



General Assembly

Seventy-fourth session

Official Records

Distr.: General
2 January 2020

Original: English

Sixth Committee

Summary record of the 16th meeting

Held at Headquarters, New York, on Wednesday, 16 October 2019, at 3 p.m.

Chair: Mr. Jaiteh (Vice-Chair) (Gambia)

Contents

Agenda item 84: The scope and application of the principle of universal jurisdiction
(*continued*)

This record is subject to correction.

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

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

19-17916 (E)



Please recycle



In the absence of Mr. Mlynár (Slovakia), Mr. Jaiteh (Gambia), Vice-Chair, took the Chair.

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

Agenda item 84: The scope and application of the principle of universal jurisdiction
(continued) (A/74/144)

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

2. **Mr. Singto** (Thailand) said that application of the principle of universal jurisdiction required a sound legal basis consistent with the principles and rules of international law, in order to prevent its abuse or misuse for political purposes. It especially lent itself to addressing transnational crimes such as terrorism, piracy, transnational organized crime and human trafficking. Thailand believed that the judicious and responsible application of the principle of universal jurisdiction over the most serious crimes could help to bring perpetrators to justice and end impunity, and had therefore adopted laws to establish universal jurisdiction over serious criminal offences relating to national security, terrorism, money-laundering, counterfeiting, piracy, robbery, indecency, transnational organized crime, human trafficking and offences relating to illegal, unreported and unregulated fishing.

3. National judicial systems should be strengthened. Where crimes did not fall within the scope of universal jurisdiction, the perpetrators should be prosecuted by the State in the territory of which the crimes had been committed or by the State whose nationals had fallen victim to such crimes. In that regard, Thailand complied fully with its obligation to extradite or prosecute as required by international treaties and bilateral agreements to which it was a party.

4. There was a need for a clear definition and more clarity on the scope of universal jurisdiction. A distinction must be drawn between the obligation to extradite or prosecute, as required by international treaties, and the principle of universal jurisdiction. His country therefore welcomed the decision of the International Law Commission to include the topic of

universal criminal jurisdiction in its long-term programme of work.

5. **Mr. Arrocha Olabuenaga** (Mexico) said that the characteristics of the concept of universal criminal jurisdiction must be clearly defined. In his delegation's view, universal jurisdiction referred to the ability of each State to exercise jurisdiction over international crimes without the existence of any of the traditional grounds for jurisdiction under criminal law. In current international practice, there was little agreement on which crimes were subject to universal jurisdiction. In addition to international crimes such as genocide, war crimes, crimes against humanity, crimes of aggression and piracy, which most countries recognized, many countries also applied universal jurisdiction to offences relating to, among other things, health, the environment, corruption and tax evasion.

6. Only international crimes which the entire community of States had an interest in prosecuting and punishing the perpetrators thereof should fall within the material scope of application of universal jurisdiction. Indeed, the authority to prosecute crimes without any link of territoriality or nationality stemmed from the breach of universally shared values or *erga omnes* norms or from the legal interest that all countries had in punishing the perpetrators of crimes that shocked the conscience of all humanity. As a corollary, crimes subject to prosecution in national courts on the basis of territoriality, nationality or "effects", particularly transnational crimes, should not be considered subject to universal jurisdiction.

7. On the other hand, Mexico agreed with many other countries that universal jurisdiction was an exceptional and complementary tool which should operate only in cases where national courts were unable or lacked the political will to act. It should therefore apply only as a last resort and as a complement to the principle of *aut dedere aut judicare*. Heads of State retained their immunity before foreign courts, including those claiming to exercise universal jurisdiction, except where the State with primary criminal jurisdiction permitted the involvement of such a court. In the ensuing discussions, national courts should be given pride of place as the principal guardians of international values.

8. The International Law Commission should include the topic of universal criminal jurisdiction in its programme of work.

9. **Mr. Lasri** (Morocco) said that the principle of universal jurisdiction was, above all, a criminal justice tool that complemented the jurisdiction of national courts. Its purpose was to combat impunity and suppress the most serious offences under international law. His

Government's efforts to combat such offences had their basis in the Constitution.

10. Since Morocco had signed the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 2014, a United Nations delegation had made an initial visit to the country in 2017 regarding the establishment of a national preventive mechanism. Under the Criminal Code, which had been amended in 2018, torture and human trafficking had been criminalized and a national preventive mechanism had been established for each of those offences. A parliamentary committee on justice, legislation and human rights was studying a bill to further amend the Code, whereby genocide, crimes against humanity and war crimes would also be defined in detail and criminalized.

11. His delegation wished to recall that recourse to universal jurisdiction ought to be rational, measured, responsible and in keeping with international law; that the principles of national sovereignty and non-interference in the internal affairs of States should not be infringed by the abuse or misuse of the principle of universal jurisdiction; and that the role of judicial cooperation with regard to extradition was recognized and even reinforced with the principle of the primacy of international conventions over national laws in the country's Code of Criminal Procedure. Morocco had signed 65 bilateral treaties on extradition and judicial assistance.

12. **Mr. Kayinamura** (Rwanda) said that his Government was supportive of mechanisms that could help to fight impunity and afford justice to victims of heinous crimes that affected the international community. In that connection, Rwanda commended the Member States that had extradited or prosecuted persons who had participated in the genocide carried out against the Tutsi in 1994, although it regretted that some of the perpetrators, including nine who had been indicted by the International Criminal Tribunal for Rwanda, were still at large.

13. While the report of the Secretary-General (A/74/144) provided relevant information to guide the discussions on the topic, it contained little about abuse and misuse of the principle of universal jurisdiction. It was worth noting that the application of the principle of universal jurisdiction had been placed on the Committee's agenda at a time when some countries had fallen victim to the abuse and misuse thereof. Such abuses, which had undermined the credibility of the international criminal justice system, were continuing. It was unfortunate that State practice showed that some non-African States were using universal jurisdiction to

indict some persons and to exonerate others, arbitrarily. In order to prevent such abuses, agreement must therefore be reached on specific safeguards and conditions to regulate the assertion of universal jurisdiction, which should be exercised with due regard for other principles of international law. A balance must be struck between ending the culture of impunity and preventing those abuses. Where political manipulation was suspected, a system should be put in place to allow aggrieved parties to appeal against orders by judges to indict or issue international arrest warrants for the leaders of other countries. Individuals and States should be able to conduct their business as usual until such a review process was completed. Otherwise, powerful States or politicized judges from those States might stifle smaller countries or the leaders thereof.

14. Rwanda was among the African countries that had used the African Union Model National Law on Universal Jurisdiction over International Crimes as a template to develop legislation to suit its domestic circumstances and that was harmonized with the laws of other countries, thereby minimizing potential clashes similar to those brought about by other countries' laws on universal jurisdiction.

15. **Mr. Furdora** (Cuba), affirming his Government's firm commitment to the fight against impunity for crimes against humanity, said that the principle of universal jurisdiction should be discussed by all Member States within the framework of the General Assembly, with the primary aim of ensuring that it was not applied improperly. His delegation was concerned about the unwarranted, unilateral, selective and politically motivated exercise of universal jurisdiction by the courts of developed countries against natural or legal persons from developing countries, with no basis in any international norm or treaty. It also condemned the enactment by States of politically motivated laws directed against other States, which had harmful consequences for international relations.

16. The General Assembly's main objective with regard to universal jurisdiction should be the development of an international set of rules or guidelines in order to prevent abuse of the principle and thereby safeguard international peace and security. Universal jurisdiction should be exercised by national courts in strict compliance with the principles of sovereign equality, political independence and non-interference in the internal affairs of other States. Universal jurisdiction should not be used to diminish respect for a country's national jurisdiction or for the integrity and values of its legal system, nor should it be used selectively for political ends in disregard of the rules and principles of international law. The exercise of

universal jurisdiction should be limited by absolute respect for the sovereignty of States. It should be exceptional and complementary in nature, and should be invoked only in cases 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 high-ranking officials must not be called into question, nor should long-standing and universally accepted international principles and norms be violated under the cover of universal jurisdiction.

17. Cuban criminal law provided for the possibility of prosecution and punishment of Cuban nationals, foreigners and stateless persons who committed an offence that constituted a crime against humanity, human dignity or public health or that was prosecutable under the terms of an international treaty.

18. **Ms. Mwangi** (Kenya), affirming her Government's unwavering commitment to the rule of law and the fight against impunity, said that universal jurisdiction must be considered together with other mechanisms of deterrence in addressing the challenges posed by heinous crimes, a view that was also in line with the commitment of the African Union to the universality principle as it applied to international criminal justice. Under the International Crimes Act of 2008, genocide, crimes against humanity and war crimes were punishable in Kenya. The Act also enabled cooperation between Kenya and the International Criminal Court. The presence of the accused, however, was a strict requirement for the prosecution of offences committed by foreign nationals abroad. In 2012, Kenya had amended its Merchant Shipping Act in order to grant its courts extraterritorial jurisdiction to combat piracy in the Indian Ocean and facilitate the implementation of article 86 of the United Nations Convention on the Law of the Sea and the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, among other instruments.

19. While there was broad agreement that serious crimes such as torture and genocide must not go unpunished, there was divergence with regard to the potential for the selective and arbitrary application of universal jurisdiction and abuse and misuse of the principle. If not carefully defined and regulated within the norms and principles of international law, its unilateral application by States could result in abuse and pose a threat to international peace and security. The basic concepts, exact parameters, scope and limitations

of universal jurisdiction and its application must be clearly set out. There must also be a willingness to make adjustments in response to changing global circumstances and social realities.

20. Her delegation continued to believe that the United Nations was the best venue for addressing the divergent views on the type and range of crimes for which the doctrine could be invoked. It trusted that the International Law Commission would be able to clarify the scope of the universality principle and propose guidelines for its proper application.

21. **Mr. Calderón** (El Salvador) said that the principle of universal jurisdiction played a key role in combating impunity in the case of crimes such as torture, genocide and crimes against humanity, and in upholding human rights. It was therefore important for national laws to be better aligned and harmonized, in order to ensure that the principle was properly implemented and that national courts were able to apply it for human rights violations. Above all, universal jurisdiction was the criminal jurisdiction predicated exclusively on the nature of the offence, irrespective of the place where it was committed, the nationality of the alleged offender, the nationality of the victim or any other link with the State exercising the jurisdiction. There was therefore no requirement for a jurisdictional link of territoriality, of nationality or of national interest with the facts involved, since the ultimate goal was to protect the human rights of people who had been injured by international crimes affecting the entire international community.

22. El Salvador acknowledged that it was important to have a solid normative foundation for the application of the principle of universal jurisdiction, in order to protect those rights, especially in the case of serious crimes. In that connection, a number of rights had been enshrined in the Constitution as being fundamental for human dignity and the proper legal framework and constitutional jurisprudence had been developed for their realization. In 2018, for example, the Government had adopted a policy establishing the criteria and guidelines for the investigation and prosecution of war crimes and crimes against humanity committed during the armed conflict in El Salvador, and to uphold the right of victims to justice and reparation. That policy was in line with a number of international legal instruments that had been ratified by El Salvador and incorporated into its domestic law. Overall, the country had made significant progress in applying the principle of universal jurisdiction and combating impunity.

23. **Mr. Konfourou** (Mali) said that the scope and application of the principle of universal jurisdiction was

an especially important agenda item for his country, which was slowly recovering from the multidimensional crisis it had been facing since 2012. The principle of universal jurisdiction was a key tool for strengthening the system of international justice and suppressing the kinds of serious violations of international law that were frequently committed by terrorist and drug-trafficking groups in Mali. It had been incorporated into the legal order of Mali, including in its Criminal Code and Code of Criminal Procedure and in legislation passed in 2012 against human trafficking and the smuggling of migrants. In line with its international commitments, Mali had put in place a national legal framework to reinforce its efforts to combat terrorism, including through the punishment of perpetrators and the protection of victims. In that connection, his Government welcomed the decision of the International Criminal Court to convict the Malian terrorist Ahmad al-Faqi al-Mahdi for the destruction of mausoleums and historical sites in Timbuktu during the occupation of the northern part of the country by terrorists in 2012.

24. The principles of sovereign equality of States, non-interference in the internal affairs of States and the immunity of State officials, especially Heads of State and Government, must be respected in the exercise of universal jurisdiction. Therefore, the scope and application of the principle of universal jurisdiction must be more clearly defined.

25. **Mr. Molefe** (South Africa) said that his delegation continued to believe that the principle of universal jurisdiction played an important role in ensuring that perpetrators of the most serious crimes were not able to escape justice. However, it acknowledged that while universal jurisdiction was a powerful tool against impunity, it often came with a number of challenges, including that of cooperation between States, which was essential to the successful prosecution of alleged offenders. His country was therefore working with other States to develop a multilateral convention on mutual legal assistance and extradition for serious international crimes. Universal jurisdiction also presented a challenge to the sovereignty and territorial integrity of States and should thus be approached with the necessary political sensitivity, in particular to avoid allegations of selective application. The issue of its impact on immunities must also be approached prudently.

26. South Africa and other African States were looking at ways to overcome the impasse in the Sixth Committee on the application of the principle of universal jurisdiction. A technical study by the International Law Commission could provide clarity on the legal aspects of the principle. The Committee, however, remained the most appropriate forum for

political discussions on the abuse or misuse of the principle. The two processes could thus run in parallel. The principle of universal jurisdiction was appropriate for addressing specific international crimes of a serious nature and discussions on the topic should not be allowed to falter.

27. **Mr. Proskuryakov** (Russian Federation) said that the report of the Secretary-General (A/74/144) had demonstrated, yet again, the absence of consensus on the concept of universal jurisdiction and its application. The exercise of universal jurisdiction must accord with States' obligations under international law, in particular those relating to the immunity of State officials.

28. The Russian Federation, while a defender of the independence of the judiciary, did not wish to see situations in which any given court ruling could place a State in breach of its international obligations. In order to combat impunity, it was important to strengthen the relevant mechanisms for criminal justice cooperation, including through multilateral agreements on the exchange of information, cooperation between investigative bodies and law enforcement capacity-building.

The meeting rose at 4 p.m.