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Chair: Mr. Chindawongse (Thailand)
later: Mr. Milano (Vice-Chair) (Italy)

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

Statement by the President of the General Assembly

1. **Mr. Francis** (Trinidad and Tobago), President of the General Assembly, said that the Committee's work was central to upholding the principles of peace, justice and the rule of law and to ensuring that the international legal framework remained robust and adaptable to the evolving needs of the temporarily beleaguered multilateral system. Indeed, in the face of daunting and unprecedented challenges – from the ongoing impacts of the coronavirus disease (COVID-19) pandemic to the deepening climate crisis and the vicious cycle of conflicts around the world – the Committee's work in producing clarity, stability and predictability was more critical than ever. The sad situation in the Middle East, Africa and elsewhere, including in Haiti, served as a reminder that the international community could not take peace for granted; it needed to invest more to achieve and sustain it. He was convinced that, while current challenges were great, so too was Member States' collective capacity to surmount them and to bring about transformational change that would contribute meaningfully to sustainable development.

2. Saving succeeding generations from the scourge of war must remain the centrepiece of Member States' work within the United Nations. The myriad challenges arising from the devastating impacts of climate change must also remain a core focus. In that context, the Committee's deliberations on the issue of protection of persons in the event of disasters and other related issues were therefore particularly important.

3. One such issue was sea-level rise, a key priority during his presidency. While the International Law Commission was still considering the topic of sea-level rise in relation to international law, it was incumbent upon the Committee also to continue discussions on the legal implications of sea-level rise. It was not hyperbole to say that rising seas posed a serious existential threat to many Member States, particularly small island developing States. The international community owed it to affected communities to ensure predictability, sustainability and security in the midst of the climate crisis. The General Assembly and its Main Committees must create adequate space to ponder and address such vexing challenges, including their implications for international law. With a view to giving impetus to that crucial dialogue, he would convene an informal plenary meeting on sea-level rise on 3 November 2023.

4. The scourge of terrorism in all its forms and manifestations, which continued to spread across the world, must be countered through both domestic actions

and cross-border coordination. He urged the Committee to help establish the conditions under which justice and respect for international obligations arising from treaties and other sources of international law were maintained and honoured, and to strive to ensure full respect for international law in all its deliberations.

5. With regard to programme planning, members would recall that the Committee for Programme and Coordination had not been able to agree on 10 programmes, which had subsequently been referred to the Main Committees. In that regard, the Committee's habit of seeking consensus-based solutions was admirable; he urged all delegations to engage in a spirit of consensus-building throughout the session. Consensus was an anchor of the multilateral system and reflected the principle of sovereign equality of States, in accordance with which the perspectives of all countries, including those in vulnerable situations, were heard and accommodated to the extent possible.

6. *Mr. Milano (Italy), Vice-Chair, took the Chair.*

Agenda item 84: The scope and application of the principle of universal jurisdiction (A/78/130)

7. **Mr. Heidari** (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, in particular the sovereign equality and political independence of States and non-interference in their internal affairs, should be strictly observed in any judicial proceedings, including in the exercise of universal jurisdiction. 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. It should be borne in mind that the current item had been added to the agenda of the Committee in 2009, at the initiative of the Group of African States, with a view to clarifying the scope and application of the principle of universal jurisdiction and preventing its abuse.

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 Movement was alarmed about the legal and political implications of the misapplication of universal jurisdiction with regard to the immunity of State officials and the sovereignty of States. It was particularly concerned about the application of universal

jurisdiction in respect of certain States members of the Movement. The Committee might find the decisions and judgments of the International Court of Justice and the work of the International Law Commission useful in its debate. Any unwarranted expansion of the list of crimes that could be prosecuted through the application of universal jurisdiction must be avoided.

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. The Movement would continue to pursue the common goal of mutual respect among States, which involved, among other things, maintaining the rule of law around the world and ensuring the proper, responsible and judicious application of universal jurisdiction.

11. **Mr. Ikondere** (Uganda), speaking on behalf of the Group of African States, said that the current item had been included in the agenda of the General Assembly since its sixty-third session at the request of the Group, which had been concerned about the abusive application of the principle of universal jurisdiction, particularly against African officials. However, despite lengthy and intense debates on the item since then, no significant steps had been made in addressing misuse or abuse of the principle and the scope of universal jurisdiction remained uncertain.

12. The Group welcomed the adoption of General Assembly resolution [76/118](#), in particular paragraph 3, in which the Assembly had invited the working group of the Sixth Committee, to be established at its seventy-seventh session, to consider and comment on the question “what should be the role and purpose of universal jurisdiction”. It looked forward to a constructive debate on that question during the current session. The Group reiterated that its concern regarding the applicability of the principle of universal jurisdiction did not pertain to what was being done

collectively through multilateral processes or the world community, but rather to the indictment by individual judges in non-African States of incumbent African Heads of State and Government, Ministers for Foreign Affairs and other senior officials who were entitled to immunity under international law.

13. African States and the African Union Commission had cooperated and engaged constructively in the Committee’s work on the topic, including by submitting information on applicable international treaties, national legal rules and judicial practices. In view of the number of reports prepared on the topic to date, the Group was in favour of requesting the Secretary-General to review his previous reports and, on the basis of that review, submit a report to the General Assembly at a reasonable time, but preferably at its seventy-ninth session, identifying convergences and gaps in the practice of States for the Committee’s consideration. A significant first step forward would be for the Committee to include in the draft resolution to be adopted on the topic in the current session wording reflecting the diversity of views expressed by States in the Committee and in its working group, including concerns expressed in relation to abuse or misuse of the principle of universal jurisdiction.

14. The Committee could and must take steps to address the propensity of non-African States to apply the principle of universal jurisdiction in cases involving Africans outside the multilateral processes, without the consent of African States and without applying the cooperation safeguards of the international system. The Group had evidence of the use of the principle of universality in Africa with the consent and cooperation of the African States concerned, and in line with their commitment to end impunity for atrocity crimes. Consent and cooperation, when regulated within the multilateral system, could help to limit the abuse and misuse of the principle of universal jurisdiction. Such jurisdiction must be complementary to the national jurisdiction of the country concerned and must be exercised in good faith and with due regard for other principles of international law, including sovereignty, non-interference in the internal affairs of States, sovereign immunity and diplomatic immunity. Agreed norms must be established with regard to the scope and application of universal jurisdiction.

15. **Ms. Mark** (Saint Vincent and the Grenadines), speaking on behalf of 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 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 groups had certainly made progress in their seven years of work, moving from a concise road map 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.

16. Universal jurisdiction was an exceptional tool 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.

17. CELAC welcomed the decision of the International Law Commission to include the topic of universal criminal jurisdiction in its long-term programme of work. The Commission's study of that topic should enable the General Assembly to make more progress in clarifying certain legal aspects of the principle under international law.

18. **Ms. Popan** (Representative of the European Union, in its capacity as observer), speaking also on behalf of the candidate countries Albania, Bosnia and Herzegovina, North Macedonia, the Republic of Moldova, Serbia and Ukraine; the potential candidate country Georgia; and, in addition, Monaco and San Marino, said that, as strong supporters of accountability for core international crimes, the European Union and its member States supported all efforts to strengthen the current international legal framework and prevent impunity for the most serious crimes under international law. Universal jurisdiction could be an important tool for promoting international accountability in respect of such crimes. However, it remained an exceptional form of jurisdiction that permitted a State to exercise jurisdiction in the absence of any specific link of nationality or territoriality to an offence. The primary responsibility for investigating a crime lay with the State that had a direct link to it. The application of the principle of universal jurisdiction should be restricted to the most serious crimes under international law and

should be governed by transparent rules to ensure legal certainty in the exercise of such jurisdiction.

19. Prevention should be at the centre of discussions on the scope and application of the principle of universal jurisdiction, which was one of many tools that could be used to deter the commission of the most serious international crimes. To support national authorities in their investigation and prosecution of the crime of genocide, war crimes and crimes against humanity, the European Union had set up a network to ensure that persons responsible for such core international crimes faced justice.

20. **Mr. Paulauskas** (Lithuania), speaking also on behalf of Estonia and Latvia, said that the three delegations considered the principle of universal jurisdiction to be an important and useful tool for preventing impunity and ensuring accountability for international crimes that undermined universal values common to the international community. Universal jurisdiction was a generally recognized principle of public international law that facilitated the promotion of the rule of law and had a deterrent effect on potential perpetrators. The primary responsibility to prosecute perpetrators of the most serious international crimes lay with the States on whose territory the crimes were committed or with States that had other jurisdictional links to the crime, such as the nationality of the perpetrator or the nationality of the victims. However, if those States were unwilling or unable to hold the perpetrators to account, other States that had no direct connection to the crime should fill the gap on the basis of universal jurisdiction, which was an important subsidiary tool for ensuring accountability for the worst crimes, in particular genocide, war crimes and crimes against humanity.

21. The three delegations encouraged States to adopt laws that supported the exercise of universal jurisdiction. Estonia, Latvia and Lithuania had adopted such laws and had already applied universal jurisdiction to open an investigation into crimes allegedly committed in and against Ukraine. National case law should be based on the interpretations provided in the decisions of international courts, in particular the International Criminal Court, the International Criminal Tribunal for Rwanda, the International Tribunal for the Former Yugoslavia and, in certain cases, the International Court of Justice.

22. For more than a year and a half, there had been reports of heinous crimes being perpetrated on the territory of Ukraine as a consequence of the Russian aggression. The three delegations believed that those crimes, including the crime of aggression, would

eventually be investigated and punished by the International Criminal Court or a special international tribunal. In the meantime, the exercise of universal jurisdiction by competent organs of individual States could contribute to the delivery of justice for victims, help to close the impunity gap and prevent the commission of further crimes.

23. The common goal of ending impunity for the most serious crimes of international concern should translate into increased efforts and resources in all States to ensure that universal jurisdiction was used to its full potential. That goal should also guide the Committee's discussions on the principle of universal jurisdiction. Referring the topic to the International Law Commission would ensure progress in the discussions and help to ensure the proper application of the principle.

24. **Mr. Agnello** (Canada), speaking also on behalf of Australia and New Zealand, said that universal jurisdiction was a fundamental principle of international law that empowered States to prosecute, on behalf of the international community, the perpetrators of the most serious crimes of international concern. Serious international crimes such as piracy, genocide, war crimes, crimes against humanity, slavery and torture were well established in customary international law. They undermined efforts to achieve the goals of the 2030 Agenda for Sustainable Development and threatened international peace, security and stability. It was therefore in the interests of all States to ensure that they were prevented and their perpetrators prosecuted. Universal jurisdiction, which applied irrespective of where the crime occurred, the nationality of the perpetrators or the victims or any other links between the crime and the prosecuting State, provided an essential tool for that purpose.

25. Universal jurisdiction must be exercised in good faith, in a manner consistent with the rule of law and the right to a fair trial and in accordance with laws relating to diplomatic relations and privileges and immunities. Its application must be free from political motivation, discrimination and arbitrariness. As a general rule, the primary responsibility for investigating and prosecuting serious international crimes rested with the State in which the criminal conduct was alleged to have occurred, or the State of nationality of the accused. States with territorial jurisdiction were often in the best position to achieve justice, given their access to evidence, witnesses and victims.

26. Australia, Canada and New Zealand all had laws establishing their jurisdiction in respect of the most serious international crimes. They encouraged Member

States that had not already done so to incorporate universal jurisdiction into their domestic laws, in accordance with international law. By doing so, they would contribute to strengthening the international accountability framework and ensuring that perpetrators of grave international crimes did not receive safe haven anywhere in the world.

27. As was evident from the information contained in the Secretary-General's most recent report on the topic (A/78/130), universal jurisdiction was an important complementary mechanism and a critical tool for delivering justice and ensuring accountability in circumstances where the territorial State was unwilling or unable to exercise jurisdiction. The three delegations noted, in particular, the recent judgments delivered by Austrian criminal courts against nationals of the Syrian Arab Republic for terrorism-related acts committed abroad. Those judgments demonstrated the importance of universal jurisdiction in advancing the fight against impunity in cases where the International Criminal Court lacked jurisdiction, including in the absence of a referral by the Security Council. The three delegations looked forward to participating in the discussions of the Committee's working group on relevant elements of a working concept of universal jurisdiction.

28. **Ms. Fielding** (Sweden), speaking on behalf of the Nordic countries (Denmark, Finland, Iceland, Norway and Sweden), said that those countries continued to caution against developing an exhaustive list of crimes to which universal jurisdiction would apply. Any conditions attached to the application of universal jurisdiction must not unnecessarily restrict the possibility of bringing suspected offenders to justice. The Committee's dialogue on universal jurisdiction should focus on ensuring that no perpetrators of the most serious international crimes went unpunished.

29. States bore the primary responsibility for investigating and prosecuting serious international crimes within their jurisdiction. When States were unable or unwilling to do so, the exercise of universal jurisdiction by third States could serve as an important tool for ensuring accountability for the most serious international crimes, providing redress for victims and limiting impunity. Furthermore, the exercise of universal jurisdiction contributed to the implementation of the principle of complementarity provided for under the Rome Statute of the International Criminal Court. In cases where the Court lacked jurisdiction, including in the absence of a referral by the Security Council, universal jurisdiction as a legal basis could help close a gap in the existing international legal order concerning accountability for the most serious international crimes.

30. The Nordic countries had all incorporated the principle of universal jurisdiction into their respective domestic laws, thereby allowing domestic prosecution of the most serious crimes of international concern, regardless of where they occurred or the nationality of the perpetrator. They encouraged States that had not yet done so to incorporate the principle into their domestic laws in order to ensure that there was no safe haven anywhere in the world for perpetrators of such crimes. Prosecutors in several countries had opened investigations into cases against suspected perpetrators and there had been a steady increase in prosecutions for international crimes in domestic courts, many of them based on universal jurisdiction, thereby sending a clear message that those who committed atrocities could not escape justice.

31. **Mr. Zúkal** (Czechia), speaking also on behalf of Austria and Slovakia, said that universal jurisdiction was an important jurisdictional basis for the prosecution of the most serious crimes under international law in cases where jurisdiction based on the principle of territoriality or of active or passive personality could not or would not be exercised. Universal jurisdiction was, however, distinct from the jurisdiction of international courts and tribunals. It was a tool that could help deliver justice to victims, prevent further crimes and close the impunity gap, all in keeping with guarantees of a fair trial, due process and other applicable norms of international law.

32. As the Committee's discussions on the topic of universal jurisdiction had stalled in recent years, the delegations of Austria, Czechia and Slovakia proposed two avenues for reinvigorating the deliberations: taking stock of the views and submissions presented thus far on the topic, and requesting the International Law Commission to provide the Committee with a legal analysis of the principle of universal jurisdiction. Such analysis could help to resolve differences of opinion on the definition, scope and application of the principle of universal jurisdiction in a manner that stripped the topic of political sensitivities. The three delegations found it difficult to understand how such a contribution by the Commission could be detrimental to the Committee's discussions. On the contrary, it could bring legal clarity and certainty. They therefore invited the Commission to move the topic of universal criminal jurisdiction to its current programme of work.

33. The three delegations welcomed the inclusion in General Assembly resolution 77/111 of a request to the Secretary-General to submit a report to the Assembly at its seventy-ninth session reviewing all information and observations on the scope and application of universal jurisdiction submitted by Member States and relevant

observers and identifying possible convergences and divergences on the definition, scope and application of universal jurisdiction for the consideration of the Committee. The Secretary-General's report should be published well in advance of the seventy-ninth session in order to allow sufficient time for delegations to study it and prepare for a meaningful discussion.

34. **Mr. Chindawongse** (Thailand) said that universal jurisdiction was a generally accepted principle of international law, although States had differing views regarding its definition, scope and application. Thailand had adopted provisions allowing its courts to hear cases involving certain offences committed outside the country that did not necessarily have any link with Thailand or with the country's Government or nationals. For example, under the Penal Code, Thai courts had extraterritorial jurisdiction over acts of terrorism, counterfeiting, sex trafficking and piracy, which had been widely accepted internationally as heinous crimes that all States should suppress, regardless of where and by whom they were committed. Thailand had also established national jurisdiction over criminal offences such as torture and enforced disappearance pursuant to international treaties to which it was a party. Although such serious crimes were not yet recognized as crimes subject to universal jurisdiction, international treaties could oblige States parties to criminalize and establish jurisdiction over them under national criminal law. His delegation encouraged Member States to submit information regarding their national legal rules and judicial practices which might amount to expressions of *opinio juris* on the issue.

35. The international community shared a common interest in and responsibility for combating impunity and asserting universal jurisdiction for the most serious crimes. Universal jurisdiction must, however, be defined and applied in conformity with the principles enshrined in the Charter of the United Nations and other applicable principles of international law, including the principles of State sovereignty, territorial integrity and immunity of State officials from foreign criminal jurisdiction. It should be used as a complementary option to other principles of jurisdiction, including territoriality and nationality, that provided a stronger link to the crimes in question.

36. The distinction between universal jurisdiction and the principle of *aut dedere aut judicare* must be clearly defined. Universal jurisdiction did not create an obligation for States to extradite or prosecute, which was primarily a treaty obligation under specific conditions defined by relevant treaty provisions. The general principles of law, notably *nullum crimen, nulla poena sine lege* and the prevention of double jeopardy,

should be recognized when applying the principle of universal jurisdiction to certain crimes. Misuse and abuse of those principles might lead to the biased accusation or conviction of a person for an ordinary crime committed in a political context when power was used arbitrarily and the rule of law was severely hindered. His delegation fully supported continued discussion of the current agenda item in the Committee as well as the Secretariat's efforts to continue to gather information on States' practices on the item.

37. **Ms. Hasler** (Liechtenstein) said that it was encouraging to see that national judiciaries were increasingly invoking the principle of universal jurisdiction to launch investigations and institute criminal proceedings against perpetrators of international crimes. German courts, in particular, had been a champion of universal jurisdiction. Her delegation commended their work in pursuing atrocity cases committed in Syria. By invoking universal jurisdiction, domestic prosecutors and judges could not only hold perpetrators of the most serious international crimes to account, but also bring justice to the victims. Her delegation commended in particular the work of the United Nations-mandated 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, which had assisted the Koblenz Court in securing convictions against high-level Syrian officials for crimes against humanity.

38. The Mechanism prepared case files for prosecutions in courts that had jurisdiction over crimes committed in Syria, irrespective of the affiliation of the perpetrators. The Mechanism and other, similar United Nations-mandated accountability mechanisms, working in conjunction with the States invoking universal jurisdiction, played a critical role in preventing impunity for atrocity crimes. In that connection, her delegation was closely observing ongoing discussions on the concept of pooled universal jurisdiction, wherein national courts collaborated in addressing the most serious crimes under international law. The Rome Statute of the International Criminal Court included important provisions that allowed for State cooperation with the Court for the purposes of domestic prosecution. Her delegation called upon all Member States that had not yet done so to accede to the Rome Statute and the amendments thereto and to incorporate the provisions of those instruments into their national criminal codes.

39. The International Law Commission could assist States by formulating guidelines or conclusions clarifying the nature, scope and limits of universal

jurisdiction and the procedural safeguards for its proper application.

40. **Mr. Figueiredo Sobral Torres** (Brazil) said that it was clear from the Secretary-General's report (A/78/130) that State practice in relation to the scope and application of the principle was not uniform. Universal jurisdiction was subsidiary to more direct bases for jurisdiction, such as territoriality and nationality. States with the closest links to the crime should always have jurisdictional priority to prosecute perpetrators – something that should be considered when clauses on the obligation to extradite or prosecute were drafted. Before opening an investigation on the basis of universal jurisdiction, judicial authorities should ensure that there were no relevant investigations under way in the States with direct links to the crime, the suspects or the victims. A custodial State with no direct link to the crime should also seek the cooperation of States with primary jurisdiction over it.

41. Universal jurisdiction was exceptional and should be exercised responsibly, judiciously and on the basis of clear and objective parameters in order to prevent its abuse and misuse. A State's exercise of jurisdiction based solely on the universality principle should be limited to serious crimes set out in international treaties, and only States parties to those treaties should exercise such jurisdiction. In order to avoid the application of the principle for political purposes, the accused should be present in the territory of the forum State. Universal jurisdiction must not be exercised arbitrarily or to serve interests other than those of justice. It should be exercised only in accordance with the principles of sovereign equality and non-interference in the internal affairs of States and with basic principles of criminal law, such as the prohibition of double jeopardy.

42. **Ms. Grosso** (United States of America) said that, despite the long history 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. The submissions made by States to date, the continued efforts of the Committee's working group on the topic and the Secretary-General's reports had helped to identify differences of opinion and points of consensus on the issue. Over the years, the Committee had discussed a number of important matters relating to universal jurisdiction, including its definition, scope and application. Her delegation welcomed the Committee's continued consideration of the issue and the information received from States about their own practices. In that regard, it noted that recent amendments to the United States War Crimes Act had expanded jurisdiction over the offences listed in the Act to offenders who were present in the United States,

regardless of the nationality of the victim or the offender.

43. **Mr. Hasenau** (Germany) said that since 2002, German prosecutors had been able to exercise universal jurisdiction in respect of the crime of genocide, crimes against humanity and war crimes. While his Government would prefer that the most serious crimes under international law be tried by the relevant national authorities or by international tribunals, in particular the International Criminal Court if the applicable complementarity criteria were met, the German Code of Crimes against International Law and the principle of universal jurisdiction allowed all potential loopholes to be closed and for perpetrators of such crimes to be held accountable.

44. In July 2023, the Government had introduced a draft bill on the advancement of international criminal law to further close impunity gaps and strengthen victims' rights in proceedings concerning international trials. The bill addressed both procedural matters, such as simplifying the representation of victims in courts and providing courtroom interpretation services for foreign media; and material matters, including providing for changes in regard to the crimes of sexual violence, sexual slavery, forced abortion and the prohibition of certain weapons of war.

45. Germany was playing an active role in ensuring accountability for serious international crimes. Structural investigations had led to several trials and convictions of members of terrorist organizations, in particular Da'esh, who had returned to Germany. The prosecution of terrorism offences in combination with core international crimes ensured that perpetrators were held fully accountable. In the immediate aftermath of the illegal attack on Ukraine by Russia, the Federal Prosecutor General of Germany had initiated a structural investigation concerning war crimes committed in that country in the context of the Russian war of aggression, the scope of which had later been extended to encompass crimes against humanity. As a result of those efforts, the Federal Prosecutor General had, in agreement with the Prosecutor General of Ukraine, initiated investigations against five individuals. German prosecutors were currently conducting more than 100 other investigations regarding international crimes. The message was clear: those who committed atrocities would eventually be held accountable.

46. **Ms. Vittay** (Hungary) said that, as evidenced by the information presented in the Secretary-General's report (A/78/130), judicial practice in relation to the application of the principle of universal jurisdiction was steadily evolving in many countries. In Hungary, the

Budapest Metropolitan Court had delivered a landmark judgment in 2020, in which it had held that the accused person had committed crimes against humanity against the civilian population in Syria. The Budapest Court of Appeal had upheld the judgment in 2021, thereby sending a clear message: perpetrators of the most heinous international crimes should not go unpunished, irrespective of their nationality or the country in which they had committed such crimes.

47. The growing practice of States shed light on the safeguards surrounding the application of universal jurisdiction. Ideally, in accordance with the principle of State sovereignty, international crimes should be tried by local courts in the country where they had been committed. Universal jurisdiction should be exercised only as a last resort and only in cases involving the most heinous international crimes where the territorial State was unable or unwilling to prosecute. As an additional national safeguard in Hungary, criminal proceedings on the basis of universal jurisdiction could only be initiated by order of the Prosecutor General. That requirement ensured that it was the highest law enforcement official with the greatest expertise who meticulously reviewed every potential case. Failure to obtain the requisite order from the Prosecutor General resulted in the dismissal of the case.

48. Her delegation looked forward to reviewing the report to be prepared by the Secretary-General pursuant to General Assembly resolution 77/111. A report identifying possible convergences and divergences regarding the definition, scope and application of universal jurisdiction would provide a good basis for a structured discussion.

49. **Mr. Evseenko** (Belarus) said that his delegation had always recognized the need to combat impunity and to ensure that those who committed crimes were punished, and maintained its position that universal jurisdiction could only be applied in respect of certain categories of crimes for which general rules of international law had been developed and that had arisen from universal international treaties and customary international law. Extending universal jurisdiction to any and all crimes would be at odds with the fundamental principle of international law, namely the principle of sovereign equality of States. Given the ambiguity in the approaches that States had taken to universal jurisdiction, coupled with shortcomings arising from the misuse of the principle for political purposes and attempts to apply it in the broadest possible sense without regard for international legal obligations relating to the immunity of State officials, the rule of criminal prosecution on the basis of universal jurisdiction could not be considered a rule of customary

international law. An international legal obligation for States to prosecute the perpetrators of international crimes in their territories could arise only on the basis of a universal international treaty.

50. Several initiatives had been undertaken recently to ensure a wider application of universal jurisdiction in relation to certain international crimes on the basis of hastily concluded multilateral agreements among a limited group of States outside the framework of the United Nations. One example was the Ljubljana-The Hague Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes Against Humanity, War Crimes and Other International Crimes. Despite the generally lofty objectives of that Convention and the balanced nature of the definitions set out therein, it could not be said to enjoy universal recognition by States Members of the United Nations, as it had not been adopted through an inclusive negotiation process. Moreover, it provided for a controversial mechanism that could potentially lead to unjustified politically motivated criminal prosecution of foreign officials and citizens in the courts of other States and international courts. The Ljubljana-The Hague Convention might be seen as having made a positive contribution to the development of universal jurisdiction if it included safeguards to ensure that the concept would not be used for political purposes, in violation of the principles of sovereign equality of States and non-interference in their internal affairs. In the absence of such safeguards, the Convention could undermine States' confidence in the concept of universal jurisdiction and solidarity in the international community.

51. The main criterion for determining whether an act should be subject to universal jurisdiction was whether it undermined the interests of all members of the international community. Strong procedural safeguards should also be put in place to ensure that judicial proceedings conducted on the basis of universal jurisdiction would be impartial and that the sovereign rights of States and the general rules for recognizing or waiving the immunities of State officials would be respected. It was worth continuing the discussions on the principle of universal jurisdiction with the understanding that it could have legal substance only if the international community recognized that certain crimes could be so dangerous to society that there was justification for limiting the sovereignty of States by allowing for exemptions from the general principles of their criminal jurisdiction.

52. In Belarus, the principle of universal jurisdiction was understood as the competence of the State to prosecute and punish persons guilty of the most serious

crimes, irrespective of the nationality of the perpetrators or the place where the crime was committed. The prosecution of such crimes was regulated by the Criminal Code, the Code of Criminal Procedure and international treaties to which Belarus was a party.

53. His delegation was convinced that progress could be made on the topic if all Member States participated in the discussions and focused on moving towards a common understanding of the concept of universal jurisdiction. His delegation had submitted the full version of its statement on the topic to the Bureau of the Committee.

54. **Ms. Rubinshtein** (Israel) said that her delegation could not comment on the topic of universal jurisdiction without noting the horrific events that had occurred in her country over the previous few days. Hamas, a murderous terrorist organization, had killed 1,300 Israelis and wounded over 3,500 people, including civilians from many of the States participating in the current debate. It had also taken numerous hostages, including children and elderly persons. Those inhumane atrocities constituted grave war crimes and crimes against humanity, and the persons responsible must be held accountable for their actions. Her Government was grateful for the support it had received from the international community.

55. **Mr. Jacobs** (Kingdom of the Netherlands) said that his Government was shocked by and had condemned the terrible attack on Israel of 7 October 2023 and was extremely worried about the impact that the ensuing escalation of violence was having on victims on both the Israeli and the Palestinian sides of the conflict.

56. In his delegation's view, universal jurisdiction was an important tool in the fight against impunity for the most serious crimes under international law, which should never go unpunished. It also contributed to the application of the principle of complementarity under the Rome Statute. While the scope and application of the principle of universal jurisdiction had been under consideration by the Committee for some years, the views and practices of States still varied widely.

57. In the Netherlands, the most relevant piece of legislation concerning universal jurisdiction was the International Crimes Act, which had been adopted to implement the Rome Statute. The Act had replaced several pieces of legislation on genocide, war crimes and torture, and had codified crimes against humanity in the country's law. The Act provided for the application of domestic criminal law for specific crimes committed outside the country, as long as the suspect was present

in the Netherlands or the crime was committed by or against a Netherlands national.

58. Under the Act, the most relevant basis for the exercise of universal jurisdiction by the Netherlands was that the crime was committed outside the Netherlands, since it allowed the authorities to investigate and prosecute specific crimes when they were committed abroad by foreign nationals. However, the Act did not provide for full, unlimited universal jurisdiction; crimes committed abroad by foreigners against non-Netherlands nationals could not be prosecuted unless the alleged perpetrator had been identified and was physically present in the Netherlands. In such cases, the decision to investigate and prosecute was made by the public prosecutor's office. Under the country's law, there was no dual criminality requirement for the investigation and prosecution of international crimes. His delegation supported the consideration of the topic of universal criminal jurisdiction by the International Law Commission.

59. **Mr. Heidari** (Islamic Republic of Iran) said that the widely accepted rationale for the principle of universal jurisdiction was that a viable and effective global criminal justice mechanism was needed to combat gross and heinous crimes that were considered to affect the interests of all and that, in order to avoid impunity, the accused should be prosecuted in the country of arrest, regardless of where the crime had been committed. While the existence of that principle was not disputed, Member States did not have a common legal and conceptual understanding of it or of the crimes to which it could be applied. In particular, they had differing views as to the intersection between universal jurisdiction and the immunities of certain high-ranking officials and the crimes that were subject to universal jurisdiction. Any non-consensus-based expansion of the list of crimes subject to universal jurisdiction would be incompatible with the purposes of the principle. In circumstances where there was no international legal basis for the exercise of universal jurisdiction, the broad interpretation and application of the principle by forum States must not be considered as establishing a precedent.

60. As indicated by several judges of the International Court of Justice in the case concerning the *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, conferring jurisdiction upon the courts of every State in the world to prosecute crimes that were subject to universal jurisdiction would risk creating judicial chaos. Furthermore, one of the judges had indicated in his separate opinion that universal jurisdiction in absentia was unknown to international law. Whatever the source of universal jurisdiction, its

selective application could prejudice such cardinal principles of international law as sovereign equality of States and immunity of State officials from foreign criminal jurisdiction.

61. His Government viewed universal jurisdiction as a treaty-based exception in exercising its national criminal jurisdiction. It should be complementary to other bases of criminal jurisdiction, such as territorial, protective and personal jurisdiction. Universal jurisdiction provided a tool to prosecute the perpetrators of certain serious crimes under relevant international treaties, but it could not be exercised in isolation or to the exclusion of other relevant rules and principles of international law. Given the divergence of views and the lack of consistent State practice, consideration of the topic by the International Law Commission would not produce satisfactory results.

62. His delegation wished to express its concern about the recent brutal attacks against innocent people in Palestine, as a result of which more than 1,400 people had been killed, including many children, and 100,000 had been displaced in Gaza. The Palestinian people were defending their freedom, their dignity, their right to self-determination and their right to live in peace. The international community should hold the perpetrators of the attacks accountable.

63. **Mr. Pieris** (Sri Lanka) said that universal jurisdiction was based solely on the nature of the crime. National courts could exercise universal jurisdiction to prosecute and punish, and thereby deter, heinous acts recognized as serious crimes under international law. While universal jurisdiction held out the promise of greater justice, the existing jurisprudence on the matter was disparate, disjointed and poorly understood; the application of the principle was therefore subject to incoherence and confusion and could result in the uneven delivery of justice. Some had suggested that, in addition to war crimes, crimes against humanity, genocide and the crime of aggression, the list of international crimes that could be subject to universal jurisdiction should include terrorism, torture, corruption and crimes against the environment. It was essential to identify the defining features of offences that warranted classification as international crimes and to understand what treating them as international crimes would entail.

64. International criminal tribunals, including the International Criminal Court, had a vital role to play as a complement to national courts in combating impunity, particularly where, in the wake of mass atrocities or oppressive rule, the authorities of national judicial systems were unable or unwilling to prosecute serious international crimes. Enhancing the proper exercise of

universal jurisdiction by national courts would help close the gap in law enforcement that had favoured perpetrators of serious international crimes. The crafting of clearer and more sound principles to guide the exercise of universal jurisdiction by national courts would help to ensure accountability and prevent the commission of further crimes. It was necessary to develop principles that would give greater coherence and legitimacy to the exercise of universal jurisdiction and ensure that it was not used for purposes extraneous to criminal justice, such as the harassment of political opponents. Universal jurisdiction must be used in a prudent manner that prevented abuse of power and did not impede the quest for peace.

65. Greater clarity was needed regarding the respective roles of national courts and international tribunals in combating impunity for serious international crimes, which international law described as acts that international law deemed universally criminal. The International Law Commission should give serious thought to that aspect of the matter.

66. **Mr. Ndoye** (Senegal) said that peaceful coexistence and cooperation among States depended to a large extent on an international order based on legal rules. Combating impunity for the most serious crimes should be at the heart of the international community's fight to that end. However, in keeping with the principles of complementarity and State sovereignty, the internationalization of criminal law should never mean that States were deprived of jurisdiction over offences committed in their territory. At the same time, no State should serve as a safe haven for the perpetrators of the most serious crimes. Universal jurisdiction had proved to be one of the most effective means of preventing and punishing the worst atrocities, particularly those defined in the Rome Statute of the International Criminal Court.

67. 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 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.

68. 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 of Terrorism, the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Corruption.

69. The application of the principle of universal jurisdiction must always be based on the principles of international law, including respect for the sovereignty of States, the sovereign equality of States and non-interference in their internal affairs. The legitimacy and credibility of the principle of universal jurisdiction were strongly dependent on it being applied in accordance with the principle of complementarity, which was well established in international criminal law. Universal jurisdiction should thus be exercised only when States could not or would not investigate extremely serious crimes allegedly committed in their territory.

70. His delegation was aware that there were obstacles to the application of the principle of universal jurisdiction, which, if applied in a clear-eyed manner, would undoubtedly contribute to the development of international criminal law. It called upon the International Law Commission to undertake to clearly delimit the scope of application of the principle.

71. **Mr. Arrocha Olabuenaga** (Mexico) said that the exercise of universal jurisdiction could be a useful tool for ensuring that the most serious crimes did not go unpunished. As atrocities continued to be committed all over the world, the international community should use all the means at its disposal to ensure accountability for such crimes and compliance with international law. In order to maximize effectiveness in the exercise of universal jurisdiction, it was important to clarify issues such as its subsidiary nature in relation to the jurisdiction of the territorial State and the distinctions between universal jurisdiction and extraterritorial jurisdiction and between universal jurisdiction and the principle of *aut dedere aut judicare* and international criminal jurisdiction. National courts must retain the prerogative to exercise their jurisdiction; universal jurisdiction could be exercised only when a State lacked the will or the capacity to do so and when the International Criminal Court did not have jurisdiction to hear the case. Other issues that required further consideration were the application of universal

jurisdiction in absentia and the identification of the crimes that could be subject to universal jurisdiction.

72. His delegation joined other delegations in requesting the International Law Commission to move the topic of universal criminal jurisdiction to its current programme of work. It hoped that the members of the Commission would put aside their internal differences to address the repeated requests of Member States in that regard. In addition to clarifying the legal and technical aspects of the topic, the Commission would thus demonstrate its willingness to listen to and address the legitimate concerns of States. His delegation remained committed to working towards a clear legal regime for the exercise of universal jurisdiction and to seeking a paradigm shift that placed victims, not perpetrators, at the centre of the Committee's efforts.

73. **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.

74. 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.

75. 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. There would be merit in reaching a consensus on the definitional issues.

76. **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 the crimes had been committed or with other States that had a connection to the crimes because of the nationality of either the perpetrators 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 complementary tool that must be used in accordance with the relevant treaties and rules of international law.

77. His Government understood that there must be clear rules governing the exercise of universal jurisdiction. Indeed, 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. His delegation therefore welcomed the decision of the International Law Commission to move the topic of universal criminal jurisdiction to its long-term programme of work.

78. The Argentine judicial authorities had exercised universal jurisdiction on the basis of the gravity of the crimes concerned, in particular genocide, war crimes, crimes against humanity and serious human rights violations. In Argentine judicial practice, universal jurisdiction was exercised as a complement and as an exception to the principles of territoriality and active or passive personality, and after it had been determined that the crimes in question were not being tried or could not be tried by the State in whose territory they had been committed or by the State of nationality of the perpetrators or the victims. Before invoking universal jurisdiction, the judicial authorities also first ruled out that there were no ongoing investigations in the country concerned and that no international criminal tribunal was investigating the facts.

79. **Mr. Baca** (Costa Rica) said that while some progress had been made in the 13 years that the topic of universal jurisdiction had been on the Committee's agenda, it fell short of what was needed, which seemed to be the fate of many of the agenda items considered by the Committee. Rather than promoting the progressive development of international law, the Committee seemed to be witnessing its stagnation.

80. In the face of numerous situations of massive and systematic violations of human rights, the application of the principle of universal jurisdiction was more necessary than ever. The international community had a duty to ensure justice for victims of the most heinous crimes and to prevent impunity for the most serious international crimes, which was unacceptable and,

moreover, unjustifiable, given the increasing availability of legal cooperation mechanisms to combat it. Universal jurisdiction was, however, a complement to, not a replacement for, national jurisdiction. States had the primary obligation to deliver justice, but when they did not do so, universal jurisdiction must be brought to bear.

81. His delegation was convinced of the merits of universal jurisdiction as a means of preventing impunity for the most serious crimes and reaffirmed its commitment to work constructively with other delegations in the discussions on the relevant elements of a working concept of universal jurisdiction. It was important to reach agreement on the scope and application of such jurisdiction in order to dispel concerns about its potential abuse or misuse. In preparation for those discussions, his delegation encouraged States and international organizations to continue submitting information on the subject. Information on the treatment of the principle of universal jurisdiction in national laws would make it possible to undertake a comparative analysis, which was crucial to increase understanding of legislative approaches and judicial practice in relation to universal jurisdiction.

82. His delegation appreciated the work of the Secretariat in compiling information on relevant applicable international treaties, including those containing provisions on the principle of *aut dedere aut judicare*, which must be differentiated from the principle of universal jurisdiction. It also welcomed the decision by the International Law Commission to move the topic of universal criminal jurisdiction to its long-term programme of work.

83. **Ms. Sebenik** (Slovenia) said that universal jurisdiction was an invaluable tool for ensuring accountability, providing redress for victims and preventing impunity for crimes of concern to the international community. It was an important complement to the jurisdiction of international tribunals and ensured that persons accused of serious crimes could be held accountable in situations where the State concerned was unwilling or unable to exercise jurisdiction. The exercise of universal jurisdiction could help to fill jurisdictional gaps and eliminate other obstacles in determining criminal responsibility for such crimes. It was encouraging that national judicial authorities had increasingly invoked universal jurisdiction in recent years to launch investigations into atrocities in several countries and had successfully conducted judicial proceedings on that basis.

84. The international community had taken an important step towards ensuring accountability for the most heinous crimes with the adoption in May 2023 of the Ljubljana-The Hague Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes Against Humanity, War Crimes and Other International Crimes. With its well-defined procedures for mutual legal assistance and extradition, the Convention provided the legal basis that would, for the first time in history, allow countries to cooperate expeditiously and systematically in the prosecution of the most serious international crimes. It was therefore a key instrument that would enable States to exercise universal jurisdiction effectively. Her delegation invited all States to sign the Convention at the signing conference to be held in The Hague in February 2024.

85. **Mr. Kirk** (Ireland) said that today, more than ever, the international community must strive to ensure accountability for international crimes. Universal jurisdiction was a key tool in the fight against impunity. Ensuring that the perpetrators of international crimes were held to account not only served as a deterrent to further crimes, but was also a critical element of reconciliation processes and could bring a sense of closure to victims, thus consolidating peace and reducing the likelihood of future conflict.

86. His Government considered that universal jurisdiction allowed a State to assert jurisdiction over an offence irrespective of the place in which it was committed, the nationality of the accused, the nationality of the victim or any other link with the prosecuting State. The Constitution of Ireland provided for the exercise of extraterritorial jurisdiction in accordance with the generally accepted principles of international law. However, the exercise of extraterritorial jurisdiction of any type, including universal jurisdiction, was exceptional. Irish domestic law did not allow trials in absentia; the exercise of universal jurisdiction therefore required the presence of the alleged perpetrator within the territory of Ireland.

87. The application of the principle of universal jurisdiction should be governed by transparent rules that would guarantee legal certainty and the reasonable exercise of such jurisdiction. It was widely agreed that the primary responsibility for investigating and prosecuting international crimes lay with the State or States with the closest link to the offence committed. However, when those States were unable or unwilling to prosecute, it was in the interests of the international community as a whole to ensure that justice could be delivered.

88. His delegation looked forward to participating in the working group that would consider the relevant elements of a working concept of universal jurisdiction. It hoped that those efforts would assist the Committee in deciding how the principle of universal jurisdiction could best be used to minimize gaps in the international justice system to the benefit of all.

89. **Mr. Roshdy** (Egypt) said that his delegation recognized the importance of preventing impunity and progressively developing international law. At the same time, it stressed the importance of abiding by the principles of customary international law and public international law, in particular respect for the sovereignty of States, non-interference in their internal affairs and the immunity of high-level State officials, and guarding against the adoption of broad definitions of the principle of universal jurisdiction, especially when crimes were committed abroad and where the conditions for the exercise of such jurisdiction were not met. Universal jurisdiction should be a complement to, not a substitute for, national jurisdiction. Recourse to it should be exceptional and should be limited to cases in which the States where such crimes were committed were unwilling or unable to exercise jurisdiction.

90. The Committee should be meticulous in its discussions on the topic and should not set any timelines for reaching a desired outcome.

91. **Mr. Ikondere** (Uganda) said that the international community was still far from reaching a consensus on the definition and scope of the principle of universal jurisdiction and the conditions and procedures for its application. His delegation was of the view that the main responsibility for the exercise of universal jurisdiction lay with the State where a crime had taken place. It stressed the need for strict respect for the national sovereignty, territorial integrity and political independence of every State. The international community should be mindful of the high risk of improper use of universal jurisdiction.

92. Efforts to determine the scope and application of universal jurisdiction should be premised on the desire to protect fundamental rights and ensure justice and accountability for the most heinous crimes through the adoption of collective State measures. However, equal consideration should be given to other legal obligations that formed the basis for international relations, such as the customary international law obligation to respect the immunity of sitting Heads of State and Government and other senior State officials from foreign criminal jurisdiction. Universal jurisdiction should be approached with the necessary sensitivity to avoid allegations of the selective application thereof, which

could call into question the credibility of an essential component in international criminal justice.

93. Universal jurisdiction was subordinate to territorial and national jurisdiction and should be exercised only in exceptional circumstances. The State in whose territory a crime was alleged to have been committed should have priority to prosecute, as the territorial State was most affected by the crime and was best placed to gather evidence. In addition, prosecution in the territorial State enabled victims to witness the trial. In line with the principle of complementarity, which had been recognized by various international courts and tribunals, another State could prosecute the crime only if the territorial State was unwilling or unable to do so.

94. Treaty obligations to extradite or prosecute should not be conceived as, or used to infer, treaty-based universal jurisdiction. The obligation to extradite or prosecute was conceptually and legally distinct from universal jurisdiction. A detailed analysis of State practice and *opinio juris* was needed to identify the existence of a customary rule of universal jurisdiction over a particular crime. Universal jurisdiction could not be exercised in isolation from, or to the exclusion of, other applicable principles of international law, including the principles of State sovereignty and territorial integrity. It should be exercised in good faith in order to avoid its misuse and abuse.

95. **Mr. Jadoon** (Pakistan) said that while the imperative underlying the principle of universal jurisdiction was to uphold the ideals of accountability and justice by holding to account the perpetrators of certain egregious crimes, fundamental differences regarding the nature, scope and application of the principle continued to prevent consensus on the matter. The selective use and manipulation of the principle by some States undermined the credibility of international law and efforts to combat impunity. The scope and application of the principle of universal jurisdiction must be addressed cautiously and in an objective manner in the light of customary international law and *opinio juris*.

96. Universal jurisdiction was subordinate to, and not a substitute for, territorial and national jurisdiction. The State in whose territory the crime was committed should have primary responsibility for prosecution, since it was the State most affected by the crime and the best placed to gather evidence. Moreover, prosecution in the territorial State made it easier for victims to witness the proceedings. In accordance with the principle of complementarity, which had been recognized by various international courts and tribunals, another State could

prosecute the crime only if the territorial State was unwilling or unable to do so.

97. Universal jurisdiction should be exercised only in respect of grave crimes that affected the international community as a whole and that were generally agreed to be subject to universal jurisdiction, such as war crimes, crimes against humanity and genocide. Moral and legal standards must be applied consistently and uniformly in all instances; otherwise, any calls for accountability would lack credibility and smack of double standards and selectivity, especially when egregious crimes committed in full view of the international community were studiously ignored. In line with the obligations arising under the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), universal jurisdiction should apply in respect of crimes committed in regions under foreign occupation.

98. Treaty obligations to extradite or prosecute should not be understood as, or used to infer the existence of, universal jurisdiction. Treaty-based jurisdiction was conceptually and legally distinct from universal jurisdiction proper. A detailed analysis of State practice and *opinio juris* was needed in order to identify the existence of a customary rule of universal jurisdiction over a particular crime. Furthermore, universal jurisdiction could not be exercised in isolation from, or to the exclusion of, other applicable principles of international law, such as the sovereignty of States and territorial integrity. The principle of universal jurisdiction was not a licence to undermine the sovereignty of States, but rather a means, in full conformity with the principles of international law and the Charter of the United Nations, of ensuring that perpetrators did not use jurisdictional gaps to evade justice.

99. **Mr. Mohammed** (Sudan) said that any inclusive, impartial and balanced approach to the topic of universal jurisdiction should be grounded in the established principles of international law, customary international law and the Charter of the United Nations, particularly the principles of sovereign equality of States, political independence and non-interference in the internal affairs of States. In considering universal jurisdiction, the General Assembly should focus on the conditions that must be met for its application. National jurisdiction should take precedence over universal jurisdiction, as the latter complemented but did not replace the jurisdiction of States. It should apply only when States were unwilling or unable to exercise jurisdiction, and when no other court was available to prosecute the alleged perpetrator.

100. The State where the crime occurred and the State of nationality of the perpetrator bore primary responsibility for prosecution. All States had an obligation to criminalize serious crimes under their domestic law and to exercise jurisdiction effectively when such crimes were committed on their territories or by their nationals. Such action was essential in order to avoid competing jurisdictions, procedural violations and politically motivated prosecutions. Universal jurisdiction was a complex subject and discussions on it should continue without undue haste and without a single interpretation of the principle being imposed or given preponderance.

101. **Mr. Proskuryakov** (Russian Federation) said that his Government was staunchly committed to combating impunity for the most serious crimes under international law. The principle of universal jurisdiction was an important tool for holding perpetrators of such crimes accountable. However, it should be applied with the utmost care until it was circumscribed within a strictly defined, universally accepted legal framework, or until a consensus emerged regarding, at the very least, the conditions for and the scope of its application. As demonstrated yet again in the Secretary-General's report (A/78/130), there was no common understanding of the principle among States and international organizations. States wishing to exercise universal jurisdiction were obligated to do so in strict compliance with customary international law, in particular the obligation to respect the immunity of State officials.

102. There were also other, less controversial, tools available for combating impunity for the most serious crimes under international law. In that connection, his delegation called for stronger treaty-based mechanisms for cooperation in criminal matters, including legal assistance and information-sharing among investigation authorities. Although his delegation was not opposed to the Committee's continued discussion of the topic, it believed that progress towards the development of uniform standards and criteria for the application of universal jurisdiction would be difficult to achieve. It might be worth moving work on the item to a three-year cycle.

103. Several delegations had, once again, made anti-Russian remarks, interspersed with praises of the principle of universal jurisdiction and calls for the Committee to develop it further. It was worth recalling that the item had been allocated to the Committee in response to concerns that Western countries were abusing the principle of universal jurisdiction and failing to respect the immunity of officials of developing countries. Accordingly, the Committee's task was not to strengthen the institution of universal jurisdiction, but

to develop consensus-based rules that would help to ensure that it could not be abused for political ends. The statements delivered by many Western delegations in the current debate showed clearly that the Committee had made little headway towards accomplishing that task. As a result, universal jurisdiction continued to be viewed by the West primarily as a political tool to be used against countries and regimes they did not like.

104. **Ms. Carral Castelo** (Cuba) said that the principle of universal jurisdiction should be discussed by all Member States in the General Assembly, whose main objective with regard to universal jurisdiction should be to develop a set of international rules or guidelines in order to prevent abuse of the principle and thereby safeguard international peace and security. Universal jurisdiction should not be used to diminish respect for a country's national jurisdiction or for the integrity and values of a political system, nor should it be used selectively for political ends in disregard of the rules and principles of international law. 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 States. It should be complementary in nature, applied only to crimes against humanity, and invoked only in exceptional circumstances, where there was no other way for the perpetrators to be prosecuted.

105. Her 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. 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 longstanding and universally accepted international principles and norms be violated under the cover of universal jurisdiction.

106. 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. Her delegation supported the development of international rules or guidelines to establish clearly the scope and limitations of universal jurisdiction and the crimes to which it should be applied. It welcomed the work of the Committee's open-ended working group in that regard.

107. **Mr. Nyanid** (Cameroon) said that a consensus existed regarding the need to combat impunity, which was the basis for the exercise of universal jurisdiction. In the successive resolutions adopted on the matter, States had clearly expressed their commitment to fighting impunity and to ensuring the legitimacy and credibility of the principle of universal jurisdiction through its responsible and judicious application consistent with international law. The inclusion of the wording "consistent with international law" showed the commitment of sovereign States to keep intact the Westphalian notion of international society, which affirmed the sacrosanct principle of State sovereignty. That phrase should enable delegations to come to an agreement on the notion, as it served as a reminder that sovereignty lay at the heart of the development of international law.

108. His delegation reiterated that, under international law, universal jurisdiction was consubstantial with the notion of diplomatic protection and referred to the power and capacity of States to prosecute their nationals who committed a crime, regardless of their place of residence, by virtue of the nationality link. The extraterritorial jurisdiction of the State of origin was based on several recognized principles, including the nationality or active or passive personality principle and the protective principle, both of which required a link between the act committed and the State exercising jurisdiction, and the principle of immunity, which stemmed from State sovereignty.

109. His delegation viewed with concern the tendency to give all States the power to punish certain types of offences, regardless of where they were committed or the nationality of the perpetrator or the victims. It also had serious reservations about how the principle of extraterritoriality was being construed by certain States, which were adopting laws that provided, contrary to international law, that their national laws applied to foreign citizens who committed crimes, even outside their territories. It would be preferable, instead, for those States to make use of mechanisms available under international law, in particular judicial cooperation agreements.

110. His delegation believed that a State could prosecute serious crimes committed abroad only when the perpetrator or the victim was a national of that State. Consequently, extraterritoriality could only be envisaged by the country of origin of the accused, consistent with the active personality principle, and only when the acts committed were criminalized under its laws. When an offence was committed against a foreign national, the State could prosecute only if the offence was criminalized under both its criminal law and the

criminal law of the State in whose territory the offence was committed, in accordance with the principle of dual criminality. His delegation encouraged States to include in their domestic legal systems provisions giving their domestic courts full jurisdiction over all crimes committed by their nationals.

111. Universal jurisdiction must be exercised on the basis of clear and objective criteria in order to prevent its misuse or abuse. It should not be used for political purposes and must be exercised with scrupulous respect for the sovereignty of States. As international crimes always included extraterritorial elements that necessitated greater interaction between States, it was essential for States to coordinate their actions and cooperate so to ensure a balance between respect for the principles set out in their domestic criminal laws and the principles enshrined in the regional instruments to which they were parties.

112. **Mr. Li Linlin** (China) said that his Government appreciated the efforts made over the previous 15 years to clarify the scope and application of the principle of universal jurisdiction and supported the full use of existing treaty mechanisms to strengthen inter-State judicial cooperation in order to prevent impunity. Universal jurisdiction was a complex issue involving legal, political and diplomatic considerations, and its scope and application must be carefully managed in strict accordance with international law in order to avoid any abuse. The principle of universal jurisdiction was not a widely accepted rule of international law, and there continued to be diverging views as to whether it could be applied to crimes other than piracy.

113. Some States exercised jurisdiction on the basis of an obligation to extradite or prosecute under international treaties or extraterritorially on the basis of a specific link, and some international judicial bodies exercised jurisdiction over specific crimes on the basis of international legal instruments. Those situations were, however, different from the exercise of universal jurisdiction over piracy and therefore did not constitute the basis for determining the scope and application of universal jurisdiction. States that had provided for the application of universal jurisdiction in their domestic laws had set preconditions, such as the presence of the accused in their territories, reflecting a prudent attitude towards the exercise of such jurisdiction.

114. States exercising universal jurisdiction must abide strictly by the principle of sovereign equality of States. The establishment of jurisdiction should be premised on the existence of a legitimate sovereign interest or a substantive connection between the case in question and the State in question. Universal jurisdiction exercised by

a State in the absence of a link, such as *ratione loci* or *ratione personae* or vital national security interests, was a form of complementary jurisdiction that could overlap or conflict with the jurisdiction of other States and should be avoided.

115. Such jurisdiction should be applied in accordance with other universally recognized principles and rules of international law, including respect for the immunity of foreign Heads of State, Heads of Government, Ministers for Foreign Affairs and other officials, and in keeping with the purposes and principles of the Charter of the United Nations, including non-interference in the internal affairs of States. Due process in criminal proceedings should be observed and the fundamental rights of the accused upheld. Universal jurisdiction should not be misused for political purposes. Such misuse would be risk creating total judicial chaos and would encourage the powerful to act arbitrarily in their interests, which would represent not an advance in the law but a step backward.

116. As there remained enormous differences in the views and judicial practices of States with regard to universal jurisdiction, his delegation believed that it would be premature for the International Law Commission to study the issue. It nonetheless supported continued discussion of the topic in the Committee with a view to forging greater consensus.

117. **Mr. Khaddour** (Syrian Arab Republic), speaking in exercise of the right of reply, said that the statement delivered by the representative of Liechtenstein appeared to have been intended to politicize the debate on an agenda item that was strictly legal in nature. The entire statement had been devoted to making accusations concerning issues that impinged on the sovereignty of his country. He would invite the representative to consider carefully the statements made by numerous other delegations that had stressed the importance of non-interference in the internal affairs of States.

118. The statement delivered by the representative of Liechtenstein had also included comments on 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, an illegitimate mechanism established in flagrant violation of international law and the Charter of the United Nations. The representative of Liechtenstein should re-examine the relevant provisions of international law and the judgment of the International Court of Justice in the *Arrest Warrant of 11 April 2000 (Democratic*

Republic of the Congo v. Belgium) case concerning the competence of foreign courts to prosecute officials of other States. The representative of Liechtenstein should also review the failed attempts by some European courts to apply that principle. Those courts had failed the victims when the perpetrators were of specific nationalities. The Pinochet and Ariel Sharon cases came to mind, as did the various cases against George Bush, Donald Rumsfeld and Tony Blair. It would be interesting to hear what the representative of Liechtenstein thought of those cases and how they had been handled.

119. The representative of Liechtenstein had alluded to the achievements of courts in neighbouring countries, but he would invite her to focus on the courts and cases in her own country, especially cases involving huge tax fraud, money-laundering from organized crime and government corruption and the financing of terrorism. Those crimes did not require the exercise of universal jurisdiction; it would suffice to exercise national jurisdiction in order to suppress them, because they were committed in the territory of Liechtenstein.

The meeting rose at 1.05 p.m.