

Summary record of the 11th meeting – A/C.6/73/SR.11

Agenda item 87

A/C.6/73/SR.11

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Sixth Committee

Summary record of the 11th meeting

Held at Headquarters, New York, on Wednesday, 10 October 2018, at 10 a.m.

Chair: Mr. Biang (Gabon)

later: Ms. Kremžar (Vice-Chair) (Slovenia)

Contents

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

The meeting was called to order at 10.05 a.m.

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

- 1 **Mr. Faisal Al-Thani** (Qatar) said that his delegation welcomed the continued debate on the scope and application of the principle of universal jurisdiction and the establishment of a working group of the Sixth Committee on the topic, pursuant to General Assembly resolution 72/120. Universal jurisdiction was a mechanism of the rule of law and a legal tool that could help to prevent impunity for serious crimes and grave violations of international law, international humanitarian law and international human rights law. Only through concerted international efforts, however, would it be possible to close legal loopholes with a view to preventing impunity, bringing the perpetrators of atrocities to justice, promoting the rule of law at the national and international levels, deterring others from committing such crimes and ensuring reparation for victims.
- 2 His delegation viewed universal jurisdiction as a means of fulfilling the obligation to extradite or prosecute under the four Geneva Conventions of 1949 and their Additional Protocols. It had become increasingly clear that universal jurisdiction was an important means of addressing crimes committed in the context of national conflicts where domestic courts were incapable of shouldering the legal responsibility to prosecute. In order to achieve wide-ranging international support for the principle of universal jurisdiction,

however, it would be necessary to narrow the gap between the divergent positions regarding its scope. It was essential to strike the right balance so that efforts to end impunity did not result in abuse of the principle of universal jurisdiction. Such jurisdiction must be exercised in good faith and in accordance with the Charter of the United Nations and the applicable rules of international law.

- 3 The Criminal Code allowed Qatar to exercise jurisdiction beyond its national borders, as did its laws on counter-terrorism, money-laundering and the financing of terrorism, and human trafficking. In addition, Qatar was a party to a number of international conventions in which the application of universal jurisdiction was envisaged, including the Geneva Conventions of 1949, the United Nations Convention on the Law of the Sea and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- 4 **Mr. Meza-Cuadra** (Peru) said that universal jurisdiction, as it had evolved, could be an effective means of ensuring accountability for the most serious crimes, including genocide, war crimes and crimes against humanity, the victims of which were almost always the most vulnerable populations. There were clearly differences of opinion as to the conditions under which universal jurisdiction could be applied. There was no generally agreed view, 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 the exercise of universal jurisdiction. Moreover, it was necessary to consider what criteria would apply in the event that more than one State sought to exercise universal jurisdiction in a given matter. In any case, universal jurisdiction must always be exercised in accordance with international law and the principles enshrined in the Charter of the United Nations.
- 5 His delegation was of the view that the working group on the topic should continue its work, 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 important to ensure that minority groups were recognized as victims in the definition of such crimes. Without prejudice to the continued work of the working group, his delegation welcomed the decision by the International Law Commission to include the topic of universal criminal jurisdiction in its long-term programme of work. In the current context, it was more important than ever to achieve clarity with regard to the scope and application of the principle of universal jurisdiction in order to facilitate cooperation by States and other international actors in the prosecution and punishment of the perpetrators of the most heinous crimes.
- 6 Peru was a peaceful, stable country that had overcome serious internal conflicts thanks to the application of genuine accountability mechanisms, which were the best means of preventing the recurrence of serious violations of human rights and international humanitarian law. The principle of universal

- jurisdiction, as long as it did not constitute a form of intervention in the internal affairs of States, was such a mechanism.
- 7 **Mr. Alavi** (Liechtenstein) said that the common goal of ending impunity for the most serious crimes of international concern should guide discussions on the principle of universal jurisdiction. It was encouraging to see that more and more States were recognizing universal jurisdiction as an effective tool in the fight against impunity and that national judiciaries were invoking universal jurisdiction to hold accountable those responsible for atrocities.
- 8 The primary responsibility for prosecuting perpetrators of the most serious international crimes, particularly genocide, war crimes and crimes against humanity, unquestionably rested with the States on whose territory the crimes were committed. However, if those States were unwilling or unable to prosecute them – other States, even if they had no direct connection to the crime, should be able to do so on the basis of universal jurisdiction. As for the scope of universal jurisdiction, existing treaty law and customary international law were sufficiently clear. Liechtenstein was a party to all relevant applicable international treaties. Thus far, however, there had been no cases of the application of universal jurisdiction in Liechtenstein.
- 9 Universal jurisdiction must be clearly distinguished from the jurisdiction of international courts and tribunals, in particular that of the International Criminal Court. Nevertheless, although the Rome Statute of the Court did not provide a basis for universal jurisdiction, a large number of perpetrators operated beyond the Court's jurisdictional reach; where the seriousness of the situation warranted, and where domestic prosecution and all other options had failed, the International Criminal Court should be able to act. However, it was often up to the Security Council to give the Court jurisdiction, which generally did not happen. The dynamic in the Council in that respect could not be expected to change in the near future, and alternatives should therefore be sought in order to ensure justice and prevent impunity, including the application of universal jurisdiction in domestic proceedings. Universal jurisdiction was thus a critical component of the international criminal justice system.
- 10 He wished to highlight the important role of 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, the mandate of which was to prepare cases for prosecution in courts that had jurisdiction over crimes committed in Syria. In the face of continued unwillingness or inability of Syrian courts to prosecute, other national courts or an international tribunal could step in. The path to the International Criminal Court remained obstructed by the use of the veto in the Security Council. By invoking universal jurisdiction, however, a number of European courts had been able to prosecute perpetrators in a limited but still meaningful way. His delegation welcomed that development and encouraged all States to cooperate with the Mechanism.

- 11 The recent establishment by the Human Rights Council of a similar accountability mechanism for Myanmar was a sign of the international community's strong political acceptance of the Syria Mechanism. Universal jurisdiction would undoubtedly remain an important tool for ensuring accountability.
- 12 **Mr. Carrillo Gómez** (Paraguay) said that he wished to pay tribute to the visionaries who 70 years earlier had proclaimed respect for the rights and freedoms enshrined in the Universal Declaration of Human Rights as a common standard of achievement for all peoples and nations. Today, the provisions of the Universal Declaration formed part of *jus cogens* and served as a basis for the exercise of universal jurisdiction. The scope of universal jurisdiction was reflected in several Paraguayan laws that had constitutional status. Paraguay recognized the existence of a supranational legal order that protected human rights and prohibited crimes such as genocide, torture and enforced disappearance; it also recognized the non-applicability of statutory limitations in respect of such crimes.
- 13 The domestic law implementing the Rome Statute of the International Criminal Court distinguished national jurisdiction from universal jurisdiction, specified the limits of national jurisdiction and established the penalties for genocide, crimes against humanity and war crimes. The Paraguayan Criminal Code, in accordance with the principle of universal jurisdiction, extended the scope of Paraguayan criminal jurisdiction to acts committed abroad against Paraguayan legal goods protected or legal goods enjoying universal protection and to cases in which the offender was a Paraguayan national or was a foreign national present in the territory of Paraguay whose extradition had been refused. The principle of universal jurisdiction was also present in Paraguayan case law. In a 2008 judgment, for example, the Supreme Court of Paraguay had ruled that heinous crimes such as torture were not subject to any statutory limitations and reaffirmed that violations of fundamental rights should not go unpunished.
- 14 His delegation valued the efforts of the members of the international community to end impunity for the most serious international crimes, thereby strengthening the legitimacy of the principle of universal jurisdiction. It also applauded the work of the International Law Commission on the prevention and punishment of crimes against humanity. The Government of Paraguay supported the work of international human rights monitoring bodies and since 2003 had maintained a standing invitation to all such bodies to visit the country.
- 15 Unfortunately, in Latin America and the Caribbean, as in other regions of the world, dictatorial regimes continued to violate the human rights of their populations, thereby also violating the obligations of States under the Universal Declaration of Human Rights. Universal jurisdiction could represent a ray of hope and a path to justice for peoples oppressed by authoritarian regimes, ensuring that those responsible for such violations were subject to international criminal justice. His Government affirmed its solidarity with the peoples of Venezuela and Nicaragua in the face of abuses of power and renewed its commitment to strengthening the principle of universal jurisdic-

- tion as a key tool for preventing impunity and ensuring justice and reparation for victims of international crimes.
- 16 **Mr. Khng** (Singapore) said that the principle of universal jurisdiction was based on the recognition that some crimes were of such exceptional gravity that they shocked the conscience of all humanity. The international community had a shared responsibility to address such crimes and to support the global commitment to combat impunity. Universal jurisdiction did not, however, apply to all crimes. To determine whether a crime was subject to universal jurisdiction, it was necessary to make a conscientious analysis of State practice and *opinio juris*. Universal jurisdiction was not and should not be the primary basis for the exercise of criminal jurisdiction by States. It was complementary to other bases of jurisdiction recognized under international law, including territoriality and nationality. It should not be exercised in isolation from other applicable principles of international law, such as the immunity of State officials from foreign criminal jurisdiction, State sovereignty and territorial integrity. Lastly, universal jurisdiction was a principle of customary international law and should not be conflated with the exercise of jurisdiction pursuant to treaties or the exercise of jurisdiction by international tribunals.
- 17 **Mr. García Moritán** (Argentina) said that the most serious crimes affecting the international community as a whole must not go unpunished. It was the duty of States to exercise their criminal jurisdiction against those responsible for such crimes. The primary responsibility for investigation and prosecution lay with the States in whose territories crimes had been committed or with other States that had a connection to the crimes because of the nationality of either the perpetrator or the victims. Nonetheless, in circumstances where States could not or did not wish to exercise jurisdiction, other States without a direct link to the crime could fill the void through the exercise of universal jurisdiction. It was, however, an exceptional and supplementary tool that must be used in accordance with the relevant treaties and rules of international law. Although the principles of universal jurisdiction and *aut dedere aut judicare* might overlap in some cases, they were distinct concepts and should not be conflated.
- 18 Universal jurisdiction was a critical component of the international criminal justice system. However, its application without restrictions could generate conflicts of jurisdiction between States and subject individuals to possible procedural abuses or give rise to politically motivated prosecutions. It would therefore be useful to develop clear rules to guide the exercise of universal jurisdiction. His delegation supported the step-by-step approach followed thus far within the working group on the topic to clarify various issues and arrive at a better understanding of the principle of universal jurisdiction. It was also in favour of a study by the International Law Commission on the topic.
- 19 **Mr. Omer Dahab Fadl Mohamed** (Sudan) said that 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 sover-

eighty, 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.

- 20 Universal jurisdiction was not applied consistently from one State to another. Its unilateral and selective application by the national courts of certain States could lead to international conflict. Universal jurisdiction could not replace jurisdiction based on territoriality or nationality, and should be restricted to the most serious and heinous of crimes: on no account should its scope be expanded to cover lesser crimes, nor should it be invoked in isolation from the other relevant principles of international law, such as sovereignty, territorial integrity and the immunity of State officials from criminal prosecution. 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 repeatedly reaffirmed that view in the outcome documents of the ordinary and extraordinary sessions of its Assembly and had also rejected the issuance of arrest warrants against African leaders, which undermined the security and stability of African nations.
- 21 It was important to continue discussing the question of universal jurisdiction within the Sixth Committee 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 political agendas or as a pretext for intervening in the internal affairs of States. His delegation remained of the view that it was too soon to request the International Law Commission to conduct a study on various aspects of the principle of universal jurisdiction.
- 22 **Ms. Onanga** (Gabon) said that her Government attached great importance to all international instruments aimed at protecting civilians, in particular the third and fourth Geneva Conventions of 1949. Holding the perpetrators of the most serious violations of international law to account was an important aspect of efforts to end impunity and ensure justice for victims.
- 23 Under the Gabonese Constitution, high-level State officials could be held criminally responsible before the High Court of Justice for acts committed in carrying out their duties if such acts were defined as crimes at the time of their commission. Her delegation believed that the scope of universal jurisdiction must be limited; that it could not clash with national jurisdiction; and that the country in which a serious international crime had been committed had the primary responsibility for prosecution. Universal jurisdiction should be exercised only as a complementary measure and only when the territorial State was unwilling or unable to exercise its jurisdiction. Moreover, it must be exercised in compliance with the principles of international law, in particular the principles of sovereign equality of States, non-interference in their internal affairs and the immunity of State officials. Building national capacity was of utmost importance in efforts to promote interna-

- tional criminal justice in a manner that was compatible with the crucial national processes required to achieve reconciliation and lasting peace.
- 24 While noting the decision by the International Law Commission to include the topic of universal criminal jurisdiction in its long-term programme of work, her delegation was of the view that the topic was of a political nature and therefore should remain on the agenda of the Sixth Committee.
- 25 **Mr. Mlynár** (Slovakia) said that his delegation welcomed the Committee's decision to establish a working group on the topic of universal jurisdiction and hoped that a legal debate would help to alleviate the political sensitivities associated with the principle and bring clarity on pertinent issues, such as the crimes to which universal jurisdiction might apply and the relationship between the principle of universal jurisdiction and those of immunity of State officials and *aut dedere aut judicare*. Universal jurisdiction had been a firm part of international law for centuries, first in relation to piracy and subsequently in relation to crimes against humanity, war crimes, genocide, torture and other crimes. The inclusion of the concept in article 5 of the Convention against Torture and in draft article 6 of the draft articles adopted by the International Law Commission under the topic "Crimes against humanity" were strong evidence of its existence and acceptance.
- 26 The application of universal jurisdiction should not in any way call into question traditional jurisdictional links based on territoriality or personality. However, it could complement those jurisdictional approaches and help to prevent impunity, especially in situations where alleged perpetrators had evaded the States having territorial or personal jurisdiction. In the absence of a truly universal framework for mutual legal assistance and of universal acceptance of the Rome Statute of the International Criminal Court, universal jurisdiction remained a guarantee against impunity of such perpetrators. The development of a treaty on mutual legal assistance or a convention on the prevention and punishment of crimes against humanity would not strip the principle of universal jurisdiction of its relevance or narrow the scope of its application. Efforts to develop such agreements, together with the application of universal jurisdiction and the strengthening of the International Criminal Court, could complement and reinforce each other, creating a strong legal framework aimed at ensuring accountability.
- 27 **Mr. Al Arsan** (Syrian Arab Republic) said that selectivity, double standards and other irregular practices in international relations, including within the United Nations, made it impossible to maintain the rule of law or fulfil the aims of universal jurisdiction: achieving justice and fighting impunity. It was clear from the report of the Secretary-General (A/73/123 and A/73/123/Add.1) that there was a tendency on the part of some Governments to broaden the scope of universal jurisdiction to serve their national interests or to advance their narrow political agendas, with scant regard for the promotion of what was referred to as "international criminal justice". It was worth recalling that, in its resolution 72/120, the General Assembly had expressed concerns in relation to the abuse or misuse of the principle of universal jurisdiction, acknowledging the need for continuing discussions on the

scope and application of the principle in the Sixth Committee and noting that the legitimacy and credibility of the use of the principle were best ensured by its responsible and judicious application consistent with international law. The Sixth Committee had a responsibility to defend the concept of justice and protect the principles of law from the types of political whims reflected in the practices and behaviours of certain Governments.

- 28 His delegation had always reaffirmed the importance of the judgments and advisory opinions of the International Court of Justice, the primary and only body within the United Nations to which States could resort in matters relating to universal jurisdiction. His delegation had also always rejected and resisted the suspicious tendencies of certain Governments to broaden the scope of universal jurisdiction in a distorted and illegal manner under the pretext of fighting impunity. The Syrian Arab Republic had been one of the first signatories to the Rome Statute of the International Criminal Court. The work of that Court, however, had shown that its role had always been, and would always be, to prosecute weak States. The nature of the cases considered by the Court made it clear that international criminal justice was an unattainable goal, because the priority was always to reflect the political considerations and will of the major powers. For evidence of the political hypocrisy inherent in the work of the Court, it sufficed to recall that some of the Member States that promoted the Court and called for the application of a spurious and elusive mandate in the Syrian Arab Republic had signed bilateral memorandums of understanding with the Government of a particular country providing immunity from prosecution by the Court for that country's soldiers.
- 29 Some delegations continued to promote the so-called 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, which was nothing more than a forum for political propaganda, although it was promoted as an instrument that would help to fight impunity, achieve justice and support national judicial bodies seeking to apply universal jurisdiction.
- 30 It was worth recalling that General Assembly resolution 71/248, by which the Mechanism had been established, had been adopted without consensus, had no legal basis, violated several Articles of the Charter and represented an unprecedented encroachment by the General Assembly on the mandate of the Security Council. He invited the legal experts in the Sixth Committee to examine the letter from the Permanent Mission of the Syrian Arab Republic addressed to the Secretary-General (A/71/799) and the letter from the Permanent Mission addressed to the President of the General Assembly (A/72/106), both of which presented a fair and balanced legal assessment that exposed the serious legal flaws in resolution 71/248.
- 31 Despite the claims by certain countries that they were fighting impunity, it was worth recalling, first, that according to public reports in one European country, that country's Government had been implicated in a secret operation to support several armed groups in the Syrian Arab Republic that had

- committed heinous acts amounting to war crimes and crimes against humanity. Second, the Government of one of the principal sponsors of resolution 71/248 had adopted a position that was in stark contrast with that of the United Nations by providing military and logistical support to the Nusra Front, a group which had been designated by the international community and the United Nations as a terrorist organization. Universal jurisdiction should therefore be applied in a fair manner to hold accountable those Governments and the other sponsors of resolution 71/248.
- 32 **Ms. Hořňáčková** (Czechia) said that universal jurisdiction was an important tool in the fight against impunity for the most serious crimes. It was in the interest of all States to hold perpetrators of such crimes accountable and not to offer them safe haven. The territorial State had the primary jurisdiction to prosecute and punish perpetrators of such crimes. However, when it was unwilling or unable to do so, and neither the State of nationality of the perpetrator nor that of the victim was prosecuting them in earnest, other States were entitled to do so, even if they had no territorial or personal connection to the crime committed.
- 33 As illustrated by the judgment of the International Court of Justice in the case of *Questions Concerning the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, the strict application of the principle of *aut dedere aut judicare* under relevant international treaties, together with the application of the principle of universal jurisdiction under customary international law, could help to deter the commission of such crimes and enhance the fight against impunity. At the same time, it should be emphasized that internationally accepted standards of fair trial and the immunity *ratione personae* of foreign State officials under customary international law and international treaties must always be upheld when exercising universal jurisdiction in domestic courts.
- 34 Her delegation remained of the view that the question of the scope and application of universal jurisdiction was of a predominantly legal nature and deserved a thorough legal analysis. It acknowledged the differences among States concerning the customary nature of universal jurisdiction, the decision of whether the presence of the alleged offender in the territory of a State was required for the exercise of such jurisdiction or whether a trial could be conducted in absentia, and the need for procedural safeguards in the exercise of universal jurisdiction. It appreciated the work of the working group on the topic but considered that the topic should be referred to the International Law Commission for study. The Commission was an expert body that could allocate adequate time to the matter. Moreover, referring the topic to the Commission would demonstrate the Committee's commitment to strengthening its interaction with that body. The Commission itself apparently had seen a need for clarification of certain aspects of the topic, as it had decided to include the topic "Universal criminal jurisdiction" in its long-term programme of work.
- 35 **Mr. Umasankar** (India) said that the perpetrators of crimes should not be allowed to go unpunished because of procedural technicalities, including lack of jurisdiction. The principle of universal jurisdiction was an exception to

general criminal law, under which jurisdiction was generally exercised on the basis of territoriality or nationality. The exception was justified, however, by the grave nature of the crimes, which affected the international community as a whole, and the need to ensure that no safe haven was provided to those who committed such crimes.

- 36 Careful analysis of State practice and *opinio juris* was needed in order to identify the existence of a customary rule of universal jurisdiction for a particular crime. It was important to avoid misuse of the principle of universal jurisdiction, the conceptual and legal meaning of which had yet to be clarified. Treaty obligations to extradite or prosecute should not be conceptualized as, or used to infer the existence of, universal jurisdiction, as treaty-based jurisdiction was conceptually and legally distinct from universal jurisdiction.
- 37 **Ms. Pino Rivero** (Cuba), affirming her Government's firm commitment to the fight against impunity for crimes against humanity, 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 politically motivated laws directed against other States, which had harmful consequences for international relations.
- 38 The General Assembly's main objective with regard to universal jurisdiction should be the development of an international set of rules or guidelines in order to prevent abuse of the principle and thus safeguard international peace and security. Her delegation commended the working group's efforts to identify areas of consensus that could guide the work on universal jurisdiction and help to establish the requirements for its application.
- 39 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. Universal jurisdiction should not be used to diminish respect for a country's national jurisdiction or for 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 complementary in nature, and should be restricted to crimes against humanity and invoked only in 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.

- 40 Cuban criminal law provided for the possibility of prosecution and punishment of Cuban nationals, foreigners and stateless persons who committed an offence that constituted a crime against humanity, human dignity or public health or that was prosecutable under the terms of an international treaty.
- 41 **Mr. Elshenawy** (Egypt) said that the principle of universal jurisdiction was one of the tools the international community could use to combat impunity and promote the rule of law. Discussions were currently under way in Egypt regarding the possibility of incorporating certain very serious crimes, such as crimes against humanity and war crimes, in domestic legislation and providing for universal jurisdiction in that regard. Universal jurisdiction, however, must remain a complement to national jurisdiction. Fundamentally, each State should be responsible for prosecuting crimes committed within its territory, and universal jurisdiction should be exercised only when the territorial State was unable or unwilling to prosecute. More effort was therefore needed, in keeping with the principle of national ownership, to support legislative and judicial reforms and build the capacity of each State to fulfil its responsibilities in that regard.
- 42 Universal jurisdiction must be exercised impartially and not politicized in any way. It must be applied with full respect for the rules of international law and the principles enshrined in the Charter of the United Nations, international conventions and customary international law, in particular the principles of sovereign equality of States, non-interference in their internal affairs and the immunity of Heads of State and other high-level officials, a principle confirmed by the International Court of Justice.
- 43 His delegation remained ready to work with other delegations to overcome differences in opinion and find consensus on the topic. It believed, however, that it was too early to request the International Law Commission to conduct a study or add the topic to its programme of work in the near term.
- 44 **Mr. Bukoree** (Mauritius) said that the principle of universal jurisdiction was well established in international law. Its purpose was to ensure that individuals who committed serious crimes, such as war crimes, genocide or torture, were brought to justice and punished. When such jurisdiction was applied, it was essential to ensure that the territorial integrity and the sovereign equality of States and the immunity of State officials under international law were fully respected. Universal jurisdiction should be truly universal. There should be no double standards or political activism in picking and choosing leaders to be investigated and prosecuted. It should not be forgotten that universal jurisdiction was the final recourse for victims of international crimes to obtain justice.
- 45 In Mauritius, the International Criminal Court Act provided for the application of the principle of universal jurisdiction. The country had no other legislation that empowered its courts to exercise such jurisdiction, nor did it recognize the competence of foreign courts to exercise jurisdiction over matters that fell within the jurisdiction of its national courts. Mauritian courts had territorial jurisdiction unless a domestic law expressly provided for extrater-

territorial jurisdiction, as was the case with the Dangerous Drugs Act, the Prevention of Terrorism Act, the Merchant Shipping Act and the Courts Act.

- 46 **Ms. Romi Brammer** (South Africa) said that South Africa had enacted legislation that provided for conditional universal jurisdiction over certain crimes, including war crimes, crimes against humanity and genocide. However, the accused must be present in the territory of South Africa in order to be prosecuted. In relation to the investigation of such crimes, on the other hand, the Constitutional Court had ruled that the presence of the alleged offender was not required for investigation and that anticipatory investigation did not violate the fair trial rights of a suspect or accused person.
- 47 Universal jurisdiction was an important tool for curbing impunity and her Government did not contest its lawfulness in respect of certain crimes. However, the principle was not uniformly applied in all countries and its application presented some practical challenges and complications. For example, a State might be inundated with requests to investigate a host of offences with no indication that the accused had ever entered the territory of that State. Such requests would place an immense burden on criminal justice systems, particularly those that already suffered from resource constraints.
- 48 Furthermore, to successfully prosecute an accused, a State would require appropriate cooperation and support, but if universal jurisdiction was being exercised because the territorial State was unwilling or unable to prosecute, it seemed unlikely that such a State would be in a position to provide assistance, for instance by collecting and sharing evidence. A multilateral convention on mutual legal assistance and extradition for serious international crimes would place an obligation upon parties to cooperate with a State exercising universal jurisdiction and could be useful in securing mutual legal assistance from States when carrying out prosecutions.
- 49 Universal jurisdiction also presented a challenge to State sovereignty and territorial integrity and should be approached with the necessary political sensitivity in order to avoid allegations of selective application, which could call into question the credibility of an essential component of international criminal justice. The impact of universal jurisdiction on the immunity of State officials, in particular, was a question that must be approached with caution. The implications of carrying out an arrest in violation of international law could have far-reaching consequences for a State, both legally and politically. If universal jurisdiction was to fulfil its potential as a means of ensuring accountability for serious international crimes, it must not be applied in a selective or politicized manner.
- 50 **Ms. Bah-Chang** (Sierra Leone) said that universal jurisdiction could be a vital legal tool for combating impunity for core international crimes, but there was serious concern in African States about the potential for its abuse by the courts of non-African States against African officials. Such abuse could undermine international law and endanger international peace and security. Sierra Leone was proud to join in the international community's efforts to curb impunity for grave crimes, whether through provision for universal jurisdiction at the national level or through the prosecution of atrocity

- crimes in a hybrid court, such as the Special Court for Sierra Leone. The possibility of universal jurisdiction for grave breaches of the Geneva Conventions and Additional Protocol I thereto was recognized under the domestic law of Sierra Leone, and the country had collaborated with the United Nations in setting up the Special Court to prosecute those bearing the greatest responsibility for war crimes, crimes against humanity and other serious violations of international humanitarian law committed between November 1996 and January 2002.
- 51 The Sixth Committee had made some progress towards forging a common understanding of the principle of universal jurisdiction, identifying its scope and distinguishing it from related concepts such as the jurisdiction of international criminal tribunals and the extraterritorial application of national laws. The Secretary-General had catalogued helpful evidence of State practice on universal jurisdiction, which demonstrated that the principle was recognized and embraced by countries in all regions of the world. Nevertheless, as must be evident to anyone who had followed the debates on universal jurisdiction, the Committee appeared to have reached the point of inertia.
- 52 Her delegation therefore welcomed the decision of the International Law Commission to place the topic on its long-term programme of work. The Commission could bring to bear the necessary technical rigour in considering the key issue of the extent of application of universal jurisdiction, which was an inherently technical question of public international law. The material on State practice compiled by the Secretary-General offered a sound basis for the Commission to reach a legal conclusion on the matter. Some delegations had suggested that the Commission, rather than addressing theoretical issues, should address issues that were of practical relevance to States. Universal jurisdiction was such a topic. As to the outcome of the Commission's work, it would be useful to draw up draft guidelines or conclusions on universal criminal jurisdiction. Now that the Commission had completed its work on several other topics, it might move the topic of universal criminal jurisdiction to its current programme of work.
- 53 The consideration of the principle of universal jurisdiction in other forums of the United Nations should not, however, mean an end to the Sixth Committee's debates on the topic. The Committee could continue to seek consensus on the scope and application of the principle.
- 54 **Mr. Arrocha Olabuenaga** (Mexico) said that eight years of debate had served to clarify the differences between the principle of universal jurisdiction and the principles of international criminal jurisdiction and *aut dedere aut judicare*. The Secretary-General had put together a valuable compilation of State legislation and practice, which had shown that the principle of universal jurisdiction existed in numerous national laws and was being applied in current judicial practice.
- 55 States continued to hold conflicting positions on two main issues. First, the legislation and practice of States varied with respect to the list of crimes subject to universal jurisdiction in their national courts. Whereas most States restricted the exercise of universal jurisdiction to genocide, crimes against

humanity, war crimes and the crime of aggression, some also extended it to torture, counterfeiting and terrorism. Second, States also differed in their positions regarding the relationship between universal jurisdiction and the immunity of Heads of State, especially in relation to international crimes. His delegation was of the view that such immunity would apply if a foreign court sought to exercise universal jurisdiction, but it would not apply in a case brought before the International Criminal Court in accordance with the Rome Statute.

- 56 The discussion of the topic in the Sixth Committee had exhausted its potential. The issues concerned were eminently technical in nature and should be studied in the light of international law, with a focus on two questions. The first was whether universal jurisdiction could be exercised when international instruments expressly authorized it under the principles of universal jurisdiction, *aut dedere aut judicare* and international criminal jurisdiction or under only one of them, or whether States could extend it to other crimes not covered by those principles. The second question concerned the compatibility of the principle of universal jurisdiction with other general principles of international law, such as the immunity of Heads of State, the political independence of States and non-interference in the internal affairs of States. The International Law Commission was the most appropriate body to conduct a technical study on those matters, and his delegation welcomed the Commission's decision to include the topic of universal criminal jurisdiction in its long-term programme of work. It encouraged the Sixth Committee to request the Commission to move the topic to its current programme and begin work on it as soon as possible.
- 57 *Ms. Kremžar (Slovenia), Vice-Chair, took the Chair.*
- 58 **Mr. Amolo** (Kenya), affirming his Government's unwavering commitment to the rule of law and the fight against impunity, said that it was clear that the scope and application of the principle of universal jurisdiction was a source of genuine concern to many. If not carefully defined and regulated in accordance with acceptable norms and other principles of international law, universal jurisdiction might be applied in an abusive, unilateral manner that could threaten international peace and security. Extraterritorial jurisdiction should be invoked only as a secondary means in cases where domestic courts were unwilling or unable to address a matter. The international law immunities accorded to Heads of State and government officials must be respected wherever universal jurisdiction was invoked.
- 59 The principle of universal jurisdiction should be applied in a fair, uniform and consistent manner. To that end, the basic concepts and definitions relating to universal jurisdiction should be clearly set out. His delegation was convinced that the United Nations was the best venue for addressing the divergent views on the scope and application of universal jurisdiction and would continue to participate actively in the work of the working group on the topic.
- 60 **Mr. Kayinamura** (Rwanda) said that his Government was supportive of mechanisms that could prevent impunity and afford justice to victims of

- genocide, war crimes and crimes against humanity. Those who committed such heinous crimes should not go unpunished. In that connection he wished to point out that a large number of the key masterminds of the 1994 genocide against the Tutsi in Rwanda remained at large and continued to enjoy impunity. He commended the countries that had refused to allow perpetrators of genocide safe haven and had sought to bring them to justice.
- 61 Nevertheless, continued abuse of the principle of universal jurisdiction had created a crisis of credibility in international criminal justice that could not be ignored. Some judges from some countries consistently disregarded normal international justice mechanisms and accorded themselves the right to extend national jurisdiction to indict weaker nations or hold nations at ransom under the guise of international justice. None had been held accountable for their illegal, politically motivated actions. The African Union Model National Law on Universal Jurisdiction over International Crimes offered a template for developing legislation that would help to ensure a harmonized approach and minimize potential clashes with regard to universal jurisdiction. It was important to strike the right balance between the need to end the culture of impunity and the need to guard against abuse of the principle of universal jurisdiction. To avoid political manipulation, there should be a review system whereby a decision by a judge to issue an international arrest warrant or an indictment against a leader of another country could be appealed to another judge or to another court. Until the review process was completed, individuals and States should be permitted to conduct their business normally.
- 62 He urged Member States and relevant United Nations institutions to be mindful of the potential for abuse of the principle of universal jurisdiction, as such abuse could generate instability and have negative effects on international law and order.
- 63 **Mr. Li Jiuye** (China) said that universal jurisdiction was a multifaceted issue with political, legal and diplomatic dimensions. It was clear from the Committee's deliberations on the topic that members agreed on the importance of fighting impunity and achieving justice. However, they had widely divergent views on the applicability of universal jurisdiction and on the conditions for its application in respect of crimes other than piracy. There were also significant differences in State practice and *opinio juris*, and no widely recognized rules of customary international law had thus far been identified. 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 States or infringe the immunity of States, State officials or diplomatic and consular personnel. The principle of universal jurisdiction must not be conflated with the obligation to extradite or prosecute under treaties or with the jurisdiction of international judicial bodies established pursuant to treaties or other legal instruments.
- 64 In view of the great divergence of views among Member States concerning the topic and the unlikelihood of reaching consensus, the Committee should

give serious consideration to whether it was necessary to continue its consideration of the item.

- 65 **Mr. Escalante Hasbún** (El Salvador) said that said that universal jurisdiction was a tool for averting impunity for the most serious international crimes, including torture, genocide and crimes against humanity. However, there continued to be marked differences in the way the principle was applied, which reflected differences in the way in which it had been incorporated into national legislation. His delegation therefore favoured the idea of establishing clear rules on the exercise of universal jurisdiction. It was important to consider the scope and application of universal jurisdiction in the light of national legal provisions, the jurisprudence of national courts and applicable international treaties.
- 66 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 Constitution provided that international treaties to which the country was a party became law in El Salvador from the moment they entered into force. El Salvador was a party to several international conventions that provided for the application of the principle of universal jurisdiction in respect of serious international crimes, including the Geneva Conventions of 1949 and Additional Protocols I and II thereto. It was also a party to the Rome Statute of the International Criminal Court.
- 67 With regard to national jurisprudence relating to universal jurisdiction, in 2016 the Supreme Court had declared several articles of the General Amnesty (Consolidation of the Peace) Act, applicable in El Salvador for crimes committed during the Salvadoran armed conflict from 1980 to 1992, to be unconstitutional. Following that ruling, it had been established that no internal measures could be allowed to impede the investigation of such crimes. The Supreme Court had also undertaken to delimit more precisely the conceptual scope of the principle of universal jurisdiction, referring in its judgment No. 24-S-2016, of 24 August 2016, to the definition established in the Princeton Principles on Universal Jurisdiction, and recognizing in its judgment No. 558-2010, of 11 November 2016, the importance of not granting amnesty for crimes that represented serious violations of international humanitarian law.
- 68 El Salvador remained committed to bringing to light the truth and ensuring justice and comprehensive reparation for victims through the recognition and effective application of the principle of universal jurisdiction.
- 69 **Mr. Musikhin** (Russian Federation), noting that the scope and the modalities of application of universal jurisdiction had not yet been agreed at the international level, said that the Secretary-General's latest report on the topic attested to the existence of widely divergent views on the matter, a situation that could lead to the application of universal jurisdiction in a manner that was arbitrary or abusive and that might constitute interference in the internal affairs of States. Universal jurisdiction must be exercised in accord-

ance 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. With regard to future consideration of the topic, his delegation was of the view that the Sixth Committee should remain the forum for discussion of issues relating to universal jurisdiction and that it would be premature for the International Law Commission to include the topic in its current programme of work.

- 70 **Mr. Saleh** (Libya) said that his country supported the application the principle of universal jurisdiction in order to prevent impunity. Indeed, States and organizations must cooperate in order to apprehend the perpetrators of certain crimes and bring them to justice. Nevertheless, it would be premature to adopt or enshrine the principle of universal jurisdiction, as there was still a lack of clarity as to the crimes subject to such jurisdiction and to the relevant judicial procedures for the exercise thereof. Moreover, applying universal jurisdiction in a way that violated the Charter of the United Nations would not bring justice or help to achieve the shared goal of combating impunity.
- 71 Libyan laws guaranteed the independence of the judiciary and ensured that judges were safe from any pressures or threats. Citizens had recourse to all courts, and trials were fair. His delegation encouraged Member States to continue considering the exercise of universal jurisdiction in accordance with the Charter with a view to preventing impunity.
- 72 **Mr. Lasri** (Morocco) said that universal jurisdiction was an effective instrument of criminal justice and a justified means of combating impunity. Nevertheless, it remained a complement to national jurisdiction and an exception to the traditional rules of international criminal law in that it enabled States to exercise extraterritorial criminal jurisdiction in respect of the perpetrators of certain crimes.
- 73 The Moroccan justice system continued to be based on the principles of territorial jurisdiction or personal jurisdiction, and Moroccan law did not explicitly recognize the principle of universal jurisdiction. At the same time, the law did not contain any provisions that would prevent its application or lead to impunity. The Constitution provided that genocide, crimes against humanity and war crimes were punishable by law and. in July 2018, following the country's accession to the Optional Protocol to the Convention against Torture in 2014, the Criminal Code had been amended to criminalize torture and human trafficking and to provide for the establishment of a national preventive mechanism.
- 74 If universal jurisdiction was to be exercised, it must be done in a responsible manner that was in conformity with international law and did not violate the principles of State sovereignty and non-interference in the internal affairs of States. In that connection, his delegation wished to highlight the value of judicial cooperation with regard to extradition, a measure provided for under the Moroccan Code of Criminal Procedure, which recognized the primacy of international conventions over national laws.

- 75 **Mr. Masuku** (Eswatini) said that universal jurisdiction was a well-established principle of international law. Its noble purpose was to ensure that individuals who committed grave offences, such as war crimes and crimes against humanity, did not enjoy impunity. It was not, however, a principle that could operate in isolation from other international norms and principles, including those of sovereign equality of States, territorial jurisdiction and the immunity of State officials under customary international law. His delegation wished to register its grave concern over the selective and politically motivated manner in which the principle of universal jurisdiction had thus far been applied.
- 76 It was well recognized in the main legal systems and in the jurisprudence of the International Court of Justice that 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. That was a standard that was difficult, if not impossible, to meet. It was a fallacy to think that there was a set of global norms regulating the application of universal jurisdiction or that, even if such norms did exist, the courts of a country wishing to exercise such jurisdiction would know with certainty what they were. The idea of universal jurisdiction was an offence to cultural relativism. Through the exercise of such jurisdiction, external actors sought to impose their will in contravention of the principle of self-determination. It was for domestic courts to apply national laws in accordance with national standards and values. States should have complete and inextinguishable sovereignty over what happened in their territories.
- 77 **Mr. Panayotov** (Bulgaria) said that his delegation welcomed the Committee's continued deliberations on universal jurisdiction. It also welcomed the inclusion of the topic in the long-term programme of work of the International Law Commission. Shedding light on the application of universal jurisdiction could serve to strengthen cooperation with various international tribunals that relied on complementarity as an effective measure for tackling impunity. Criminal tribunals should not be left on their own in the fight against impunity, particularly as their jurisdiction was limited. International cooperation was essential to prevent impunity. Member States of the United Nations and States parties to the Rome Statute needed a constant reminder of their obligation to uphold the rule of law and contribute to the implementation of international criminal justice. For their part, the States members of the European Union had pledged repeatedly to prevent any part of Europe from becoming a safe haven for perpetrators of the gravest crimes, and the European Union had set up organizations and tools to support national authorities in dealing with such crimes.
- 78 There was no doubt that the principle of universal jurisdiction had a role to play in ensuring the prosecution of the most heinous crimes of international concern. Nevertheless, the exercise of universal jurisdiction was still considered a political act that could and did affect international relations. True international justice could be achieved only through systematic and consis-

- tent policy focused on preserving common fundamental values. His delegation encouraged all Member States to cooperate in order to complement the activities of international organizations in pursuing the perpetrators of atrocious international crimes and delivering justice for millions of victims around the world.
- 79 **Mr. Tiare** (Burkina Faso) said that universal jurisdiction was, in theory, a necessity in the fight against impunity. A serious offence committed in the territory of a Member State and left unpunished was a threat to international peace and security. All States had a moral duty to ensure that the perpetrators of the most serious crimes, wherever they were found, were brought to justice and that the victims of such crimes received reparation.
- 80 Burkina Faso was a party to several international instruments that included a general obligation to extradite or prosecute, including those on torture, enforced disappearance and international humanitarian law. The principle of universal jurisdiction had been incorporated in its new Criminal Code, adopted in May 2018. A law establishing the procedures and competent authorities for implementing the Rome Statute of the International Criminal Court in Burkina Faso had been adopted in December 2009. Under the legal provisions in force, Burkina Faso could not be a safe haven for criminals seeking impunity. Although universal jurisdiction was an appropriate mechanism for ensuring that serious crimes did not go unpunished, it could not be exercised effectively unless it was supplemented by mutual legal cooperation and assistance mechanisms. Moreover, its application was often limited by domestic laws, in particular those on statutes of limitation, admissibility of complaints, immunity and amnesty, hence the need to harmonize such mechanisms within the framework of a multilateral instrument.
- 81 The principle of universal jurisdiction should be applied in respect of the most serious international crimes, including terrorism, financing and support of terrorism, genocide, war crimes, crimes against humanity, piracy, slavery, torture, human trafficking, hostage-taking and counterfeiting. An international consensus must be reached on its exercise, 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 the immunity of State officials from jurisdiction. The increasing politicization of the concept and its selective application were detrimental to the cause of justice and to international peace. The principle of universal jurisdiction should be implemented in a framework of transparent international cooperation.
- 82 **Mr. Simcock** (United States of America), welcoming the Committee's continued consideration of the topic, 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. Previous discussions and reports on the subject had been useful in identifying points of consensus and differences in opinion. His delegation looked forward to hearing the views of other delegations regarding possible new, practical approaches for further work on the topic.

- 83 **Ms. Sande** (Uruguay) said that it had taken two world wars and the massacre of millions of innocent people to awaken the conscience of the international community and cause it to realize that there were crimes that represented an affront to all of humanity and could not be allowed to go unpunished. That realization had led to the Nuremberg trials, which some considered to be at the origin of the concept of universal jurisdiction. While there was still no internationally agreed definition of the concept, it was clear that the basis for the exercise of universal jurisdiction was the seriousness of the crimes committed and the fact that they affected the international community as a whole. It was also clear that universal jurisdiction must remain a complement to national jurisdiction. The State in whose territory a serious crime had been committed or the State of nationality of the perpetrators or the victims had primary jurisdiction. Only if the national courts of those States were unwilling or unable to prosecute should universal jurisdiction be exercised.
- 84 The lack of a clear definition limited the acceptance of the principle of universal jurisdiction and made States reluctant to recognize it in their national laws, although the need to protect fundamental human rights and prevent impunity was plainly recognized. It was therefore necessary to clarify the scope of the principle of universal jurisdiction and the conditions in which it could be exercised. In Uruguayan legislation, Act No. 18.026, on cooperation with the International Criminal Court in combating genocide, war crimes and crimes against humanity, provided that, when a person suspected, on the basis of *semi-plena probatio*, of having committed one of the crimes identified in the Act was present in the territory of Uruguay or in a place under its jurisdiction, the State, in the absence of a request for surrender from the International Criminal Court or a request for extradition, was obliged to exercise its jurisdiction. The Act provided for such jurisdiction not only in respect of the crimes set out in the Rome Statute but also in respect of torture, enforced disappearance, political killings, serious deprivation of liberty, sexual aggression against persons deprived of liberty and conspiracy to commit the crimes of genocide, war crimes and crimes against humanity.
- 85 Given the diversity of positions and the need to clarify the nature and scope of universal jurisdiction, her delegation considered it important for the International Law Commission to proceed with its study of the topic as soon as possible.

The meeting rose at 1 p.m.