

# Summary record of the 10th meeting – A/C.6/73/SR.10

## Agenda item 87

A/C.6/73/SR.10

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### Sixth Committee

#### Summary record of the 10th meeting

Held at Headquarters, New York, on Tuesday, 9 October 2018, at 3 p.m.

*Chair:* Ms. Ponce (Vice-Chair) (Philippines)

*later:* Mr. Luna (Vice-Chair) (Brazil)

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**Agenda item 86:** The rule of law at the national and international levels (*continued*)

**Agenda item 87:** The scope and application of the principle of universal jurisdiction

*In the absence of Mr. Biang (Gabon), Ms. Ponce (Philippines), Vice-Chair, took the Chair.*

*The meeting was called to order at 3.10 p.m.*

#### Agenda item 86: (...) <sup>1</sup>

**Agenda item 87: The scope and application of the principle of universal jurisdiction** (A/73/123 and A/73/123/Add.1)

94. **Mr. Al Habib** (Islamic Republic of Iran), speaking on behalf of the Movement of Non-Aligned Countries, said that the principles enshrined in the Charter of the United Nations, particularly the sovereign equality and political independence of States and non-interference in their internal affairs, should be strictly observed in any judicial proceedings. The exercise by the 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

1 For the purpose of this journal the Summary Record of this meeting has been reduced to only include Agenda item 87, paragraphs 94-113.

of universal jurisdiction against officials of some States members of the Non-Aligned Movement raised both legal and political concerns.

95. Universal jurisdiction provided a tool for prosecuting the perpetrators of certain serious crimes under international treaties. However, it was necessary to clarify several questions in order to prevent its misapplication, including the range of crimes that fell within its scope 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.

96. The Movement would participate actively in the work of the working group on the topic. The discussions therein should be aimed at identifying the scope and limits of the application of universal jurisdiction; consideration should be given to establishing a monitoring mechanism to prevent abuse. Universal jurisdiction could not replace other jurisdictional bases, namely territoriality and nationality. It should be asserted only for the most serious crimes and could not be exercised to the exclusion of other relevant rules and principles of international law, including State sovereignty, the territorial integrity of States and the immunity of State officials from foreign criminal jurisdiction.

97. In the view of 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.

98. **Mr. Jaiteh** (Gambia), speaking on behalf of the Group of African States, 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 Group, which was concerned about the abusive application of the principle, particularly against African officials. The 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, or unilaterally if circumstances so demanded, in situations of genocide, war crimes and crimes against humanity.

99. 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.

100. African and other like-minded States around the world called on the international community to adopt measures to end the abuse and political manipulation of the principle of universal jurisdiction by judges and politicians, 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.

101. Finally, while the Group had taken note of the inclusion of a topic entitled "Universal criminal jurisdiction" in the long-term programme of work of the International Law Commission, it held resolutely to its position that the agenda item "The scope and application of the principle of universal jurisdiction" should also be retained among those allocated by the General Assembly to the Sixth Committee.

102. **Ms. Thomas** (New Zealand), speaking also on behalf of Australia and Canada, said that the three countries recognized universal jurisdiction as a well-established principle of international law that provided a legal basis for States to prosecute and punish the most serious international crimes, regardless of where the conduct occurred and the nationality of the perpetrator, and to ensure that the perpetrators did not receive safe haven anywhere in the world. Australia, Canada and New Zealand had recognized universal jurisdiction over the most serious international crimes such as genocide, crimes against humanity, war crimes, slavery, torture and piracy.

103. Universal jurisdiction offered a complementary framework to ensure that persons accused of serious international crimes could be held accountable in circumstances where the territorial State was unwilling or unable to exercise jurisdiction. As a general rule, the primary responsibility for investigating and prosecuting serious international crimes rested with the State in which that conduct had occurred. Those States were in the best position to see justice done, given their access to evidence, witnesses and victims.

104. Universal jurisdiction must be exercised in good faith and with regard to other principles and rules of international law, including laws related to diplomatic relations and privileges and immunities. It was critical that universal jurisdiction be applied in a manner consistent with the rule of law and the right to a fair trial.

105. Australia, Canada and New Zealand all had legislation establishing universal jurisdiction in respect of the most serious international crimes. They encouraged Member States that had not already done so to incorporate universal jurisdiction into their domestic legislation and to work cooperatively and collaboratively to hold perpetrators to account.

Both perpetrators and would-be perpetrators of the most serious international crimes must be deterred and know that their actions would not go unpunished.

106. **Ms. Schougin Nyoni** (Sweden), speaking on behalf of the Nordic countries (Denmark, Finland, Iceland, Norway and Sweden), said that the principle of universal jurisdiction had been incorporated into many national jurisdictions. It allowed national prosecutors to pursue individuals believed to be responsible for certain grave international crimes even when they were committed elsewhere and neither the accused nor the victims were nationals of that State. Such prosecutions were an increasingly important part of international efforts to hold perpetrators accountable, to provide justice to victims, to deter future crimes and to help ensure that there were no safe havens. Combating impunity for atrocity crimes was in the interests of the international community and was its common responsibility.

107. While the Committee continued to discuss the scope and application of the principle of universal jurisdiction, the Nordic countries noted that the topic of universal criminal jurisdiction had been included in the long-term programme of work of the International Law Commission. The principle of universal jurisdiction drew on developments in international law, including State practice, and on views of international courts and tribunals as well as scholars. That ongoing process should be allowed to evolve. It was not advisable to attempt to develop an exhaustive list of crimes for which universal jurisdiction would apply.

108. In most States, the application of the principle of universal jurisdiction rested with the national prosecutorial offices. A discussion on the scope and application of universal jurisdiction would need to take into account the practices and processes of those bodies, including prosecutorial discretion and mechanisms securing the independence of prosecutorial offices.

109. At the international level, the International Criminal Court played an important role in securing accountability for the most serious crimes. It provided an avenue for prosecution when States did not exercise jurisdiction, but the primary responsibility nevertheless rested with States. The development of other bodies at the international level, such as the International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011, assisted both national and international jurisdiction in the fight against impunity. The International, Impartial and Independent Mechanism was not provided with any prosecutorial capacity of its own but could contribute to future proceedings before national jurisdictions applying the principle of universal jurisdiction or proceedings in international courts and tribunals. The contributions of the Mechanism and other possible future mechanisms could help shape the application of universal jurisdiction.

110. Bringing perpetrators to justice was not only about ending impunity but also about strengthening respect for international law and providing justice for victims. The application of the principle of universal jurisdiction was an important tool for States and international courts and tribunals to ensure that the most serious crimes did not go unpunished.

111. **Mr. Escalante Hasbún** (El Salvador), 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. Past discussions in the Committee had focused on the elements addressed in the informal paper submitted by the working group on the topic 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 groups had certainly made progress in their seven years of work, moving from a concise road map to a combined set of elements relating to each of the three pillars of the United Nations, and culminating in a full set of policy indicators covering all of them.

112. 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 principles that had the common goal of ending impunity. CELAC shared that understanding, which was consistent with the relevant applicable law, the diverse set of obligations of States under international law and the observance of the rule of law at the national and international levels.

113. CELAC welcomed the decision of the International Law Commission to include the topic of universal jurisdiction in its long-term programme of work. The Commission's study of that topic should enable the General Assembly to make more progress in clarifying certain legal aspects of the principle under international law.

*The meeting rose at 6 p.m.*