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Chair: Mr. Charles (Trinidad and Tobago)

later: Ms. Morris-Sharma (Vice-Chair) (Singapore)

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The meeting was called to order at 10 a.m.

Agenda item 86: The scope and application of the principle of universal jurisdiction (A/70/125)

1. **Mr. Dehghani** (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 State officials was firmly established in the Charter and in international law and must be respected.

2. The invocation of universal jurisdiction against officials of some States members of the Non-Aligned Movement raised both legal and political concerns. The Assembly of the African Union, which was committed to combating impunity, had, in its decision Assembly/AU/Dec.420 (XIX), reiterated its request that warrants of arrest issued on the basis of the abuse of the principle of universal jurisdiction should not be executed in any member State.

3. Universal jurisdiction provided a tool for prosecuting the perpetrators of certain serious crimes under international treaties. However, it was necessary to clarify a number of questions in order to prevent its misapplication, including the range of crimes that fell within the scope of universal jurisdiction and the conditions for its application; the Committee might find the decisions and judgments of the International Court of Justice and the work of the International Law Commission useful for that purpose. The Movement cautioned against unwarranted expansion of the range of such crimes and would participate actively in the work of the Working Group on the topic, including by sharing information and practices, with a view to ensuring the proper application of universal jurisdiction.

4. **Mr. Fornell** (Ecuador), speaking on behalf of the Community of Latin American and Caribbean States (CELAC), said that the member countries of CELAC attached great importance to the issue of the scope and application of universal jurisdiction, which should be examined in the light of international law as embodied

in previously agreed conventions and treaties. Discussions at the sixty-seventh, sixty-eighth and sixty-ninth sessions of the Committee had focused on the elements addressed in the informal paper submitted by the Working Group to the Committee at the sixty-sixth session of the General Assembly (A/C.6/66/WG.3/1), namely, the role and purpose of universal jurisdiction and how it differed from other related concepts; its scope in terms of the range of crimes covered; and the conditions for its application. The Working Group had explored several points on which consensus existed and others that required further consideration.

5. Universal jurisdiction was an institution of international law of an exceptional character for the exercise of criminal jurisdiction, which served to fight impunity and strengthen justice. It was international law, therefore, which established the scope of its application and enabled States to exercise it as a supplement to sovereign jurisdiction based on territoriality or nationality. A number of Member States had affirmed 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 institutions that had the common goal of ending impunity. CELAC shared that understanding, which was consistent with human rights principles and the observance of the rule of law at the national and international levels.

6. 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.

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

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

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

10. **Ms. Aching** (Trinidad and Tobago), speaking on behalf of the Caribbean Community (CARICOM), said that a comprehensive legal study would help to provide a solid framework for future discussions on the scope and application of the principle of universal jurisdiction. CARICOM therefore welcomed the establishment of the Working Group at the current session to discuss the topic. Given its impact on international peace and security and on the codification of international law, universal jurisdiction should be considered carefully, to ensure full respect for and

adherence to the principles and norms of international law and peaceful coexistence and cooperation among States. Universal jurisdiction played a pivotal role in ensuring that the perpetrators of the most serious crimes of concern to the international community were brought to justice, by offering a subsidiary basis for addressing the impunity gap.

11. Notwithstanding article 31 of the Vienna Convention on Diplomatic Relations, which provided for the immunity of diplomatic agents from the criminal jurisdiction of the receiving State, CARICOM supported the jurisdiction of the International Criminal Court, as set out in the Rome Statute, which established that no one was immune from prosecution for genocide, crimes against humanity, war crimes or the crime of aggression. Nonetheless, the Court's jurisdiction could be exercised only when a State was unwilling or unable to prosecute perpetrators under its domestic law. National courts, therefore, had the primary responsibility to investigate and prosecute crimes, whether committed by their own nationals, in their own territory, or otherwise under their jurisdiction.

12. The application of universal jurisdiction was necessary and justifiable in instances where the crimes committed affected the international community and where national legal systems allowed the perpetrator to continue to act with impunity, and in cases of mass atrocity crimes. The extraterritorial application of domestic laws by a State was contrary to the principle of universal jurisdiction, unless permitted under international law, such as in cases where the State had jurisdiction to do so over one of its own nationals.

13. The members of CARICOM remained committed to combating impunity; however, care must be taken to ensure that the exercise of universal jurisdiction did not generate abuse or conflict with international law. The scope and application of universal jurisdiction must therefore be informed by the principles of international law, respect for the sovereignty and territorial integrity of States, and the rule of law.

14. **Ms. Schwalger** (New Zealand), speaking also on behalf of Australia and Canada, said that the three countries recognized the long-established principle of universal jurisdiction, which provided a legal basis for States to prosecute the most serious crimes of international concern, regardless of where the conduct occurred or the nationality of the perpetrator, and

irrespective of any other links between the crimes and the prosecuting State. They acknowledged the work of those States that had incorporated universal jurisdiction over the most serious international crimes in their domestic legislation and encouraged others to follow suit.

15. The principle of universal jurisdiction should be applied in good faith and with regard to other principles and rules of international law, including the rule of law, natural justice, and the laws relating to diplomatic relations and privileges and immunities. National courts should exercise such jurisdiction in a manner consistent with the rule of law, including the equality of persons before the law and fair-trial obligations.

16. As a general rule, the primary responsibility for prosecution should rest with the State in which the crime was committed. Universal jurisdiction provided a complementary framework to ensure that persons were held accountable for grave crimes of universal concern and could not enjoy safe haven. The principle entitled States to investigate and prosecute serious international crimes when States with jurisdiction to prosecute based on territoriality or nationality were unable or unwilling to do so, often because the accused had moved to another country. States must ensure that universal jurisdiction was only applied to those crimes that were recognized as the most serious and abhorrent, such as genocide, war crimes and crimes against humanity, slavery, torture and piracy.

17. Despite the criticism that universal jurisdiction could be used by States to usurp or undermine sovereign immunity, immunities could be relied upon in cases where universal jurisdiction was the basis for investigation or prosecution just as they could in cases where a State sought to exercise jurisdiction over a foreign national accused of committing crimes on its territory. It was important not to confuse universal jurisdiction with other principles of international law, including the obligation to extradite or prosecute. Although that obligation was similarly designed to combat impunity, it did not provide a jurisdictional basis per se. Australia, Canada and New Zealand would continue to work with other Member States to respond swiftly, impartially and thoroughly to crimes that shocked the global conscience and to ensure that perpetrators of such crimes did not go unpunished.

18. **Mr. Meza-Cuadra** (Peru) said that universal jurisdiction was generally recognized as a valuable institution of international law for the purpose of combating impunity for particularly serious crimes, including genocide, war crimes and crimes against humanity. It should, however, always be applied in conformity with international law, in particular the Charter of the United Nations. Universal jurisdiction might provide a pathway for dealing with such crimes rapidly and effectively when other accountability mechanisms could not be applied.

19. His delegation therefore welcomed the decision of the General Assembly, contained in its resolution 69/124, to establish a working group of the Sixth Committee to continue to undertake a thorough discussion of the scope and application of the principle of universal jurisdiction. Peru hoped that substantive progress would be made on the topic at the current session, in particular with regard to the definition of the concept of universal jurisdiction, its scope and the conditions of its application. In that connection, the list of offences subject to universal jurisdiction should not be limitative and the debate on consensual definitions of such crimes should continue. It was also important to ensure that minority groups, which were sometimes not recognized by States themselves, should be recognized as victims in the definition of such crimes.

20. There were differences of opinion, however, as to the conditions under which universal jurisdiction could be applied. There was no uniform criterion, for example, on the relationship between universal jurisdiction and the regime of immunity of State officials, or on the cooperation and assistance mechanisms available to facilitate its exercise. It would also be helpful to establish criteria that would apply when more than one State sought to exercise universal jurisdiction in a given case.

21. Universal jurisdiction was a tool used to promote post-conflict peace and stability, provided such use did not amount to interference in the internal affairs of States. It was therefore imperative for the international community to reach agreement on the scope and application of the principle, which could foster cooperation between and among States and other international actors in the prosecution and punishment of perpetrators of serious human rights violations. Although the Sixth Committee was the appropriate forum in which to consider the scope and application of universal jurisdiction, in order to make further

progress, the possibility of requesting the International Law Commission to prepare a study on the topic should be considered.

22. **Ms. Yeow** (Singapore) said that the Working Group on the scope and application of universal jurisdiction had made substantial progress since it was first established. Given the sensitivity and complexity of the issues involved, her delegation favoured a step-by-step approach to the topic that allowed points of consensus to be identified and built upon. The foundational rationale of universal jurisdiction was that certain crimes were of such exceptional gravity that their suppression was a joint concern of the international community and consequently gave every State the right to exercise its jurisdiction to prosecute the perpetrators of such heinous crimes.

23. While the principle was not disputed, its scope and application varied among States, as attested by the range of crimes that were considered by States to fall under its scope. Her delegation recalled the suggestion that, rather than drawing up a list of specific crimes, the Committee could make a general reference to the obligations arising under customary international law and treaty law. Whether a crime attracted universal jurisdiction was not a question of preference, or priorities specific to a single State or group of States or a particular region. The crime should be assessed against the foundational rationale of universal jurisdiction, accompanied by a careful and robust analysis of State practice and *opinio juris*.

24. It was important to keep in mind the distinction between the jurisdiction of national courts over crimes for which the international community as a whole generally agreed the application of universal jurisdiction was appropriate and the jurisdiction of international tribunals over treaty crimes or the obligation to extradite or prosecute required by specific international treaties. The principle of universal jurisdiction was one of several tools that might be used to fight impunity and to maintain international peace and security; it was not and should not be the primary basis for the exercise of criminal jurisdiction by States. It was complementary in nature and should be applied only when no State was able or willing to exercise jurisdiction on the basis of territoriality or nationality to prevent alleged perpetrators from continuing to act with impunity.

25. Universal jurisdiction should not be exercised to the detriment of other principles of international law, such as the immunity of State officials from foreign criminal jurisdiction, State sovereignty and territorial integrity. There was also room for discussion on its interaction with other elements, such as good faith, impartiality, judiciousness, transparency, due process, prosecutorial discretion and international comity, among others. The legitimacy and credibility of the exercise of universal jurisdiction hinged on its principled application in a complementary, non-arbitrary and non-selective manner.

26. **Ms. Dieguez La O** (Cuba) said that the principle of universal jurisdiction should be discussed by all Member States within the framework of the General Assembly, with the primary aim of ensuring that it was not applied improperly. Her delegation reiterated its concern at the unwarranted, unilateral, selective and politically motivated exercise of universal jurisdiction by the courts of developed countries against natural or legal persons from developing countries, with no basis in any international norm or treaty. It also condemned the enactment by States of laws directed against other States, which had harmful consequences for international relations.

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

28. Universal jurisdiction should not be used to diminish respect for a country's national jurisdiction or to question the integrity and values of its legal system. Nor should it be used selectively for political ends in disregard for the rules and principles of international law. The exercise of universal jurisdiction should be limited by absolute respect for the sovereignty of States. It should be exceptional and supplementary in nature, and should be restricted to crimes against humanity and invoked only in exceptional cases where there was no other way to bring proceedings against the perpetrators and prevent impunity. The prior consent of the State in which the crime had been committed, or of the State or States of which the

accused was a national, should also be obtained as a matter of the utmost importance. Moreover, the absolute immunity granted under international law to Heads of State, diplomatic personnel and other incumbent high-ranking officials must not be called into question.

29. Her delegation commended the efforts made by the Working Group to identify areas of consensus that could guide the Committee's work on the topic. It also supported the elaboration of international rules or guidelines to establish clearly under what conditions or within which limits universal jurisdiction might be invoked, as well as the crimes to which it should be applied.

30. **Mr. Spresov** (Belarus) said that universal jurisdiction should be consistent with standards of international law, including treaty law and customary law, and thus should not run counter to principles such as the sovereign equality of States, territorial integrity, non-interference with internal affairs and the immunity of State officials. The adoption of national legislation that unilaterally expanded the scope of universal jurisdiction of States should be seen as interference in the internal affairs of other States and as the extraterritorial application of the laws of individual States. It was inadmissible for States to unilaterally and arbitrarily apply the principle of universal jurisdiction, including through the indirect means of mutual legal assistance.

31. In view of the lack of consensus on the scope of the principle of universal jurisdiction, the international community should determine to which crimes and circumstances such jurisdiction should apply. The only acceptable criterion thus far clearly identified was that the crime must be detrimental to the interests of all members of the international community, without exception. Crimes thus defined included piracy, crimes against humanity, crimes against peace, war crimes, trafficking in persons and human organs or tissues, and other types of transnational organized crime, such as drug and weapons trafficking.

32. With a view to optimizing the agenda of the General Assembly, his delegation proposed that in the future the current agenda item should be considered on a biennial basis.

33. **Mr. Mohamed** (Sudan) said that the Committee was the most appropriate forum in which to discuss universal jurisdiction and to seek to reconcile the

differing views of States, particularly with regard to its scope. The application of universal jurisdiction must be consistent with the principles established in international law and the Charter of the United Nations, in particular the sovereignty, sovereign equality and political independence of States and non-interference in their internal affairs. The General Assembly's work on the subject should focus on ensuring that those principles were respected and that universal jurisdiction remained a complementary mechanism rather than a substitute for national jurisdiction. Universal jurisdiction was not applied consistently from one State to another; moreover, its unilateral and selective application by the national courts of certain States could lead to international conflict.

34. His delegation recalled that, in the opinion of the International Court of Justice, the immunity granted to Heads of State and Government and other government officials under international law was beyond question. The African Union had also repeatedly reaffirmed that view in the outcome documents of the ordinary and extraordinary sessions of its Assembly, in the light of the increasing number of cases of politically motivated application of the principle of universal jurisdiction. It had also rejected the issuance of arrest warrants against African leaders, which undermined the security and stability of African nations.

35. It was important to continue discussing the question of universal jurisdiction with a view to achieving a common understanding of the concept and ensuring that it was applied in a manner consistent with its original objectives and not in the service of particular political agendas.

36. **Mr. Al-Malik** (Qatar) said that universal jurisdiction was an important mechanism for ensuring the rule of law and equitable justice and combating impunity for serious violations of international law, international humanitarian law and human rights. Given the wide range of views on the topic among States, his delegation hoped that the Working Group would complete its task of identifying those points on which there was consensus and those that required further study and consultation.

37. Universal jurisdiction and international criminal jurisdiction were complementary legal institutions that had the common goal of putting an end to impunity. Nonetheless, it was important to define the principle of

universal jurisdiction and to clarify which crimes, beyond crimes against humanity, war crimes, genocide, gross violations of human rights and piracy, fell within its scope.

38. While there was a need to bring the perpetrators of international crimes to justice, universal jurisdiction should be exercised in accordance with internationally agreed mechanisms, in good faith and in compliance with international law. In order to define the scope of universal jurisdiction, it was important to strike a balance between the progressive development of the concept and the need to uphold the principles enshrined in the Charter of the United Nations, including the sovereign equality of States.

39. His delegation supported the declaration to restrict the use of veto powers in the Security Council in cases of mass atrocity. The Working Group's successful identification of crimes that were subject to universal jurisdiction would also send a clear message to perpetrators that they could not exploit lacunae in the international regime and the lack of international political will to continue committing their crimes with impunity.

40. **Mr. Orozco** (Colombia) said that universal jurisdiction was a form of criminal jurisdiction and was therefore prescriptive in nature. Traditionally, the forms that a State's exercise of prescriptive criminal jurisdiction could take had been provided for restrictively in international law. As the Permanent Court of International Justice had pointed out in the 1927 *S.S. "Lotus" (France v. Turkey)* case, the freedom of States to submit cases to their domestic criminal jurisdiction was limited by the rules created for that purpose by the international legal system. There were five recognized bases for the exercise of criminal jurisdiction: territoriality, active personality, passive personality, protection of the State, and universal jurisdiction.

41. Universal jurisdiction was residual in nature, being exercised in respect of crimes presumed to have been committed in the territory of another State, by or against a national of another State, without posing a direct threat to the vital interests of the State exercising jurisdiction. The essence of the concept was therefore the legislative authority of a State to extend its prescriptive jurisdiction even in the absence of any national or territorial link with the crime in question.

42. Universal jurisdiction accorded any State the authority to claim jurisdiction over perpetrators of crimes that had been strongly condemned by the international community, including genocide, torture and terrorism, provided those persons were present in its national territory, even if the crime had been committed elsewhere. Universal jurisdiction could operate under customary law with respect to international crimes such as genocide, war crimes and crimes against humanity. However, it was an optional, not a compulsory, form of jurisdiction.

43. Universal jurisdiction should be distinguished from the obligation to extradite or prosecute (*aut dedere aut judicare*), which was established in various instruments such as the 1949 Geneva Conventions and operated under customary law in relation to certain international crimes. Universal jurisdiction, on the other hand, being only a type of prescriptive jurisdiction recognized by international law, did not impose a duty on the State to dispense justice.

44. Universal jurisdiction should also be distinguished from the exercise of jurisdiction by international criminal tribunals. The International Criminal Court, for example, was governed by the principle of complementarity, as set forth in article 17 of the Rome Statute. The Court might exercise criminal jurisdiction only where national legal systems were unwilling or unable to investigate or prosecute the perpetrators of international crimes. Colombia recognized the principle of universal jurisdiction as a norm of international law consistent with its Political Constitution, and as one that should be respected, but that applied only to cases involving crimes of serious concern to the international community and serious violations of human rights and international humanitarian law.

45. Lastly, proceedings instituted on the basis of universal jurisdiction must respect the legal safeguards governing the conduct of any criminal case, including those set forth in international human rights instruments such as the International Covenant on Civil and Political Rights and the American Convention on Human Rights. Universal jurisdiction was subject to the same legal limitations as any other form of jurisdiction, including the general principles *nullum crimen sine lege* and *nulla poena sine lege*.

46. **Mr. Marn** (Slovenia) said that the role and purpose of universal jurisdiction was to combat

impunity, protect the rights of victims, achieve international justice and ensure that there was no safe haven for perpetrators of heinous crimes. When national courts exercised universal jurisdiction appropriately and in accordance with internationally recognized standards, they acted to protect not only their own interests and values but also those of the international community. Although its courts had not yet faced cases involving universal jurisdiction, Slovenian national laws provided for that option should such a need arise.

47. While it was important for the Committee to continue working to crystallize the notion of universal jurisdiction, it should not limit itself by listing all the crimes that fell within the scope of universal jurisdiction. Instead, it could develop a general reference that referred to obligations arising under customary international law and treaty law.

48. His delegation continued to support both national and international efforts that sought to end impunity for the most serious violations of international humanitarian law. However, States had the primary responsibility to prosecute the perpetrators of such violations. International assistance and cooperation, including mutual legal assistance in criminal matters, were vital for ending impunity. In that context, Slovenia, together with the Netherlands, Belgium and Argentina, would continue to work on an initiative to open negotiations on a treaty for mutual legal assistance and extradition between States for the domestic investigation and prosecution of crimes against humanity, war crimes and genocide. That initiative had already received the support of almost 50 States from all regions, including States that were not members of the International Criminal Court. He called on all other States to join the initiative.

49. While appropriate national and international legal frameworks were essential for the implementation of universal jurisdiction, effective cooperation at a practical level and adequate capacities were crucial. The appropriate exercise of universal jurisdiction required a proper understanding of the concept by the relevant State authorities, along with a well-functioning system for cooperation. In that light, Slovenia saw great value in the activities of the Working Group and the identification of guiding principles for applying universal jurisdiction.

50. His delegation called on other regions to follow the example of the European Union and its Genocide Network, which consisted of contact points set up to ensure close cooperation between national authorities in investigating and prosecuting persons suspected of committing or participating in the commission of genocide, crimes against humanity and war crimes.

51. **Ms. Benešová** (Czech Republic) said that universal jurisdiction was an important tool in the fight against impunity for the most serious crimes. However, the question of its scope and application was of a predominantly legal nature and should be referred to the International Law Commission for study. The Commission was an expert body that could allocate adequate time to the issue and could also use the knowledge garnered from its study of other closely related topics in addressing it. Referring the topic to the Commission would also demonstrate the Committee's commitment to strengthening its interaction with the Commission and help the Committee to manage its agenda more efficiently.

52. For certain topics, however, such as the elaboration of a comprehensive convention against international terrorism, where the solution of complex legal issues was inseparably linked with politically sensitive considerations, the Committee had a central role to play in the negotiations. It should therefore keep its focus on such topics. However, when it was possible and appropriate, it should share its workload with other legal expert bodies within its purview; the topic of universal jurisdiction represented just such an opportunity.

53. **Mr. Kravik** (Norway) said that there could be no impunity for atrocity crimes and other crimes that fell within the ambit of universal jurisdiction. The Norwegian Penal Code of 2005, which entered into force in 2015, did not provide a specific list of crimes to which universal jurisdiction applied. Instead, it allowed for the discretionary application of such jurisdiction when the alleged offender was present in Norwegian territory, when the act was punishable by imprisonment of more than one year and, except in cases relating to war crimes, crimes against humanity and genocide, when the act represented an offence also in the State where it was committed. The concrete application of the principle of universal jurisdiction must be consistent with international law, and the prosecuting authorities must retain the ability to exercise full discretion in that application. The main

purpose of the new Penal Code was to ensure that Norway did not become a safe haven for individuals wishing to avoid criminal responsibility for serious crimes.

54. However, not all cases that met the criteria for universal jurisdiction were to be prosecuted before Norwegian courts. Except for cases related to genocide and crimes against humanity, the prosecutor should make an independent determination, taking into account the gravity of the crime in question; the connection between the alleged offender and Norway, including whether the crime affected Norwegian interests; and the possibility of the alleged offender being extradited to another State that might have a stronger legal interest or be better placed to proceed with the prosecution.

55. Norway also had in place robust control mechanisms to ensure that all relevant factors were taken into consideration in the exercise of universal jurisdiction. The law did not allow for any external interference, political or otherwise, in the work of independent prosecutors. However, great care must be taken to prevent abuse of prosecutorial power, a danger that was inherent in all criminal law systems and not only those related to the exercise of universal jurisdiction. His delegation therefore welcomed a discussion on prosecutorial discretion in universal jurisdiction cases, including determining who should have the authority to make prosecutorial decisions in such cases. Such a debate would be more constructive than maintaining the current focus on the scope and application of universal jurisdiction.

56. *Ms. Morris-Sharma (Singapore), Vice-Chair, took the Chair.*

57. **Ms. Carnal** (Switzerland) said that while it had proved difficult to achieve consensus on the topic of universal jurisdiction, it was important to advance the debate, as it helped to ensure that those guilty of the most serious crimes in a given jurisdiction were prosecuted in cases where no other jurisdiction applied. It was the very application of the principle of universal jurisdiction that had made it possible to open the trial against the former President of Chad, Hissène Habré in 2015 –the first time a former Head of State was being tried by an African court.

58. Switzerland recognized and applied the principle, under certain conditions, in its own legal system. However, since there was no international consensus

on the definition of universal jurisdiction, her delegation shared the position that the issue should be further examined by experts. She reiterated her delegation's proposal at past sessions of involving the International Law Commission in the debate, given the fundamentally juridical and technical nature of the topic. A comprehensive legal study analysing the practical application of the principle would provide a solid basis for future constructive discussions.

59. **Mr. Holovka** (Serbia) said that universal jurisdiction was a valuable tool for prosecuting serious crimes, particularly gross violations of international humanitarian law. Its application, however, raised a number of issues that were as yet unresolved; the international community should strive to agree on essential elements, especially with regard to the scope of acts that fell under such jurisdiction. His Government's position remained that war crimes, crimes against humanity and genocide could never fall under the exclusive jurisdiction of the State on whose territory such crimes were committed but were a concern of the international community as a whole. Bearing that in mind, national jurisdiction, which must be complementary to international jurisdiction, could be effective in fighting impunity for those grave breaches of international humanitarian law.

60. In 2003, Serbia had adopted the Law on Organization and Competences of Government Authorities in War Crimes Proceedings, which provided for jurisdiction over war crimes committed in the territory of the former Yugoslavia, regardless of the nationality of the accused, and regardless of the presence of the accused in Serbian territory, although no such proceedings thus far had been conducted in absentia. The provision had been necessary in the light of the fact that, among the 300,000 refugees who had found shelter in Serbia, a significant number were guilty of the most horrific war crimes. Most of the defendants had been present in the territory of Serbia and had not been indicted by neighbouring countries. The trials conducted under the 2003 law were being monitored by the Organization for Security and Co-operation in Europe and by the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 as part of the completion strategy.

61. The European Union recognized that universal jurisdiction for genocide, crimes against humanity and

war crimes was well established under both treaty and customary international law. Moreover, a number of States members of the European Union had adopted laws granting universal jurisdiction over such crimes to their domestic courts.

62. **Mr. Luna** (Brazil) said that the aim of universal jurisdiction was to deny impunity to individuals responsible for serious crimes defined by international law which, by their gravity, shocked the conscience of all humanity and violated peremptory norms of international law. As a basis for jurisdiction, it was of an exceptional nature compared with the more consolidated principles of territoriality and nationality. Although the exercise of jurisdiction was primarily the responsibility of the State concerned in accordance with the principle of the sovereign equality of States, combating impunity for the most serious crimes was an obligation set out in numerous international treaties. Universal jurisdiction should be exercised only in full compliance with international law; it should be subsidiary to domestic jurisdiction and limited to specific crimes; and it must not be exercised arbitrarily or in order to fulfil interests other than those of justice.

63. A shared understanding of the scope and application of universal jurisdiction was necessary in order to avoid improper or selective application. In that connection, his delegation welcomed the activities of the Working Group and supported an incremental approach in its discussions. The Working Group should continue to seek an acceptable definition of the concept and could also consider the kinds of crimes to which such jurisdiction would apply and its subsidiary nature. At the appropriate time, it should also consider whether the formal consent of the State where the crime had taken place and the presence of the alleged criminal in the territory of the State wishing to exercise jurisdiction were required. One of the most contentious issues was how to reconcile universal jurisdiction with the jurisdictional immunities of State officials. At the current stage of discussion, it would be premature to consider the adoption of uniform international standards on the matter.

64. Brazilian legislation recognized the principles of territoriality and nationality as bases for exercising criminal jurisdiction. Its courts could exercise universal jurisdiction over the crime of genocide and the crimes, such as torture, which Brazil had a treaty obligation to suppress. Under Brazilian law, it was necessary to enact national legislation to enable the

exercise of universal jurisdiction over a specific type of crime; such jurisdiction could not be exercised on the basis of customary international law alone without violating the principle of legality.

65. The international community should strive to promote universal adherence to the Rome Statute of the International Criminal Court; achievement of that objective would probably render discussions on universal jurisdiction redundant. Meanwhile, efforts to achieve the shared objective of denying impunity to the perpetrators of serious international crimes should be maintained.

66. **Ms. Nguyen Thi Hong Quyen** (Viet Nam) said that universal jurisdiction was an important tool for combating international crimes. In reforming the Penal Code, her Government was considering providing for universal jurisdiction in the case of certain crimes, in accordance with the international treaties to which Viet Nam was a party. In doing so, Viet Nam demonstrated its commitment to ensuring that perpetrators of the most serious international crimes did not go unpunished and contributing to the promotion of the rule of law at the national and international levels.

67. Universal jurisdiction should be exercised in keeping with the general principles of international law, including sovereign equality, non-interference in the internal affairs of other States and the immunity of State officials. The preferred jurisdiction was the territorial State or the State of nationality; universal jurisdiction should apply only as a last resort and as a complement to national jurisdiction. It was important that the alleged perpetrator should be present in the territory of the State exercising jurisdiction. Moreover, only crimes such as genocide, crimes against humanity, war crimes and torture should be subject to universal jurisdiction.

68. Noting the divergent views of States regarding the scope and application of the principle of universal jurisdiction, as well as the rejection of its selective and arbitrary application, she said that to ensure that universal jurisdiction was exercised in good faith and in an impartial manner in accordance with international law, her delegation supported the development of common standards on its scope and application. Furthermore, as there was a link between universal jurisdiction and other topics being discussed or slated to be discussed by the International Law Commission, such as the immunity of State officials and *jus cogens*,

the Sixth Committee should entrust the Commission with preparing a working document to be considered by the Committee regarding the legal framework and the possibility of developing an instrument on universal jurisdiction.

69. **Ms. Oberman** (Israel) said that her delegation, along with many others, acknowledged the importance of combating impunity and bringing the perpetrators of the most serious crimes to justice. It was clear from the Secretary-General's reports on the topic that many States recognized that universal jurisdiction was supplementary and on occasion applied by national courts as an exception to the preferred jurisdictional principles of territoriality and nationality. In order to prevent any improper resort to universal jurisdiction, the international community must agree on the definition of that principle and on the scope of its application.

70. To ensure the responsible exercise of universal jurisdiction, appropriate safeguards should be established in national legal systems, including requiring that criminal proceedings based on universal jurisdiction should be brought by a public prosecutor; that the approval of high-level legal officials should be sought for such proceedings; and that jurisdiction should be exercised only if the accused was present in the forum State and additional jurisdictional links existed. Furthermore, the legitimacy of the principle of universal jurisdiction depended on its proper application, in line with other standards of international law. In that connection, further deliberation was needed on the ways in which national courts should address due process challenges; on competing jurisdictional claims by other States that might have a closer link to the underlying criminal act; and on the relevance of international law as it related, for instance, to immunity.

71. Given the diverse views among Member States on the issue of universal jurisdiction, her delegation welcomed the Committee's continued consideration of the item as well as additional input from States regarding their own practice.

72. **Mr. Remaoun** (Algeria) said that universal jurisdiction was a principle of international law of exceptional character for combating impunity for serious crimes, such as genocide, war crimes and crimes against humanity. It must be exercised in good faith and in accordance with the principles of

international law, such as State sovereignty, territorial jurisdiction, the primacy of action by States in criminal prosecutions, the protective principle and, most of all, the immunity of incumbent Heads of State and Government. Universal jurisdiction should be a complementary mechanism and a measure of last resort; it could not override the right of a State's national courts to try crimes committed in the national territory.

73. Algeria was concerned about the selective, politically motivated and arbitrary application of universal jurisdiction without due regard for international justice and equality. The International Criminal Court had focused exclusively on African States while ignoring unacceptable situations in other parts of the world; that selectivity had been the main reason for holding the extraordinary session of the Assembly of the African Union in Addis Ababa in October 2013. In the light of the outcomes of that and other recent African Union meetings and conferences of the Movement of Non-Aligned Countries, his delegation supported the Committee's continued work on the scope and application of the principle of universal jurisdiction on the basis of respect for the sovereign equality and political independence of States.

74. **Mr. Saganek** (Poland) said that the Sixth Committee was the best forum for discussing the scope and application of the principle of universal jurisdiction. States' varying approaches with regard to the scope of legislative and judicial jurisdiction did not run counter to international law; on the contrary, those approaches were in line with the judgment of the Permanent Court of International Justice in the case of the S.S. "Lotus", which distinguished legislative and judicial jurisdiction from administrative jurisdiction, the latter being limited to the territory of a given State.

75. In addition to the more obvious territorial and personal bases of jurisdiction, a State could also exercise its jurisdiction in cases of acts committed by foreigners outside its territory on the basis of passive nationality or protective jurisdiction. Such jurisdiction presupposed a strong relationship between the act and the State in question. On the other hand, many States recognized the need to establish provisions dealing with the responsibility of foreigners for acts committed abroad and not directed against that State or its nationals. While that type of jurisdiction had been referred to as universal jurisdiction, there was now a

tendency to reserve the latter principle for instances where jurisdiction was mandatory under international law. The choice of terminology was in fact very important. If the notion of universal jurisdiction were to be limited to the jurisdiction exercised when implementing international agreements, the question arose of what to call the analogous jurisdiction exercised autonomously by States. According to the S.S. “*Lotus*” judgment, States had considerable discretion in that regard. The comments submitted by a number of States indicated that they made use of that discretion and rightly identified the scope of such powers as universal jurisdiction. Thus, it was too simplistic to speak of universal jurisdiction as one uniform phenomenon.

76. The various types of so-called universal jurisdiction exercised by States might depend on several factors, for instance, whether a given act was punishable under the law of the place in which it was committed; whether the accused was present in the territory of a State; and whether the jurisdiction could be framed in the context of the principle of *aut dedere aut judicare*. The scope and application of universal jurisdiction was therefore a delicate matter involving the reconciliation of each State’s competence to decide on its jurisdiction and the obligation of each to respect the jurisdiction of other States.

77. Despite the contentiousness of universal jurisdiction, the application of the principle was an opportunity to combat impunity for the most heinous crimes, such as murder, rape and other crimes against humanity, as recognized in the Rome Statute of the International Criminal Court. For its part, Poland had opted for a wide scope of jurisdiction: thus, article 110 of the Polish Criminal Code provided that Polish criminal law applied to any foreigner who committed abroad an offence that was against the interests of Poland or of its nationals. The same article stipulated that Polish criminal law applied to foreigners who committed other offences abroad provided that the offence in question was penalized by Polish criminal law by more than two years’ imprisonment; that the offence was also penalized in the State in which it was committed; that the accused was present in the territory of Poland; and that the accused was not to be extradited.

78. The judgment of 20 July 2012 of the International Court of Justice in the case concerning *Questions relating to the Obligation to Prosecute or Extradite*

(*Belgium v. Senegal*) had underlined that the best way of giving effect to the principle of *aut dedere aut judicare* was to prescribe universal jurisdiction in the domestic law of a given State. The work of the International Law Commission on the principle of *aut dedere aut judicare* supported that finding.

79. **Mr. Townley** (United States of America) said that, despite the importance of the principle of universal jurisdiction and its long history as a part of international law relating to piracy, basic questions remained concerning its exercise in respect of universal crimes. His delegation encouraged the Committee to continue its work on the definition and scope of the principle.

80. It would be useful to further analyse the practical application of universal jurisdiction, including the criteria that States used in determining whether to exercise universal jurisdiction and how States addressed competing jurisdictional claims by other States. The United States, for example, might refrain from exercising universal jurisdiction when the State in whose territory the crime was committed or the State whose citizens were the primary victims of the crime was able and willing to prosecute. Specifically, it would be interesting to know whether other States’ laws or policies prohibited the exercise of universal jurisdiction where that possibility existed, whether such a possibility was a prudential consideration or whether it was considered irrelevant.

81. Also warranting further consideration were issues related to due process, including how States ensured due process guarantees when exercising universal jurisdiction and how national courts had addressed due process challenges. In the United States, due process required that a defendant could reasonably anticipate that he or she might be subject to United States jurisdiction when committing a crime. In the context of piracy, at least one United States court had concluded that there was no need for a specific connection between the United States and the defendant because the universal condemnation of piracy put a defendant on notice that he or she could be prosecuted wherever he or she was found. Appropriate safeguards should be in place to ensure the responsible use of universal jurisdiction, where it existed. His delegation would be interested to learn what other conditions or safeguards States had placed on the exercise of universal jurisdiction.

82. It would also be useful to continue examining the relationship between the obligation to extradite or prosecute and universal jurisdiction. While they were distinct concepts, there was some overlap, particularly in treaties that provided for an “extradite or prosecute” regime and also required that States should establish jurisdiction over the underlying crimes. More generally, his delegation would welcome more information on the practice of other States and looked forward to considering the issues in as practical a manner as possible.

83. **Mr. Leonidchenko** (Russian Federation) said that the divergent views of States on the subject of universal jurisdiction were understandable, as the legal parameters of the concept remained somewhat vague. Universal jurisdiction must in all cases be exercised in accordance with the rules of customary international law, in particular those relating to the immunity of State officials. Moreover, it should be recalled that other tools were available to States and the international community for combating impunity.

84. Although the debate on universal jurisdiction within the Committee had not advanced significantly in the past year, his delegation was not opposed to continued discussion of the topic by the Committee, so long as it did not lead to duplication of the work of other bodies. It was nonetheless unclear whether the Committee had a realistic prospect of reaching a consensus on the scope and application of universal jurisdiction.

85. **Mr. Bamrungphong** (Thailand) said that the proper application of universal jurisdiction would help to enhance accountability, end impunity and promote the rule of law at the national and international levels. In its Penal Code, Thailand had established jurisdiction over serious criminal offences, including those relating to the country’s security, terrorism, counterfeiting and piracy, even if they were committed outside the territory of Thailand. In addition, to implement international treaties to which it was a party, Thailand had adopted domestic legislation establishing jurisdiction over certain crimes, including transnational organized crime and human trafficking, as defined by the United Nations Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing that Convention. Most recently, in compliance with its international obligations, his Government had begun drafting a royal

ordinance on fisheries with a view to combating illegal, unreported and unregulated fishing. The ordinance would allow Thai courts to prosecute such fishing regardless of where it took place and regardless of the nationality of offenders and their ships.

86. The divergent views of States regarding the definition, scope and application of universal jurisdiction was one of the reasons that perpetrators of certain serious crimes enjoyed safe haven. Those perpetrators must be brought to justice; at the very least, they should be prosecuted by the State in whose territory the crimes were committed, or by the State whose nationals were the victims of such crimes. His delegation was in favour of tasking the International Law Commission with examining the scope and application of the principle of universal jurisdiction in order to provide further guidance to States.

87. **Ms. Sornarajah** (United Kingdom) said that her delegation understood universal jurisdiction to refer to national jurisdiction established over a crime irrespective of the place of perpetration, the nationality of the suspect or the victim or other links between the crime and the prosecuting State. The main rationale for national jurisdiction was that the most serious international crimes affected the international legal order as a whole and that all States should therefore be able to prosecute such crimes.

88. Universal jurisdiction should be distinguished from certain other types of jurisdiction, such as the jurisdiction of international judicial mechanisms, including the International Criminal Court; the jurisdiction established under treaties which provided for an “extradite or prosecute” regime, although some States, including the United Kingdom, might establish universal jurisdiction at the domestic level in order to implement such treaties; and the extraterritorial jurisdiction of national courts to prosecute crimes committed by a State’s nationals overseas. The United Kingdom had in some cases, relating to especially heinous crimes, extended its extraterritorial jurisdiction to cover persons with a close connection with the United Kingdom other than its own nationals.

89. Under international law, universal jurisdiction in its true sense had been clearly established only for a small number of specific crimes, such as piracy and war crimes, including grave breaches of the Geneva Conventions. Universal jurisdiction was permissive, unless a mandatory treaty-based obligation existed to

provide for the prosecution of a crime, for instance, as provided for by the Geneva Conventions in respect of grave breaches. In other words, under international law, States were entitled, but not obliged, outside of treaty-based obligations, to assert universal jurisdiction over those crimes.

90. There appeared to be a lack of consensus by the international community regarding the additional limited group of crimes that some States considered subject to universal jurisdiction but that were not underpinned by treaties providing for universal jurisdiction. Accordingly, a careful study of State practice and *opinio juris* would be required to determine whether they were established under customary international law as crimes subject to universal jurisdiction and whether there were conditions for the exercise of such jurisdiction.

91. The legal system of the United Kingdom was built on the tradition that, as a general rule, the authorities of the State in whose territory an offence was committed were best placed to prosecute that offence, particularly because of the availability of evidence and witnesses, and the visibility of justice for victims. However, the exercise of territorial jurisdiction was not always possible. In such cases, while it was not an option of first resort, universal jurisdiction could be a tool to ensure that the perpetrators of serious crimes did not escape justice. It was advisable to establish safeguards to ensure that universal jurisdiction was exercised responsibly.

92. It was clear from the Secretary-General's report that there continued to be a diversity of views among Member States on the scope and application of universal jurisdiction, as well as on the conditions for the exercise of such jurisdiction. In that context, it seemed premature to attempt to adopt new international instruments on the issue. Her delegation nevertheless stood ready to contribute to further discussion of the topic in the Sixth Committee.

93. **Mr. Hitti** (Lebanon) said that, while universal jurisdiction was an important tool in seeking accountability for grave crimes committed under international law, such jurisdiction should not be used for political ends, nor should it be applied arbitrarily or selectively, but instead in good faith and with regard to due process. Universal jurisdiction must be exercised in accordance with the Charter of the United Nations, in particular, the principles of sovereign equality of

States and non-interference with internal affairs. In that connection, primary responsibility for the prosecution of alleged perpetrators of the most heinous crimes lay with the States concerned, by way of either territorial or personal jurisdiction. Consistent with the principle of complementarity, universal jurisdiction must be exercised only when States were unwilling or unable to prosecute alleged perpetrators.

94. The international community must first agree on which crimes should be subject to universal jurisdiction. Those crimes then must be clearly defined under international law in order to avoid inconsistencies in the application of such jurisdiction. Such concerns could be addressed through an international convention.

95. His delegation welcomed the deliberations of the Working Group on the topic and took note of the informal Working Group paper as a useful basis for furthering the Committee's discussion. In addition, it supported the suggestion of referring the topic of universal jurisdiction to the International Law Commission for its consideration.

96. **Mr. Waweru** (Kenya) said that the divergence of views among States was a sign that, if it was not carefully defined and regulated within the acceptable norms of international law, the unilateral application of universal jurisdiction by States could be subject to abuse and might become a threat to international peace and security.

97. Extraterritorial jurisdiction should be invoked only as a secondary means, in cases where the national jurisdiction was unwilling or unable to address a matter. Caution must therefore be exercised in the application of the principle of universal jurisdiction, lest impunity at the national level be replaced by impunity at the international level, under the guise of universal jurisdiction. The jurisdiction of the International Criminal Court should not be confused with universal jurisdiction. The fact that some States were not held accountable for international crimes reflected a double standard. The overt politicization of the use of universal jurisdiction was a concern the Committee should address. Where the principle of universal jurisdiction was applicable, it should be exercised fairly, uniformly and consistently, without abuse or selectivity, and without undermining the essential principles governing relations among States. Kenya, like other African States, was concerned about

the abuse of the principle of universal jurisdiction, which endangered the universal application of longstanding norms of international law and paid mere lip service to the fight against impunity.

98. Lack of a common understanding on the scope and application of the principle of universal jurisdiction was likely to undermine the rule of law internationally. The United Nations provided the best forum with the broadest legitimacy for addressing the divergent views on the range of crimes that should be subject to universal jurisdiction, which in any case should be exercised in good faith and in accordance with international law. The international community should be willing to examine and amend the system of international justice, including the principle of universal jurisdiction, in order to respond to the complexity of global democracies and social realities. Kenya, for its part, would take an active part in the work of the Working Group on the topic.

99. **Mr. Mahtab** (India) said that his Government remained convinced that the perpetrators of crimes should be brought to justice and that procedural technicalities, including lack of jurisdiction, should not prevent them from being punished. The bases for criminal jurisdiction included territoriality, which related to the place of commission of the offence; nationality, which related to the nationality of the accused and, in the practice of some States, the nationality of the victim; and the protective principle, which related to the national interests affected. The common feature of those jurisdictional theories was the connection between the State asserting jurisdiction and the crime committed.

100. In the case of universal jurisdiction, there was no link between the State claiming jurisdiction and the offence or the offender; its rationale lay in the fact that certain offences affected the interests of all States. Piracy on the high seas was the only crime over which claims of universal jurisdiction were undisputed; universal jurisdiction in relation to piracy had been codified in the United Nations Convention on the Law of the Sea. However, various international treaties provided for universal jurisdiction as between the States parties to those treaties in respect of certain other crimes, such as genocide, war crimes, crimes against humanity and torture.

101. What was at issue was whether the jurisdiction provided for under those treaties could be converted

into a commonly exercisable jurisdiction, irrespective of whether the other State or States concerned were parties to them. Questions remained concerning the basis for extending such jurisdiction; the relationship between universal jurisdiction and laws on immunity, pardon and amnesty; and harmonization with domestic law. Furthermore, the principle of universal jurisdiction must not be confused with or be allowed to short-circuit the widely recognized obligation to extradite or prosecute.

102. **Mr. Nasimfar** (Islamic Republic of Iran) said that a common understanding of the principle of universal jurisdiction had yet to be developed. The Committee should now engage in deliberations based on the original reasons for introducing the item in the Committee's work and should discuss relevant aspects from different perspectives. In many legal systems, extraterritorial jurisdiction had to be based on a multilateral treaty: crimes could be prosecuted only when designated as such in a treaty to which the State concerned was a party. The scope of the concept of international crimes must be unambiguous; to leave the interpretation to national courts would adversely affect the stability and integrity of international law. His delegation viewed universal jurisdiction as a treaty-based exception in the exercise of criminal jurisdiction. The prevailing principle was that of territorial jurisdiction, which barred States from exercising criminal jurisdiction beyond their borders and was central to the principle of sovereign equality of States.

103. Universal jurisdiction was not specifically addressed under Iranian legislation and did not appear to have ever been invoked by his country's domestic courts. However, the Penal Code recognized the jurisdiction of national courts over crimes punishable under international treaties to which the Islamic Republic of Iran was a party, irrespective of the location of the crime or the nationality of the accused, provided that the accused was present in Iranian territory. The Islamic Republic of Iran was a party to many international instruments, most of which included the obligation to extradite or prosecute. That concept should not, however, be confused with the principle of universal jurisdiction. None of the bilateral agreements on extradition and mutual legal assistance concluded by his Government contained any reference to universal jurisdiction.

104. The main concern with regard to the concept of universal jurisdiction was that its application could

conflict with certain fundamental principles of international law, in particular the immunity of State officials from foreign criminal jurisdiction, which emanated from the sovereign equality of States. The doctrine was also said to have been used selectively. Criminal jurisdiction over foreign nationals should be exercised without bias and in good faith. It should not be applied in an arbitrary manner or violate the immunities granted under international law to Heads of State and Government, diplomatic personnel and other incumbent high-ranking officials. There was a continuing debate over the nature of the crimes to which such jurisdiction might apply, the conditions for and limits on its application, and the possible need for a link between the suspect and the prosecuting State and for the presence of the alleged offender in the forum State.

105. **Mr. Medina** (Bolivarian Republic of Venezuela) said that the Committee should continue discussing the categories of crimes that should be subject to universal jurisdiction, focusing on the most heinous crimes and crimes against humanity, which was in line with the Venezuelan Penal Code. The list of crimes should be explicit and limitative. In order to prevent the politicization of the application of the principle of universal jurisdiction, it should not be applied without regard for the immunity granted to State officials. In that connection, his delegation was of the view that, notwithstanding the Rome Statute's dismissal of the immunities granted to senior State officials, the scope and application of the principle of universal jurisdiction should be considered within the framework of universally accepted law, including the recognition of such immunities.

106. In any case, the application of universal jurisdiction should always be considered supplementary to that of national courts with a jurisdictional link of nationality or territoriality. Consequently, universal jurisdiction could be exercised only in those cases where the courts corresponding to the territory where the crime was committed or the nationality of the perpetrator or victim were unable or unwilling to exercise their jurisdiction.

107. The principle of universal jurisdiction should only be invoked by a country on the basis of a rule of international law, such as an international treaty; reference to domestic legislation was not sufficient in such cases. Likewise, crimes for which national courts might invoke universal jurisdiction must be sufficiently

established at the international level and should in any case be limited to those of serious concern to the international community as a whole. Lastly, universal jurisdiction must be exercised in accordance with the principles of international law, including sovereignty and non-interference in States' internal affairs. His delegation supported continuing informal consultations among delegations with a view to referring the topic to the International Law Commission, in order to free the topic from undue political pressure.

108. **Mr. Zhou Wu** (China) said that the Committee's priority, bearing in mind the original intention of the General Assembly in including the item, should be to ensure the prudent application of the principle of universal jurisdiction and to prevent its abuse so as to avoid negatively affecting inter-State relations. When applying and exercising universal jurisdiction, States should strictly adhere to international law.

109. States differed considerably on the matter of which crimes should be subject to universal jurisdiction, the sole exception being piracy. Relevant rules of customary international law had yet to be identified. In the meantime, a distinction should be drawn between universal jurisdiction and the obligation of States to extradite or prosecute, as well as the jurisdiction explicitly granted to existing international judicial bodies by specific treaties or other legal instruments.

110. In the absence of international consensus on the definition, scope and application of universal jurisdiction, States should not seek unilaterally to exercise universal jurisdiction where not expressly permitted by the international law currently in force. Refraining from such actions would effectively safeguard the basic principles of international law and the common interests of the international community, and would ensure the stable and healthy development of international relations.

111. **Ms. Soulama** (Burkina Faso) said that the principle of universal jurisdiction could be defined as the power of the domestic courts of a State to try a crime committed outside the borders of the State, regardless of the nationality of the perpetrator or victims of the crime and in the absence of harm to the interests of that State. As a supplement to the ordinary criminal jurisdiction of States, when a breakdown of government made it difficult to prosecute perpetrators of atrocities at the national level, the exercise of

universal jurisdiction had proved to be an effective way of combating impunity for the most serious crimes affecting the international community as a whole. In view of the increasingly porous nature of borders, universal jurisdiction made it possible to prosecute perpetrators of such crimes wherever they might be.

The meeting rose at 1 p.m.

112. While there were considerable divergences of opinion among States regarding the scope and application of universal jurisdiction, every effort should be made to reach a consensus and address concerns. To be generally acceptable, the principle should be applied in respect of the most serious international crimes, in other words, those that fell within the *jus cogens* category and were subject to and punishable under treaty law or customary international law. Such crimes included genocide, war crimes, crimes against humanity, piracy, slavery and human trafficking, hostage-taking, and counterfeiting. The application of the principle should be based on a sufficiently clear and precise definition of the crimes in question and of the national means of implementation. Once a consensus was reached on the crimes that were subject to universal jurisdiction, each State should adopt domestic legislation establishing procedures for the prosecution and punishment of the perpetrators.

113. In Burkina Faso, a law implementing the Rome Statute of the International Criminal Court had been adopted in 2010. In addition to defining the crimes subject to that Statute, determining the relevant competent authorities and providing for punishment, the law also applied to other crimes, such as those recognized in the 1949 Geneva Conventions and their Additional Protocols. The country's judges could therefore exercise universal jurisdiction in respect of the crimes specified in those instruments, which were unanimously recognized by the international community.

114. The divergence of views on the scope and application of the principle of universal jurisdiction should not prevent the international community from working to combat impunity at the international level on the basis of traditional principles and mechanisms of criminal jurisdiction, such as territoriality and personality. In that regard, the *aut dedere aut judicare* principle should complement the principle of universal jurisdiction with a view to overcoming the difficulties associated with the prosecution and punishment of international crimes. Mutual judicial assistance and cooperation should also be encouraged.