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## Sixth Committee

### Summary record of the 13th meeting

Held at Headquarters, New York, on Wednesday, 11 October 2017, at 10 a.m.

*Chair:* Mr. Muhumuza (Vice-Chair)..... (Uganda)  
*later:* Mr. Gafoor (Chair)..... (Singapore)

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*In the absence of Mr. Gafoor (Singapore), Mr. Muhumuza (Uganda), Vice-Chair, took the Chair.*

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

**Agenda item 83: Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization**  
(continued) (A/72/33)

1. **Ms. Fernández Juárez** (Bolivarian Republic of Venezuela) said that her delegation advocated a reform of the Security Council that entailed its expansion, a review of its decision-making mechanisms and the improvement of its working methods. The revitalization of the General Assembly was also essential, and the Special Committee must play a more active role in that process. The principal policies and decisions of the United Nations should emanate from the General Assembly, the Organization's most democratic body. Reform of the United Nations should be carried out in a truly democratic and inclusive spirit, not on the basis of the interests of individual States.

2. The interference of the Security Council in matters that exceeded its competence and should be dealt with by other bodies was a matter of concern to her delegation, which had therefore proposed that the Special Committee's work should include efforts to reverse that tendency and preserve a balance among the competencies of the various bodies.

3. The Security Council's authority to impose sanctions should be subject to the provisions of the Charter of the United Nations; sanctions were not an end in themselves but rather a means of finding political solutions when threats to international peace and security had proved not to be amenable to the peaceful settlement of disputes. The imposition of such sanctions must be based on reliable information and preceded by a clear warning to the State or party to which they were addressed. They must be clearly delineated and not applied on a "preventive" or "unilateral" basis, and they must be lifted as soon as they had served their purpose.

4. Sanctions must not obstruct humanitarian aid to civilian populations and should be suspended to prevent a humanitarian disaster in the event of an emergency or force majeure. Under no circumstances should they be aimed at undermining the legitimate authorities of a State. Her delegation staunchly opposed the imposition on developing countries like her own of unilateral coercive measures aimed at strangling the economy and restricting the right to self-determination. The question of assistance to third countries affected by sanctions imposed by United Nations organs deserved priority attention.

5. The Bolivarian Republic of Venezuela supported the proposals made by the delegations of Belarus, Cuba, Ghana and the Russian Federation, which deserved further consideration. It likewise supported the proposal by the Non-Aligned Movement on the peaceful settlement of disputes and its impact on the maintenance of peace.

6. The *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council* were valuable research tools for government and academic institutions engaged in the study and teaching of international relations, while also being a source of information on the work of the Organization. They should continue to be updated in all the official languages.

**Agenda item 85: The scope and application of the principle of universal jurisdiction** (A/72/112)

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

8. Universal jurisdiction provided a tool for prosecuting the perpetrators of certain serious crimes under international treaties. However, it was necessary to clarify several questions in order to prevent its misapplication, including the range of crimes that fell within its scope and the conditions for its application; the Committee might find the decisions and judgments of the International Court of Justice and the work of the International Law Commission useful for that purpose.

9. The Movement would participate actively in the work of the Working Group on the topic. The discussions therein should be aimed at identifying the scope and limits of the application of universal jurisdiction; consideration should be given to establishing a monitoring mechanism to prevent abuse. Universal jurisdiction could not replace other jurisdictional bases, namely territoriality and nationality. It should be asserted only for the most serious crimes and could not be exercised to the

exclusion of other relevant rules and principles of international law, including State sovereignty, the territorial integrity of States and the immunity of State officials from foreign criminal jurisdiction.

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

11. **Mr. Boukadoum** (Algeria), speaking on behalf of the African Group, said that the scope and application of the principle of universal jurisdiction had been included in the agenda of the General Assembly since its sixty-third session at the request of the African Group, which was concerned about the abusive application of the principle, particularly against African officials. The African Group recognized that universal jurisdiction was a principle of international law intended to ensure that individuals who committed grave offences did not enjoy impunity and were brought to justice. Under the Constitutive Act of the African Union, the Union had the right to intervene, at the request of any of its member States, in situations of genocide, war crimes and crimes against humanity.

12. However, abuse of universal jurisdiction could undermine efforts to combat impunity; it was therefore vital, when applying the principle, to respect other norms of international law, including the sovereign equality of States, territorial jurisdiction and the immunity of State officials under customary international law. The International Court of Justice had expressed the view that the cardinal principle of immunity of Heads of State should not be called into question. Some non-African States and their domestic courts had sought to justify arbitrary or unilateral application or interpretation of the principle on the basis of customary international law. However, a State that relied on a purported international custom must, generally speaking, demonstrate to the satisfaction of the International Court of Justice that the alleged custom had become so established as to be legally binding.

13. African and other like-minded States around the world called on the international community to adopt measures to end the abuse and political manipulation of the principle of universal jurisdiction by judges and politicians from States outside Africa, including by violating the principle of the immunity of Heads of State under international law. The Group reiterated the request by African Heads of State and Government that arrest warrants issued on the basis of the abuse of universal jurisdiction should not be executed in any State member of the African Union, and noted that the African Union had urged its members to use the

principle of reciprocity to defend themselves against the abuse of universal jurisdiction.

14. **Mr. Jaime Calderón** (El Salvador), speaking on behalf of the Community of Latin American and Caribbean States (CELAC), said that the member countries of CELAC attached great importance to the issue of the scope and application of the principle of universal jurisdiction. Past discussions in the Committee had focused on the elements addressed in the informal paper submitted by the Working Group on the topic to the Committee at the sixty-sixth session of the General Assembly, namely, the role and purpose of universal jurisdiction and how it differed from other related concepts; its scope in terms of the range of crimes covered; and the conditions for its application. The Working Group had certainly made progress in its six years of work, moving from a concise roadmap to a combined set of elements relating to each of the three pillars of the United Nations, and culminating in a full set of policy indicators covering all of them.

15. Universal jurisdiction was an institution of international law of exceptional character for the exercise of criminal jurisdiction, which served to fight impunity and strengthen justice. It was international law, therefore, which established the scope of its application and enabled States to exercise it. CELAC was pleased that several delegations had reiterated their view that universal jurisdiction should not be confused with international criminal jurisdiction or with the obligation to extradite or prosecute; those were different but complementary legal principles that had the common goal of ending impunity. CELAC shared that understanding, which was consistent with the relevant applicable law, the diverse set of obligations of States under international law and the observance of the rule of law at the national and international levels.

16. If no progress was made in the upcoming meetings of the Working Group, the possibility of referring the topic to the International Law Commission for study should perhaps be considered, especially since the Commission was currently examining a number of issues linked to the principle of universal jurisdiction.

17. **Ms. Beckles** (Trinidad and Tobago), speaking on behalf of the Caribbean Community (CARICOM), said that States had the responsibility to prosecute the perpetrators of crimes so heinous that they posed a serious threat to the international community. No place should become a safe haven for perpetrators of genocide, torture, crimes against humanity, war crimes and the crime of aggression. Consistent with the principles of international law, universal jurisdiction offered a subsidiary basis for promoting accountability,

closing the impunity gap and strengthening international justice systems.

18. CARICOM supported the jurisdiction of the International Criminal Court and its foundational principle of complementarity, which meant that the Court's jurisdiction could be exercised only when a State was unwilling or unable to prosecute perpetrators under its domestic law. National courts, therefore, had the primary responsibility to investigate and prosecute crimes, whether committed by their own nationals, in their own territory, or otherwise under their jurisdiction. The application of universal jurisdiction was necessary and justifiable in instances where the crimes committed affected the international community and where national legal systems allowed the perpetrator to continue to act with impunity, and in cases of mass atrocity crimes. The extraterritorial application of domestic laws by a State was contrary to the principle of universal jurisdiction, unless permitted under international law, such as in cases where the State had jurisdiction to apply it to one of its own nationals. Care must therefore be taken to ensure that the exercise of universal jurisdiction did not generate abuse or conflict with international law.

19. A comprehensive legal study would help to provide a solid framework for future discussions on the scope and application of the principle of universal jurisdiction. If no progress was made at the current session of the General Assembly, CARICOM saw merit in referring the topic to the International Law Commission for consideration.

20. **Ms. McDougall** (Australia), speaking also on behalf of Canada and New Zealand, said that the three countries were acutely aware that impunity lay behind much of the barbarity being witnessed around the world. Ending impunity was therefore critical to promoting the rule of law, helping victims and their loved ones heal and deterring would-be perpetrators. Any State in which a serious international crime was alleged to have occurred had the primary responsibility to investigate and prosecute such crimes. However, the territorial State was not always willing or able to do so for serious international crimes. The State of nationality of the perpetrator or of the victim might also be unable to exercise jurisdiction.

21. Universal jurisdiction was therefore an alternative means by which the international community could ensure that crimes of exceptional gravity did not go unpunished. It had first been developed in relation to piracy, to prevent pirates from enjoying safe haven, and had since been extended under customary international law to the crimes of genocide, war crimes, crimes against humanity, slavery and torture. All Member

States had a responsibility to help ensure that those crimes did not go unpunished.

22. The domestic laws of Australia, Canada and New Zealand established universal jurisdiction in domestic courts over the most serious international crimes: such crimes could be prosecuted irrespective of the perpetrator's nationality, the location of the alleged conduct or any other jurisdictional links between the alleged crime and the prosecuting country concerned.

23. The three countries had long held the view that universal jurisdiction must be exercised in good faith, in conformity with the Charter and other applicable rules of international law. In particular, the exercise of universal jurisdiction was subject to obligations under international law concerning immunities and was therefore entirely consistent with State sovereignty. Universal jurisdiction must also be exercised in accordance with international fair trial rights and the principles of *nullum crimen sine lege* and *ne bis in idem*. At all times, the exercise of universal jurisdiction must be free from political motivation, discrimination and arbitrary application.

24. For several years, the Committee had been making slow but steady progress, through its Working Group, towards narrowing the differences of view on the scope and application of the principle of universal jurisdiction. Currently, agreement had been reached on some key points. The time was now ripe to start reflecting those advances in the resolution on universal jurisdiction to be adopted at the seventy-second session of the General Assembly. In that way, a unified and unequivocal message would be sent to perpetrators and would-be perpetrators of serious international crimes that they could not run from justice.

25. **Mr. Arrocha Olabuenaga** (Mexico) said that universal jurisdiction was a useful tool for combating impunity for the most serious international crimes. Under the relevant international instruments, it was applicable solely to piracy and war crimes. It thus differed from two related principles: the obligation to extradite or prosecute (*aut dedere aut judicare*), which was incorporated in international instruments on genocide, torture, forced disappearance and attacks on civil aviation and maritime transport; and international criminal jurisdiction, which was exercised by international criminal courts and tribunals in respect of the crimes of genocide, war crimes and crimes against humanity. After seven years of debate, States still held a variety of positions on some relevant aspects of the topic. For example, Mexico believed that while the immunity of Heads of State and Government did not apply in the case of international criminal jurisdiction

under the Rome Statute of the International Criminal Court, it did come into play before foreign courts under the principles of either universal jurisdiction or *aut dedere aut judicare*. That aspect should be clarified in order to avoid confusion in State practice.

26. There were also differences in State practice on which crimes were subject to universal jurisdiction in their national courts. Whereas most States restricted the exercise of universal jurisdiction to genocide, crimes against humanity, war crimes and the crime of aggression, some also extended it to torture, counterfeiting and terrorism. It was therefore necessary to clarify whether universal jurisdiction could be exercised only when international instruments expressly authorized it under all three principles — universal jurisdiction, *aut dedere aut judicare* and international criminal jurisdiction — or solely under one of the three. It would also be prudent to clarify whether States could extend universal jurisdiction to cover crimes other than those addressed in the relevant instruments.

27. Given that the aspects requiring clarification were technical in nature, the Committee should request the International Law Commission to undertake a study to elucidate the scope and application of the principle of universal jurisdiction strictly from the standpoint of international law.

28. **Mr. Mohamed** (Sudan) said that the application of universal jurisdiction must be consistent with the principles established in international law and the Charter of the United Nations, in particular the sovereignty, sovereign equality and political independence of States and non-interference in their internal affairs. The General Assembly's work on the subject should focus on ensuring that those principles were respected and that universal jurisdiction remained a complementary mechanism rather than a substitute for national jurisdiction. Universal jurisdiction was not applied consistently from one State to another; moreover, its unilateral and selective application by the national courts of certain States could lead to international conflict. With regard to the deliberations of the Working Group, his delegation believed that universal jurisdiction could not replace the principles of territoriality and nationality, and should be restricted to the most serious and heinous of crimes: on no account should its scope be expanded to cover lesser crimes, nor could it be invoked in isolation from the other relevant principles of international law, such as sovereignty, territorial integrity and the immunity of State officials from criminal prosecution.

29. His delegation recalled that, in the opinion of the International Court of Justice, the immunity granted to

Heads of State and Government and other government officials under international law was beyond question. The African Union had also repeatedly reaffirmed that view in the outcome documents of the ordinary and extraordinary sessions of its Assembly and had also rejected the issuance of arrest warrants against African leaders, which undermined the security and stability of African nations. It was important to continue discussing the question of universal jurisdiction with a view to achieving a common understanding of the concept and ensuring that it was applied in a manner consistent with its original objectives and not in the service of political agendas or as a pretext for intervening in the internal affairs of States.

30. His country had ratified most of the human rights treaties. In accordance with article 127 of the Sudanese Constitution, those treaties constituted part of domestic legislation. Sudanese law prohibited impunity, and in 2015 the Criminal Code had been amended to cover the most serious crimes under international law.

31. His delegation was of the view that it was premature at the present stage to request the International Law Commission to conduct a study on various aspects of the principle of universal jurisdiction.

32. **Ms. Fong** (Singapore) said that the principle of universal jurisdiction was based on the recognition that some crimes were of such exceptional gravity that every State had the right to exercise its criminal jurisdiction to prosecute the perpetrators. However, it was not and should not be the primary basis for the exercise of criminal jurisdiction by States. It was complementary to other bases of jurisdiction recognized under international law, including territoriality and nationality, and should be asserted only when no State was able or willing to exercise jurisdiction on those grounds.

33. To determine whether a crime was subject to universal jurisdiction, it was necessary to make a thorough and robust analysis of State practice and *opinio juris*. To extend the application of universal jurisdiction to crimes other than those of exceptional gravity, in a manner unsupported by State practice and *opinio juris*, was an abuse of the principle. Moreover, that principle must not be conflated with the obligation to extradite or prosecute under treaties, or with the jurisdiction of international tribunals established pursuant to international treaties.

34. Lastly, universal jurisdiction should not be exercised in isolation from other applicable principles of international law, such as the immunity of State officials from foreign criminal jurisdiction, State sovereignty and territorial integrity. Its exercise must also be consistent with the principles of due process,

transparency, rules of procedure and evidence and international comity.

35. **Mr. Arriola Ramírez** (Paraguay) said that the principle of universal jurisdiction went beyond the usual rules of jurisdiction over crimes in order to serve the interests of justice by enabling States to prosecute the perpetrators of crimes, irrespective of their nationality or that of their victims and of the place where the crimes were committed. Paraguay had so firmly incorporated a number of human rights instruments into its domestic legislation that they could only be removed by constitutional amendment. The Criminal Code provided for prosecution of certain offences subject to universal jurisdiction, such as genocide, human trafficking and illicit drug trafficking, committed in foreign countries. The legislature had adopted a bill on the application of the Rome Statute of the International Criminal Court, which covered universal jurisdiction and limitations on national jurisdiction, and the legislative process for the adoption of the Kampala amendments thereto was soon to begin. Cooperation among States was essential in order to combat impunity for the most serious offences and to achieve the objective of universal jurisdiction.

36. **Mr. Andersen** (Norway) said that it was clear from the discussions within the Working Group on universal jurisdiction that all States shared the view that there should be no impunity for serious crimes of concern to the international community as a whole. Universal jurisdiction was an important tool for ensuring that the perpetrators of atrocity crimes and certain other serious crimes were brought to justice. Norway was pleased that the concept had developed into a fundamental principle of national and international criminal law.

37. The Sixth Committee was the most suitable forum for discussing the scope and application of the principle of universal jurisdiction. The discussions within the Working Group had helped to clarify the positions of Member States. Some delegations had alluded to the problem of potential abuse of the principle. His delegation agreed that any misuse of prosecutorial powers should be prevented. However, attempting to develop an exhaustive list of crimes subject to universal jurisdiction would not be constructive.

38. In States that had incorporated the principle of universal jurisdiction into their domestic legislation, responsibility for determining its scope and application in specific cases rested with national prosecutorial offices. Many other States were also considering incorporating the principle into their national legal frameworks, which meant that how it would be applied would also largely be determined by their national

judicial entities. The Committee should accordingly focus on how national jurisdictions organized their prosecutorial offices and applied the principle of universal jurisdiction. It was important to identify appropriate mechanisms to ensure that prosecutorial offices were independent and free from political interference, and to examine how prosecutorial discretion was applied in universal jurisdiction cases. Discussion of those issues would enhance the common understanding of how independent prosecutors should apply the principle of universal jurisdiction in a responsible manner.

39. **Mr. Al Arsan** (Syrian Arab Republic) said that his country's position on the sensitive item under discussion was based on its firm belief that justice must be free from all selectivity, politicizing and double standards. Unfortunately, that had not been the case to date. The main task conferred upon the Sixth Committee had always been to defend the cause of justice. However, the behaviour of some States had not been consistent with that ideal. Some Member States were disregarding the International Court of Justice and trying to expand the scope of universal jurisdiction in a way that undermined State sovereignty and the role and status of their national legal entities.

40. His country had been one of the first States to sign the Rome Statute of the International Criminal Court. However, the Court had ceded to pressure exerted by influential countries, and his country had had to distance itself from that body, for it was no longer sufficiently impartial. It was being used as a tool to serve the interests of influential Governments and as a means to undermine international relations.

41. Turning to practical examples of attempts to politicize the principle of universal jurisdiction, he said that some Member States were currently engaged in supporting terrorism in his country, financing and arming terrorist groups, for example the Nusrah Front, which had been listed by the United Nations as a terrorist organization. Those States had found no other way of dealing with the war against terrorism — which was being successfully conducted by the Syrian Arab Republic, together with its allies — than to distort the principle of universal jurisdiction through the establishment of the so-called International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011. General Assembly resolution [71/248](#), by which that body had been established, had been adopted without consensus and was inconsistent with the provisions of the Charter of the United Nations.

42. As pointed out in a letter addressed to the Secretary-General by his country's Permanent Mission (A/71/799), which pinpointed various legal violations and revealed the political dimensions behind the move by Qatar and Liechtenstein to set up the so-called Mechanism, General Assembly resolution 71/248 granted the Mechanism a wide range of powers that were the prerogative of national public prosecutors. The Charter did not give the General Assembly any mandates or prerogatives connected with judicial prosecution or criminal investigations. The General Assembly was not entitled to create an organ enjoying powers that did not belong to it. A significant amount of the funding for the Mechanism had been provided by a Government that did not even recognize the Nusra Front as a terrorist organization and that continued to finance and arm that organization. Thus, the Mechanism was being financed from the same source that was financing terrorism: there was no way it could be independent or impartial.

43. Another corroborative example had been provided by a Member State and was cited in the Secretary-General's report under the current agenda item (A/72/112). The Higher Regional Court in Frankfurt am Main, exercising universal jurisdiction, had handed down a prison sentence to a person convicted of the crimes of travelling to fight in Syria, actively participating with an armed group in murdering a Syrian officer and a soldier and decapitating them. The person had been sentenced to two years' imprisonment. That verdict was surely the height of impunity and a travesty of justice – the lenient sentence was in no way commensurate to the crime.

44. He gave a third example, in which political hypocrisy had been taken to unprecedented heights. The Governments of some States proudly proclaimed that they had acceded to the Rome Statute and called for the jurisdiction of the International Criminal Court to be exercised in the Syrian Arab Republic. However, the same Governments had concluded bilateral agreements with the United States Government to guarantee immunity to American soldiers so that they could not be prosecuted by the International Criminal Court.

45. It was no longer acceptable for some Governments to translate justice — one of the noblest causes of humanity — into a way of interfering in the domestic affairs of other States. It was no longer acceptable for justice to be a political tool in the hands of the strongest, to be exerted over the weakest.

46. **Ms. Kremžar** (Slovenia) said that her Government saw merit in continuing the work aimed at crystalizing the notion of universal jurisdiction.

However, if tangible outcomes could not be achieved, consideration should be given to transferring the debate to the plenary or, if that move did not enjoy support, to the International Law Commission. She questioned the advisability of listing all the crimes that could be covered by the principle of universal jurisdiction. Instead, a general reference could be developed, referring to obligations arising under customary international law and treaty law. There was a common understanding that the role of universal jurisdiction was to combat impunity and protect the rights of victims of the most serious crimes of concern to the international community as a whole; at the same time, it should also prevent the most horrible crimes from happening in the first place. When exercising universal jurisdiction, States should always take into account the core principle of *nulla poena sine lege*.

47. The application of the principle of universal jurisdiction entailed specific challenges, including with respect to evidence collection in the context of inter-State cooperation. In that regard, Argentina, Belgium, the Netherlands and Slovenia were actively engaged in efforts to improve inter-State cooperation for the prosecution of atrocity crimes, in particular by working towards the negotiation of a new international instrument on mutual legal assistance and extradition between States for genocide, crimes against humanity and war crimes. She urged all delegations to support that initiative.

48. **Mr. Gouba** (Burkina Faso) said that his country was a party to many international instruments that contained a general obligation to extradite or prosecute, including those on torture, forced disappearance and international humanitarian law. The principle of universal jurisdiction was incorporated in his country's laws, including the 1966 Criminal Code. Under a law adopted in May 2014 to prohibit the sale of children, child prostitution and child pornography, courts in Burkina Faso had the obligation to prosecute perpetrators of such offences, wherever they were committed. In December 2009, a law determining the competent authorities and establishing procedures for implementing the Rome Statute had been adopted.

49. Thus, given the legal provisions in force, Burkina Faso could not be a safe haven for criminals seeking impunity. Although universal jurisdiction was an appropriate mechanism for ensuring that serious crimes did not go unpunished, it could not be exercised effectively unless it was supplemented by mutual legal cooperation and assistance mechanisms. Moreover, its application was often limited by domestic laws, in particular those on statutes of limitation, admissibility of complaints, immunity and amnesty, hence the need to

harmonize such mechanisms within the framework of a multilateral instrument.

50. The principle of universal jurisdiction should be applied in respect of the most serious international crimes, including terrorism, genocide, war crimes, crimes against humanity, piracy, slavery, torture, human trafficking, hostage-taking and counterfeiting. An international consensus must be reached on its exercise with due regard for other fundamental principles of international law, in particular the sovereign equality of States, non-interference in the internal affairs of States and the immunity of State officials from jurisdiction.

51. **Mr. Celarie Landaverde** (El Salvador) said that universal jurisdiction was a tool for averting impunity for the most serious international crimes, including torture, genocide and crimes against humanity. Under article 10 of the Salvadoran Criminal Code, universal jurisdiction could be exercised over crimes committed by any person in a place not subject to Salvadoran jurisdiction, provided the crimes affected legal rights that were protected under international law or entailed a serious breach of universally recognized human rights.

52. The Constitutional Chamber of the Supreme Court had established an important precedent by characterizing as unconstitutional a number of provisions in the general amnesty law relating to crimes committed during the armed conflict of 1980 to 1992. The Chamber had stated that the country's constitutional and international obligations in respect of fundamental rights were incompatible with the adoption of absolute and unconditional amnesties and other measures that were conducive to impunity and militated against the administration of justice and the award of reparation to victims.

53. The ruling expressly recognized the principle of universal jurisdiction as being applicable to serious international crimes, in the interests of justice, truth and full reparation to victims. The nature of the crime was deemed to constitute the sole criterion for the exercise of universal jurisdiction, without the requirement of a territorial or personal link. Nevertheless, it was important to acknowledge the exceptional nature of universal jurisdiction, which could only be exercised in the event of the inability or unwillingness to prosecute on the basis of one of the other principles of criminal law, in particular the principle of territoriality.

54. **Ms. Guardia González** (Cuba) said that the principle of universal jurisdiction should be discussed by all Member States within the framework of the General Assembly, with the primary aim of ensuring that it was not applied improperly. Her delegation reiterated its concern at the unwarranted, unilateral, selective and

politically motivated exercise of universal jurisdiction by the courts of developed countries against natural or legal persons from developing countries, with no basis in any international norm or treaty. It also condemned the enactment by States of laws directed against other States, which had harmful consequences for international relations.

55. The General Assembly's main objective with regard to universal jurisdiction should be the adoption of an international set of rules or guidelines, in order to prevent abuse of the principle and thus safeguard international peace and security. Universal jurisdiction should be exercised by national courts in strict compliance with the principles enshrined in the Charter of the United Nations, in particular the principles of sovereign equality, political independence and non-interference in the internal affairs of States.

56. Universal jurisdiction should not be used to diminish respect for a country's national jurisdiction or to question the integrity and values of its legal system, nor should it be used selectively for political ends in disregard of the rules and principles of international law. The exercise of universal jurisdiction should be limited by absolute respect for the sovereignty of States. It should be exceptional and supplementary in nature, and should be restricted to crimes against humanity and invoked only in exceptional cases where there was no other way to bring proceedings against the perpetrators and prevent impunity. The prior consent of the State in which the crime had been committed, or of the State or States of which the accused was a national, should also be obtained as a matter of the utmost importance. Moreover, the absolute immunity granted under international law to Heads of State, diplomatic personnel and other incumbent high-ranking officials must not be called into question.

57. Her delegation commended the Working Group for its efforts to identify areas of consensus that could guide the Committee's work on the topic. It also supported the elaboration of international rules or guidelines to establish clearly the scope and limitations of universal jurisdiction and the crimes to which it should be applied.

58. **Ms. Premabhuti** (Thailand) said that only with judicious and responsible application of the principle of universal jurisdiction could perpetrators of crimes that were of serious concern to the international community be brought to justice. At the same time, however, national judicial systems should be strengthened. Perpetrators should be prosecuted by the State in whose territory the crimes were committed or whose nationals were victims of such crimes, if they did not fall within the scope of universal jurisdiction. Thailand had



established universal jurisdiction over a number of serious criminal offences relating to national security, terrorism, money-laundering, counterfeiting, piracy, robbery, gang robbery on the high seas, indecency, human trafficking and transnational organized crime. Perpetrators of those crimes would be prosecuted in Thailand even if the crimes were committed outside its territory.

59. Her country was also undertaking a comprehensive reform of its fisheries law, aiming to root out illegal, unreported and unregulated fishing as well as human trafficking and forced labour in the fisheries sector. The law currently allowed Thai courts to prosecute for illegal fishing and unlawful labour practices regardless of where they took place and regardless of the nationality of the offenders and ships.

60. There was a need to agree on the definition and scope of universal jurisdiction and to establish clear rules for its application. A distinction should be made between its application and the obligation to extradite or prosecute as required by international treaties. Most important of all was to promote a better common understanding among Member States on that very important issue.

61. *Mr. Gafoor (Singapore) took the Chair.*

62. **Ms. Sande** (Uruguay), after reaffirming her country's support for the rule of law and the protection of human rights, said that crimes committed against those rights must not go unpunished. Although jurisdiction in criminal matters was normally reserved for the territorial State, there was a need to change that situation and provide for a jurisdiction that would ensure that the perpetrators of such crimes were brought to justice even in cases when a State was unwilling or unable to prosecute them. By its very nature, universal jurisdiction, which was resisted by some and defended by others, should be based on extensive cooperation, through instruments like extradition and mutual legal assistance, in order to ensure the prosecution of perpetrators, irrespective of their nationality. Such prosecution had also become possible with the establishment of the International Criminal Court and international tribunals, in accordance with their constituent instruments. Moreover, the international human rights instruments envisaged the jurisdiction of international tribunals based on the principle of subsidiarity, since they provided for the need to exhaust domestic remedies before having recourse to extraterritorial tribunals or courts. Thus, one element to be taken into account in the context of universal jurisdiction was the competitive relationship it might have with jurisdictions founded on principles other than

extraterritoriality. There was also a need for constant interaction between domestic and international institutions in the interests of protecting human rights.

63. **Mr. Kpayedo** (Togo) said that his Government was convinced that the most serious crimes that threatened peace, security and well-being must not go unpunished. Universal jurisdiction had to be exercised in order to prevent impunity for such crimes when the alleged perpetrator had fled to another State to escape justice in his or her own country or when the crimes took place in unstable regions, where the inhabitants lacked adequate legal protection. Togo was working to combat impunity and promote justice based on equity. It was a party to several international conventions containing an obligation to extradite or prosecute, including the four Geneva Conventions of 1949 and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The new Criminal Code criminalized all acts of torture, and under article 155, Togolese courts had jurisdiction to prosecute anyone who had allegedly perpetrated a serious crime, irrespective of his or her nationality and of the place where the crime was committed. A "serious crime" was understood to mean the crime of genocide, war crimes, crimes against humanity and the crime of apartheid.

64. The principle of universal jurisdiction should not serve as a pretext to undermine such fundamental principles of international law as non-intervention and the sovereign equality of States, nor should it allow certain external jurisdictions to usurp domestic jurisdiction. Furthermore, that principle should not override guarantees of due process and the cardinal principles of criminal law, or overturn the rules of immunity that were the basis for smooth international relations. In view of the high risk of politicization, the scope and application of universal jurisdiction should be strictly defined.

65. His Government reiterated its call for closer international cooperation on legal matters and enhanced technical assistance for States so that they could themselves ensure the proper administration of justice and continue their efforts to combat impunity.

66. **Mr. Heumann** (Israel) said that while Israel, given its history, embraced the importance of combating impunity and ensuring that perpetrators of the most serious crimes of international concern were brought to justice, it was necessary to be sure that the principle of subsidiarity was honoured and that universal jurisdiction mechanisms were used only as a last resort. Moreover, his delegation warned against the potential for political abuse of universal jurisdiction mechanisms

and stressed the importance of adopting safeguards against such unacceptable abuses.

67. **Mr. Mpongosa** (South Africa) said that universal jurisdiction had evolved from eighteenth- and nineteenth-century doctrine and jurisprudence, which held that perpetrators of certain crimes were enemies of all mankind, subject to capture and trial wherever they were found. True universal jurisdiction applied only in the case of crimes under international customary law. However, in recent years, a number of multilateral treaties dealing with international crimes had conferred wide jurisdictional powers upon States parties. The result was a quasi-universal jurisdiction, known as conditional universal jurisdiction, under which States parties were required to prosecute or extradite persons who happened to be present in their territories.

68. The key to determining whether a criminal prosecution or a civil case for damages could be brought based on universal jurisdiction was the law of the particular country. Most States, including South Africa, did not try a person for an international crime unless the conduct had been criminalized under domestic law. South Africa had enacted a number of pieces of legislation providing for some form of universal jurisdiction on such subjects as the implementation of the Rome Statute and the Geneva Conventions, protection against terrorist acts and civil aviation offences. It had also adopted legislation providing for extraterritorial jurisdiction over mercenary activities, foreign military assistance and torture, provided that there was a jurisdictional link to South Africa.

69. There was a growing world conviction that impunity would no longer be tolerated. While there was general consensus that the principle of universal jurisdiction was important in the fight against impunity, a number of issues remained unresolved. They included the definition of the principle of universal jurisdiction and the need to distinguish it from related concepts, such as the jurisdiction exercised by international criminal courts and tribunals established by treaties; the relationship between the obligation under international law to extradite or prosecute and the jurisdiction of national courts; the temporal immunity of Heads of State; assurances of due process and fairness in the course of national proceedings based on universal jurisdiction; and the possibility of selective and arbitrary application of the principle and its politicization. The question of which crimes were subject to universal jurisdiction was still unsettled, though there was general agreement that they included piracy, slavery, war crimes, crimes against humanity, genocide, torture and some international terrorist crimes.

70. South Africa accepted the principle of universal jurisdiction for specific international crimes of a serious nature, based on its support for the fight against impunity and the quest for justice; however, it was opposed to the selective application of that principle.

71. The controversy surrounding universal jurisdiction was not about the validity of the principle, but its application and scope, in particular, the intersection between universal jurisdiction and the immunities of certain high-ranking officials. Therefore, a balance must be sought between the interests of mankind to prevent impunity and the interests of the community of States to allow officials to act freely on the inter-State level without unwarranted interference.

72. **Mr. Abdullahi** (Nigeria) said that, while the principle of universal jurisdiction was meant to ensure that alleged perpetrators did not go unpunished, it continued to be controversial, among other reasons because it allowed States to claim criminal jurisdiction over an accused person irrespective of where the alleged crime had been committed and of the accused person's nationality. Universal jurisdiction should always be exercised in good faith and in accordance with other principles of international law, including the immunity of State officials

73. Nigeria strongly believed that relevant State officials must have immunity against the exercise of universal jurisdiction; that the primary responsibility for investigating and prosecuting serious crimes lay with the State that had territorial jurisdiction; and that universal jurisdiction should be a complementary mechanism to ensure that accused persons could only be held accountable where the State was unable or unwilling to exercise its jurisdiction. If cooperation with the State where a crime was committed was possible, especially through agreements on extradition and mutual legal assistance, universal jurisdiction must not be used prematurely; it should only be used as a last resort.

74. His delegation hoped that the Working Group to be established during the current session would clarify some of the outstanding grey areas, including the relationship between immunity and universal jurisdiction. It should also address the concerns of many Member States, including members of the African Union, which respected the principle of universal jurisdiction but were troubled by the uncertainty surrounding its scope and application. Given the technical nature of the subject matter, it would be useful if the International Law Commission could contribute to the discussion.

75. **Mr. Waweru** (Kenya) said that the scope and application of the principle of universal jurisdiction was a source of genuine concern to many. If not carefully defined and regulated, the unilateral application of universal jurisdiction by States could be subject to abuse; moreover, impunity at the national level might be replaced with impunity at the international level under the cloak of universal jurisdiction. Extraterritorial jurisdiction should be invoked only as a secondary means in cases where domestic courts were unwilling or unable to address a matter. The exercise of universal jurisdiction could not be an end in itself; it must be part of a process towards an end, and that end was lasting peace.

76. **Mr. Kabir** (Bangladesh) said that universal jurisdiction should be understood to be complementary to national jurisdiction in cases involving grave violations of international humanitarian law and human rights law. That pragmatic approach was enshrined in the Rome Statute, wherein the International Criminal Court was considered a court of last resort in cases where domestic courts were unwilling or unable to ensure accountability for crimes such as genocide, war crimes and crimes against humanity. The existence of the Court, and the authority vested in it, should create an obligation for the national courts of States parties to the Rome Statute to address any risk of impunity for mass atrocity crimes committed within their respective territories, whenever and by whomsoever committed.

77. Any attempt by the Court to exercise its jurisdiction with scant regard for the jurisdiction of national courts would make it susceptible to the vagaries of international and domestic politics, as demonstrated by some of its recent cases. States parties to the Rome Statute might work to prevent such susceptibility but, in the interest of maintaining its authority and credibility, the Court should ensure that its jurisdiction remained complementary to that of national courts. The ongoing deliberations on the activation of the Court's jurisdiction over the crime of aggression were indicative of the challenges in that regard.

78. Similarly, if national courts applied the principle of universal jurisdiction too extensively and in an extraterritorial manner, they could become open to international and domestic political influence, thus complicating relations between the executive and judiciary organs of States at the international and national levels. Arbitrary judgments concerning the competence of national judicial processes in the application of universal jurisdiction must be avoided, and the courts of certain States should not be seen as more equal than those of others in that regard. Doing so would undermine the objectives of justice and fairness

that the principle of universal jurisdiction was intended to achieve.

79. After six years of work by the Working Group, the Committee might now need to seriously consider the future course of action with a view to facilitating constructive deliberations instead of the repetition of statements in the plenary and the Committee.

80. **Mr. Luna** (Brazil) said that, as a basis for jurisdiction, universal jurisdiction was of an exceptional nature compared with the more consolidated principles of territoriality and nationality. Although the exercise of jurisdiction was primarily the responsibility of the State concerned in accordance with the principle of the sovereign equality of States, combating impunity for the most serious crimes was an obligation set out in numerous international treaties. Universal jurisdiction should be exercised only in full compliance with international law; it should be subsidiary to domestic jurisdiction and limited to specific crimes; and it must not be exercised arbitrarily or in order to fulfil interests other than those of justice.

81. A shared understanding of the scope and application of universal jurisdiction was necessary in order to avoid its improper or selective application. In that connection, his delegation welcomed the Working Group's activities and supported an incremental approach in its discussions. The Working Group should continue to seek an acceptable definition of the concept and could also consider the kinds of crimes to which such jurisdiction would apply, as well as its subsidiary nature. At the appropriate time, it should also consider whether the formal consent of the State where the crime had taken place and the presence of the alleged criminal in the territory of the State wishing to exercise jurisdiction were required.

82. One of the most contentious issues was how to reconcile universal jurisdiction with the jurisdictional immunities of State officials. At the current stage of discussion, it would be premature to consider the adoption of uniform international standards on the matter. Brazilian legislation recognized the principles of territoriality and nationality as bases for exercising criminal jurisdiction. Its courts could exercise universal jurisdiction over the crime of genocide and the crimes, such as torture, which Brazil had a treaty obligation to suppress. Under Brazilian law, it was necessary to enact national legislation to enable the exercise of universal jurisdiction over a specific type of crime; such jurisdiction could not be exercised on the basis of customary international law alone without violating the principle of legality. The Committee should seriously consider the possibility of requesting the International

Law Commission to study some or all of the issues involved in the subject of universal jurisdiction.

83. **Mr. Ly** (Senegal) said that his country's Code of Criminal Procedure authorized the exercise of universal jurisdiction for other crimes in addition to genocide, crimes against humanity and war crimes, such as attacks on State security, counterfeiting, acts of terrorism and torture. According to Senegalese law, the accused must be present in Senegalese territory, either under arrest or after extradition, or one of his or her victims must reside in Senegal. The basis for universal jurisdiction consisted of the instruments the country had ratified, namely the four Geneva Conventions of 1949, the international conventions on torture, forced disappearance and the prevention and punishment of the crime of genocide and the Rome Statute.

84. Questions remained about universal jurisdiction, particularly concerning the type of crimes it covered and the scope of its application. It must be exercised in good faith, not in a selective or abusive manner, and in line with the principles of international law, including State sovereignty, non-interference in the internal affairs of States and the sovereign equality of States. Complementarity, too, should come into play, meaning that universal jurisdiction could be exercised only when States could not or would not investigate or prosecute the alleged perpetrators of crimes. Domestic courts had the primary responsibility to carry out such investigations or prosecutions.

85. **Mr. Shi Xiaobin** (China) said that the importance of eliminating impunity and achieving justice was generally recognized. However, the international community was still far from a consensus on the existence of general universal jurisdiction in international law, as well as on its definition, scope and conditions and procedures of application. States differed considerably in their views concerning which crimes should be subject to universal jurisdiction, the sole exception being piracy. Relevant rules of customary international law had yet to be identified. Discussions at the current time should therefore focus on ways to ensure that States applied universal jurisdiction prudently, so as to deter its abuse and to strike a necessary balance between combating impunity and maintaining stability in international relations. Attention should be paid to the distinction between universal jurisdiction and the obligation to extradite or prosecute envisaged in the international treaties on combating serious crimes, and between universal jurisdiction and the jurisdiction exercised by international judicial bodies under specific treaties.

86. The establishment and exercise of universal jurisdiction should be in line with the purposes and principles of the Charter of the United Nations and the norms of international law and should not violate State sovereignty, interfere in the internal affairs of State or infringe the immunity of States, State officials and diplomatic and consular personnel.

87. In view of the great divergence of views among countries concerning the scope and application of the principle of universal jurisdiction, China suggested that the Committee should review whether it was necessary to continue its consideration of the item.

88. **Mr. Al Nasser** (Saudi Arabia) said that the principle of universal jurisdiction had been formulated with the objective of fighting impunity. However, clear standards and mechanisms had yet to be put in place, and Member States had drawn attention to other formal and substantive obstacles. The principles set forth in the Charter of the United Nations and international law, such as the sovereignty equality of States and non-interference in internal affairs, must be upheld. Any attempt to apply universal jurisdiction without regard for those principles would be counterproductive and would leave the door open for politicization. Any national law that was inconsistent with the Charter and international law must not be recognized. Moreover, the enormous diversity in how judgments in national courts were applied militated against the successful exercise of universal jurisdiction. All Member States should continue exploring ways to apply universal jurisdiction in order to achieve their shared goal of finding an effective way to combat impunity.

*The meeting rose at 1.05 p.m.*