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Chair: Ms. Al-Thani . . . . . (Qatar)

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21-15339 (E)

The meeting was called to order at 10.05 a.m.

Agenda item 86: The scope and application of the principle of universal jurisdiction (*continued*) (A/76/203)

1. **Mr. Klussmann** (Germany) said that universal jurisdiction was an effective and proportionate tool for pursuing accountability for the most serious crimes of international concern. While Germany would prefer the most serious crimes under international law to be tried by international tribunals, in particular the International Criminal Court if the applicable complementary criteria were met, it played its part in ensuring accountability for such crimes, with German courts currently hearing cases regarding torture perpetrated in Syrian prisons by the Syrian regime and crimes committed by members of Da'esh.

2. Since 2002, German prosecutors had been able under German law to exercise universal jurisdiction in respect of the crimes of genocide, crimes against humanity and war crimes committed outside Germany, regardless of the nationality of the victim or the perpetrator or of any other connection to Germany. However, there was no provision for the criminal liability of companies or other legal persons, and the possible applicability of immunity might need to be considered. Furthermore, in order to be tried before a German court, a defendant must be present in Germany; trials in absentia were not permitted in the German legal system. However, prosecutors and police could initiate preparatory investigations in order to preserve evidence and support a swift commencement of proper proceedings once the accused entered Germany.

3. Special police and prosecution units had been set up to investigate international crimes. The Federal Prosecutor General often initiated investigations into international crimes based on information received from the German migration authority. It also conducted structural investigations, gathering and preserving evidence of large-scale crimes for use in future proceedings. One such investigation, which had been under way since 2011, related to crimes against humanity and war crimes committed by members of the Syrian regime, including the alleged use of chemical weapons.

4. On 24 February 2021, a German court had sentenced a member of the Syrian intelligence services to four years and six months imprisonment for abetting crimes against humanity. The verdict against the alleged main perpetrator in the case, who was charged with overseeing the torture of more than 4,000 people, was expected in the coming months. In another case being heard in Germany, a Syrian doctor was accused of having committed crimes against humanity, including torture and murder in Syrian prisons. Further trials and convictions concerned persons associated with Da'esh, the Nusrah Front and other terrorist organizations in Syria and Iraq who had returned to Germany. In addition to being terrorist organizations, those associations had acted as organized non-State armed groups, meaning that they qualified as parties to non-international armed conflicts under international humanitarian law. As such, it was possible to cumulatively prosecute and hold foreign terrorist fighters accountable for war crimes, crimes against humanity and genocide in addition to terrorism-related offences.

5. The competent German authorities implemented the concept of cumulative prosecution to ensure full accountability. For example, a German national was currently being tried for her alleged involvement in war crimes while she was a member of Da'esh, for killing a young Yazidi girl, and a foreign national had been extradited to Germany to face charges of genocide committed against the Yazidi community in Iraq. Cumulative prosecution was particularly useful in relation to the acts of the spouses of foreign terrorist fighters. It had often proven difficult to gather sufficient evidence to prosecute those women for membership in a terrorist organization, but German courts had found that occupation of an apartment from which victims of Da'esh had fled could constitute the war crime of appropriation of property. The courts had also found a mother who had handed her own child over to a Da'esh military training camp guilty of the war crime of conscripting or enlisting children. Several such cases had been tried in German courts in the last few years, resulting in significant sentences.

6. German prosecutors were currently conducting more than 100 investigations regarding international crimes. The message was clear: there was no safe haven in Germany for perpetrators of international crimes.

7. **Mr. Tun** (Myanmar) said that universal jurisdiction was the most effective means of ending impunity for those who committed serious violations of international humanitarian law and other crimes of an international nature, such as crimes against humanity and genocide. In February 2021, the military of Myanmar had staged an illegal coup d'état under the pretext of electoral fraud. When people had come out onto the streets to protest, exercising their rights to freedom of speech and of assembly, the military had responded disproportionately, using live ammunition against the protestors. Since then, large numbers of civilians had been murdered, arrested and sentenced without fair trials.

8. His delegation commended the Secretary-General for including the work of the Independent Investigative Mechanism for Myanmar in his report (A/76/203). The preliminary view, based on an analysis of the information collected by the Mechanism, was that since seizing power the military had committed crimes against humanity, including persecution, imprisonment, sexual violence, enforced disappearances and torture. The Government had therefore lodged a declaration with the registrar of the International Criminal Court, accepting the Court's jurisdiction with respect to international crimes committed in Myanmar since 2002, as the legal system and courts of Myanmar were incapable of administering justice against the Myanmar military.

9. The lack of respect for international law had its roots in the decades-long impunity enjoyed by the military of Myanmar. The Government of Myanmar could not bring an end to that impunity and hold the perpetrators of such heinous crimes accountable all by itself. It would therefore continue to work closely with the international community, including the Association of Southeast Asian Nations (ASEAN), the United Nations, the International Criminal Court and other countries to hold the perpetrators to account, bring justice to victims and strengthen respect for peremptory norms of general international law. Further strengthening of the work of the working group on the current agenda item would be particularly important in that connection.

10. **Mr. Kayinamura** (Rwanda) said that 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. Rwanda fully supported the role of universal jurisdiction in combating impunity for and punishing the perpetrators of genocide, war crimes and crimes against humanity and affording justice to victims. It regretted that several fugitives who had participated in genocide in Rwanda, including individuals who had been indicted by the International Criminal Tribunal for Rwanda, continued to enjoy safe haven in some Member States. His Government had sent more than 1,000 indictments to Member States, but very few had responded.

11. In order to prevent abuse of the principle, agreement must 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.

12. 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.

13. **Mr. Nyanid** (Cameroon) said that there was a shared responsibility to ensure that the perpetrators of the most serious crimes were held accountable. At the same time, core principles of international relations, such as the sovereign equality of States, non-interference in their internal affairs and the immunity of State officials, must be safeguarded. Cameroon was concerned by some countries' understanding and application of universal jurisdiction, as they seemed to conflate the principle with the freedom to judge every serious crime committed abroad, regardless of where it was committed or of the nationalities of the perpetrator and victim. Attributing primary responsibility for prosecuting and punishing perpetrators to the forum State flew in the face of State sovereignty.

14. Universal jurisdiction should be exercised with respect for established procedures, and applied in a manner consistent with the rule of law and the fundamental principles of criminal justice, including *nullum crimen sine lege, nulla poena sine lege*, due process and the presumption of innocence. It should be invoked only for the most serious crimes and atrocities, and should not be used for political ends. In accordance with the principle of subsidiarity, a State with national or territorial jurisdiction should be given the first opportunity to investigate crimes and, if appropriate, prosecute the perpetrators. Universal jurisdiction should apply only as a mechanism of last resort when a State was either unwilling or unable to prosecute the perpetrators. Even then, a State asserting universal jurisdiction must possess a clear connection to the facts or the parties concerned, such as the presence in its territory of the accused or the victims. Universal jurisdiction should not be invoked to justify prosecutions in absentia or unwarranted interference in the internal affairs of other States.

15. Assertion of universal jurisdiction outside of those circumstances undermined inter-State relations, especially as there was not yet widespread *opinio juris* concerning the principle, and a number of States remained persistent objectors to it. In the exercise of universal jurisdiction, the functional immunity of public officials should not apply for the most serious crimes. However, it was the State of nationality of an official which had the power to waive such immunity in order to allow justice to be delivered. The immunity *ratione personae* of the highest official of the State, while that official was in office, should be preserved as a precondition for the orderly conduct of both domestic and international affairs and for any mediation or peacebuilding efforts. The turbulence that might otherwise be caused at the highest level of government could create the opposite effect and result in the worst injustices for the people who were meant to be protected, reflecting the maxim *summum jus, summa injuria*.

16. For universal jurisdiction to apply, the power of the State to establish jurisdiction must be solidly based on international law, and not solely on the national laws of the State invoking it. Another State could not claim jurisdiction unless the State in which the crime had been committed demonstrated that it was neither willing nor capable of carrying out an investigation or prosecution. There could be a prescription that a State claiming universal jurisdiction should first obtain the consent of the State in which the crime had been committed and the State having a nationality link with the crime.

17. Cameroon was waging war against impunity at all levels and was a party to several regional and international instruments that applied the principle of universal jurisdiction. Under its Criminal Code and Code of Criminal Procedure, national courts had jurisdiction to hear cases concerning certain offences, regardless of the nationality of the perpetrator or the victim or of where the crime was committed.

18. **Mr. Pieris** (Sri Lanka) said that universal jurisdiction was an important tool for fighting impunity and preventing egregious criminal acts. There was currently no international legal instrument that defined the principle, but in accordance with customary international law, it was applied to crimes such as genocide, war crimes, aggression, crimes against humanity, piracy, slavery and trafficking in persons. The principle of universal jurisdiction had been incorporated into the United Nations Convention on the Law of the Sea with regard to piracy and also into the Geneva Conventions. The principles enshrined in the Charter of the United Nations, in particular the sovereign equality of States and non-interference in the internal affairs of States, should be strictly observed in any judicial proceedings involving the exercise of universal jurisdiction.

19. Sri Lanka was deeply concerned about the misuse of universal jurisdiction; the principle must not be invoked to justify any violations of the principles set out in the Charter or to further political agendas, and it must be applied in consonance with other principles of international law, including State sovereignty and the territorial integrity of States. States should continue to seek the right balance between respect for sovereign equality and the difficult task of bringing perpetrators of crimes to justice. To bring an end to impunity for heinous crimes, they should incorporate their international obligations into their municipal laws and cooperate to provide any assistance that was requested in relation to prosecutions.

20. The principle of universal jurisdiction was based on the notion that certain crimes were so harmful to the international interest that States were not only entitled, but were obliged, to bring proceedings against their perpetrators, regardless of where the crimes took place or of the nationality of their perpetrators. It was intended to legitimize the controversial idea that national courts should be able to hear charges against anyone within their jurisdiction who was alleged to have committed a serious crime under international law.

21. In view of the absence of adequate means to ensure that those charged with international crimes were held accountable, enlisting national courts in the quest for international justice was a mechanism that must be carefully considered. National courts could collectively provide far-reaching jurisdiction, having, for example, the potential to reach former government officials, including Heads of State, who would otherwise avoid accountability by claiming that they had acted in an official capacity. There would be no statute of limitations on the prosecution of crimes committed by such officials, and States could refuse to extradite alleged perpetrators when doing so might entail subjecting them to the death penalty, or any cruel, inhuman or degrading punishment.

22. The discussion of universal jurisdiction was not intended to undermine the importance of a positivist inquiry into the valid legal source of domestic jurisdiction, nor was it an appeal to judges to ignore prescribed jurisdictional boundaries. Rather, the intent was to expose the limitations of a purely positivist approach to jurisdiction by judges and practitioners in universal jurisdiction cases. Ultimately, it made little sense to explain universal jurisdiction in terms of sovereignty or inter-State comity. Rather than trying to

force the principle into a traditional State-centred account, it made more sense to see it as part of a broader shift and the recognition of a rival account of international affairs.

23. **Mr. Phiri** (Zambia) said that States had grappled with the principle of universal jurisdiction for a dozen years and had reached consensus over time on some of its fundamental elements. They had largely agreed that the principle was well established in international law and that certain crimes were so detrimental to the international order and interests that States were not only entitled, but obliged, to bring proceedings against their perpetrators. There was broad agreement that States with a close link to such crimes had an obligation to extradite or prosecute the perpetrators, regardless of where the crime was committed or the nationality of the perpetrator or the victim. By and large, States also acknowledged that universal jurisdiction was a complementary tool intended to prevent impunity in cases where the territorial State was unable or unwilling to exercise jurisdiction.

24. However, international criminal law was evolving and legal scholars had recently been considering new questions related to universal jurisdiction, such as whether the principle was applicable only to situations of armed conflict or whether it also applied to more covert crimes committed in other contexts, and whether it should apply to those who had conducted biological experiments on human beings or intentionally caused great suffering or serious injury, particularly when such acts were part of a widespread or systematic assault against a civilian population. The Committee needed to make tangible progress on the fundamental aspects of universal jurisdiction, so that it could devote time to such new concerns.

25. To end impunity and preserve global peace and security, as well as to achieve sustainable development, all Member States must domesticate the relevant treaties and enact relevant laws that incorporated the principles of universal jurisdiction. In line with its commitment to upholding the principles and values enshrined in conventions and treaties to which it was a signatory, Zambia was determined to cooperate with and preserve the integrity of the international criminal justice system, including the International Criminal Court and the International Residual Mechanism for Criminal Tribunals. The Government of Zambia had initiated a reform of the country's criminal justice system aimed, inter alia, at building a more comprehensive legal framework that adequately incorporated key legal principles, including universal jurisdiction.

26. Although the item of universal jurisdiction had been on the Committee's agenda since 2009, when the African Group had raised the justifiable concern that use of the principle appeared to be politically motivated or overtly targeted at specific countries or regions, little progress had been made. The Committee had yet to reach consensus on whether incumbent Heads of State and other high-ranking officials could be prosecuted in foreign and national courts, or on the extent of the territorial jurisdiction of international criminal courts, or on how to prevent the misapplication of the principle of universal jurisdiction and other similar principles of customary international law. However, despite the lack of progress, the item should remain on the Committee's agenda and the Committee should resist the temptation to pass it over to any other international body.

27. **Mr. Hollis** (United Kingdom) said that his delegation understood universal jurisdiction to refer to national jurisdiction established over a crime irrespective of the alleged place of perpetration, the nationality of the alleged perpetrator, the nationality of the victim, or other links between the crime and the prosecuting State. Universal jurisdiction should be distinguished from the jurisdiction of international judicial mechanisms, and from other categories of extraterritorial jurisdiction. On the other hand, there were significant overlaps between universal jurisdiction and "extradite or prosecute" regimes, which required careful scrutiny.

28. There were practical constraints on delivering justice through the exercise of universal jurisdiction. The primacy of the territorial approach to jurisdiction reflected the fact that the authorities of the State in whose territory an offence was committed were generally best placed to prosecute that offence, as it was easier for them to secure the evidence and witnesses necessary for a successful prosecution. Consequently, there were only a small number of offences over which the courts of the United Kingdom could exercise jurisdiction when there was no apparent link to the country.

29. The question of whether universal jurisdiction should apply to particular crimes was best approached collaboratively by States, through treaties, with a focus on how those crimes could be addressed effectively. The United Kingdom continued to doubt whether the issues faced by States in respect of universal jurisdiction would be best addressed by the International Law Commission taking the topic forward. However, there would be merit in reaching consensus on the definitional issues.

30. **Ms. Abu-ali** (Saudi Arabia) said that, in view of the diversity of State practice with regard to the

application of the principle, it was important to examine the laws and measures enacted by Member States. The principle should be invoked only in specific situations, namely in respect of grave crimes and when the territorial State was unwilling or unable to exercise jurisdiction. Its application should not go beyond the principles enshrined in the Charter of the United Nations and international law. Nor should universal jurisdiction be invoked to undermine the principles of State sovereignty, non-interference in the internal affairs of States and the equality of States. Any recourse to universal jurisdiction without regard for those fundamental points would politicize the principle.

31. **Ms. Villalobos Brenes** (Costa Rica) said that increasing conflict and violence around the world, a trend exacerbated by the coronavirus disease (COVID-19) pandemic, heightened the threat of atrocity crimes. It was therefore important to strengthen both national and international justice mechanisms. The principle of universal justice, being one more tool for ensuring accountability and avoiding impunity, continued to be highly relevant in that regard. To allay the concern expressed by some delegations regarding the scope of application of universal jurisdiction, it was useful to bear in mind that every State was responsible for affording justice to victims and ensuring that the perpetrators of crimes were brought to justice.

32. The Geneva Conventions of 12 August 1949, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Rome Statute of the International Criminal Court contained an obligation to extradite or prosecute the perpetrators of the crimes set out therein. However, when national jurisdiction failed, universal jurisdiction should apply. States should incorporate the principle into their national laws to in order to prevent impunity. Universal jurisdiction was a mechanism of last resort and, like the jurisdiction of the International Criminal Court, should complement, rather than replace, national jurisdiction. Universal jurisdiction was an exceptional mechanism; however, owing to the gravity of some crimes, primarily those related to human rights, it was a judicial remedy for ensuring that international fugitives were brought to justice.

33. In the last 20 years, Costa Rica had been making progress on incorporating universal jurisdiction into its criminal law. First, it had eliminated the express prohibition on prosecuting Costa Rican citizens or foreigners for crimes committed outside its territory in cases of genocide, piracy and trafficking in slaves, women and children. It had subsequently expanded the set of crimes that could be prosecuted and punished in the country even though they had been committed elsewhere, to include international crimes such as terrorism and the financing of terrorism, torture, and trafficking in weapons, ammunition and explosives. In 2019, Costa Rica had added the majority of offences against public finances, such as administrative and transnational bribes, to the crimes subject to universal jurisdiction.

34. The current uncertainty surrounding the application of universal jurisdiction would dissipate when the International Law Commission completed its study on the topic “Universal criminal jurisdiction”, which was currently on its long-term programme of work. The Commission’s objective report would help countries to incorporate the principle into their laws.

35. **Mr. Panier** (Haiti) said that although universal jurisdiction had been considered a fundamental principle of international law since its inclusion in the Geneva Conventions of 1949, there was still no consensus on it within the community of States: while it could serve as a tool to combat impunity, it could also be used as a means of domination or of interference in the internal affairs of States.

36. There could be no justification for the most serious crimes, such as genocide, crimes against humanity and war crimes. In order to prevent impunity for such crimes, the exercise of universal or extraterritorial jurisdiction by foreign courts might be necessary, but it should be a last resort in the event of shortcomings in the judicial system of the country in which the crime had been committed. The principle of universal jurisdiction should not be used to justify any form of judicial imperialism, nor should it be abused for political purposes or applied in such a way as to undermine the fundamental principle of State sovereignty.

37. The domestic laws of States should be harmonized with international legal instruments relating to universal jurisdiction. The application of the principle of universal jurisdiction remained ambiguous and confusing. In Haiti, the law prohibited the extradition of Haitian nationals, and the Constitution provided that no Haitian national could be deported or forced to leave the national territory for any reason. At the international level, the Charter of the United Nations set out the principles of sovereign equality of States and non-interference in the internal affairs of States, while the Inter-American Convention on Extradition advocated the rejection of extradition requests in cases of offences committed outside the territory of the requesting foreign State.

38. It was clear that many States remained concerned about the scope and application of the principle of universal jurisdiction. His delegation hoped that the

debate in the Committee would help to forge a consensus and to clarify the ambiguities surrounding the issue.

39. **Mr. Ndoye** (Senegal) said that universal jurisdiction was one of the most effective tools for preventing and punishing serious crimes affecting the international community as a whole, as defined in the Rome Statute of the International Criminal Court, in that it allowed for the prosecution and judgment of cases involving such crimes. Considering that the exercise of universal jurisdiction remained a necessity in the fight against impunity for atrocity crimes, Senegal had incorporated it into its domestic legal system through the 2007 law amending the Code of Criminal Procedure, which gave Senegalese courts jurisdiction over cases involving genocide, crimes against humanity, war crimes and terrorist acts. It had also enacted a law in 2018 on combating money-laundering and the financing of terrorism, which gave Senegalese courts jurisdiction to try any natural or moral person prosecuted for crimes committed in the territory of a State party to the Treaty on the West African Economic and Monetary Union or the Treaty for the Establishment of the East African Community, or in a third State, provided that in the latter case such jurisdiction was stipulated in an international treaty.

40. In addition, Senegal was a party to several international legal instruments that gave the States parties the power to exercise universal jurisdiction when the State in which the perpetrator was located did not exercise such jurisdiction or extradite the perpetrator. It was a party, for example, to the International Convention for the Protection of All Persons from Enforced Disappearance, the International Convention for the Suppression of the Financing Terrorism, the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Corruption.

41. The application of the principle of universal jurisdiction must always be based on the principles of international law, including the non-violation of the sovereignty of States, non-interference in the internal affairs of States and the sovereign equality of States. The legitimacy and credibility of the principle of universal jurisdiction were strongly dependent on its application, which should always be in accordance with the fundamental principle of complementarity. Universal jurisdiction should thus be exercised only when States could not or would not investigate the alleged perpetrators of serious crimes.

42. **Mr. Lasri** (Morocco) said that the principle of universal jurisdiction offered an exception to the traditional rules of international criminal law, in that it enabled any State that had accepted that principle under the terms of a treaty to exercise extraterritorial criminal jurisdiction in respect of the perpetrators or victims of the most serious types of crime affecting the international community, regardless of the nationality of the perpetrators or victims of such crimes or the place where the crimes were committed. It therefore remained a fundamental tool for combating impunity and strengthening international justice.

43. Universal jurisdiction should be exercised in good faith, in keeping with the principles of international law, including State sovereignty, political independence and non-interference in the internal affairs of States. The principle of universal jurisdiction should be applied only in situations where a State did not have the capacity to exercise its sovereign right to try the perpetrators of certain offences. It should therefore remain complementary to, and not replace, the principle of national jurisdiction. It should only be invoked in respect of the most serious crimes in international law and should never be abused for political purposes.

44. The topic deserved to be examined in greater depth, without compromising the balance that must be struck between the need for justice and respect for the sovereign rights of States. Although the Moroccan legal system was based essentially on the principles of territorial and personal jurisdiction, it also encompassed a number of measures akin to the principle of universal jurisdiction. Apart from the Constitution, which contained provisions criminalizing the most serious offences affecting the international community, the amended Criminal Code contained a listing of those crimes, namely genocide, crimes against humanity and war crimes.

45. Morocco was a party to a number of international instruments containing that principle, including the four Geneva Conventions of 1949 and the Additional Protocols thereto, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Morocco had also signed more than 45 bilateral agreements and 5 regional conventions on mutual legal assistance in criminal matters and extradition. The principle of universal jurisdiction was an important complementary mechanism that could be used to fill a jurisdictional gap when a territorial State was unable or unwilling to exercise its jurisdiction. In such circumstances, all States, in keeping with their international obligations and their national laws, should cooperate with national and international courts to help them bring the perpetrators of serious international crimes to justice.

46. **Mr. Mainero** (Argentina) said that the most serious crimes affecting the international community as a whole must not go unpunished. It was the duty of States to exercise their criminal jurisdiction against those responsible for such crimes. The primary responsibility for investigation and prosecution lay with the States in whose territories crimes had been committed or with other States that had a connection to the crimes because of the nationality of either the perpetrator or the victims. Nonetheless, in circumstances where States could not or did not wish to exercise jurisdiction, other States without a direct link to the crime could fill the void through the exercise of universal jurisdiction. It was, however, an exceptional and supplementary tool that must be used in accordance with the relevant treaties and rules of international law. Although the principles of universal jurisdiction and *aut dedere aut judicare* might overlap in some cases, they were distinct concepts and should not be conflated.

47. Universal jurisdiction was a critical component of the international criminal justice system. However, its application without restrictions could generate conflicts of jurisdiction between States and subject individuals to possible procedural abuses or give rise to politically motivated prosecutions. It would therefore be useful to develop clear rules to guide the exercise of universal jurisdiction. His delegation welcomed the decision of the International Law Commission to include the topic in its long-term programme of work, as the Commission's examination of the topic should shed light on various significant aspects of the matter.

48. **Mr. Changara** (Zimbabwe), noting that deliberations on the agenda item had somewhat stalled, said that Member States should engage constructively to clarify the definition, scope and application of the principle of universal jurisdiction and to reach agreement as to which crimes should be subject to it. Universal jurisdiction should be exercised with the consent of, and in cooperation with, the relevant national judicial institutions. It should also be exercised in a cautious manner to avoid creating tension between States. The apparent misapplication of the principle against African officials raised questions regarding its selective use in violation of the Charter of the United Nations.

49. Universal jurisdiction should be exercised in good faith and with due respect for the basic principles of international law, including the sovereign equality of States, non-interference in their internal affairs and political independence. It was a mechanism of last resort, to be used only in cases in which national courts were unable or unwilling to act. Its scope and application should be consistent with the territorial jurisdiction of States and the immunity granted to Heads of State and Government and other senior officials under customary international law. International criminal law did not operate in isolation; it required cooperation between States, law enforcement organizations and judicial institutions. The credibility and legitimacy of universal jurisdiction hinged on the provision of effective redress and justice through the objective application of uniform rules.

50. At the international level, Zimbabwe was a party to the Geneva Conventions; at the continental level, its position on universal jurisdiction was informed by the Constitutive Act of the African Union, under which the Union had the right to intervene in a member State in respect of war crimes, genocide and crimes against humanity. Zimbabwe was also a party to the African Charter on Human and People's Rights, which gave effect to the foundational principles of universal jurisdiction.

51. At the national level, Zimbabwe did not have legislation relating expressly to universal jurisdiction but was not averse to promoting judicial cooperation in respect of crimes to which the principle applied, through mutual legal assistance under various extradition treaties to which it was a party.

52. **Mr. Taufan** (Indonesia) said that the absence of clarity and consensus as to the scope and application of the crucial principle of universal jurisdiction could lead to inappropriate, even abusive application of domestic law toward foreign nationals that would undermine fundamental principles of international law. It was vitally important to clarify all the conceptual ambiguities around the principle of universal jurisdiction, identify the crimes failing thereunder, and explore conditions for its application. The topic should therefore be addressed with caution.

53. Owing to the exceptional nature of the principle, its scope of application must be limited to only the most heinous crimes. It was important to distinguish between universal jurisdiction and the obligation to extradite or prosecute, which in many instances was more specific in scope, as enshrined in agreements between States. Universal jurisdiction should be exercised in accordance with due process of law and only as a last resort in cases in which a State that had jurisdiction was unable or unwilling to prosecute. Cooperation between States on legal and criminal matters was critical to the application of universal jurisdiction. Without such cooperation, no investigation or prosecution could take place.

54. Under its Penal Code, Indonesia could assert criminal jurisdiction over heinous crimes, such as piracy

and hijacking, regardless of where they took place and the nationality of the perpetrators or the victims.

55. **Mr. Proskuryakov** (Russian Federation) said that his country was committed to combating impunity for the most serious crimes under international law and noted the value of the principle of universal jurisdiction for bringing those who perpetrated such crimes to justice. However, the report of the Secretary-General (A/76/203) showed once again that there was a wide range of views on universal jurisdiction, the crimes to which it applied, which legal instruments provided for it, and the ways in which it was exercised. Until consensus was reached on the conditions for the application of the principle and its scope, States must exercise the utmost caution when applying the principle. There were many cases in which the arbitrary use of universal jurisdiction had complicated relations between States. The exercise of universal jurisdiction must accord with States' obligations under international law, in particular those relating to the immunity of State officials. Furthermore, there were other tools for combating crime besides universal jurisdiction. In that connection, it was important to strengthen treaty-based mechanisms for criminal justice cooperation, such as legal assistance, information exchange and cooperation between investigative bodies.

56. There had been no new developments in the debate on the agenda item over the past year. Given the continued differences of opinion among States, it was not even realistic to talk about the development of uniform standards and criteria for the exercise of universal jurisdiction or to expect the Committee to make progress in its examination of the topic.

57. **Ms. Solano Ramirez** (Colombia) said that the principle of universal jurisdiction was protected by the "bloc of constitutionality", which allowed treaties ratified by Colombia that recognized human rights and contained clauses related to the principle of universal jurisdiction to be applied in the country as constitutional norms, in line with article 93 of the Constitution. The principle of universal jurisdiction was not explicitly reflected in Colombian law. However, the Constitutional Court and the Supreme Court, in their jurisprudence, had recognized it as a treaty obligation, encapsulated in the various international instruments to which Colombia was a party that provided for the exercise of the principle. The Colombian courts had considered that the principle of universal jurisdiction had to do with the international obligations under international human rights law, international humanitarian law and international criminal law that allowed for the direct punishment of those responsible for the most serious human rights violations and grave breaches of international humanitarian law, owing precisely to the transcendental and potentially harmful nature of such universal offences.

58. The Colombian courts had indicated that, given the manner in which the principle of universal jurisdiction operated, its application could conflict with the principle of *ne bis in idem*, set out in article 29 of the Colombian Constitution. However, the Colombian Criminal Code recognized the principles of extraterritoriality of criminal law and exception to the prohibition of double jeopardy, to the extent that there were international instruments that relativized it. The principle of *ne bis in idem* was therefore not absolute since it might be limited when weighed against other constitutional rights or principles if they stemmed from international human rights law. According to the Constitutional Court and the Supreme Court, the principle of universal jurisdiction applied in the country only when expressly enshrined in a treaty and when the person being prosecuted was present within the geographical boundaries of the State, even if the crime had not been committed there. Universal jurisdiction had been expressly enshrined in several international conventions binding Colombia and in numerous judicial cooperation agreements signed by the State. Colombia had also signed various treaties that expressly recognized universal jurisdiction for the prosecution and punishment of crimes such as genocide, torture, terrorism and illicit drug trafficking.

59. As there was little agreement on the scope and application of the principle of universal jurisdiction, her delegation believed that the Committee should continue examining the issue and that the decision to establish a working group on the matter should be reiterated.

60. **Ms. Ighil** (Algeria) said that her delegation wished to reaffirm its strong commitment to combating impunity and promoting human rights, democracy, the rule of law and good governance. Although the principle of universal jurisdiction was a tool for ending impunity for grave crimes under international treaties, there continued to be fundamental differences of opinion regarding the crimes it covered and its scope and application, which was impeding efforts to arrive at a common understanding and definition of the principle. The principle should be considered a complementary mechanism and a measure of last resort that could not replace the jurisdiction of national courts over crimes committed on their territories.

61. Universal jurisdiction should be exercised in good faith and with due respect for the basic principles of international law, in particular the sovereign equality of States, political independence and non-interference in

the internal affairs of States. The scope and application of the principle should be consistent with the territorial jurisdiction of States and the immunity granted to Heads of State and Government and other senior officials under customary international law.

62. While the international community had a shared responsibility to seek justice and combat heinous crimes, the political and selective use of the principle of universal jurisdiction did not serve justice; on the contrary, it affected the credibility of international law and the fight against impunity, and undermined attempts to dispense global justice. The selective and arbitrary application of the principle of universal jurisdiction, particularly without regard for the requirements of international justice and equality, must be avoided.

63. Her delegation took note of the decision by the International Law Commission to include the topic of universal criminal jurisdiction in its long-term programme of work and was the view that the Committee should continue examining the issue through the working group established for that purpose, and that referral of the topic to the Commission would be premature at the current juncture.

64. **Archbishop Caccia** (Observer for the Holy See) said that any attempt to apply universal jurisdiction in order to hold accountable those responsible for grave violations of international law must be consistent with the principles of subsidiarity, sovereign equality of States and functional immunity of State officials. Since a State with close links to a perpetrator or to the victims usually had stronger claims to jurisdiction, better access to witnesses, victims and evidence, and a responsibility to its nationals to hold wrongdoers accountable, it had a responsibility to prosecute such cases if it was able to do so. “Forum shopping” and interference in the internal affairs of States, including through trials held in absentia, were unacceptable. While the immunity of State officials must be safeguarded, immunity could not be invoked for crimes against humanity, war crimes or genocide, which could never be deemed acts of State.

65. The severity of the crime underpinned the principle of universal jurisdiction. Yet, States must ensure that the desire to hold wrongdoers accountable did not erode practices that protected the integrity of courts and public trust in trial outcomes. For that reason, fundamental norms of criminal justice must be in place when the severity of the crime served as the basis for jurisdiction. The presumption of innocence, the principle of legality and the right to due process, inter alia, must be respected, in line with the obligation to uphold the rule of law.

66. The report of the Secretary-General (A/76/203), together with prior reports, reflected significant unity in relation to the most serious internationally recognized crimes, namely genocide, crimes against humanity and war crimes. Many States required a connection between the country and the accused or the act, an element that the Holy See considered essential for fair trials and the just application of the principle of universal jurisdiction. The reports also revealed, however, significant divergences in respect of the scope of the principle; States should therefore exercise caution when considering any expansion of the scope of the principle beyond those grave crimes.

67. Universal jurisdiction should be applied on an exceptional basis and should be limited to those crimes. Applying it too broadly would undermine not only the ability to invoke the principle legitimately but also the distinction between particularly serious offences and other criminal activity.

68. **Mr. Harland** (Observer for the International Committee of the Red Cross) said that universal jurisdiction was one of the key tools for preventing and repressing serious violations of international humanitarian law. The Geneva Conventions of 1949 and Additional Protocol I thereto stipulated that States parties had an obligation to search for persons alleged to have committed, or to have ordered to be committed, acts defined therein as grave breaches, and to bring such persons, regardless of their nationality, before their own courts or hand them over for trial by another State party. Other international instruments, such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, placed a similar obligation on States parties to vest in their courts some form of universal jurisdiction over the crimes set out therein. In addition, State practice and *opinio juris* had helped to consolidate a customary rule whereby States had the right to exercise universal jurisdiction over serious violations of international humanitarian law.

69. States increasingly recognized the principle of universal jurisdiction as an important means of ending impunity for serious violations of international humanitarian law and other international crimes. The value placed on that objective was evident in the universal acceptance of the Geneva Conventions and the continued ratification of or accession to Additional Protocol I thereto and other relevant treaties.

70. Many States had set up specialized units to deal exclusively with the substantive and procedural specificities of international crimes, and an initiative was under way aimed at drafting a multilateral treaty on

mutual legal assistance and extradition for domestic prosecution of the most serious international crimes.

71. The International Committee of the Red Cross (ICRC) continued to support States in their implementation of international humanitarian law, including the obligation to repress serious violations of international humanitarian law through, inter alia, the exercise of universal jurisdiction. At the request of States, it offered legal advice and technical assistance on a bilateral basis to government experts on the national implementation of international humanitarian law, covering topics such as the incorporation of serious violations of international humanitarian law and other international crimes into domestic criminal law and procedure and the application of the principle of universal jurisdiction.

72. ICRC continued to offer its expertise in international humanitarian law to national judicial authorities and was thus aware of the efforts being made by States and the challenges they faced when prosecuting serious violations of international humanitarian law. In that connection, ICRC would, in 2022, launch an international humanitarian law manual specifically aimed at judicial authorities.

73. ICRC also continued to promote its manual on domestic implementation of international humanitarian law, which provided policymakers, legislators and other stakeholders with a practical tool for the implementation of international humanitarian law, including the repression of serious violations of international humanitarian law and the application of universal jurisdiction.

74. **Mr. Altarsha** (Syrian Arab Republic), speaking in exercise of the right of reply, said that, earlier in the meeting, the representative of Germany had used the term “Syrian regime” in reference to the Government of the Syrian Arab Republic. A representative of the Syrian Arab Republic would not use the term “German regime” in reference to the Government of Germany, out of respect for the rules of procedure. Either the representative of Germany was too inexperienced to know the rules of procedure, or his Government was under the impression that, by using the term “Syrian regime”, it could change or delegitimize the Government of the Syrian Arab Republic, a country that had been a founding member of the United Nations. Such lack of professionalism reflected the frustration of the German Government at its failure to break the Syrian people. The delegation of the Syrian Arab Republic hoped that the Chair would remind members that the Committee dealt with legal matters and was not an appropriate place for accusations and lies.

75. The representative of Germany had given the impression, in short, that Germany was setting the standard for the exercise of universal jurisdiction, and that other countries would need a great deal of time and experience to rise to its level. Yet, he had mentioned only two cases, one involving a German woman who had killed a Yazidi girl, and the other involving a woman who had handed her son over to Da’esh for recruitment. Moreover, the idea that a single Syrian national was responsible for overseeing the torture of more than 4,000 people led one to wonder what alternative reality the German Government inhabited.

76. The representative of Germany had referred to the alleged use of chemical weapons. Perhaps his heavy workload had led him to confuse the Sixth Committee with the First Committee. He should raise the issue in that forum, where the delegation of the Syrian Arab Republic would be ready to rebut his lies. The Government of the Syrian Arab Republic had, in any event, destroyed its entire chemical weapons arsenal in 2013 and joined the Organisation for the Prohibition of Chemical Weapons. It had sent hundreds of letters to the Secretary-General and the President of the Security Council warning them that armed terrorist groups had acquired chemical substances and intended to use them in order to frame the Syrian Arab Army. In the meantime, as had been reported in *Der Spiegel, Khalid al-Salih*, a senior member of the terrorist group White Helmets, had been given a warm welcome in Germany. The delegation of Germany was in no position to boast of its judicial system.

77. Ultimately, politicizing the agenda item did a disservice not only to the Syrian Arab Republic, but to all members of the Committee. The question at hand was how to protect all Member States by promoting cooperation while ensuring respect for national sovereignty. That path was worth pursuing, even if it was a lonely one.

The meeting rose at 12.05 p.m.