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Chair: Mr. Turbék (Vice-Chair) . . . . . (Hungary)

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16-17604 (E)

In the absence of Mr. Danon (Israel), Mr. Turbék (Hungary), Vice-Chair, took the Chair.

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

Agenda item 173: Observer status for the International Chamber of Commerce in the General Assembly (A/71/232 and A/C.6/71/L.7)

Draft resolution A/C.6/71/L.7: Observer status for the International Chamber of Commerce in the General Assembly

1. **The Chair** recalled that, at the sixty-ninth session of the General Assembly, France, the coordinating delegation for the agenda item, had decided not to pursue the request for observer status in the General Assembly for the International Chamber of Commerce at that session, while reserving the right to present it at a future session.

2. **Mr. Stehelin** (France), introducing the draft resolution on behalf of the sponsors, said that they had been joined by Australia, Brazil, Finland, Gabon, Guatemala, Madagascar, Morocco, Romania and the United Arab Emirates. The private sector was a key to sustainable and equitable economic development, in particular in the least developed countries. To meet the Sustainable Development Goals and implement the Addis Ababa Action Agenda of the Third International Conference on Financing for Development and the Istanbul Programme of Action for the Least Developed Countries for the Decade 2011-2020, closer participation of the business world was essential. It was thus high time to involve the International Chamber of Commerce, a major representative of the private sector, in the work of the General Assembly and to recognize the role that it had long played as a partner of the United Nations.

3. The debate about the contribution of the business world to the Organization's ambitious sustainable development programme could not be reduced to a discussion about structure. The International Chamber of Commerce, nearly half the members of which were national public entities relied on a network of national committees and had a unique set-up that could not be replicated. An artificial structure would have to be created to enable it to circumvent General Assembly resolution 49/426 (1994). It was worth noting that a similar conclusion had led to the granting of observer status to the International Olympic Committee in 2009. The International Chamber of Commerce was ideally placed to represent the business world in the General Assembly. It contributed to many departments, offices, programmes, funds and agencies of the United Nations in the areas of sustainable development, the environment, energy, information and communications technologies, development funding, human rights and intellectual property.

4. While the primary decision-making responsibility with regard to the challenges facing the world lay with Governments, the mobilization of all the forces of society, working in a spirit of partnership, would be for the benefit of all. The granting of observer status to the International Chamber of Commerce would help in meeting the objectives set in the Addis Ababa Action Agenda, the Istanbul Programme of Action as well as in the Paris Agreement and would ensure closer relations in the future between Governments and the private sector, which would feel more accountable than ever for promoting sustainable development and combating climate change.

5. **Mr. Luna** (Brazil) said that Governments continued to be the driving force behind efforts to implement the 2030 Agenda for Sustainable Development, but they would also need the support of the private sector. Civil society and business organizations often had knowledge of needs at the national and local level, close contacts with local partners and an in-depth understanding of the Sustainable Development Goals. The International Chamber of Commerce was uniquely positioned to represent the business community in the General Assembly. A decision to grant it observer status would be beneficial for all.

6. **Mr. Palma Cerna** (Honduras) said that, as a catalyser of wealth and innovation, the private sector had a role to play in the achievement of the Sustainable Development Goals. The participation of the International Chamber of Commerce in the sessions of the General Assembly as an observer would be an excellent opportunity to hear the perspective of private enterprise on the many topics addressed by the General Assembly, and it would help to strengthen the private sector's commitment to the Sustainable Development Goals and the principles and values of the United Nations. Honduras called on all Member States to

support the granting of observer status to the International Chamber of Commerce, in recognition of the valuable role of the private sector, not only as a source of financing, but also as an ally in formulating and promoting initiatives that contributed to the realization of the Organization's objectives.

7. **Mr. Medina Mejías** (Bolivarian Republic of Venezuela) said that it was important to meet the criteria set out in General Assembly resolution 49/426, pursuant to which the granting of observer status should in the future be confined to States and to those intergovernmental organizations whose activities covered matters of interest to the Assembly. The International Chamber of Commerce was a praiseworthy private institution for alternative dispute resolution, commercial arbitration and commercial business policy, and his delegation commended its work in the United Nations Economic and Social Council. Unfortunately, however, the Chamber did not meet the criteria set out in that resolution. His delegation could therefore not recommend granting it observer status.

8. **Ms. Özkan** (Turkey) said that her delegation supported the request to grant the International Chamber of Commerce observer status in the General Assembly.

9. **Mr. Waweru** (Kenya) said that his delegation agreed to grant the International Chamber of Commerce observer status in the General Assembly. Since the adoption of the 2030 Agenda and the Sustainable Development Goals, the Addis Ababa Action Agenda of the Third International Conference on Financing for Development and the Paris Agreement, it had become abundantly clear that Governments needed to work more closely with the business community if the objectives of those initiatives were to be achieved. Many organizations dealing with a wide range of issues had observer status in the General Assembly, but none focused exclusively on the private sector. The International Chamber of Commerce could bridge that gap. It had held consultative status with the United Nations since 1946 and had had a close working relationship with many of its specialized agencies. It had been active as part of the United Nations Global Compact and had provided support to the Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises. It could help to strengthen the role of the private sector in generating employment, creating wealth through trade, promoting investment and financing for development, addressing rapid urbanization, ensuring food security, reducing inequalities and promoting prosperity.

10. **Ms. Melikbekyan** (Russian Federation) said that although its activities might well be of interest to the General Assembly, the International Chamber of Commerce did not meet one of the important criteria for the granting of observer status pursuant to General Assembly resolution 49/426, namely that it must be an intergovernmental organization.

11. **Mr. Rogač** (Croatia) said that his delegation supported the draft resolution, because granting observer status to the International Chamber of Commerce in the General Assembly would be of great benefit to all.

12. **Mr. Al Arsan** (Syrian Arab Republic) said that his delegation respected the International Chamber of Commerce, but felt that it did not fulfil the criterion of being an intergovernmental organization.

13. **Mr. Remaoun** (Algeria) said that his delegation respected the activities of the International Chamber of Commerce, but that that body failed to meet the criteria for the granting of observer status set out in General Assembly resolution 49/426. Algeria had reservations about granting it observer status.

14. **Mr. Atlassi** (Morocco) said that his delegation was in favour of granting observer status to the International Chamber of Commerce, to enable it to familiarize itself with the concerns of Member States with regard to sustainable development, achievement of the Sustainable Development Goals, and climate change. It was important to ensure the active involvement of the business world in the projects of Member States.

15. **Mr. Misonne** (Belgium) said that his delegation endorsed the request for the granting of observer status to the International Chamber of Commerce, given that the United Nations sought to establish partnerships with the private sector for the pursuit of sustainable development objectives. The International Chamber of Commerce made a valuable contribution to the work of the United Nations, and it would be even more useful if it was granted observer status.

16. **Mr. Racovită** (Romania) said that his delegation supported the request to grant observer status to the International Chamber of Commerce, which over the decades had made a valuable contribution to the work of the General Assembly in the areas of sustainable development, the environment, energy, climate change, information and communications technologies, the United Nations Global Compact and intellectual property, as well as to discussions in the United Nations Commission on International Trade Law. The elements in the explanatory memorandum provided to support the request for observer status (A/71/232) provided sufficient assurance that the International Chamber of Commerce met the criteria for the granting of observer status.

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

17. **Mr. Cortorreal** (Dominican Republic), 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 the principle of universal jurisdiction. Discussions at the sixty-seventh, sixty-eighth, sixty-ninth and seventieth sessions of the Committee had focused on the elements addressed in the informal paper submitted by the Working Group on the topic to the Committee at the sixty-sixth session of the General Assembly, namely, the role and purpose of universal jurisdiction and how it differed from other related concepts; its scope in terms of the range of crimes covered; and the conditions for its application. The Working Group had explored several points on which consensus existed and others that required further consideration.

18. Universal jurisdiction was an institution of international law of 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. CELAC was pleased that several delegations had reiterated their view that universal jurisdiction should not be confused with international criminal jurisdiction or with the obligation to extradite or prosecute; those were different but complementary legal 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.

19. During its 2015 meetings, the Working Group had discussed a non-paper prepared by its Chair which had proposed preliminary standards for the application of universal jurisdiction. CELAC believed that since the inclusion of universal jurisdiction as an agenda item had been requested with a view to establishing guidelines for its application, those discussions had been very relevant, and it expected that further discussions on the non-paper at the current session would make it possible to start work on such guidelines. If no progress was made in the upcoming meetings of the Working Group, the possibility of referring the topic to the International Law Commission for study should perhaps be considered.

20. **Mr. Nasimfar** (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. The invocation of universal jurisdiction against officials of some States members of the Non-Aligned Movement raised both legal and political concerns.

21. 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 and judicious application of

universal jurisdiction, consistent with international law. That would contribute to its legitimacy and credibility.

22. For the Non-Aligned Movement, it was premature at the current stage to request the International Law Commission to undertake a study on the topic of universal jurisdiction.

23. **Mr. Joyini** (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.

24. 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.

25. African and other like-minded States around the world called 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 by violating 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 to use the principle of reciprocity to defend themselves against the abuse of universal jurisdiction.

26. **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. Consistent with the principles of international law, universal jurisdiction offered a subsidiary basis for promoting accountability, closing the impunity gap and strengthening international justice systems, by ensuring that the perpetrators of the most serious crimes of concern to the international community were brought to justice. 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 or war crimes. It looked forward to a decision by the General Assembly in 2017 introducing the Court's jurisdiction for the crime of aggression, and it called on all States that had not yet done so to ratify the Kampala Amendments to the Rome Statute.

27. 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. 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.

28. 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. If no progress was made at the current session of the General Assembly, CARICOM saw merit in referring the topic to the International Law Commission for consideration.

29. **Ms. Boucher** (Canada), speaking also on behalf of Australia and New Zealand, 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. The principle of universal jurisdiction should be applied in good faith and with regard to other principles and rules of international law. National courts should exercise such jurisdiction in a manner consistent with the rule of law, including the obligation to ensure an impartial, expeditious and fair trial for all parties.

30. The primary responsibility for prosecution should rest with the State in which the crime was committed. When States with jurisdiction to prosecute based on territoriality or nationality were unable or unwilling to do so, 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. States must ensure that universal jurisdiction was only applied to those crimes that were recognized as the most serious, such as genocide, war crimes and crimes against humanity, slavery, torture and piracy.

31. **Ms. Diéguez 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.

32. 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 and thus safeguard international peace and security. Universal jurisdiction 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.

33. 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 of 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.

34. Her delegation commended the Working Group for its efforts 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.

35. **Ms. Benešová** (Czechia) 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. In addition, the potential of the current format of work on the topic had already been exhausted. The Commission was the most appropriate venue for making further progress on the topic and exploring it in full. Referring the topic to the Commission would also demonstrate the Committee's commitment to strengthening its interaction with the Commission.

36. **Ms. Al-Sulaiti** (Qatar) said that her delegation supported the efforts of the international community and the cooperative spirit that States had shown in dealing with international crimes and flagrant violations of human rights, and in ensuring that perpetrators were held accountable and brought to justice. Universal jurisdiction was a mechanism of the rule of law that guaranteed equitable justice and helped to combat impunity for grave violations of international law, international humanitarian law and international human rights law. Qatar was aware of the significant challenges involved in the implementation of that principle. Universal jurisdiction was not the only means of combating impunity for international crimes and should not be analysed in isolation from other elements. It must be part of a comprehensive approach aimed at strengthening the deterrent effect of sanctions so as to prevent such crimes. Qatar appreciated the practice of States that had helped to enshrine the rules of customary international law in their domestic systems by granting jurisdiction to their national courts over the crimes defined in the relevant international conventions, and in particular those concerning international humanitarian law and international human rights law. In Qatar, for example, both the Constitution and the Criminal Code conferred on national courts the right to try a number of such crimes.

37. 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. The nature of a crime should determine whether it was subject to universal jurisdiction. In her delegation's view, crimes against humanity, war crimes, genocide, grave human rights violations and acts of piracy must all be subject to such jurisdiction.

38. The growing number of violations of international law in many regions testified to the need for legal mechanisms to put an end to those violations, to deter their commission and to prosecute the perpetrators. Without such mechanisms, violations would only become more numerous, as evidenced by the increasing frequency of massacres, population displacements, aerial bombardments, deliberate starvation of people, embargos and intimidation of civilians whose only fault had been their wish to enjoy their legitimate right to freedom, dignity and self-determination, in conformity with international law and holy law. It was therefore important to define the scope of universal jurisdiction, and in particular to close the legal gaps exploited by the perpetrators of such crimes. Bringing such persons to justice would send a clear message that the international community intended to ensure that no one was above the law and that justice was done for the victims.

39. **Mr. Celarie Landaverde** (El Salvador) said that universal jurisdiction was a tool for avoiding impunity for the most serious international crimes, including torture, genocide and crimes against humanity. Universal jurisdiction coexisted with other legal mechanisms, including the obligation to prosecute or extradite and the jurisdiction of international tribunals, but it was important to recognize its unique character, in that the nature of the crime constituted the sole criterion for its application, without the requirement of a territorial or personal link.

40. 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 protected under international law or entailed a serious breach of universally recognized human rights. The Code did not contain a specific list of crimes, and its general scope therefore enabled the principle of universal jurisdiction to be adjusted to developments in international law and to acts considered to be particularly serious or in violation of

international human rights law. 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, in particular the principle of territoriality, was unwilling or unable to prosecute the crime.

41. **Mr. Horna** (Peru) said that universal jurisdiction was a valuable institution of international law, but it should 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 the most serious crimes, including genocide, war crimes and crimes against humanity rapidly and effectively when other accountability mechanisms could not be applied. His delegation therefore welcomed the decision of the General Assembly, contained in its resolution 70/119, pursuant to which the Working Group of the Sixth Committee would continue its consideration 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.

42. 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.

43. 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.

44. **Mr. Mohamed** (Sudan) said that all countries sought to apply the principle of universal jurisdiction pursuant to their national legislation on the crimes concerned, but all countries did not agree on the scope of such jurisdiction. 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. On no account should the scope of national jurisdiction be expanded in a manner that permitted its extraterritorial application.

45. 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. The Sudan rejected the issuance of arrest warrants against African leaders, which undermined the security and stability of African nations. 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 or as a pretext for intervening in the internal affairs of States.

46. **Mr. Leonidchenko** (Russian Federation), noting the persistence of divergent views on the subject of universal jurisdiction, said his delegation continued to believe that the principle did not have sufficiently clear and generally recognized parameters and that its arbitrary utilization was likely to complicate inter-State relations. 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. 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.

47. **Mr. Millogo** (Burkina Faso) said that the principle of universal jurisdiction was incorporated in his country's laws, including the 1996 Criminal Code, which had incorporated most of the international conventions providing for the application of universal jurisdiction by their States parties. A law implementing the Rome Statute of the International Criminal Court had also been adopted in 2010. In addition to defining the crimes that were 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.

48. Universal jurisdiction was an appropriate mechanism for ensuring that serious crimes did not go unpunished, because it closed gaps in national jurisdictions that enabled perpetrators to escape accountability. For that reason, Burkina Faso had ratified most international conventions that provided for the application of universal jurisdiction. Unfortunately, universal jurisdiction was often limited by domestic laws, in particular those on statutes of limitation, admissibility of complaints, immunity and amnesty, hence the need to harmonize concepts relating to the subject.

49. In the view of his delegation, the principle of universal jurisdiction should be applied in respect of the most serious international crimes, including genocide, war crimes, crimes against humanity, piracy, slavery and human trafficking, hostage-taking and counterfeiting. If an international consensus was to be reached, universal jurisdiction must be exercised in good faith and with due regard for other fundamental principles of international law, in particular the sovereign equality of States, non-interference in the internal affairs of States, and immunity of State officials from jurisdiction. The politicization of the concept and its selective application were detrimental to the cause of justice and encouraged impunity.

50. **Mr. Hitty** (Lebanon) said that his country, which was a party to many treaties aimed at combating international crimes, believed that it was essential to put an end to impunity and to ensure that the most serious crimes were prosecuted. The principle of universal jurisdiction was of primary importance in prosecuting alleged perpetrators of crimes prohibited in international law. However, it should not be applied arbitrarily or selectively. It must be defined in accordance with the principles embodied in the Charter of the United Nations, including the sovereign equality of States and non-interference in the internal affairs of States. Consistent with the principle of complementarity, primary responsibility for the prosecution of alleged perpetrators lay with the States concerned, by way of either territorial or personal jurisdiction. Deciding which crimes would be subject to universal jurisdiction was a thorny issue. Whereas some crimes or violations could be defined in international treaties, others were not clearly defined, and definitions might vary from one country to another.

51. **Mr. Chinyonga** (Zambia) said that when used in good faith, universal jurisdiction was a powerful tool for the preservation of the fundamental values of the international community, protection and promotion of the rule of law and human rights, and for the effort to combat impunity. While such jurisdiction was valuable as a mechanism for dealing with heinous crimes, such as war crimes, genocide and torture, there was a lack of clarity concerning its scope and application, making it

prone to abuse and selective application in the absence of mutually agreed parameters.

52. It was critical to strike a balance between the principle of universal jurisdiction and other principles of international law, including State sovereignty, sovereign equality of States, immunity of State officials and, indeed, the rule of law. To do otherwise could destabilize international relations and erode efforts to maintain international peace and security under the Charter of the United Nations. States should have an obligation to exercise universal jurisdiction in good faith in order to prevent any misapplication; it must always be a last resort after all other avenues had been pursued. They should likewise establish domestic legal frameworks that facilitated the legitimate exercise of universal jurisdiction. A swift conclusion to the Committee's work on the agenda item would enable them to modify their statutes accordingly.

53. **Mr. Saganek** (Poland) said it was evident that States adopted different solutions with regard to the scope of their jurisdiction, including for acts committed by foreigners abroad. In general, Poland applied the principle of territorial or personal jurisdiction, although it also applied the principle of universal jurisdiction in limited cases. Under its Penal Code, regardless of the law in force in the place of commission of an offence, Polish penal law applied to Polish citizens and foreigners facing extradition who had committed an offence abroad, where Poland was obliged to prosecute them under an international convention or pursuant to the Rome Statute of the International Criminal Court. Polish penal law also applied to foreigners who had committed an offence abroad against the interests of the Republic of Poland or of a Polish citizen, legal entity or organizational unit that did not have a legal personality, to foreigners who had committed a terrorist offence abroad, and to foreigners who had committed an offence abroad that was subject under Polish law to a penalty exceeding two years' imprisonment, where the perpetrator was present in Polish territory and no decision on his or her extradition had been taken. The latter case could be regarded as an example of universal jurisdiction.

54. The ongoing debates in the Sixth Committee reflected the concern of many delegations about such provisions, which were nonetheless present in the regulations of many States. The rules of international law were different with respect to different kinds of jurisdiction. They were very precise and strict with regard to executive jurisdiction. As the Permanent Court of International Justice had pointed out in the 1927 *S.S. "Lotus" (France v. Turkey)* case, a State could exercise its executive power only within its own territory. On the other hand, States had quite a wide margin of discretion for passing laws relating to jurisdiction and establishing legal consequences for acts committed by foreigners abroad.

55. Universal jurisdiction was rarely applied in Poland. It acted as a safety net rather than a part of the everyday work of the Polish judges or prosecutors. Nevertheless, the relevant provisions had a positive role to play if applied in a balanced way, taking into account the interests of other States. Strict application of territorial and personal jurisdiction often ensured that no one who committed a serious crime escaped prosecution. Domestic provisions on universal jurisdiction were of great value, since they allowed States to respect international instruments that referred to the principle of *aut dedere aut judicare*. Universal jurisdiction held out the promise of greater justice, but it must be in line with international law, since the application of conflicting jurisdictional provisions could create tensions between States.

56. **Mr. Rogač** (Croatia) said that universal jurisdiction was a valuable tool in efforts to end impunity. It should be applied lawfully and not misused for political purposes. In that connection, it was regrettable that the 2003 Serbian Law on Organization and Competences of State Authorities in War Crimes Proceedings not only flatly contradicted the basic principles of universal jurisdiction, but also misapplied the concept for political purposes. Unconditional applicability to all States and areas, regardless of the crime committed, was a basic prerequisite for the application of universal jurisdiction. The Serbian Law, on the other hand was neither universal, since it applied only to neighbouring States, including Croatia, nor subsidiary, since instead of serving as a last resort or "safety net" in the fight against impunity, it constituted an arbitrary, a priori indictment and verdict against other sovereign States, selected at the discretion of Serbia, and violated the principle of complementarity.

57. By adopting that Law, Serbia had ignored the clearly expressed readiness of Croatia to prosecute alleged international crimes committed on its territory, interfering instead in the criminal jurisdiction of another State, in violation of the principles embodied in the Charter of the United Nations, including the sovereign equality of States. Serbia insisted on adopting such a law which, amounted to insidious legal aggression, even though its Penal Code contained the principle of universal jurisdiction in its proper form. The fact that the only State ever to have been found responsible for breaches of the Convention on the Prevention and Punishment of the Crime of Genocide and whose direct criminal involvement in the events in the former Yugoslavia had been proven beyond doubt purported to assume the role of policeman and supreme judge made its whole case much more tragic and absurd. It attempts to assume that role and act as a champion of transitional justice under the guise of universal jurisdiction was cynical.

58. The 2003 Law was nothing but an attempt to rewrite history and redistribute responsibility and blame for the bloodiest armed conflict in Europe since the Second World War, and it had had an adverse impact on relations between States in the region. Croatia called on Serbia to amend that legislation as soon as possible. It wished to remind Serbia that, within the context of negotiations for accession to the European Union, Serbia had agreed as an interim benchmark, to avoid conflict of jurisdictions, implement its war crimes legislation without discrimination, and discuss controversial legislation until an agreeable solution was found. Croatia believed strongly that fulfilment of those undertakings by Serbia would provide incentive for a re-examination of the controversial law. The international community must prevent the manipulation of the concept of universal jurisdiction for political purposes.

59. **Mr. Medina Mejías** (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, in line with the Venezuelan Penal Code. The list of crimes should be explicit and limitative.

60. Universal jurisdiction was an incipient principle. To ensure that it was applied impartially and objectively, clear and transparent definitions and mechanisms needed to be elaborated to prevent applications based on utilitarian interpretations, which might lead to interventionist actions. An unrestricted application of universal jurisdiction might tempt prosecutors with domestic political ambitions to institute proceedings against the State officials of other countries. That would be detrimental to the rule of law at the international level, since it would violate the widely recognized principles of sovereign equality of States and non-interference in the internal affairs of States, which were fundamental to international peace and security.

61. 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, 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. In any case, the application of universal jurisdiction should always be considered supplementary to the jurisdiction 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.

62. 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. 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.

63. The outcome of work on the topic should be a treaty that harmonized the elements needed to ensure the application of universal jurisdiction without it becoming a danger to the rule of law at the international level.

64. **Mr. Arrocha Olabuenaga** (Mexico) said that universal jurisdiction was a useful tool for combating impunity for the most serious international crimes by enabling States to exercise jurisdiction to prosecute such crimes, regardless of the nationality of the perpetrator or the victim or the place where the offence was committed. Strictly speaking, in accordance with international law, only two crimes required a State to investigate and prosecute, regardless of the link to that State: piracy, pursuant to the United Nations Convention on the Law of the Sea, which had been considered customary international law on several occasions; and war crimes, in conformity with the Geneva Conventions of 1949.

65. Other international treaties, such as the Convention on the Prevention and Punishment of the Crime of Genocide and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, made provision for another principle, that of the obligation to prosecute or extradite. That principle did not mean an obligation to exercise universal jurisdiction, because the domestic legislation of a State might require a connection with the crime, such as territoriality or active or passive personality, or other criteria for the extraterritorial application of jurisdiction; if those conditions were not met, the State would have to extradite on the basis of the above-mentioned conventions. Other international treaties, such as the Rome Statute of the International Criminal Court, established the principle of international criminal jurisdiction for four international crimes: genocide, war crimes, crimes against humanity and crimes of aggression, with regard to which the immunity of Heads of State and Government was not applicable. Mexico was a State party to all those treaties and therefore recognized those three separate principles.

66. The discussion of the scope and application of universal jurisdiction in the Sixth Committee, which had been going on since 2009, had exhausted its potential. Given the technical nature of the issues concerned, the Committee should request the International Law Commission to undertake a study of the topic, including the rules of customary international law which gave rise to its exercise, and its relationship to the immunity of Heads of State and Government.

67. **Mr. Low** (Singapore) said that the principle of universal jurisdiction was an important weapon in the international community's arsenal for the fight against impunity, but its scope and application were unclear. Universal jurisdiction should only be asserted for crimes that were generally agreed by the international community. An unwarranted expansion of the principle to include anything less than the most heinous crimes would distort its purpose and undermine its legitimacy. The question of which crimes could be covered by universal jurisdiction should be assessed on the basis of State practice and *opinio juris*. Singapore looked forward to continuing the discussions on the underlying rationale and approach for the inclusion of further examples in the Working Group's preliminary list of crimes for which universal jurisdiction might apply.

68. 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. 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, due process, transparency, separation of powers and prosecutorial discretion, as well as practical matters involving the collection and preservation of evidence, availability and attendance of witnesses, and rules of procedure.

69. There was a distinction between the exercise of universal jurisdiction, which was a principle of customary international law, and the exercise of jurisdiction as provided for in treaties or the exercise of jurisdiction by international tribunals constituted under specific treaty regimes. The principle of

universal jurisdiction should therefore not be confused with the latter two, which were separate scenarios. The legitimacy and credibility of universal jurisdiction hinged on its principled application in a complementary and non-arbitrary manner.

70. **Mr. Stephen** (United Kingdom) said that his 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.

71. 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.

72. Under international law, universal jurisdiction had been clearly established only for a small number of specific crimes, such as piracy and war crimes, including grave breaches of the 1949 Geneva Conventions. There was a lack of consensus on whether a small number of other crimes were subject to universal jurisdiction, reflecting the general rule that the authorities of the State in whose territory an offence was committed were best placed to prosecute that offence 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 or appropriate. 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 procedural safeguards to ensure that universal jurisdiction was exercised responsibly.

73. While rare, establishing universal jurisdiction before the courts of the United Kingdom was not legally complex. Parliament had legislated to confer such jurisdiction on the courts in relation to certain offences, and experience had demonstrated that the relevant legal framework could be applied with clarity. Difficulties were more likely to arise in relation to practical, evidential matters or, in some cases, whether the accused person enjoyed any immunity under international law. Scrutinizing offences alleged to have been committed thousands of miles away was likely to present challenges. That had been the recent experience of the United Kingdom during a prosecution for torture alleged to have taken place outside the United Kingdom. While there had been few legal problems with establishing universal jurisdiction pursuant to the domestic legislation implementing the obligations of the United Kingdom under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, obtaining evidence and dealing with practical issues such as translation had proved to be problematic. Difficulties might also arise in relation to whether the principle of *autrefois convict* prevented criminal proceedings in the United Kingdom in circumstances where the same facts had been subject to criminal proceedings in another jurisdiction, albeit for a lesser offence.

74. **Ms. Pierce** (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. It would be useful to further analyse the practical application of universal jurisdiction, including the criteria that States used in determining whether to exercise it or not, how States addressed competing jurisdictional claims by other States, and issues relating to due process.

75. The United States was interested more broadly in what conditions or safeguards States had placed on the exercise of universal jurisdiction; appropriate safeguards should be in place to ensure responsible use of universal jurisdiction, where it existed. Her 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.

76. **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.

77. 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, as well as 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.

78. 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. 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.

79. 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.

80. **Mr. Ayoko** (Nigeria) said that the principle of universal jurisdiction continued to be controversial, among other reasons because it allowed States to claim criminal jurisdiction over an accused person irrespective of where the alleged crime had been committed and of the accused person's nationality or country of residence. A number of issues should be addressed to make the principle practicable and widely acceptable. Nigeria recognized the importance of universal jurisdiction in the fight against impunity, and it had consistently supported efforts to ensure that anyone who committed crimes of international concern, including genocide, crimes against humanity and war crimes, was brought to justice. However, the principle should always be exercised in good faith and in accordance with other principles of international law, including the sovereign equality of States and immunity of State officials, in particular Heads of State.

81. Nigeria believed that immunity of State officials should not be sacrificed for the sake of the principle of universal jurisdiction; that the primary responsibility for investigating and prosecuting serious international crimes lay with the State that had territorial jurisdiction; and that universal jurisdiction provided a complementary mechanism to ensure that accused persons could only be held accountable where the State was unable or unwilling to exercise its jurisdiction.

82. His delegation hoped that the Working Group to be established during the current session would consider outstanding grey areas, including the relationship between immunity and universal jurisdiction. It should also address the concerns of many Member States, including States members of the African Union, which respected the principle of universal jurisdiction but were troubled by the

uncertainty surrounding its scope and application. The Working Group should seek to define universal jurisdiction and decide on its scope, and it should explore the possibility of adopting measures to put an end to the manipulation and abuse of the principle for settling political scores. Legitimacy and credibility were best ensured if the principle of universal jurisdiction was applied responsibly and judiciously, in line with international law.

83. Given the technical nature of the subject matter, it would be useful if the International Law Commission could contribute to the discussion.

84. **Mr. Holovka** (Serbia), speaking in exercise of the right of reply, said that the statement by the representative of Croatia on the exercise of universal jurisdiction by Serbia contained a number of distortions and malicious misrepresentations. The Serbian Law on Organization and Competences of State Authorities in War Crimes Proceedings had been prepared in cooperation with international legal experts and had been praised by the Organization for Security and Cooperation in Europe, the International Criminal Tribunal for the Former Yugoslavia and other international bodies monitoring war crimes trials. It was interesting to note that Croatia had not challenged that Law until very recently, in order to exploit it for domestic political purposes. The representative of Croatia had implied that Serbia had been involved in a genocide, but with its abysmal track record for trying war crimes, Croatia was the last country that had a right to lecture others, let alone Serbia.

85. **Mr. Rogač** (Croatia), speaking in exercise of the right of reply, said that most of the comments by the representative of Serbia were not established in fact or in law, whereas the points had raised by Croatia had been acknowledged by the International Criminal Tribunal for the Former Yugoslavia and the International Court of Justice.

The meeting rose at 6.05 p.m.