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## Sixth Committee

### Summary record of the 13th meeting

Held at Headquarters, New York, on 20 October 2015, at 3 p.m.

*Chair:* Mr. Charles . . . . . (Trinidad and Tobago)

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(*continued*)

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

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

1. **Mr. Manhiça** (Mozambique) said that the question of the application of the principle of universal jurisdiction was of great importance and concern to all Member States, in particular to the African States. His delegation considered that it was inappropriate for individual States to attempt to apply the principle while a universal consensus on the matter was still pending, since unilateral application of the principle could disrupt the internationally accepted legal system.

2. Universal jurisdiction should be exercised with caution and only after the international community had established the criteria for its application, determined its compatibility with the Charter of the United Nations and other relevant instruments of international law and identified the crimes that could be subject to universal jurisdiction and the circumstances in which they could be invoked. The exercise of universal jurisdiction could only be legitimate if it respected the principles of the sovereign equality of all States, non-interference in the internal affairs of other States and the immunity of State officials, in particular Heads of State.

3. Mozambique strongly condemned the application of the principle of universal jurisdiction for political motives or reasons other than those allowed under international law. However, it could be an important tool for the prosecution of perpetrators of certain serious crimes such as those related to the slave trade, trafficking in human beings, air and maritime piracy, terrorism and related acts, abduction, organized crime and genocide, among others. His delegation would never condone impunity and stood ready to share experiences and best practices on the issue with other Member States.

4. **Mr. Elshenawy** (Egypt) said that the principle of universal jurisdiction was one of the tools the international community could use to combat impunity and establish the rule of law. Currently in Egypt there was serious discussion of incorporating certain very serious crimes, such as crimes against humanity and war crimes, in domestic legislation and providing for universal jurisdiction in that regard. Universal jurisdiction could serve as a complement to national jurisdiction.

5. Fundamentally, each State should be responsible for prosecuting crimes committed within its own jurisdiction, and universal jurisdiction should be exercised only when the State in which the crime was committed was unable or unwilling to prosecute. Therefore more effort was needed, in keeping with the principle of national ownership, to support judicial reforms enabling each State to achieve the capacity to assume its own responsibilities in that regard.

6. Universal jurisdiction must be exercised with neutrality and not politicized in any way. It must be applied with full respect for the principles of international law and custom, including the Charter of the United Nations, in particular the principles of sovereign equality, non-interference in the affairs of other States and the immunity of Heads of State and other high officials, a principle confirmed by the International Court of Justice.

7. His delegation was ready to work with other delegations to overcome differences.

8. **Mr. Rogač** (Croatia) said that universal jurisdiction was a powerful subsidiary tool for ending impunity for core international crimes. Croatian criminal law allowed for the exercise of criminal jurisdiction for the most serious violations of international law regardless of the location of the crime and the nationality of the perpetrator or the victim. However, it set certain limits to ensure that universal jurisdiction was exercised responsibly and as an exceptional last resort, in order to prevent its unwarranted or politically motivated use. The exercise of universal jurisdiction depended solely on the nature of the crime without limitation as to State territories. It should be exercised only subsidiarily, in other words, only if the State whose citizens were perpetrators or victims or on whose territory the crimes were committed was unwilling or unable to prosecute them. Moreover, the State exercising universal jurisdiction needed to respect international due process norms and implement it in good faith, in a reasonable, predictable and responsible manner, in accordance with all the applicable rules of international law and international comity, including those related to international cooperation in criminal matters.

9. His delegation encouraged Serbia to introduce in its legislation universal jurisdiction for core international crimes and to apply it in strict adherence to the above principles. Unfortunately, the current

Serbian legislation, the 2003 Law on Organization and Competences of State Authorities in War Crimes Proceedings, was neither universal, since it applied only to neighbouring States, nor subsidiary, since it ran counter to the basic principles for exercising universal jurisdiction. Such an arbitrary and flawed system not only undermined international cooperation in criminal matters but ultimately hampered the fight against impunity. Serbia could prosecute some of the most serious violations committed on the territory of the former Yugoslavia on the basis of the principle of active personality without invoking that controversial law, since most of the accused were Serbian. For the other less numerous cases involving perpetrators who were nationals of neighbouring States, Serbia should make use of existing mutual assistance mechanisms in criminal matters between States, international comity and bilateral agreements already in force.

10. Croatia strongly supported the role of the international criminal justice mechanisms and gave full recognition to the decisions of the International Tribunal for the Former Yugoslavia. It repudiated the idea that a State should try to supplant those mechanisms by restricting universal jurisdiction to “regional jurisdiction”.

11. **Mr. Celarie Landaverde** (El Salvador) said that El Salvador recognized universal jurisdiction as a tool for avoiding impunity for the most serious international crimes, including torture, genocide and crimes against humanity. Under article 10 of the Salvadoran Criminal Code universal jurisdiction could be exercised over crimes committed by any person in a place not subject to Salvadoran jurisdiction provided the crimes affected legal rights that were internationally protected under international law or entailed a serious breach of universally recognized human rights. Although it did not contain a specific list of crimes, the law embodied the essential characteristic of universal jurisdiction — the characteristic which distinguished it from jurisdiction based on territoriality or personality — namely, that the nature of the crime constituted the sole criterion for its application.

12. It had become clear over a number of sessions that, while a large number of States provided for universal jurisdiction in their legislation, there remained many questions about its application, questions that prevented the establishment of a true international standard on the matter. In the first place, it was important to recognize the exceptional nature of

universal jurisdiction, which could only be legitimately exercised if the State in which the crime was committed, or which had jurisdiction by virtue of one of the other principles of criminal law, was unwilling or unable to investigate, prosecute and punish the crime. Secondly, it was important to distinguish universal jurisdiction from other types of jurisdiction that were also designed to avoid impunity, such as the obligation to extradite or prosecute or the jurisdiction attributed by treaty to international tribunals. His delegation considered that further examination of the item was required in order to define the general guidelines that all Member States should follow.

13. **Mr. Atlasi** (Morocco) said that the principle of universal jurisdiction offered an exception to the traditional rules of international criminal law in that it enabled any State that had accepted that principle under the terms of a treaty to exercise extraterritorial criminal jurisdiction in respect of the perpetrators or victims of the most serious types of crime affecting the international community, regardless of the nationality of the perpetrators or victims of such crimes or the place where the crimes were committed. Its purpose was to combat impunity. However, those applying it must respect the principles of the sovereign equality and territorial integrity of States enshrined in the Charter of the United Nations.

14. The draft revised Moroccan Criminal Code recognized a number of crimes covered by universal jurisdiction, including crimes against humanity and genocide. In cases where the crime was committed outside the territory of Morocco, its national jurisdiction was regulated by the Code of Criminal Procedure. That Code also, as currently being drafted, established the non-applicability of statutory limitations to serious crimes.

15. As a party to the four Geneva Conventions of 1949 and their Additional Protocols I and II, and having withdrawn its reservation to article 20 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Morocco recognized the obligation to extradite or prosecute as a basis for jurisdiction other than that deriving from the principle of universal jurisdiction under the Rome Statute. However, acts of torture and other cruel, inhuman or degrading treatment or punishment as prohibited by the Convention, together with enforced disappearances, were clearly established as crimes in Moroccan legislation. Furthermore, in matters of

judicial cooperation with regard to extradition, article 713 of the Code of Criminal Procedure stipulated that international conventions took precedence over national laws.

16. Nonetheless, apart from the realization of universal justice, the exercise of universal jurisdiction risked encroaching upon the principles of national sovereignty and non-interference enshrined in the Charter of the United Nations.

17. **Ms. Rodríguez Pineda** (Guatemala) said that combating impunity for the most serious crimes of international concern had become more difficult because of the failure of some States to prosecute such crimes committed within their borders and the recent increase in transnational criminal activity. Impunity for such crimes must not be tolerated. Some States questioned the connection between universal jurisdiction and the fight against impunity, but in the view of her delegation the best way to prevent crime was to leave no place on earth where crime went unpunished. The responsibility for combating impunity did not lie entirely with the courts. Difficulties were often thrown in their way by the issuance of pardons by the executive or the passage of laws by the legislature guaranteeing impunity to the perpetrators of crimes.

18. It was up to individual States to pass laws allowing for the exercise of universal jurisdiction. The concept of “international crime” required further examination, since the development of international criminal law had resulted in different understandings and different labels, giving rise to controversy. A deeper understanding of the international legal framework was needed so that crimes could be defined in national legislation in a manner compatible with international law.

19. Universal jurisdiction had certain defining characteristics: national courts must be competent to try perpetrators of the most serious international crimes even if the crimes were not committed in the territory of the forum State, even if the perpetrator would not ordinarily be subject to the domestic legal system and even if the victim was not a national or resident of the forum State. Her delegation looked forward to an extensive interchange of views in the working group on the item; practical issues relevant to the discussion were the immunities of Heads of State and jurisdictional conflicts. However, her delegation was

convinced that the time had come to refer the topic to the International Law Commission for a study of the current state of international law on the scope and application of universal jurisdiction.

20. **Archbishop Auza** (Observer for the Holy See) said that the issue of universal jurisdiction undoubtedly impacted the competing principles of the sovereignty of States and immunity of State officials, on the one hand, and the deterrence of the most serious crimes and prevention of impunity, on the other. Used for political or ideological purposes, universal jurisdiction had the potential to harm international cooperation and the rule of law. But universal jurisdiction might be necessary to ensure that atrocities against human rights and humanitarian law did not go unanswered.

21. Universal jurisdiction must be firmly based on substantive and procedural international norms, and there were difficult questions to be answered with regard to the propriety of universal jurisdiction, including the crimes to which it could be applied. An expert study of the customary international law on the subject would be a productive step in advancing the Committee’s work.

22. Prevention and prosecution of grave violations of international law were the legitimate duties of all States. Properly understood and applied, with due regard to the principle of subsidiarity, universal jurisdiction could serve as an important tool in the mission to protect the weak and prevent impunity.

23. **Mr. Ojeda** (Observer for the International Committee of the Red Cross) said that the principle of universal jurisdiction remained one of the key tools for ensuring the prevention and repression of serious violations of international humanitarian law. The “grave breaches” regime laid down in the four Geneva Conventions of 1949 and their Additional Protocol I of 1977 stipulated that States parties had a legal obligation to search for persons alleged to have committed, or to have ordered to be committed, those violations of the Conventions and the Protocol defined as grave breaches. States were then required to bring such persons, regardless of nationality, before their own courts or hand them over for trial by another State party concerned. Some other international instruments placed a similar obligation on States parties to vest in their courts some form of universal jurisdiction over serious violations of the rules they contained. In addition, State practice and *opinio juris* had helped to

consolidate a customary rule whereby States could empower their courts to exercise universal jurisdiction over other serious violations of international humanitarian law, such as war crimes.

24. The International Committee for the Red Cross (ICRC) continued to promote the prevention and sanction of serious violations of humanitarian law, with an emphasis on universal jurisdiction. In that regard it offered legal and technical assistance to States in adapting their legislation and developed practical tools, such as the Manual on Domestic Implementation of International Humanitarian Law and model legislation, to assist policymakers, legislators, judges and other interested parties.

25. ICRC had identified more than 100 States that had established some form of universal jurisdiction over war crimes and had made such information available in its National Implementation Database. During 2014 and 2015, while some States had limited the exercise of universal jurisdiction, others had adopted domestic legislation criminalizing serious violations of international humanitarian law and provided for universal jurisdiction over such crimes perpetrated beyond their borders.

26. States had the primary responsibility for investigating and prosecuting such crimes. When they could not take legal action based on other grounds of jurisdiction, the assertion of universal jurisdiction could serve as an effective mechanism to ensure accountability and limit impunity. Although ICRC recognized the possible legal, technical and practical challenges involved, it strongly encouraged States to find ways to overcome them and to enact appropriate legislation to respond to serious violations of international humanitarian law on the basis of all principles of jurisdiction.

*The meeting rose at 3.50 p.m.*