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Chair: Mr. Danon. . . . . (Israel)

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16-17736 (E)

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

Agenda item 85: The scope and application of the principle of universal jurisdiction (*continued*) (A/71/111)

1. **Ms. Langerholc** (Slovenia) said that universal jurisdiction was an important principle of international law that contributed towards strengthening the rule of law at both the national and the international levels. Although views on its scope and application were still divergent, there was a common understanding that it was a fundamental tool for combating impunity and ensuring accountability for the most serious crimes, as had recently been reaffirmed by the trial before the Extraordinary African Chambers in the Senegalese courts.

2. Her delegation recognized the potential of universal jurisdiction for the prevention and prosecution of the most serious crimes affecting the international legal order as a whole and shared the view that the application of universal jurisdiction was based on the nature of the crime, regardless of the nexus between the crime and the prosecuting State, including the place where it was committed and the nationality of the perpetrator or the victim.

3. Although no criminal cases had been tried on the basis of universal jurisdiction in Slovenia, its national legal order accepted that customary international law and treaty law were the main guiding sources for defining crimes that by their nature could be tried under universal jurisdiction. Customary international law permitted the exercise of universal jurisdiction over the most serious crimes under international law, including genocide, crimes against humanity, war crimes, torture and piracy. In addition, many treaties required States parties to empower their criminal courts to exercise jurisdiction over the crimes defined therein, although that obligation extended only to the exercise of such jurisdiction when a suspect was subsequently present in the territory of a forum State.

4. Slovenian legislation did not contain a list of crimes for which the principle of universal jurisdiction could be applied. Article 13 of the Criminal Code contained the relevant provisions on universal jurisdiction; its second paragraph concerned the prosecution of foreign citizens who had committed a crime abroad, were apprehended in Slovenia and were not extradited to the foreign country, while its third paragraph applied in the event that a foreign citizen committed a crime abroad that, under an international treaty or general principles of law recognized by the international community, could be prosecuted in any country, irrespective of where it had been committed. Prosecution under the third paragraph of article 13 was possible only with the approval of the Minister of Justice, while prosecution under the second paragraph thereof was subject to approval by the Minister of Justice in the absence of double criminality and with the proviso that, according to the general principles of law recognized by the international community, the offence in question had constituted a criminal act at the time it had been committed. The inclusion of such safeguards reflected an understanding that a degree of caution was needed in order to prevent the principle of universal jurisdiction from being applied too extensively. Its application under article 13, paragraph 2, was further limited by provisions specifying that perpetrators should not be prosecuted if they had served the sentence imposed on them in the foreign country or if it had been decided in accordance with an international agreement that the sentence imposed in the foreign country was to be served in Slovenia; if according to foreign law, the criminal offence concerned could be prosecuted only upon the complaint of the injured party and such a complaint had not been filed; or if the perpetrators had been acquitted by a foreign court, their sentence had been remitted or the execution of the sentence had fallen under the statute of limitations. However, under the Criminal Code, the statute of limitations did not apply to crimes for which life imprisonment could be imposed, including genocide, crimes against humanity and war crimes, or to those offences for which, in accordance with international agreements, no statute of limitations could be applied.

5. The Slovenian Criminal Procedure Act laid down procedural rules that were also applicable in the context of the principle of universal jurisdiction, ensuring recognized standards of due process, including for the accused. For example, a procedural rule on trials in absentia in effect prohibited trials in the complete absence of a defendant, since a trial was allowed to be held when a duly summoned defendant failed to appear at the main hearing only if his or her presence was not indispensable, the defence counsel

was present and the defendant had already been heard. With regard to rules on immunities, article 6 of the Criminal Code prohibited the application of Slovenian criminal law to the acts of persons who benefited from immunity from criminal liability pursuant to the provisions of the Constitution or rules of international law.

6. It was well accepted that the application of the principle of universal jurisdiction entailed specific challenges, including with respect to evidence collection in the context of inter-State cooperation. In that regard, Argentina, Belgium, the Netherlands and Slovenia were actively engaged in efforts to improve inter-State cooperation for the prosecution of atrocity crimes, in particular by working towards the negotiation of a new international instrument on mutual legal assistance and extradition between States for genocide, crimes against humanity and war crimes. She urged all delegations to support that initiative. Bearing in mind the potential role of the principle of universal jurisdiction in ensuring accountability for the perpetrators of heinous crimes, her delegation would continue supporting a common understanding of different issues relevant to the topic. In that regard, it also saw merit in exchanging views and practice in other forums, such as the European Union Genocide Network.

7. **Ms. Ben Avraham** (Israel) said that her Government, along with most other countries, recognized the importance of combating impunity and bringing the perpetrators of the most serious crimes to justice. However, it was clear from both the Secretary-General's reports and national reports on the topic that Member States had diverging views on such issues as the definition, legal status, scope and application of the principle of universal jurisdiction. In order to achieve the goal of combating impunity, while at the same time preventing any misapplication or abuse of universal jurisdiction, it was essential for States to agree on a proper definition of the principle and reach a shared understanding of the scope and manner of its application. The Committee should therefore continue its work, including by further exploring the practical application of universal jurisdiction.

8. Criminal jurisdiction should be asserted by States with close jurisdictional links, since such States clearly had weightier interests in doing so than those with limited or no jurisdictional links. Clear jurisdictional links were important not only to facilitate effective prosecution but also to promote the interests of justice and reconciliation, which could be best served by the prosecution of an alleged offender in his or her own community or in the jurisdiction with the closest links.

9. Furthermore, the exercise of universal jurisdiction was subject to the principle of subsidiarity. Universal jurisdiction, both in principle and in practice, was never intended to be an independent system of justice or a system of first resort; rather, it was a mechanism of last resort. The very nature of the principle was that it should be applied in exceptional circumstances, if necessary, when the State with closer jurisdictional links refused to act. All too often, however, universal jurisdiction was being used primarily to advance a political agenda or attract media attention, rather than genuinely to advance the rule of law. Appropriate safeguards should therefore be established in national legal systems, or other relevant entities, to ensure the responsible exercise of universal jurisdiction in appropriate exceptional cases. Such safeguards could, for example, include the requirement that prosecution based on universal jurisdiction should be conducted by public prosecution officials rather than initiated by private actors; that approval should be sought from high-level legal officials before a decision was made to open a case; that the accused should be present in the territory; and that he or she should have additional relevant jurisdictional links to the forum State.

10. In the light of existing uncertainties regarding the scope and application of universal jurisdiction, it would be useful for the Working Group on the topic to obtain information from additional States on relevant practice.

11. **Mr. Fintakpa Lamega** (Togo), recalling that the Committee had not yet been able to reach a consensus on a precise definition of the principle of universal jurisdiction or a legal framework for its scope, said that the 2001 Princeton Principles on Universal Jurisdiction, the 2002 Cairo-Arusha Principles on Universal Jurisdiction in Respect of Gross Human Rights Offences, and the 2015 Madrid-Buenos Aires Principles of Universal Jurisdiction reflected the regionalization of the concept, as did the comments contained in the report of the Secretary-General

(A/71/111). The principle of universal jurisdiction should not serve as a pretext to undermine such fundamental principles of international law as non-intervention and the sovereign equality of States, nor should it allow certain external jurisdictions to usurp domestic jurisdiction.

12. The current abusive or politicized use of universal jurisdiction could lead to unacceptable interference in the sovereign exercise of the jurisdiction of national courts. Furthermore, the principle of universal jurisdiction should not override guarantees of due process and the cardinal principles of criminal law, or overturn the principles of immunity that were the basis for smooth international relations. In view of the high risk of politicization, the scope and application of the principle should be strictly defined.

13. His Government continued working to combat impunity and promote justice based on equity. Togo was a party to several international conventions containing an obligation to extradite or prosecute, including the four Geneva Conventions of 1949 and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Furthermore, through the recent reform of its Criminal Code, Togo had incorporated into its national legislation all the international treaty instruments that it had ratified. For example, articles 150 and following of the new Criminal Code criminalized all acts of torture, thereby strengthening the implementation of the Convention against Torture. Meanwhile, his Government, with the support of its partners, was also holding regular capacity-building sessions on international human rights standards for judges and judicial police officers, as part of the process of modernizing the Togolese justice system.

14. In view of the technical and complex nature of the issue, an in-depth study should be conducted to determine an appropriate legal framework. Such a study could examine both the constitutive elements of universal jurisdiction and relevant State practice. The International Law Commission would be an ideal forum for such work, with the aim of codifying the principle of universal jurisdiction. In the meantime, his Government reiterated its call for closer international cooperation on legal matters and enhanced technical assistance for States so that they could themselves ensure the proper administration of justice and continue their efforts to combat immunity.

15. **Mr. Garshasbi** (Islamic Republic of Iran) said that the rationale for universal jurisdiction appeared to be that certain particularly grave crimes must be considered as being committed against the community of nations as a whole, rather than against a specific State, and that the accused should therefore be prosecuted in the country of arrest, regardless of where the crime had been committed. The main purpose of the concept was thus to avoid impunity. However, Member States did not seem to have a common understanding of universal jurisdiction and national legislations varied in their assessment of the crimes to which it could be applied. Consequently, if the interpretation of the applicability of universal jurisdiction remained subject to the discretion of national judicial authorities, the conditions of its implementation would become even more fragmented and possibly more politicized. Indeed, as indicated by one of the judges of the International Court of Justice in *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, to confer jurisdiction upon the courts of every State in the world to prosecute such crimes would risk creating total judicial chaos and would encourage arbitrariness, for the benefit of the powerful, purportedly acting as agents for an ill-defined “international community”.

16. The selective application of universal jurisdiction could prejudice such cardinal principles of international law as the equal sovereignty of States and the immunity of State officials from foreign criminal jurisdiction, and could also lead to a wide gap in State practice. Consequently, in any scheme to implement universal jurisdiction, laws should be in place to ensure that the principles of State sovereignty and immunity of State officials were duly respected.

17. The new Iranian Criminal Code provided for the trial and punishment of perpetrators of crimes recognized as international crimes by an international treaty or by a special law, namely a domestic statute that provided for prosecution of the perpetrators of the crime, regardless of the nationality of the accused or the victim, or the place where the crime had been committed. Moreover, the Iranian Civil Code provided that treaties concluded between Iran and other States in accordance with the Constitution had the force of

domestic law. Thus, all clauses in treaties concerning the right to implement universal jurisdiction, such as article V of the International Convention on the Suppression and Punishment of the Crime of Apartheid, to which Iran was a party, were considered to be part of Iranian law once they had been adopted and incorporated within the national body of law.

18. To conclude, his Government viewed universal jurisdiction as a treaty-based exception in the exercise of criminal jurisdiction. The prevailing principle remained that of territorial jurisdiction, which was central to the principle of sovereign equality of States.

19. **Mr. Al Nasser** (Saudi Arabia) said that the principle of universal jurisdiction had been formulated with the laudable objective of fighting impunity. However, it was too early for the principle to become enshrined in international law. Clear standards and mechanisms had yet to be put in place in order to apply the principle and define its scope. Many Member States, including his own, had drawn attention to other formal and substantive obstacles, notably the principles set forth in the Charter of the United Nations and international law, such as the immunity and sovereign equality of States. Any attempt to define and enforce universal jurisdiction without regard for those principles would be counter-productive and would leave the door open for politicization. Any national law that was inconsistent with the Charter and international law deserved condemnation. For instance, the Justice Against Sponsors of Terrorism Act, which had recently entered into force in the United States, provided that individuals could sue foreign Governments in civil courts. Such laws did not enjoy consensus among States, and their adoption would pave the way for legislative chaos, abuse and politicization. Saudi Arabia would support any endeavour to uphold justice in a manner consistent with its own legislation, the international conventions to which it was a party and the international norms in place. It urged all Member States to continue exploring ways to apply universal jurisdiction within the context of the Charter and the principles of international law.

20. **Mr. Varankov** (Belarus) said that his delegation consistently supported the concept of universal jurisdiction as a way to respond to certain crimes that harmed the interests of every member of the international community, in accordance with international legal rules. The substantive and procedural aspects of the exercise of universal jurisdiction on the basis of international treaties were clear and transparent; however, a State seeking to exercise universal jurisdiction on the basis of a rule of customary international law bore the burden of proof of the existence of such a rule. Generally recognized principles of international law and the concept of the rule of law required a State's national laws to be consistent with its international legal obligations; therefore any unilateral move, with no basis in international law, to expand the list of situations subject to a State's jurisdiction under its national law could not be regarded as anything other than interference in the internal affairs of other States and an illegal arrogation by that State of supranational powers. The current tendency to use universal jurisdiction to circumvent other international legal obligations, such as those relating to refugees, was a matter of concern. Respect for due process and other guarantees of the legal rights and interests of the individuals concerned were of particular significance in that regard.

21. With regard to the ongoing process of revitalization of the work of the General Assembly and the need to optimize its agenda, his delegation proposed that the current agenda item should in the future be considered on a biennial basis. Furthermore, a compilation of material from States on the issue would be of practical value both for the work of the relevant Working Group of the Committee and for national legal authorities.

22. **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 without double standards, 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 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.

23. 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. Furthermore, the Movement of Non-Aligned Countries, at its 17th Ministerial Conference in 2014 and during its 2016 Summit, had stated that the abusive exercise of universal jurisdiction could have negative effects on international relations. His delegation supported the Committee's continued work on the scope and application of the principle of universal jurisdiction, emphasizing the importance of consensus and the need for the Working Group to take the necessary time to consider the issue in depth.

24. **Mr. Mohd Radzi** (Malaysia), recalling that Malaysia had submitted extensive comments on the principle of universal jurisdiction and had shared relevant information on its applicable domestic legislation, said that, in view of the divergence of views held by Member States, a cautious approach should be adopted in order to determine a threshold for the exercise of universal jurisdiction that was in line with international law and acceptable to all Member States. As well as helping to narrow the gap between Member States, such an approach would also be crucial in ensuring full respect for the sovereignty and territorial integrity of States.

25. The lack of specific constructive discussion in the Committee regarding the list of offences to which universal jurisdiction was applicable was a matter of concern. While fact-finding efforts to gain a clearer understanding of the scope and application of universal jurisdiction were important, the Committee should consider taking more concrete action, such as commencing an in-depth analysis of the comments and information provided by Member States and relevant observers, or referring the topic to the International Law Commission. However, before any such steps could be taken, the Committee must agree on clear criteria defining the concept of universal jurisdiction.

26. **Mr. Rao** (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.

27. 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.

28. 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, and must not be misused in any criminal or civil matter.

29. **Ms. Ji** Xiaoxue (China) said that the establishment and exercise of universal jurisdiction should be in line with the purposes and principles of the Charter of the United Nations and the norms of international law and should not violate State sovereignty, interfere in the internal affairs of State or

infringe upon the immunity of States, State officials and diplomatic and consular personnel.

30. Universal jurisdiction was complementary to national jurisdiction. The primacy of territorial, personal and protective jurisdiction must be respected in order to prevent overlap and conflict and to maintain the stability of the international legal system and inter-State relations. 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.

31. 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. Discussions at the current time should therefore focus on ways to ensure that States applied universal jurisdiction prudently and refrained from violating the principles of international law, pursuing unilateral claims or exercising universal jurisdiction in a manner not explicitly permissible under the existing international legal framework.

32. Although the matter of universal jurisdiction had been on the Committee's agenda since 2009, there was still little agreement on the scope of universal jurisdiction, and it seemed unlikely that a consensus would be reached in the near future. The Committee might therefore wish to consider suspending its consideration of the topic, while allowing the exchange of views to continue within the Working Group on the topic.

33. **Mr. Pham** Ba Viet (Viet Nam) said that universal jurisdiction was an important tool for combating the most serious crimes and preventing impunity. In its 2015 reform of the Penal Code, his Government had provided 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 had 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.

34. Universal jurisdiction should be defined and applied in keeping with the principles of the Charter of the United Nations and international law, including sovereign equality of States, non-interference in the internal affairs of other States and the immunity of State officials. Only crimes such as genocide, crimes against humanity and war crimes should be subject to universal jurisdiction. Moreover, universal jurisdiction should apply only as a last resort and as a complement to jurisdictions with stronger links to the crime, such as national and territorial jurisdiction. It was important that the alleged perpetrator should be present in the territory of the State exercising jurisdiction. Furthermore, universal jurisdiction should not be exercised unless the possibility of extradition had been discussed with the State in which the crime occurred and the State of nationality of the alleged perpetrator.

35. To ensure that universal jurisdiction was exercised in good faith and in an impartial manner, his delegation supported the development of common standards on its scope and application

36. **Mr. Kravik** (Norway) said that it was clear from the discussions within the Working Group on universal jurisdiction and the information provided by Member States on their national laws and judicial practices that all States shared the view that there should be no impunity for crimes of such gravity that they represented a concern of the international community as a whole. Universal jurisdiction was an important tool for ensuring that the perpetrators of atrocity crimes and certain other serious crimes were brought to justice. Norway was pleased that the concept had developed into a fundamental principle of national and international criminal law.

37. The Committee was the most suitable forum for discussing the scope and application of the principle of universal jurisdiction. The discussions within the Working Group had helped to clarify the positions of Member States, which appeared to be converging, although some delegations still had concerns about the potential abuse of the principle. His delegation called for open and transparent discussions with a view to identifying measures to prevent any misuse of the principle but remained convinced that the establishment of an exhaustive list of crimes subject to universal jurisdiction would not be constructive.

38. In States that had incorporated the principle of universal jurisdiction into their domestic legislation, responsibility for determining its scope and application in specific cases rested with national prosecutorial offices. Given that the way in which universal jurisdiction would be applied by States that incorporated the principle into their national frameworks in the future would also largely be determined by their national judicial entities, the Committee should focus on how national jurisdictions organized their prosecutorial offices and applied the principle of universal jurisdiction. It was important to identify appropriate mechanisms to ensure that prosecutorial offices were independent and free from political interference, and to examine how prosecutorial discretion was applied in universal jurisdiction cases. Discussion of those issues would enhance the common understanding of how independent prosecutors should apply the principle of universal jurisdiction in a responsible and predictable manner. Progress in that regard would require States to share their experiences and best practices.

39. **Mr. Holovka** (Serbia) said that universal jurisdiction was a valuable tool for prosecuting serious crimes, particularly gross violations of international humanitarian law. 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, in particular when the State of nationality of the alleged perpetrator had no manifest will to prosecute.

40. 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 or the victim. The defendants in the trials conducted under the 2003 law had been present in the territory of Serbia and had not been indicted by neighbouring countries. No such proceedings thus far had been conducted in absentia. The trials were being monitored by the Organization for Security and Co-operation in Europe Mission in Serbia 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 its completion strategy.

41. The provisions of the Law were based on, and in full accordance with, the Convention on the Prevention and Punishment of the Crime of Genocide and the Geneva Conventions of 1949. The Law prevented impunity and had been adopted as a result of his country's obligations to the International Tribunal for the Former Yugoslavia. It did not target Croatia, or any other State, in particular. Only 1 of the 170 persons tried under the Law was a citizen of Croatia. Moreover, the European Commission for Democracy through Law (Venice Commission) had adopted a positive opinion on the Law.

42. The Law did not contravene the 2006 bilateral agreement between Serbia and Croatia on cooperation in the prosecution of war crimes or their 2005 memorandum of understanding on prosecutorial cooperation. Cooperation under those instruments had continued unimpeded until 2011, when Croatia had adopted a law declaring null and void certain legal documents of the judicial bodies of the former Yugoslav People's Army, the former Socialist Federal Republic of Yugoslavia and the Republic of Serbia. The law enabled the Croatian judiciary to refuse to act in matters that were contrary to the legal order of Croatia and detrimental to its sovereignty and security. As a result, all cooperation had ceased and 75 cases involving persons suspected of war crimes remained pending.

43. Croatia had not asked Serbia to amend its Law on Organization and Competences of Government Authorities in War Crimes Proceedings until January 2015, which indicated that its current calls for changes to the Law were motivated by political considerations and a desire to ensure impunity for Croatian nationals guilty of the most serious crimes. Serbia would neither amend nor repeal the Law, as that would constitute a failure to respect its international obligation to prosecute persons suspected of committing war crimes, regardless of their nationality. In accordance with the rules of customary international law, including those reflected in many international legal texts ratified by Serbia and Croatia, perpetrators of war crimes not

prosecuted in their State of nationality should be tried in other States.

44. Although the representative of Croatia claimed that Serbia was misusing the principle of universal jurisdiction for political purposes or to rewrite history, it was, in fact, Croatia that was attempting to rewrite history and to gloss over the crimes it had committed against the Serbian people during the conflict of the 1990s and those committed by the fascist regime of the Independent State of Croatia during the Second World War. It was worth noting that only one person had been sentenced by the Croatian judiciary in relation to crimes committed during Operation Storm, in which 2,500 Serbs, primarily civilians, were brutally killed and 250,000 were forcibly displaced. Furthermore, of the 3,584 indictments for war crimes issued by Croatia as at the end of 2015, only 119 concerned members of the Croatian armed forces, and the rehabilitation of the country's war criminals continued unabated.

45. He therefore called on Croatia to prosecute war crimes and to refrain from making baseless accusations against his country. Serbia remained committed to a common European future, the promotion of regional cooperation and good neighbourly relations with Croatia based on mutual respect and understanding.

46. **Mr. Momen** (Bangladesh) said that universal jurisdiction should be understood to be complementary to national jurisdiction in cases involving grave violations of international humanitarian law and human rights law. That pragmatic approach was enshrined in the Rome Statute, wherein the International Criminal Court was considered a court of last resort in cases where national jurisdictions were unwilling or unable to ensure accountability for crimes such as genocide, war crimes and crimes against humanity. The existence of the Court, and the authority invested in it, should create an obligation for the national jurisdictions of States parties to the Rome Statute to address any risk of impunity for mass atrocity crimes committed within their respective territories, whenever and by whomsoever committed.

47. Any attempt by the Court to exercise its jurisdiction with scant regard for the jurisdiction of national courts would make it susceptible to the vagaries of international and domestic politics, as demonstrated by some of its recent cases. States parties to the Rome Statute might work to prevent such susceptibility but, in the interest of maintaining its authority and credibility, the Court should ensure that its jurisdiction remained complementary to that of national courts.

48. Similarly, if national courts applied the principle of universal jurisdiction too extensively and in an extraterritorial manner, they could become open to international and domestic political influence, thus complicating relations between the executive and judiciary organs of States at the international and national levels. Arbitrary judgments concerning the competence of national judicial processes in the application of universal jurisdiction must be avoided, and certain national jurisdictions should not be seen as more equal than others in that regard. Doing so would undermine the objectives of justice and fairness that the principle of universal jurisdiction was intended to achieve.

49. **Mr. Atlassi** (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.

50. Apart from the realization of universal justice, the exercise of universal jurisdiction risked encroaching upon the principles of national sovereignty and non-interference, also contained in the Charter. It was for that reason that Moroccan law did not recognize the principle of universal jurisdiction. Nonetheless, it did contain a number of provisions that came within the scope of that principle. For example, 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.

51. Moroccan law was based on the principles of territorial jurisdiction or personal jurisdiction and did not recognize universal jurisdiction, whether as a technical device or as a basis for jurisdiction. Nonetheless, Moroccan legislation contained provisions governing acts and offences giving rise to universal jurisdiction, but did not contain any provisions that prevented the application of such principle or that promoted impunity. Morocco adopted that approach because it considered universal jurisdiction to be an optional principle and not a binding rule; it also considered that national courts had such jurisdiction a priori but were not bound to exercise it. For Morocco, universal jurisdiction was also a preventive principle, in that it was used to make up for shortcomings in national judicial systems with regard to the prosecution of serious crimes.

52. 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. In May 2008, Morocco had hosted the Fifth Conference of Ministers of Justice of French-speaking African Countries, which had adopted an agreement on mutual legal assistance and extradition to combat terrorism. Morocco was the depositary of that important legal instrument.

Statements in exercise of the right of reply

53. **Mr. Rogač** (Croatia) said that the comments about his country made by the representative of Serbia were not founded in fact or law. The comments made by his delegation about the Serbian Law on Organization and Competences of Government Authorities in War Crimes Proceedings had not been intentionally misleading or malicious.

54. A correct reading of international law showed that the Serbian Law was not an instrument of universal jurisdiction, as it was not universal, subsidiary or politically neutral in its application. The unprecedented approach to criminal jurisdiction embodied in articles 2 and 3 of that Law, whereby the Law applied only to certain States, selected by Serbia, denied those States, including Croatia, the opportunity to exercise their right and duty to prosecute some of the most serious international crimes, despite having a much stronger, if not exclusive nexus with the case, whereas only a failed subsidiarity test could justify such jurisdictional encroachment by Serbia.

55. Serbia did not need the controversial portions of that Law, nor did it need to encroach on the sovereignty of neighbouring States in order to prosecute the heinous violations of international humanitarian law that had occurred in the former Yugoslavia. It was perfectly possible for Serbia to prosecute the perpetrators of crimes such as the genocide in Srebrenica and war crimes in the Croatian city of Vukovar under its existing Criminal Code, in particular article 9 of that Code; besides, the country had the necessary institutions in place to conduct the trials.

56. It was true that there had been some international support for the Law during the early stages of its development, before the hopes that Serbia would fulfil its responsibilities with regard to the prosecution and punishment of war crimes had faded and it had become evident that the Law was being misused for political purposes. However, even at that early stage, reputable international experts had expressed concerns. For example, the International Bar Association had stated that the issue of jurisdiction was not entirely clear and suggested the inclusion of a complementarity clause in the Law. The representative of Serbia had incorrectly stated that the Venice Commission had adopted a positive opinion of the Law. The Venice Commission had in fact considered not that Law but rather a 2008 law concerning the organization of courts and the 2013 amendment thereto.

57. The recent thorough analysis of war crimes proceedings in Serbia by the Organization for Security

and Cooperation in Europe had noted that over the past decade Serbia had prosecuted mostly isolated and sporadic cases of war crimes, that the independence of the country's judiciary was still generally weak, that public opinion was unsupportive of war crimes prosecutions, and that the War Crimes Prosecutor's Office was increasingly subjected to undue interference by other State organs. In his report submitted to the Security Council in May 2016 (S/2016/454, annex II), the Prosecutor of the International Tribunal for the Former Yugoslavia referred to "legitimate concerns about the strength of the commitment of Serbia to war crimes justice and reconciliation". The President of the Tribunal had also reported Serbia to the Security Council for non-cooperation, and on 1 August 2016 the Tribunal had ordered Serbia to extradite indicted persons whom it had been refusing to extradite since 2015. Serbia had not complied with that order.

58. It should also be noted that a number of States had refused to comply with extradition requests issued by Serbia on the basis of the Law on Organization and Competences of Government Authorities in War Crimes Proceedings, as they had deemed the requests to be politically motivated and without legal basis.

59. The overwhelming majority of persons indicted and convicted by the International Tribunal for the Former Yugoslavia were Serbian, and Serbia was the only State that the Tribunal had found to have breached the Convention on the Prevention and Punishment of the Crime of Genocide. That assertion was not misleading; it was a well-known fact and *res judicata* and a matter of calling a spade a spade; it was not a coincidence or an unfortunate error or a matter of conspiracy, but convincing proof that it was Serbia, not its neighbours, that had waged wars of aggression resulting in tens of thousands of deaths and the displacement of millions of persons in Europe. Serbia was therefore uniquely unfit to assume jurisdiction over events in neighbouring countries which it had, by and large, instigated.

60. Croatia understood that it was a challenge for Serbia to come to terms with its role in the events in the former Yugoslavia as it sought to meet the criteria for accession to the European Union concerning an independent and efficient judiciary and the rule of law. As a European Union member State whose judicial system had been under scrutiny during its own accession negotiations, Croatia was best placed to comment on the progress of Serbia and was willing to provide support. His country had a commendable record in prosecuting war crimes, regardless of the nationality of the accused or the victim: as at the end of 2015, it had initiated war crimes proceedings against 3,554 persons, of whom 605 had been convicted, and against 119 military and police officers, 46 of whom had been convicted.

61. Lastly, instead of engaging in futile efforts to establish a better past for itself, Serbia should look to the future, cooperate with its neighbouring States, implement universal jurisdiction properly and in good faith and comply with its international obligations, including by cooperating fully with the International Tribunal for the Former Yugoslavia.

62. **Mr. Holovka** (Serbia) said that the statement made by the representative of Croatia was highly inaccurate. He encouraged delegates to draw their own conclusions by reading the assessments of the President and of the Prosecutor of the International Tribunal for the Former Yugoslavia, as contained in document S/2016/454, paying particular attention to the comments concerning Croatia.

63. Serbia remained sincerely committed to a common European future and the promotion of regional cooperation and every other form of cooperation with Croatia on the basis of mutual respect and the commitment to anti-fascism that was built into the foundations of the European Union project and modern society. In that connection, Serbia was gravely concerned by a number of steps taken by the Croatian authorities, which mirrored the revisionist policy aimed at rehabilitating the fascist entity called the Independent State of Croatia and masking its actions during the Second World War as well as the crimes committed against the Serbian population in the 1990s.

64. The policies currently being pursued by Croatia had also led to a number of ethnically motivated incidents targeting the Serbian population in Croatia and seemed intended to create an environment where it was permissible to commit such crimes with impunity. Croatia had committed many improper acts that were unprecedented in the history of modern Europe and had caused great distress to citizens of Serbia and the Serbian community in Croatia.

65. Serbia expected the international community to strongly condemn the glorification and rehabilitation of Nazism and fascism in any part of the world, with no exception, and not to remain silent as criminals, terrorists and fascists were celebrated as national heroes. To do otherwise would constitute tacit acceptance of the untruths and misrepresentations presented at the current meeting.

66. **Mr. Rogač** (Croatia) said that his delegation rejected the statement made by the representative of Serbia as groundless and invited delegations to examine the various reports by the International Tribunal for the Former Yugoslavia and the relevant judgments issued by the International Court of Justice as evidence. It was also worth noting that criminal proceedings in Croatia were not monitored by the International Tribunal for the former Yugoslavia.

67. Referring delegations to the statement he had delivered at the 13th meeting of the Committee at the current session, he reiterated his delegation's position that the illegal and absurd hybrid Serbian law had more to do with regional jurisdiction than universal jurisdiction. Indeed, in its statement at the seventieth session of the General Assembly, Serbia itself had referred to the application of "universal or regional jurisdiction" in reference to that law.

68. The international community should be concerned about the rehabilitation of policies that had led to devastating wars in the former Yugoslavia and the invasion of other States by Serbia under Slobodan Milošević. With regard to the glorification of convicted war criminals, it was ironic and even tragic that convicted war criminal Veselin Šljivančanin had accompanied the President of Serbia and other high-ranking Serbian officials at a recent event to commemorate the liberation of Europe.

69. **Mr. Holovka** (Serbia) said that the facts in the relevant reports spoke for themselves.

The meeting rose at 4.40 p.m.