laundering and Combating the Financing of Terrorism Act; Law No. 15 (2011) on combating human trafficking; and the Criminal Code of Qatar, promulgated pursuant to Act No. 11 (2004) (see table 2 below).

**Republic of Moldova**

16. The Republic of Moldova reported that the principle of universal jurisdiction is reflected in its legislation, in particular in article 11, paragraph 3, of its Criminal Code. It also stated that crimes under international law set forth in international treaties are reflected under the special part of its Code. The conditions for the exercise of universal jurisdiction by the Republic of Moldova (see section II.B below) and further information on the crimes mentioned by the country (see table 1 below) are set forth.

**Sierra Leone**

17. Sierra Leone reported that national legislation is required to be passed to incorporate international law into its national system, without any formal rule of hierarchy as between treaties or customary international law. Section 40 (4) of the 1991 Constitution provides for the ratification by parliament of treaties, agreements or conventions executed by or under the authority of the President. In this regard, the national law of Sierra Leone recognizes a form of universal jurisdiction for grave breaches of the Geneva Conventions and Additional Protocol I, which are war crimes, irrespective of the nationality of the perpetrator or the place of commission of the crimes under part II of the Geneva Conventions Act of 20 December 2012. Section 2 of the Act was highlighted in particular.

18. Sierra Leone is also a party to other treaties that require States to prohibit certain international and transnational crimes in their national law, including the Rome Statute of the International Criminal Court. Sierra Leone indicated that, while national legislation has not been adopted in respect of some of those treaties, they

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<sup>8</sup> For previous comments submitted by Germany, see [A/65/181](#) and [A/72/112](#).

<sup>9</sup> For previous comments submitted by Iraq, see [A/65/181](#).

would in any event provide a treaty basis for such crimes. Furthermore, cases such as the hijacking of aircraft may not necessarily be considered universal jurisdiction offences as such.

### **Turkey<sup>10</sup>**

19. Turkey reiterated comments made previously regarding article 13 of its Penal Code (see tables 1 and 2 below). Turkey further reported that cases of genocide, crimes against humanity, migrant smuggling, human trafficking, crimes against relations with foreign States and crimes that can be prosecuted *proprio motu* are subject to prosecution in Turkey at the request of the Minister of Justice, even if there exists a conviction or acquittal decision in a foreign country regarding the crime.

20. Turkey also indicated that, as highlighted in the legal commentary pertaining to article 13 of its Penal Code, it is a party to various treaties that include provisions regarding the principle of “prosecute or extradite”, which relates to the concept of universal jurisdiction (see table 3 below).

## **2. Applicable international treaties**

21. On the basis of information received from Governments, a list of the treaties referred to by Governments is provided in table 3 below.

## **3. Judicial practice**

### **Belarus<sup>11</sup>**

22. Belarus indicated that its Supreme Court has reported no convictions for the period from 2014 to 2018 for the crimes set forth in article 6, paragraph 3, of the Criminal Code.

### **El Salvador<sup>12</sup>**

23. El Salvador reiterated its previous submission on judgment No. 44-2013/145-2013, of 13 July 2016, by which the Constitutional Chamber of the Supreme Court of Justice of El Salvador declared several articles of the General Amnesty (Peacebuilding) Act, applicable in El Salvador for crimes committed during the Salvadoran armed conflict from 1980 to 1992, to be unconstitutional. El Salvador also reiterated its submission regarding judgment No. 24-S-2016, of 24 August 2016, by which the Supreme Court referred to the Princeton Principles on Universal Jurisdiction of 2001, and judgment No. 558-2010, of 11 November 2016, by which the Constitutional Chamber recognized the importance of not granting amnesty for crimes that represent serious violations of international humanitarian law. El Salvador underlined that such precedents represented significant progress towards ensuring justice, truth and full reparation for victims.

24. El Salvador further reported that, in December 2018, a policy for criminal prosecution of war crimes and crimes against humanity committed during the armed conflict in El Salvador was approved by the Attorney-General. The policy is aimed at establishing criteria and guidelines to ensure effective and responsible investigations based on the principle of due diligence, which upholds the rights of victims with regard to access to justice, to the truth about the acts that occurred, and to reparation arising from criminal proceedings. By virtue of its binding character, the policy safeguards the duty to guarantee rights in respect of the responsibility of the State of

<sup>10</sup> For previous comments submitted by Turkey, see [A/73/123](#).

<sup>11</sup> For previous comments submitted by Belarus, see [A/65/181](#) and [A/73/123](#).

<sup>12</sup> For previous comments submitted by El Salvador, see [A/65/181](#), [A/66/93](#), [A/67/116](#), [A/69/174](#), [A/72/112](#) and [A/73/123](#).

El Salvador, namely, the responsibility established in connection with the subjective element of criminal responsibility, and in respect of actions or omissions by any public authority in the exercise of its functions or actions or omissions by individuals acting with the consent of the State through its public servants. El Salvador underlined that this approach is in line with, inter alia, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the American Convention on Human Rights. El Salvador noted that it has ratified all such instruments, which are now part of its domestic law.

### **Finland**

25. With respect to information submitted in 2017<sup>13</sup> on a case related to terrorism and war crimes, Finland reported that the district court of Tampere had dismissed the charges on 24 May 2017 and that the case was currently pending in the court of appeal of Turku. Finland also reported that the courts of first instance have delivered judgments on three different cases regarding the commission of war crimes, and that several persons have been investigated and charged with crimes related to human trafficking.

26. Finland further reported that there was currently one file regarding the suspected commission of a terrorist crime in the preliminary investigation stage and that another investigation regarding the suspected commission of a terrorist crime was at the stage where the prosecutor considers whether to bring charges.

### **Germany<sup>14</sup>**

27. Germany provided information on cases concerning war crimes under its Code of Crimes against International Law, which have resulted in three final and binding convictions (against Straton M., Aria L. and Abdelkarim El B.) and one final and binding acquittal (Omaid N.). The following five cases remained pending:

(a) In the case against Dr. Ignace M.,<sup>15</sup> the Federal Court of Justice quashed the conviction upon appeal filed by the defendant and the Federal Prosecutor General, but upheld most of the findings of the lower court. The case has been referred back to a different criminal division of the Stuttgart Higher Regional Court for a retrial;

(b) In the case against Abdelkarim El B.,<sup>16</sup> on 24 September 2018, the Higher Regional Court in Frankfurt found the accused guilty of aiding and abetting a war crime against persons and being a member of a terrorist organization abroad and, taking into consideration previous final convictions, sentenced him to 10 years' imprisonment. The court held that the accused had, as a member of Islamic State in Iraq and the Levant, participated in the cruel and inhuman treatment of a person protected under international humanitarian law. The conviction is not yet final;

(c) In the case against Suliman Al S.,<sup>17</sup> on 20 September 2017, the Higher Regional Court in Stuttgart convicted the defendant of aiding and abetting war crimes against humanitarian operations pursuant to section 10 (1) 1 of the Code by committing acts which also constituted abduction for the purpose of blackmail, three counts of attempted serious cases of blackmail and use of force or threats against life or limb and one serious case of unlawful imprisonment. He was sentenced to three and a half years' imprisonment. The conviction is not yet final. On 23 August 2018, the Federal Court of Justice amended the conviction and revoked the sentence of the

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<sup>13</sup> See [A/72/112](#), para. 21.

<sup>14</sup> For previous comments submitted by Germany, see [A/65/181](#) and [A/72/112](#).

<sup>15</sup> See [A/72/112](#), para. 22.

<sup>16</sup> *Ibid.*, para. 25.

<sup>17</sup> *Ibid.*, para. 26.

Higher Regional Court, but upheld the associated findings of the lower court. The case has been referred back to a different criminal division of the Stuttgart Higher Regional Court for a retrial;

(d) In the case against Ibrahim Al F.,<sup>18</sup> on 24 September 2018, the Higher Regional Court in Düsseldorf convicted the defendant of war crimes, specifically torture, murder and kidnappings, and sentenced him to life imprisonment. The conviction is not yet final.

(e) In a case against three Syrian brothers, on 13 December 2018, the Higher Regional Court in Celle convicted two of them for supporting a terrorist organization abroad (Jabhat Al-Nusra) and handed down prison sentences, but acquitted them of all further charges of war crimes, namely, expulsion of persons due protection under international humanitarian law and pillaging (sections 8 (1) 6 and 9 (1) of the Code). The conviction is not yet final.

28. Germany further reported that the Federal Prosecutor General has brought charges under the Code in the following cases:

(a) In proceedings before the Stuttgart Higher Regional Court, three Syrian nationals are accused of war crimes (section 8 (1) 1 and 7 of the Code) in relation to the killing of 36 employees of the Government of the Syrian Arab Republic;

(b) In proceedings before the Higher Regional Court in Berlin, Raad Riyadh A. and Abbas R. are suspected of having been members of Islamic State in Iraq and the Levant and of participating in the execution of an Iraqi officer;

(c) On 29 November 2018, Syrian national Mohamad K. was charged before the Higher Regional Court in Stuttgart. He is accused of having been a member of the Free Syrian Army and of torturing two persons. He has been remanded in custody since 20 June 2018 on the basis of an arrest warrant issued by the investigating judge at the Federal Court of Justice;

(d) On 20 December 2018, German national Sabine Ulrike Sch. was charged before the State Protection Division of the Higher Regional Court in Stuttgart. She is accused of having been a member of Islamic State in Iraq and the Levant, of extensively appropriating property of the adverse party contrary to international law although this was not imperatively demanded by the necessities of the armed conflict, and of violating the War Weapons Control Act and the Firearms Act.

29. In addition, Germany highlighted that the Federal Prosecutor General also initiated several investigative proceedings in 2018, including the following cases:

(a) In November 2016, investigative proceedings were launched against Iraqi national Mohammed Abbas Y. He is suspected of having been a member of Islamic State in Iraq and the Levant and a militia leader in properties used as prisons where Yazidi abductees were unlawfully held in catastrophic conditions; of beating women and girls, of organizing and assisting in the sale of women and girls as slaves, and of acquiring two Yazidi women; and of having raped a 17 year-old woman at least three times. Upon application by the Federal Prosecutor General, the investigating judge at the Federal Court of Justice has issued an international arrest warrant;

(b) In May 2018, investigative proceedings were commenced against Jamil A. H., who is suspected of having committed crimes against humanity. In his capacity as head of the Syrian air force intelligence service, he is suspected of several crimes committed as part of a systematic and widespread attack directed against a civilian population in the Syrian Arab Republic individually, jointly with another or through another person and as a military commander. At the request of the Federal

<sup>18</sup> Ibid.

Prosecutor General, the Federal Court of Justice has issued an international arrest warrant for the suspect;

(c) In July 2018, investigative proceedings were launched against Syrian national Nehad S., who is suspected of various crimes committed in his capacity as the head of Tadmor prison near Palmyra individually, jointly with another or through another person, and as a military commander as part of a systematic and widespread attack directed against a civilian population;

(d) In September 2018, investigative proceedings were launched against Shahab Ahmed Al W. also known as “Abu Diab”, who is suspected of having been active as a militia leader and a member of Islamic State in Iraq and the Levant, of holding Yazidi men, women and children captive, of being involved in detaining them in properties that had been converted into prisons, of organizing and assisting in the sale of women and girls as slaves, of acquiring at least four Yazidi women or keeping them as slaves, and of raping at least three women and girls multiple times. Upon application by the Federal Prosecutor General, the investigating judge at the Federal Court of Justice has issued an international arrest warrant;

(e) Since November 2018, investigative proceedings have been conducted against Murat D., who is accused of participating in the trafficking of women and girls as a member of Islamic State in Iraq and the Levant and acquiring two Yazidi women as slaves, at least one of whom he forcibly married and raped.

### **Mali**

30. Mali reported that, as a party to the Rome Statute, it recognized the competence of the International Criminal Court to consider cases involving crimes against humanity, war crimes and genocide committed in the territory of Mali or by its nationals. In July 2012, Mali referred to the International Criminal Court cases involving crimes committed in its territory in January 2012.

### **Sierra Leone**

31. Sierra Leone reported that it is firmly associated with the fight against impunity for atrocity crimes. Sierra Leone recalled that some of the most serious atrocity crimes had been committed during the conflict between March 1991 and January 2002. After several efforts between 1995 and 1999 to end the conflict had failed, the Government requested United Nations assistance to establish the Special Court for Sierra Leone. Sierra Leone reported that the mandate of that Court was to prosecute those who bore the greatest responsibility for war crimes, crimes against humanity and other serious violations of international humanitarian law committed between November 1996 and January 2002. This led to the conviction of nine persons, including the former President of Liberia, Charles Taylor.

32. Sierra Leone further reported that its High Court has jurisdiction to try an offence committed under section 2 of the Geneva Conventions Act 2012, but there has been no judicial application of the principle of universal jurisdiction under that Act.

## **B. Conditions, restrictions or limitations to the exercise of jurisdiction**

### **Constitutional and domestic legal framework**

#### **Bahrain<sup>19</sup>**

33. Bahrain reported that, pursuant to article 9 of its Criminal Code, it may prosecute any foreigner who has committed a crime abroad and has been detained on its territory, regardless of where the crime was committed or the nationality of the perpetrator, provided that it has received and rejected an extradition request.

#### **Bulgaria<sup>20</sup>**

34. Bulgaria reiterated comments made previously regarding the conditions for application of article 6 of its Criminal Code.

#### **Germany<sup>21</sup>**

35. Germany reiterated its previous comments on section 12 (1) of the German Criminal Code and section 153 et seq. (section 153f) of the Code of Criminal Procedure, as well as on the lack of legal restrictions resulting from the absence of the accused from German territory.

36. Germany added that, under the Courts Constitution Act, responsibility for prosecuting offences under the Code lies with the Federal Prosecutor General (sections 120 (1) 8 and 142a), unless the Prosecutor transfers the case to a Land public prosecution office as a “case of lesser importance” (section 142a (2) 2). This applies if the case is less serious than the average criminal proceedings as regards the complexity of the proceedings, the severity of the crime, or the significance of the crime to the perpetrator or the victim. At the date of the submission, the Federal Prosecutor General had transferred a total of four cases under the Code to the Land public prosecution offices (so-called “posing cases” under section 8 (1) 9 of the Code, in which the accused posed for photos with the bodies or body parts of rival fighters).

#### **Iraq<sup>22</sup>**

37. Iraq reported that, under article 14 of its Penal Code, the prosecution of offences on the basis of universal jurisdiction pursuant to article 13 of the Code requires the authorization of the President of the Supreme Judicial Council. The Code prohibits the prosecution of the accused if there has been a final judgment of acquittal or conviction handed down by a foreign court and any sentence has been served in full, or if the proceeding or sentence has been vacated by law, to be determined with reference to the law of the State where the judgment was handed down. If the sentence was not fully implemented or the acquittal was granted for a crime to which Iraqi law is applicable on the basis of personal or protective jurisdiction and was a result of the offence not being punishable under the law of that State, then the accused may be prosecuted in Iraqi courts. Iraqi law does not specify which court is to conduct the preliminary investigation and trial, which is determined by referral to the President of the Supreme Judicial Council.

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<sup>19</sup> For previous comments submitted by Bahrain, see [A/73/123](#).

<sup>20</sup> For previous comments submitted by Bulgaria, see [A/65/181](#), [A/73/123](#) and [Add.1](#).

<sup>21</sup> For previous comments submitted by Germany, see [A/65/181](#) and [A/72/112](#).

<sup>22</sup> For previous comments submitted by Iraq, see [A/65/181](#).

### Republic of Moldova

38. The Republic of Moldova reported that foreign citizens and stateless persons without permanent domiciles on the territory of the Republic of Moldova who commit crimes outside the territory of the Republic of Moldova shall be criminally liable under its Criminal Code and shall be subject to criminal liability on its territory. This applies if the crimes committed are adverse to the peace and security of humanity or constitute war crimes, including crimes set forth in the international treaties to which the Republic of Moldova is a party, and if those persons have not been convicted in a foreign State.

### Ukraine<sup>23</sup>

39. Ukraine reiterated that universal jurisdiction was enshrined in article 8 of its Criminal Code, under which foreign nationals or stateless persons not permanently residing in Ukraine may be held criminally liable under the Code for offences as provided for by international treaties, or if they have committed grave or especially grave offences punishable under the Code against the rights and freedoms of Ukrainian citizens or the interests of Ukraine.

40. Ukraine added that such individuals shall also be criminally liable under the Code if they have committed outside Ukraine, in complicity with officials who are citizens of Ukraine, any of the offences provided for by articles 368, 368<sup>3</sup>, 368<sup>4</sup>, 369 and 369<sup>2</sup> of the Code related to the taking or giving of a bribe, or if they have offered, promised or provided illegal benefit to such officials or accepted an offer or promise of undue advantage or received from them such benefit.

## III. Scope and application of universal jurisdiction: comments by observers

### International Maritime Organization<sup>24</sup>

41. The International Maritime Organization (IMO) elaborated on its previous comments regarding the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention), the 1988 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (SUA Protocol), the 2005 Protocol to the SUA Convention and the 2005 Protocol to the SUA Protocol. In particular, IMO referred to specific offences under article 3(1) and (2) of the SUA Convention, article 2 of the SUA Protocol, articles 3bis(1)(a) and (b), 3ter and 5bis of the 2005 Protocol to the SUA Convention, and article 2bis of the 2005 Protocol to the SUA Protocol.

42. Article 6 of the SUA Convention and its 2005 Protocol challenge criminal impunity by establishing a framework that comes close to full coverage of jurisdiction, encompassing compulsory jurisdiction by the flag State and based on territoriality and active personality, and discretionary jurisdiction based on territoriality, passive personality and the protective principle.

43. Furthermore, article 6(4) of the SUA Convention reflects the principle *aut dedere aut judicare*, which is closely linked to universal jurisdiction since it requires a State party to prosecute an alleged offender present in its territory, regardless of the lack of any other connection to the offence, in case that State party does not extradite the offender to any of the other States parties that have established jurisdiction. The obligation to prosecute or extradite established in the SUA Convention is in line with

<sup>23</sup> For previous comments submitted by Ukraine, see [A/72/112](#) and [A/73/123](#).

<sup>24</sup> For previous comments submitted by IMO, see [A/66/93](#), [A/69/174](#) and [A/70/125](#).

similar provisions in other counter-terrorism conventions, such as the Convention for the Suppression of Unlawful Seizure of Aircraft, article 4(2), and the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, article 5(2).

44. Moreover, article 8bis of the 2005 Protocol to the SUA Convention contains elements of universal jurisdiction. Subject to the express authorization of the flag State, States parties can request to undertake boarding and enforcement measures against any ship located seaward of the outer limit of the territorial sea where there are reasonable grounds to suspect that the ship or a person on board is, has been, or is about to be involved in the commission of an offence. No connection to the offence is required.

45. IMO reported that, as at 26 April 2019, 166 States were parties to the SUA Convention; 156 States were parties to the SUA Protocol; 46 States were parties to the 2005 Protocol to the SUA Convention; and 39 States were parties to the 2005 Protocol to the SUA Protocol.

### **International Committee of the Red Cross**

46. The International Committee of the Red Cross (ICRC) reiterated previous comments on several aspects of universal jurisdiction related to international humanitarian law (see [A/66/93](#), [A/68/113](#), [A/69/174](#), [A/70/125](#), [A/71/111](#), [A/72/112](#) and [A/73/123](#)).

47. The Committee noted that States have increasingly recognized the principle of universal jurisdiction as an important means of ending impunity for the commission of serious violations of international humanitarian law and other international crimes. In this connection, it mentioned the universal acceptance of the Geneva Conventions (196 States parties) and the continued ratification of or accession to Additional Protocol I (174 States parties). It also emphasized that there has been an increase in the ratification of or accession to other relevant treaties by States from January 2018 to May 2019, including three States becoming parties to the Convention for the Protection of Cultural Property in the Event of Armed Conflict and its Protocols, five existing States parties to that Convention becoming parties to its Second Protocol, two States becoming parties to the Convention on the Prevention and Punishment of the Crime of Genocide and three States becoming parties to the International Convention for the Protection of all Persons from Enforced Disappearance.

48. ICRC noted that it continues to identify an increasing number of States that have established some form of universal jurisdiction over serious violations of international humanitarian law in their national frameworks.

49. ICRC further stated that many States have created specialized units to deal exclusively with the substantive and procedural specificities of international crimes, and that States continue to lead an initiative aimed at the development of a multilateral treaty for mutual legal assistance and extradition for prosecution of the most serious crimes. It also reported that, in 2018, the number of investigations and prosecutions at the national level against alleged perpetrators of international crimes continued to increase. It offered examples of ongoing national criminal investigations and proceedings based on the principle of universal jurisdiction in Argentina, Austria, Belgium, Finland, France, Germany, Italy, the Netherlands, Norway, Senegal, Spain, Sweden, Switzerland and the United Kingdom of Great Britain and Northern Ireland.

50. ICRC reiterated its support to States in their implementation of international humanitarian law, including, but not limited to, the obligation to repress serious violations of international humanitarian law through the exercise of universal jurisdiction. In this connection, it reiterated that its Advisory Service on International Humanitarian Law offers legal advice and technical assistance to Government experts

on national implementation of international humanitarian law. The Committee also acknowledged the efforts being made by States and the challenges they face in prosecuting serious violations of international humanitarian law. In view of those challenges, ICRC is currently finalizing the drafting of an international humanitarian law manual specifically aimed at judicial authorities. Further Committee tools designed to assist States in understanding and implementing their obligations under international humanitarian law take the form of databases, reports and technical documents.

51. ICRC concluded by reiterating its support to States for establishing appropriate national legislation to respond to serious violations of international humanitarian law on the basis of all grounds of jurisdiction, including universal jurisdiction, while recognizing the judicial, procedural and practical challenges that States face regarding the principle of universal jurisdiction.

#### **IV. Nature of the issue for discussion: specific comments by States**

##### **Bahrain<sup>25</sup>**

52. Bahrain stated that the principle of universal jurisdiction stipulates that criminal courts in a State may prosecute individuals who committed crimes in another State to ensure that they cannot escape accountability and punishment for those crimes.

##### **Belarus<sup>26</sup>**

53. Belarus reported that the principle of universal jurisdiction is understood as the competence of a State to prosecute and punish persons for committing the most dangerous crimes, irrespective of the nationality of the perpetrator or the territory where the crime was committed.

##### **Bulgaria**

54. Bulgaria noted that the principle of universal jurisdiction is a guiding principle addressing the question of whether the criminal legislation of a certain State is applicable in light of the venue of the committed act. Bulgaria reported that the principle requires States to prosecute and punish certain criminal acts regardless of where the crime is committed, whose interests are affected or the nationality of the perpetrator. Bulgaria further stated that, according to some concepts in international law, the principle *aut dedere aut judicare* implies the existence of universal jurisdiction.

##### **El Salvador<sup>27</sup>**

55. El Salvador reiterated that universal jurisdiction plays a significant role in combating impunity for the most serious crimes of concern to the international community, including torture, genocide and crimes against humanity. El Salvador reiterated that universal jurisdiction also plays a role in ensuring justice, truth and full reparation for victims. El Salvador further stated that it would maintain its commitment to the continued consideration of the topic in the Sixth Committee.

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<sup>25</sup> For previous comments submitted by Bahrain, see [A/73/123](#).

<sup>26</sup> For previous comments submitted by Belarus, see [A/65/181](#) and [A/70/125](#).

<sup>27</sup> For previous comments submitted by El Salvador, see [A/73/123](#).

**Finland**

56. Finland stated that it is committed to promoting accountability and is convinced that the principle of universal jurisdiction constitutes an essential tool in the fight against impunity.

**Mali**

57. Mali stated that universal jurisdiction must be exercised in good faith, in a non-abusive and non-selective manner, based on the principles of international law, including non-violation of State sovereignty, non-interference in the internal affairs of States and the sovereign equality of States. Mali considered that priority should be given to the national courts of the State that has primary responsibility for conducting investigations and prosecutions in its territory or other places under its jurisdiction. Mali further noted that the application of universal jurisdiction could only be effective if complemented by mechanisms for judicial cooperation and mutual assistance in criminal matters that, to a large extent, continue to be governed by bilateral agreements between States.

**Qatar**

58. Qatar noted that the principle of universal jurisdiction is a mechanism of the rule of law for ensuring equitable justice and combating impunity for serious crimes and violations of international humanitarian law and human rights. Qatar stated that universal jurisdiction helps to uphold the rule of law at the national and international levels and ensure that jurisdiction is exercised in accordance with the Charter of the United Nations and applicable international law.

**Sierra Leone**

59. Sierra Leone noted the progress made on the topic since it was taken up by the Sixth Committee of the General Assembly in 2009, as Member States have forged a common understanding of the universality principle, distinguished it from related concepts such as the jurisdiction of international criminal tribunals and the extraterritorial application of national laws, and attempted to clarify the scope of application of universal jurisdiction. This includes the identification of the “core crimes” to which universal jurisdiction would apply, the conditions or criteria for the application of the principle and the procedural and other limitations that should govern its exercise under international law. Helpful evidence of State practice on universal jurisdiction has been catalogued in the reports of the Secretary-General. Sierra Leone stated that it is proud to be part of ongoing international efforts to curb impunity for grave crimes, whether through the national application of the principle of universal jurisdiction or the prosecution of atrocity crimes in a hybrid court such as the Special Court for Sierra Leone, with the further objective of addressing the concerns of its ad hoc and arbitrary application. Sierra Leone strongly supported the efforts of the African Union in seeking clarity on the scope and application of the principle of universal jurisdiction, and noted that the spirit underlying the universality principle is enshrined in article 4(h) of the African Union Constitutive Act.

60. Furthermore, Sierra Leone expressed hope that the International Law Commission would bring its technical rigour to the topic of “Universal criminal jurisdiction” in its long-term programme of work. Sierra Leone underlined the importance of that topic because, while any international legal rule can be manipulated or abused for political purposes, universal jurisdiction is ultimately a technical legal question of public international law. Although the establishment of a working group of the Sixth Committee to further thorough discussions on the scope and application of the principle of universal jurisdiction was appreciated, Sierra

Leone noted a clear lack of agreement on progress towards a consensus outcome. As the topic deserves dispassionate expert consideration, Sierra Leone reiterated its call for other African States and others to join its request for a study by the Commission. Such a study would bring greater clarity to the topic of universal jurisdiction, especially given the prior and current work of the Commission on related topics such as the draft code of crimes against the peace and security of mankind, the question of international criminal jurisdiction, *aut dedere aut judicare*, crimes against humanity, peremptory norms of general international law (*jus cogens*) and immunity of State officials from foreign criminal jurisdiction.

#### Turkey<sup>28</sup>

61. Turkey acknowledged the need to prevent impunity for international crimes. On the other hand, considering that the obligation to investigate and prosecute may likely fall on the State where the crime was committed or the State of nationality of the offender, in accordance with rules related to jurisdiction, Turkey underlined the importance of fulfilling requests of extradition and legal assistance made by the judicial bodies of such States.

62. Furthermore, Turkey recalled the concerns voiced by Member States and views expressed by some scholars regarding the possible misuse or abuse of universal jurisdiction. In this regard, Turkey reiterated that developments in the area of universal jurisdiction need to be scrutinized, that the principles of lawfulness and non-retroactivity should be safeguarded and that private law disputes should be left outside the scope of universal jurisdiction. Turkey considered it crucial that the delicate balance between ensuring the legitimacy and reliability of universal jurisdiction on the one hand and preventing impunity for international crimes on the other be observed with due attention, and that the scope and limits of universal jurisdiction be carefully considered.

Table 1

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

<i>Crime</i>	<i>State</i>
Genocide	Belarus, Cyprus, El Salvador, Germany, Republic of Moldova, Turkey, Ukraine
Torture	Cyprus, El Salvador, Turkey, Ukraine
Inhumane treatment	Republic of Moldova

<sup>28</sup> For previous comments submitted by Turkey, see [A/73/123](#).

<i>Crime</i>		<i>State</i>
Enforced disappearance		Ukraine
Crimes against humanity		Bulgaria, Cyprus, El Salvador, Germany, Republic of Moldova, Turkey
War crimes and related offences	War crimes	Belarus, Cyprus, El Salvador, Finland, Germany, Republic of Moldova, Sierra Leone
	Violation of the laws and customs of war	Belarus, Ukraine
	Criminal violations of the rules of international humanitarian law during armed conflicts	Belarus
	Failure to act or the issuance of a criminal order during an armed conflict	Belarus
	Production, stockpiling or proliferation of prohibited weapons of war	Belarus
	Use of weapons of mass destruction	Belarus
	Grave breaches of the Geneva Conventions, 1949	Cyprus
	War crimes against property and other rights	Republic of Moldova
	Use of forbidden means of warfare	Republic of Moldova
	Use of prohibited methods of warfare	Republic of Moldova
	Use without permission of the distinctive signs of international humanitarian law	Republic of Moldova

<i>Crime</i>		<i>State</i>
Military crimes		Republic of Moldova
Crimes against peace and security of humanity		Belarus, Bulgaria, Republic of Moldova
Aggression		Cyprus, Germany
Piracy		Cyprus, Ukraine
Terrorism-related offences	Terrorism	Finland, Qatar, Ukraine
	Offences as found in article 1 of the European Convention on the Suppression of Terrorism, 1977	Cyprus
	Robbery, aggravated robbery, extortion, aggravated extortion, forgery, aggravated forgery, aggravated damage to data, aggravated interference with communications, aggravated interference in an information system, offence related to a radiological weapon and committed with terrorist intent, travelling for the purpose of committing a terrorist offence	Finland
	Money-laundering, financing of terrorism	Qatar
Offences related to transportation and communication	Sabotage or disruption of international means of communication and transportation	Iraq
	Computer crimes and crimes in the telecommunication sphere	Republic of Moldova
	Seizing control or hijacking of air, sea or rail transport vehicles and offences related to the damaging of such vehicles	Turkey
Offences related to trafficking in persons	Trafficking in persons	Belarus, Finland, Mali,

<i>Crime</i>	<i>State</i>
	Qatar, Turkey, Ukraine
	Trafficking in women, children or slaves
	Migrant smuggling
Drug-related offences	Offences related to illicit trafficking of dangerous drugs
	Trafficking in drugs
	Production and trade of narcotics or psychotropic substances
	Facilitation of the use of narcotics or psychotropic substances
Environment-related offences	Ecocide
	Environmental crimes
	Intentional pollution of the environment
Offences against State security	Crimes against public security and public order
	Crimes against public authorities and State security
	Crimes against the insignia of sovereignty of the State and against the respectability of its organs
	Crimes against the security of the State
	Crimes against the constitutional order and the functioning of that order
	Crime against national defence
	Crimes involving State secrets and espionage
	Crimes against relations with foreign states
	Trespass against territorial integrity and inviolability of the State

<i>Crime</i>		<i>State</i>
	Action aimed at forceful change or overthrow of the constitutional order or takeover of Government	Ukraine
	Planning, preparation and waging of an aggressive war	Ukraine
Fiscal offences	Counterfeiting of money	Turkey
	Counterfeiting of seals	Turkey
	Manufacturing and trading of instruments used in the production of money and valuable seals	Turkey
Corruption-related offences	Taking a bribe, promise or receiving illegal benefit by public servant	Ukraine
	Bribery of official of legal entity of private law regardless of the legal-organizational form	Ukraine
	Bribery of individual who provides public services	Ukraine
	Giving a bribe, promise or giving an illegal benefit to public servant	Ukraine
	Undue influence	Ukraine
Crimes against the freedom, honour and dignity of a person		Republic of Moldova
Prostitution		Turkey

Table 2

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

<i>Category</i>	<i>Legislation</i>	<i>Country</i>
Genocide	Criminal Code, art. 127	Belarus
	Law 8(III)/2002 as amended by Law 23 (III)/2006, arts. 4 and 6; Law 13 (III)/2013, art. 3A; Law 3(III)/2018, arts. 2, 4(1) and 5	Cyprus
	Code of Crimes against International Law, sect. 6	Germany
	Criminal Code, art. 135	Republic of Moldova
Torture	Law 235/90, art. 3	Cyprus
	Penal Code, art. 13	Turkey

<i>Category</i>	<i>Legislation</i>	<i>Country</i>
Inhumane treatment	Criminal Code, art. 137	Republic of Moldova
Crimes against humanity	Criminal Code, art. 6	Bulgaria
	Law 8(III)/2002 as amended by Law 23 (III)/2006, arts. 4 and 6; Law 13 (III)/2013, art. 3A; Law 3 (III)/2018, arts. 2, 4(1) and 5	Cyprus
	Code of Crimes against International Law, sect. 7	Germany
	Criminal Code, art. 135/1	Republic of Moldova
	Penal Code, art. 13	Turkey
War crimes and related offences	Criminal Code, arts. 85, 129 and 134–137	Belarus
	Law 8(III)/2002 as amended by Law 23 (III)/2006, arts. 4 and 6; Law 13 (III)/2013, art. 3A; Law 3 (III)/2018, arts. 2, 4(1) and 5; Law 40(III)/1966, art. 4(1)(2)	Cyprus
	Code of Crimes against International Law, ss. 8–12	Germany
	Criminal Code, chap. I, arts. 137 <sup>1</sup> , 137 <sup>2</sup> , 137 <sup>3</sup> and 137 <sup>4</sup>	Republic of Moldova
	Geneva Conventions Act 2012, sect. 2	Sierra Leone
Military crimes	Criminal Code, chap. XVIII	Republic of Moldova
Crimes against peace and security of humanity	Criminal Code, arts. 85 and 128	Belarus
	Criminal Code, chap. XIV	Bulgaria
	Criminal Code, chap. I	Republic of Moldova
Aggression	Law 8 (III)/2002 as amended by Law 23 (III)/2006, arts. 4 and 6; Law 13 (III)/2013, art. 3A; Law 3 (III)/2018, arts. 2, 4 (1) and 5	Cyprus
	Code of Crimes against International Law, sect. 13	Germany
Piracy	Criminal Code, sect. 5 (1) (e)	Cyprus
Terrorism-related offences	Law 9/79, sect. 3	Cyprus
	Criminal Code as amended by Act No. 874/2018, chap. 1, sect. 7, and chap. 34 a	Finland

<i>Category</i>	<i>Legislation</i>	<i>Country</i>
	Law No. 3 (2004) promulgating the Counter-Terrorism Act; Law No. 4 (2010) promulgating the Anti-Money-Laundering and Combating the Financing of Terrorism Act	Qatar
Offences related to transportation and communication	Penal Code, art. 13	Iraq
	Criminal Code, chap. XI	Republic of Moldova
Offences related to trafficking in persons	Penal Code, art. 13	Turkey
	Criminal Code, art. 181	Belarus
	Penal Code, art. 13	Iraq
	2012 Trafficking in Persons and Smuggling of Migrants Act, arts. 16–17	Mali
Drug-related offences	Law No. 15 (2011)	Qatar
	Penal Code, art. 13	Turkey
	Criminal Code, sect. 5 (1) (e)	Cyprus
	Penal Code, art. 13	Iraq
Environment-related offences	Penal Code, art. 13	Turkey
	Criminal Code, art. 131	Belarus
	Criminal Code, chap. I, art. 136, and chap. IX	Republic of Moldova
Offences against State security	Penal Code, art. 13	Turkey
	Criminal Code, chaps. XIII and XVII	Republic of Moldova
Fiscal offences	Penal Code, art. 13	Turkey
Corruption-related offences	Criminal Code, arts. 368, 368 <sup>3</sup> , 368 <sup>4</sup> , 369 and 369 <sup>2</sup>	Ukraine
Crimes against the freedom, honour and dignity of a person	Criminal Code, chap. II	Republic of Moldova
Prostitution	Penal Code, art. 13	Turkey

Table 3

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

**A. Universal instruments**

Human rights	Convention on the Prevention and Punishment of the Crime of Genocide, 1948	Belarus
	International Covenant on Economic, Social and Cultural Rights, 1966	El Salvador
	International Covenant on Civil and Political Rights, 1966	El Salvador
	Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, 1968	Belarus
	International Convention on the Suppression and Punishment of the Crime of Apartheid, 1973	Belarus
	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984	Belarus, Bulgaria, Cyprus, Mali, Qatar, Ukraine
	Optional Protocol to the Convention on the Rights of the Child on the Involvement of children in armed conflict, 2000	Belarus
	Optional Protocol to the Convention on the Rights of the Child on the sale of children, child Prostitution and child pornography, 2000	Belarus
	International Convention for the Protection of All Persons from Enforced Disappearance, 2006	Mali
Law of armed conflict	Geneva Conventions, 1949	Belarus, Bulgaria, Cyprus, Mali, Republic of Moldova, Qatar, Ukraine

	Additional Protocols I and II to the Geneva Conventions, 1977	Belarus, Mali, Republic of Moldova
	Additional Protocol III to the Geneva Conventions, 2005	Republic of Moldova
	Convention for the Protection of Cultural Property in the Event of Armed Conflict and its Protocol, 1954, and its Second Protocol, 1999	Belarus
Disarmament	Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, 1976	Belarus
	Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects and Protocols I, II and III, 1980, Protocol IV, 1995, and Protocol V, 2003	Belarus
	Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 1997	Belarus
Law of the sea	United Nations Convention on the Law of the Sea, 1982	Qatar
Safety of maritime navigation	Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988	Belarus
	Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 1988	Belarus
Aircraft or civil aviation safety	Convention on Offences and Certain Other Acts Committed on Board Aircraft, 1963	Belarus, Turkey
	Convention for the Suppression of Unlawful Seizure of Aircraft, 1970	Belarus, Turkey
	Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, 1971	Belarus, Turkey

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Traffic in persons	Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1950	Belarus
Narcotic drugs and psychotropic substances	Single Convention on Narcotic Drugs, 1961	Turkey
	Convention on Psychotropic Substances, 1971	Turkey
Health	Protocol to Eliminate Illicit Trade in Tobacco Products, 2012	Qatar
Penal matters	Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, 1973	Belarus, Turkey
	International Convention against the Taking of Hostages, 1979	Belarus
	Rome Statute of the International Criminal Court, 1998	Cyprus, Mali, Sierra Leone
	United Nations Convention against Transnational Organized Crime, 2000	Belarus, Mali
	Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000	Mali
	Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, 2000	Mali
	Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime, 2001	Mali
	United Nations Convention against Corruption, 2003	Bulgaria, Qatar

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**B. Regional instruments**

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Human rights	American Convention on Human Rights, 1969	El Salvador
Terrorism	European Convention on the Suppression of Terrorism, 1977	Cyprus, Turkey
Traffic in persons	Council of Europe Convention on Action against Trafficking in Human Beings, 2005	Belarus
Penal matters	Arab Convention against Transnational Organized Crime, 2010	Qatar

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