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## Sixth Committee

### Summary record of the 12th meeting

Held at Headquarters, New York, on Wednesday, 17 October, at 3 p.m.

*Chair:* Mr. Sergejev ..... (Ukraine)  
*later:* Mr. Bonifaz (Vice-Chair) ..... (Peru)

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*The meeting was called to order at 3.15 p.m.*

### **Statement by the President of the General Assembly**

1. **The Chair** invited the President of the General Assembly to address the Committee.

2. **Mr. Jeremić** (Serbia), President of the General Assembly, recalled that on 24 September 2012, the General Assembly had held a High-level Meeting on the Rule of Law at the National and International Levels, at which he had stressed that international law must not be seen as a utopian aspiration with little relevance to world affairs; the principles and rules codified by centuries of treaties and agreements between nations should serve legitimate State interests rather than trying to override them. Strict adherence to the rule of law was a deterrence from recourse to war. At the Meeting, many delegations had emphasized the importance of respecting the basic tenets of international law, including the sovereignty and territorial integrity of Member States, which constituted the backbone of effective multilateralism in the twenty-first century. Speakers had also reiterated that establishing respect for the rule of law was essential to achieving lasting peace in the aftermath of conflict. It could also lead to more effective promotion of human rights, economic progress and development.

3. The Committee had been tasked with follow-up to the Declaration of the High-level Meeting (A/RES/67/1) and he looked forward to progress in that area. One essential element in the follow-up process was the principle of national ownership, which must be respected in international cooperation aimed at strengthening the rule of law. Another important element was the effort to combat corruption, which eroded public confidence and the capacity to adopt and enforce fair and objective laws and was one of the biggest obstacles to economic growth and development. A third element was Member State engagement in the process led by the Secretary-General, who had been requested to propose ways and means of developing linkages between the rule of law and the three main pillars of the United Nations — peace and security, human rights and development — and would make proposals in that regard in his report to the General Assembly at its sixty-eighth session.

4. The work of the International Criminal Court had received support from many Member States, but many had also stressed the importance of enhancing its fairness and objectivity. It would be interesting for the

Committee to follow up on the Security Council's debate on the matter at its 6849th meeting, held concurrently with the present meeting of the Committee, which would commemorate the tenth anniversary of the entry into force of the Rome Statute of the Court. In order to be effective, the corpus of international law interpreted by international courts must be observed objectively; respect for accepted norms could not be ambiguous or selective. The work of the International Court of Justice was also strongly supported by Member States; it was his understanding that several States would soon accept its compulsory jurisdiction and that the idea of seeking advisory opinions from the Court on a number of international issues was gaining traction.

5. Combating terrorism must also remain high on the agenda of the Committee and the international community since it represented one of the most pernicious threats to lasting international peace, security and development. In the new global reality all countries, even the most powerful ones, were vulnerable as capabilities once thought to lie exclusively in the hands of States, such as the ability to inflict harm on a massive scale, could become more easily accessible to non-State actors. He looked forward to hearing the outcome of the Committee's deliberations on the recommendations put forward in the report of the Secretary-General on Technical assistance for implementing the international conventions and protocols related to terrorism (A/67/158).

6. The United Nations Global Counter-Terrorism Strategy was an important instrument, but more was needed. He hoped that delegations would find a way to overcome their disagreements on definitions and other matters so that the draft comprehensive convention on international terrorism could be adopted during the current session of the Assembly. He paid tribute to Mr. Rohan Pereira of Sri Lanka for his contribution as Chair of the Committee's Working Group on measures to eliminate international terrorism and, in that context, to the efforts of the Friends of the Chair. A comprehensive convention would send a clear message to those who financed, planned and engaged in acts of terror that the world was united against them and would never yield.

### Organization of work

7. Chair recalled that during its first meeting, the Committee had deferred the election of the Chair of the Working Group on criminal accountability of United Nations officials and experts pending informal consultations. He understood that Mr. Dire Tladi (South Africa) was available to chair the Working Group and he took it that the Committee wished to elect him.

8. *It was so decided.*

9. *Mr. Bonifaz (Peru), Vice-Chair, took the Chair.*

### Agenda item 84: The scope and application of the principle of universal jurisdiction (A/65/181, A/66/93 and Add.1 and A/67/116)

10. **Mr. Errázuriz** (Chile), speaking on behalf of the Community of Latin American and Caribbean Nations (CELAC), said that the member countries of CELAC attached great importance to the issue of the scope and application of universal jurisdiction, which should be examined in the light of international law and with particular attention to the applicable international norms. The Working Group on the topic should seek to identify the points on which consensus existed and those that required further consideration. Discussions during the current session should focus on the elements addressed in the informal paper submitted by the Government of Chile during the previous session of the General Assembly (A/C.6/66/WG.3/1).

11. Universal jurisdiction was an institution of international law, which therefore established the scope of its application and enabled States to exercise it. CELAC found it constructive that a number of Member States had affirmed that it should not be confused with international criminal jurisdiction or with the obligation to extradite or prosecute (*aut dedere aut judicare*); the two legal institutions were different but complementary and had the common goal of ending impunity. While it would be premature to determine the eventual outcome of the Working Group's discussions, the possibility of referring the topic to the International Law Commission for study should not be ruled out.

12. **Mr. Al Habib** (Islamic Republic of Iran), speaking on behalf of the Movement of Non-Aligned Countries, said that the principles enshrined in the Charter of the United Nations, particularly the sovereign equality and political independence of States

and non-interference in their internal affairs, should be strictly observed in any judicial proceedings. The exercise, by 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 States officials was firmly established in the Charter and in international law and must be fully respected.

13. The invocation of universal jurisdiction against officials of some member States of the Non-Aligned Movement raised both legal and political concerns. In its decision Assembly/AU/Dec.335 (XVI), the Assembly of the African Union, while reiterating its commitment to combat impunity, had called upon all concerned States to respect international law, particularly with regard to the immunity of State officials, when applying the principle of universal jurisdiction and to seek a durable solution to its abuse.

14. It was necessary to clarify the crimes falling under universal jurisdiction and to prevent its misapplication; the Committee might find the decisions and judgments of the International Court of Justice and the work of the International Law Commission useful for that purpose. The Movement cautioned against unwarranted expansion of the range of such crimes and would participate actively in the work of the Working Group, including by sharing information and practices, with a view to ensuring proper application of universal jurisdiction.

15. **Ms. Revell** (New Zealand), speaking on behalf of Canada, Australia and New Zealand (CANZ), said that the CANZ countries had long recognized universal jurisdiction over the most serious crimes as an established principle of international law; however, the primary responsibility for prosecution should always rest with the State in which the crime had been committed because it had the best access to evidence, witnesses and victims and would benefit most from the transparency of a trial and the accountability of a verdict. If the territorial State was unable or unwilling to exercise jurisdiction, universal jurisdiction provided a complementary mechanism to ensure that individuals who committed grave crimes did not enjoy safe haven anywhere in the world. Such jurisdiction should always be exercised in good faith and in a manner consistent with international law; the rule of law must be upheld and accused persons must be guaranteed an impartial, expedient and fair trial.

16. The CANZ countries applauded those States that had incorporated universal jurisdiction over the crimes of genocide, crimes against humanity and war crimes into their domestic legislation. They encouraged others to do the same and to cooperate and support each other in order to prevent impunity.

17. **Mr. Salem** (Egypt), speaking on behalf of the Group of African States, recalled that the Group had brought the current agenda to the Committee's attention and attached great importance to it. It recognized that universal jurisdiction was a principle of international law intended to ensure that individuals who committed grave offences did not enjoy impunity and were brought to justice. The Constitutive Act of the African Union provided for the right of the African Union to intervene, at the request of any of its member States, in situations of genocide, war crimes and crimes against humanity. The African States had also adopted progressive human rights instruments, including optional protocols that permitted individuals to lodge complaints or grievances against their Governments, and they honoured their reporting obligations under United Nations human rights treaties.

18. However, the Group wished to stress the importance of respect for other norms of international law, including the sovereign equality of States, territorial jurisdiction and the immunity of State officials, in application of the principle of universal jurisdiction, whose abuse could undermine the effort to combat impunity. Some non-African States and their domestic courts had sought to justify arbitrary or unilateral application or interpretation of that principle on the basis of customary international law. He reminded those countries that a State that relied on a purported international custom must, generally speaking, demonstrate to the satisfaction of the International Court of Justice that the alleged custom had become so established as to be legally binding.

19. African and other like-minded States around the world were seeking the adoption of measures to end abuse and political manipulation of the principle of universal jurisdiction by judges and politicians from States outside Africa, including by violating the principle of the immunity of Heads of State under international law. The Group renewed the call by African Heads of State and Government for a moratorium on all pending arrest warrants and prosecutions filed against African leaders or other high-ranking officials until discussions on the matter

within the United Nations had concluded and appropriate recommendations had been made (Assembly/AU/14 (XI), para. 8).

20. **Mr. Nikolaichik** (Belarus) said that, before aspects of the principle of universal jurisdiction could be reflected in national legislation, the specific crimes to which it applied — which should include crimes against peace, war crimes, crimes against humanity and piracy — must be established in international law. In practice, quasi-universal jurisdiction already existed over crimes that were the subject of international conventions, such as the taking of hostages or torture and other cruel, inhuman or degrading treatment or punishment, provided that a link existed between the perpetrator and the forum State.

21. In the context of international law, the principle of absolute universal jurisdiction must not conflict with the principle of the sovereign equality of States and that of non-interference in their internal affairs. It was also important to rid the concept of universal jurisdiction of shortcomings resulting from its politicization, the lack of functioning international cooperation mechanisms, the absence of a clear list of crimes to which it applied, the lack of clarity concerning its applicability to individuals who enjoyed privileges and immunities and the practice of *in absentia* conviction. His Government considered a treaty-based, rule-of-law approach to universal jurisdiction most appropriate at the current stage. The perpetrators of international crimes should be prosecuted with due process and in accordance with States' international obligations and domestic laws; in the context of international law, however, universal jurisdiction could only be considered legitimate where it was established by an international treaty or a Security Council resolution.

22. A balance needed to be struck between the progressive development of the principle of universal jurisdiction and respect for the principles of equity, the sovereign equality of States and non-interference in their internal affairs, while putting an end to impunity. He hoped that the International Law Commission would conduct an in-depth and impartial study of the principle and the stated positions of States in the context of its examination of the obligation to extradite or prosecute (*aut dedere aut judicare*).

23. **Mr. Tesfaye** (Ethiopia) said that universal jurisdiction was a twofold concept belonging to both

international and municipal law. Ambiguity existed not only as to which offences constituted crimes under international law, but also as to who might be subject to such jurisdiction. Differing practices among countries had resulted in subjectivity that might be undermining the common resolve to combat impunity. The principle of universal jurisdiction was enshrined in the Criminal Code of Ethiopia as a complementary jurisdictional instrument in the effort to combat impunity, and his Government was committed to its application without abuse.

24. There appeared to be consensus on the absence of a widely established body of State practice. His delegation believed that States exercising universal jurisdiction must take particular care since national legal systems applied different procedural and evidentiary rules. Neglect of the principle of State sovereignty and that of the primacy of action in criminal prosecutions posed a serious threat to the effort to cultivate widespread appreciation of the rule of law and international law. International organs exercising universal jurisdiction were customarily bound to take into account the immunity of State officials under international law and the same was true of Member States, which were duty bound to refrain from prosecuting officials entitled to such immunity. The Committee should continue its debate on the agenda item with a view to the establishment of a consistent standard on the scope and application of universal jurisdiction.

25. **Ms. Moon Ji Hye** (Republic of Korea) said that while it was generally agreed that piracy and war crimes were subject to universal jurisdiction, there was a lack of consensus on other crimes, such as terrorism, genocide and crimes against humanity. The application of universal jurisdiction was legally complex and raised many practical questions, including who would exercise it and how it would be exercised. Her delegation was of the view that in such cases, the most important criteria would be the presence of a suspected offender in the prosecuting State's territory and the existence of a well-established and clear standard for the exercise of universal jurisdiction.

26. The principle of universal jurisdiction should not be misused for political purposes. A clear, precise definition and a well-regulated standard for its exercise would help to ensure that it was applied in conformity with international law and that it contributed to the promotion and development of the rule of law. In order

to move forward on the topic, her delegation suggested that advice should be requested from the International Law Commission.

27. **Mr. Válek** (Czech Republic) said that some delegations' statements at the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels and the discussion in the Committee were proof that the question of the scope and application of universal jurisdiction was important for Member States. His delegation remained of the view that it was a legal, not a political, issue and should be referred to the International Law Commission for study since discussions within the Working Group had shown that the Committee lacked sufficient time to clarify and reach agreement on the principle of universal jurisdiction; at the sixty-sixth session of the General Assembly, delegations had been unable to agree even on the statement that its purpose was to avoid impunity. Moreover, the Committee operated as a political body while the Commission was an expert body. In paragraph 2 of its resolution 66/103, the Assembly had decided that the Committee would continue to consider the topic without prejudice to its consideration in other forums of the United Nations and the Working Group, in paragraph 1 of its informal paper (A/C.6/66/WG.3/1), had stated that the potential role of the Commission would be considered when appropriate.

28. In his delegation's view, that time had come. If there was no agreement on that proposal, it remained ready to participate constructively in the meetings of the Working Group. It was not prepared, however, to support any proposal for the establishment of an international mechanism that would have the power to interfere with national criminal proceedings initiated on the basis of universal jurisdiction. Such a mechanism would be incompatible with his Government's understanding of the independence and impartiality of courts and judges.

29. **Mr. Maza Martelli** (El Salvador) said that his delegation fully supported the Committee's consideration of the principle of universal jurisdiction, which prevented arbitrary justice and violation of the most basic principles of human dignity. In accordance with the Princeton Principles, universal jurisdiction was based solely on the nature of the crime, without regard to where it had been committed or to the nationality of the perpetrators and victims. Nevertheless, such jurisdiction did not apply as a

general rule, but rather as an exception where the territorial State failed to take action. A State's right to punish derived from its sovereignty and must be respected when exercised in respect of crimes committed within its boundaries. Moreover, the territorial State was in the best position to investigate and prosecute the crime, enforce any punishment and ensure that victims were compensated appropriately.

30. Future work on the topic should move beyond conceptual aspects of universal jurisdiction and focus on specific considerations relating to its scope and application, such as the principles, rights and basic guarantees that should govern criminal proceedings conducted in accordance with the principle of universal jurisdiction, including compensation for victims, which was essential to justice.

31. Universal jurisdiction was applicable under his country's Criminal Code when the offence impaired legal rights that were internationally protected by specific agreements or rules of international law or that entailed a serious breach of universally recognized human rights. The Code had recently been amended and torture had been reclassified as a crime against humanity, giving it a clear international dimension that might have implications for the exercise of universal jurisdiction.

32. **Mr. Diallo** (Senegal) said that lack of a common understanding of the rules governing exercise of the principle of universal jurisdiction could lead to its misapplication and have an adverse effect on the conduct of international relations. The Committee's consideration of the matter had thus far failed to establish the scope or application of the principle. He hoped that the current discussion would pave the way for consensus.

33. While universal jurisdiction had originally applied only to crimes of piracy, customary law had expanded its scope to encompass crimes against humanity, war crimes and torture. Its must never be applied, however, in violation of fundamental principles of international law, such as the immunity of State officials, which was generally agreed to be rooted in customary international law. Universal jurisdiction was also rooted in customary international law and its application must be subject to the rules and principles recognized thereunder; States would not be willing to embrace it until agreement on a system for the international prosecution of perpetrators of serious

crimes, irrespective of their nationality, had been reached. Politicization could lead to selective application, which would only weaken the principle and hinder the achievement of its aims. The exercise of universal jurisdiction must be regulated in order to prevent such abuse, ensure respect for the sovereign equality of States and safeguard international peace and security. The conclusions of the International Law Commission on the topic would doubtless contribute to greater understanding of the issues involved.

34. **Mr. Gonzalez** (Chile) said that jurisdiction was an essential element of the rule of law and was inherent in State sovereignty. A proliferation of legislation in recent years had led to the exercise of universal jurisdiction in an inconsistent manner and without regard for the traditional rules governing territoriality, the nationality of the perpetrator and, in some cases, that of the victim, creating confusion and legal uncertainty. The international community should therefore clarify the question of jurisdiction within the framework of international law and establish a means of regulating universal jurisdiction by defining its conceptual framework and establishing its scope and application and possible exceptions thereto.

35. In his delegation's view, universal jurisdiction should apply only in exceptional circumstances and in respect of serious crimes under international law. His Government recognized such jurisdiction in cases of piracy, both pursuant to with the United Nations Convention on the Law of the Sea and, as a war crime, with the 1949 Geneva Conventions and Additional Protocol I of 1977. Universal jurisdiction could also be exercised on the basis of international law, especially treaty law, in order to prevent impunity for crimes against humanity, war crimes and genocide.

36. The foremost principle governing jurisdiction was territoriality; the courts of the State in which the crime had been committed had primary jurisdiction to investigate and punish the perpetrators. States should exercise universal jurisdiction only when the territorial State was unwilling or unable to investigate and prosecute the crime. However, States' competence to exercise universal jurisdiction should not derive solely from their domestic law, but rather from a broadly accepted international treaty.

37. The jurisdictional immunities recognized by international law should be interpreted and applied in a manner consistent with the need to combat impunity

for grave international crimes. The international community should establish a set of rules in order to resolve doubts concerning proper application of the principle of universal jurisdiction and to avoid the possibility of abuse, either through traditional channels for recourse to the courts or by other methods. If the Working Group was unable to make substantial headway on the issue in the short term, his delegation would be open to referring it to the International Law Commission for study.

38. **Mr. Abusabib** (Sudan) said that recent attempts to expand the scope of universal jurisdiction had given rise to a number of legal reservations, particularly in view of the direct link between the principle of universal jurisdiction and that of State sovereignty. Discussion of the topic should continue within a limited framework and on the basis of a definition to be agreed within the United Nations, on the condition that the exercise of such jurisdiction fully respected the principles enshrined in the Charter of the United Nations, especially the sovereign equality and political independence of States and non-interference in their internal affairs.

39. Universal jurisdiction must remain supplementary to national jurisdiction; it was a breach of established principles of international law for one State to seek unilaterally to apply it without the consent of the State in which the crime had been committed or the State of which the accused was a national. Many questions had been raised because interpretation of the scope of universal jurisdiction lay in the hands of individual States, allowing them to expand the range of crimes regarded as “most serious” and leading to inconsistency in the exercise of such jurisdiction.

40. During the Sixteenth Ordinary Session of the Assembly of the African Union, the African leaders had affirmed the importance of the principle of universal jurisdiction but had noted the existence of a double standard in its interpretation and selectivity in its application that, in some cases, violated the rules of international law and customary international law. Charges had been filed and arrest warrants issued on the basis of certain States’ interpretation of universal jurisdiction using selective standards based on national interests. Those developments had led African leaders to reject such an expansion of the principle because it had no basis in international law and because its application had moved out of the realm of law and justice and into the realm of politics. In more than one

case, the International Court of Justice had issued an opinion on the exercise of international jurisdiction by non-African States against a high-level African official. The Court had affirmed the principle that Heads of State and high-level officials were protected under international law and under the relevant international instruments.

41. His delegation supported the ongoing work of the Working Group. It remained ready to engage in dialogue with a view to preventing impunity for the perpetrators of the most serious crimes on the basis of fair criteria and of international understanding founded on the rules of international law and customary international law that protected the sovereignty of States, their judicial systems and their officials and leaders.

42. **Mr. Dahamane** (Algeria) said that universal jurisdiction was a complementary means of combating impunity and was subsidiary to national legal frameworks and mechanisms for international cooperation in criminal matters. It should never be exercised in a selective or abusive manner, but rather in good faith and in accordance with international law. Recourse to such jurisdiction should be only a last resort, where other existing legal measures could not be effectively applied. The crimes within its scope should be clearly defined, and it should not be exercised in situations where to do so would be incompatible with international law. State sovereignty and the immunity of State officials must also be respected. His delegation welcomed the work of the International Law Commission on the related topics of the immunity of State officials from foreign criminal jurisdiction and the obligation to extradite or prosecute (*aut dedere aut judicare*).

43. The nature of a crime should determine whether it fell within the scope of universal jurisdiction. It appeared to be generally agreed that piracy qualified for inclusion on that basis, as, in the view of many Member States, did crimes against humanity, war crimes, genocide, slavery and torture. Views differed, however, with respect to expansion of the range of crimes falling under such jurisdiction and the circumstances under which it could be invoked. Establishment of the scope *ratione materiae* of universal jurisdiction and of the modalities for its exercise would prevent its abuse and politicization.

44. It must be stressed that the scope of universal jurisdiction varied according to whether it was exercised by national courts or international tribunals; in both cases, however, it was of paramount importance to clarify the legal basis for such application in order to enhance the credibility of international criminal justice mechanisms in the eyes of Member States, particularly those that were reluctant to place their full confidence in those mechanisms because they were opposed to the use of double standards.

45. **Mr. León González** (Cuba) said that the issue of the scope and application of universal jurisdiction should be discussed by all Member States within the framework of the General Assembly with the primary aim of preventing its abuse, which had negative consequences for the rule of law and international relations. The reports of the Secretary-General on the topic (A/65/181, A/66/93 and A/67/116) made it clear that the courts of developed countries were using the principle of universal jurisdiction for political and discriminatory purposes against citizens of developing countries. Its scope should be limited by full respect for the sovereignty and national jurisdiction of States, the principles enshrined in the Charter of the United Nations and the immunity of Heads of State, diplomatic personnel and other incumbent high-ranking officials, which was enshrined in international law and could not be called into question. His Government was concerned at the unilateral and selective exercise of extraterritorial criminal and civil jurisdiction by national courts with no basis in any international norm or treaty or in international law, and condemned the enactment by States of politically motivated laws intended to harm other States.

46. The application of universal jurisdiction should be regulated at the international level in order to prevent abuse and safeguard international peace and security. In establishing such regulations, consideration should be given to requiring countries that invoked the principle of universal jurisdiction to obtain the prior consent of the State in which the crime had been committed or of the State or States of which the accused was a national. It should be made clear that universal jurisdiction was supplementary in nature; it could not be applied where the accused was being investigated and prosecuted by national courts and it should be exercised only under exceptional circumstances in which there was no other way to prevent impunity. The regulations should also establish

the crimes that were subject to universal jurisdiction, which, in his delegation's view, should be limited to crimes against humanity.

47. **Ms. Zarrouck Boumiza** (Tunisia) said that the principle of universal jurisdiction was an essential mechanism for strengthening the rule of law, ensuring equitable justice and ending impunity for the most serious violations of international law and human rights. However, it must be exercised in strict conformity with the Charter of the United Nations and basic principles of international law and without selectivity or abuse. The international community must agree on a clear definition of universal jurisdiction and determine its scope.

48. Universal jurisdiction was distinct from, but complementary to, the jurisdiction of international judicial institutions, which also played a key role in international efforts to end impunity and promote justice and peace. The International Criminal Court, in particular, had made a valuable contribution to those efforts and to the enforcement of international humanitarian law. However, the Court dealt with serious crimes only after the fact; a mechanism for preventing them was also needed. For that reason, her Government had proposed the creation of an international constitutional court empowered to rule that national laws or constitutions violated international law or that elections had not been conducted in accordance with the democratic principles enshrined in international law and in human rights instruments. The creation of such a court would encourage Governments to give effect to the universal principles of democracy and freedom and prevent violence and loss of life.

49. **Ms. Salazar** (Mexico) said that the question of the scope and application of universal jurisdiction should eventually be referred to the International Law Commission, which was tasked with promoting the codification and progressive development of international law and was therefore best placed to study the matter. The Working Group should therefore focus on delineating the scope and content of the request to be submitted to the Commission, using as a basis the work that it had already done on the topic.

50. **Ms. Paoni Tupa** (Democratic Republic of the Congo), reiterating the views expressed by her delegation during the previous session, said that acceptance of the principle of universal jurisdiction



continued to be limited by the lack of clear rules regarding its application. The Working Group should continue its efforts to establish such rules, which must be consistent with the general rules of customary international law. It could surely be agreed that it was desirable for States to exercise universal jurisdiction in order to prevent impunity in cases of torture, war crimes, crimes against humanity or genocide, but consensus was also needed on several prerequisites if such jurisdiction was to be applied effectively. In order for States to exercise universal jurisdiction, their domestic law must provide for the prosecution of international crimes. The model law on universal jurisdiction for international crimes adopted by the Assembly of the African Union could provide useful guidance for that purpose.

51. A way must be found to destroy the illusion that certain States had a monopoly on the exercise of universal jurisdiction to the detriment of others. It was also necessary to address the question of immunities. The judgment of the International Court of Justice in *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, a milestone in the history of international law, had shed valuable light on the grey areas surrounding the issue. Her delegation remained open to any proposal that would establish decisively and by consensus equitable legal criteria and modalities for the application of universal justice in order to prevent impunity.

52. **Mr. Tchiloemba Tchitembo** (Congo) said that it was generally agreed that universal jurisdiction should be exercised only in exceptional circumstances and that it should not be confused with the obligation to extradite or prosecute, the exercise of international criminal jurisdiction or the complementarity of the International Criminal Court, nor should its application be equated with the extraterritorial applicability of decisions of domestic courts. However, profound differences of opinion remained with regard to its definition, its scope of application and its position and basis in international law.

53. The Working Group should strive to establish legal certainty with respect to several issues. One was the exercise of universal jurisdiction on the basis of national legislation, a practice that his delegation could not understand, let alone accept, because such legislation was inherently unilateral and limited in scope. The Working Group should also address the legal problems that could arise when a State exercised

universal jurisdiction over citizens of another State with which it had no ties through a specific agreement. In addition, it should seek to resolve the inconsistencies between the extraterritorial nature of legislation relating to the exercise of universal jurisdiction and the principles enshrined in the Charter of the United Nations, particularly the sovereign equality of States and non-interference in their internal affairs, which were recognized as *jus cogens* principles of international law and which all Member States were bound to respect.

54. Most of the definitions of universal jurisdiction proposed by Member States were based on national legislation, which made it difficult to reach consensus. A definition should be sought in the international legal instruments that provided the basis for such jurisdiction. In his delegation's view, universal jurisdiction meant the capacity to prosecute persons for serious crimes of international humanitarian law, regardless of where the crime was committed and whatever the nationality of the perpetrator or the victim.

55. The bodies authorized to exercise universal jurisdiction in any specific case were those identified in the regional or international agreement that constituted the source of such jurisdiction. The scope of universal jurisdiction should comprise the crimes stipulated in the four Geneva Conventions of 1949, the Convention on the Prevention and Punishment of the Crime of Genocide, the United Nations Convention on the Law of the Sea and the international instruments on terrorism and trafficking in narcotics. Three other categories of serious crime merited special attention: gang rape, violence against children and slavery.

56. Universal jurisdiction should not overlap with the exercise of jurisdiction by international criminal courts or courts established pursuant to multilateral treaties and agreements. The International Criminal Court and other special courts were already competent to prosecute the most serious crimes of international law and international humanitarian law; greater collaboration by States with those institutions could only strengthen international justice and the international legal order.

57. **Mr. Motanyane** (Lesotho) said that the absence of a common definition of universal jurisdiction had led to uncertainty about when the principle should be invoked and what crimes it covered and had created the

potential for politicization, misuse and bias in its exercise. Unwarranted application of the principle could create a tyranny of judges and have negative effects for the rule of law at the international level. Respect for the sovereignty and national integrity of States and for the immunity of certain State officials must be ensured.

58. The principle of universal jurisdiction gave States the authority to prosecute perpetrators of the gravest crimes of universal concern, regardless of where the crime was committed or the nationality of the perpetrator or of the victim. However, no State could exercise criminal jurisdiction over crimes committed in the territory of another State unless it had some link with either the offender or the victim, or unless the crime was universally recognized or established under a treaty and the territorial State was unwilling or unable to prosecute. Universal jurisdiction provided a basis for prosecution under customary law and a number of international treaties. Its scope and the conditions for its application should therefore be identified in accordance with the relevant provisions of those treaties. The concept of universal jurisdiction must be clearly distinguished from the obligation to prosecute or extradite (*aut dedere aut judicare*), and his delegation welcomed the International Law Commission's consideration of the relationship between the two.

59. At the current stage, his delegation favoured continued discussion of the topic within the Committee and the Working Group in order to identify issues on which there was a common understanding and those that required further study, taking due account of the emergence of new treaties, State practice, judicial decisions and juristic writings that might provide greater clarity and substance.

60. **Mr. O'Brien** (India) noted that universal jurisdiction was based on a new theory that lacked proper legal backing at both the national and international levels; it assumed that each State had an interest in exercising jurisdiction over offences that all nations had condemned on the grounds they affected the interests of all States, even where they were unrelated to the State or States assuming jurisdiction. While piracy on the high seas was the only crime over which claims of universal jurisdiction were undisputed under the United Nations Convention on the Law of the Sea and under general international law, various treaties provided for such jurisdiction in respect of

certain other crimes, such as genocide, war crimes, crimes against humanity and torture. The question was whether the jurisdiction provided for under those treaties could be converted into a commonly exercisable jurisdiction in respect of a wider range of offences. The basis for extending the application of such jurisdiction was unclear and questions remained regarding the relationship between universal jurisdiction and laws on immunity, pardon and amnesty and regarding its harmonization with domestic law. The principle of universal jurisdiction must not be confused with the obligation to extradite or prosecute. The Working Group's discussion of the topic should be guided by the informal paper submitted by the Government of Chile at the previous session of the General Assembly (A/C.6/66/WG.3/1).

61. **Ms. Enersen** (Norway) said that her delegation understood universal jurisdiction to be the ability of a State to bring persons to trial for alleged crimes, regardless of where the crime was committed and of the nationality or place of residence of the perpetrator or victim and regardless of whether vital interests of that State had been threatened by the crime. It should only come into play as a safety net, where States with other types of criminal jurisdiction were unable or unwilling to act. The primary responsibility for the investigation and prosecution of crimes lay with the territorial State or the State or States with personal jurisdiction; the territorial State was usually best placed to gather evidence, secure witnesses and ensure that justice was seen to be done by the persons most affected by the crime.

62. One of the major achievements of recent decades in international relations and international law was the common understanding that the most serious crimes of concern to the international community must not go unpunished. Her delegation believed that while the Committee should consider the principle of universal jurisdiction, it should avoid consideration of criminal immunity for three reasons: immunity as an obstacle to a court's consideration of a case on the merits could arise only after the court had established jurisdiction; questions of immunity could arise with respect to the exercise of any type of jurisdiction; and discussion of the immunity of State officials might prejudice the International Law Commission's consideration of that topic.

63. As to the scope of universal jurisdiction, a cautious approach was needed; views differed as to the

crimes to which the principle applied, and its scope was constantly evolving in light of new treaties, State practice and the opinions of international tribunals and scholars. Hence, rather than seeking to reach consensus on a list of crimes to which universal jurisdiction could be applied, it would be preferable to identify the core crimes over which such jurisdiction had already been established by a number of States.

64. Like any legal principle, universal jurisdiction should be applied only in the interests of justice; any attempt to assert such jurisdiction for political reasons must be prevented. However, it should be borne in mind that prosecutions based on universal jurisdiction were quite rare and that national authorities were often reluctant to investigate and prosecute crimes committed by foreigners abroad owing to the complexity and costs of such proceedings. In order to avoid misuse, certain national procedural issues should be addressed. Her delegation therefore encouraged the Committee to discuss the existence or development of procedural or organizational best practices for application of the principle that could be compiled and forwarded to Member States for consideration. It would also be willing to discuss measures designed to strengthen international assistance in relation to such application.

65. **Ms. Millicay** (Argentina) said that the primary responsibility for the investigation and prosecution of international crimes lay with the States in which the crimes were committed or with other States that had a link with the crime, such as the State of nationality of the perpetrator or victims. Where those States were unwilling or unable to prosecute, other States could do so on the basis of universal jurisdiction, which was an additional tool to be used in exceptional circumstances in order to prevent impunity. Universal jurisdiction was thus an essential component of the international criminal justice system. Its unlimited use could, however, lead to conflicts of jurisdiction between States, procedural abuse and politically motivated prosecutions. Clear rules for its exercise were needed, particularly in light of certain erroneous interpretations of the principle.

66. Reiterating the views expressed by her delegation during the previous session, she said that the Working Group should take a step-by-step approach, focusing first on the concept of universal jurisdiction and then on its status in international law, including the legislative and judicial practice of States, and the

conditions under which it might be exercised. Discussion of the concept should seek to distinguish it from the principles of *jus cogens*, *obligatio erga omnes* and, especially, *aut dedere aut judicare* and to identify its specific characteristics. The possibility of referring the matter to the International Law Commission should not be ruled out.

67. The examination of international treaties, internal legislation and judicial practice must take into account the difference between the *aut dedere aut judicare* obligation and universal jurisdiction; whereas the former was established in numerous multilateral treaties, the latter was included explicitly in only in a few, and implicitly in others which stated that they did not exclude any criminal jurisdiction exercised in accordance with national law. It should also be borne in mind that treaties that implicitly allowed the exercise of universal jurisdiction also provided for the application of the *aut dedere aut judicare* principle; as the International Law Commission had decided to focus on the latter concept, the Working Group should consider the relationship between the two but concentrate primarily on the former.

68. **Ms. Eyoma** (Nigeria) said that the concept of universal jurisdiction must be defined and its scope delimited in order to prevent bias and selectivity in its application or its exploitation in order to settle political scores. It should always be exercised in good faith and in accordance with other principles of international law, including the rule of law, the sovereign equality of States and the immunity of State officials. The time had come to reach consensus on the substance of the principle; her delegation therefore encouraged all Member States to engage actively in the effort to identify the scope and application of universal jurisdiction and thus to give legitimacy and credibility to its use.

*The meeting rose at 6 p.m.*