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## Sixth Committee

### Summary record of the 13th meeting

Held at Headquarters, New York, on Wednesday, 12 October 2011, at 3 p.m.

*Chair:* Mr. Salinas Burgos ..... (Chile)

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

**Agenda item 84: The scope and application of the principle of universal jurisdiction (continued)**

(A/66/93 and Add.1)

1. **Mr. Kohona** (Sri Lanka) said that the concept of universal jurisdiction had developed mainly as a means for maritime States to assert jurisdiction over piracy but had gradually been extended to other egregious acts such as crimes against humanity, war crimes, genocide and torture. Recently, it had been used with little regard to the noble aims originally associated with it and had been applied selectively and arbitrarily to achieve political goals that could undermine the sovereign equality of States and erode the immunity of State officials and diplomatic agents. The arbitrary and unilateral expansion of the principle, sometimes by advocacy groups with short-term objectives, could ultimately weaken the application of the principle. The development of the principle of universal jurisdiction and its application must be guided by international consensus.

2. It was disturbing that efforts were being made in a small number of jurisdictions to apply the principle of universal jurisdiction without any significant input from the majority of countries. Arbitrary definitions of jurisdiction would create uncertainty and would detract from the time-tested concepts of the immunity of States and State officials, the sovereign equality of States and non-interference in the internal affairs of other States. The widest possible cross-section of the international community should play a role in determining the framework for the application of the principle.

3. Universal jurisdiction should be invoked only when all other options had been exhausted. If used to achieve the wrong goals, it could cause more harm than good. Moreover, the exhaustion of local remedies was a basic rule of customary international law. Because it enjoyed readier access to the evidence and was closer to the aggrieved parties, the country where the crimes were alleged to have taken place was best suited to prosecute them. If that country's judicial mechanisms were already dealing with the case, universal jurisdiction should not be exercised in another place. To do so would strain relations between States, by second-guessing the capacity of the government and judiciary of the country of the alleged crime. Any State choosing to exercise universal jurisdiction *in absentia*

must introduce safeguards to prevent abuse of the principle.

4. One consequence of the abusive and selective invocation of the principle of universal jurisdiction could be "show trials", where the targets were chosen to maximize media exposure and to ensure that the accused was found guilty in the court of public opinion. The practice of targeting high officials by that means had been shown to hinder diplomatic dialogue, and might be deliberately intended to test the scope of diplomatic privileges and immunities. Some States had recognized the need to prevent abuse and, in a welcome development, had decided to require the prior approval of senior State authorities before claims under universal jurisdiction could be instituted.

5. **Ms. Guo** Xiaomei (China) said that a clear definition was needed of the scope and application of the principle of universal jurisdiction to ensure the healthy development of the international legal order and international relations. On the basis of the principle of sovereign equality, international law recognized the jurisdiction of a State within its own territory and the jurisdictional immunity of one State vis-à-vis another. States could also exercise jurisdiction over crimes committed on the high seas, including piracy. In exercising jurisdiction under its domestic law, a State must respect the immunities enjoyed by another State under international law, including the immunity of the Head of State and other officials, the immunities of diplomatic and consular personnel, and the jurisdictional immunities of States and their property. The principle of extradite or prosecute reflected in some international treaties was an obligation applicable only to the States parties to the treaty concerned and was not a basis for universal jurisdiction. Moreover, abuse of the principle of universal jurisdiction was a violation of international law; if domestic judicial organs of a State violated the legitimate rights and interests of another State under international law, the first State incurred international responsibility.

6. The Committee should continue to discuss the question of universal jurisdiction in the Working Group it had established in accordance with General Assembly resolution 65/33. Until a common understanding was reached, all States should refrain from exercising jurisdiction over another State in the name of universal jurisdiction.

7. **Mr. Tladi** (South Africa) said that the question of universal jurisdiction was complex and entangled with other difficult political issues. Other speakers had already drawn attention to the importance, in exercising it, of respecting the sovereign equality of States and their territorial jurisdiction and official immunities. As some legal commentators had pointed out, the concepts of *jus cogens* and of obligations *erga omnes*, which were central to the principle of universal jurisdiction, in practice were often used as instruments in hegemonic struggles. To avoid undermining those important principles, the universal reach of international law should be approached without the solipsism of empire; it was possible to move beyond hegemony to a re-appropriation of values. In its decisions on universal jurisdiction, the African Union had recognized the purpose of the principle as ensuring that those who committed grave offences did not do so with impunity. It was not the validity of the principle itself that was in question, but its scope and application.

8. To resolve issues relating to the scope and application of the principle, careful consideration must be given to the intersection between universal jurisdiction and the immunity of certain high-ranking officials. The different approaches taken by judges of the International Court of Justice in the case concerning the *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)* revealed the need for a more thorough assessment. The conclusion of the majority was based on the extent to which the law on immunities could limit the reach of universal jurisdiction. However, in their separate opinions, some members of the Court had also drawn attention to the need to strike a balance between the interest of humanity in preventing impunity and the interest of the community of States in preserving freedom of action at the inter-State level, without unwarranted interference. That balance should guide the Committee's efforts to define the relationship between universal jurisdiction and immunities.

9. In considering that relationship, it might be necessary to consider the scope of the immunities concerned by asking who was entitled to the protection of the immunities, for what crimes, whether the nature of the crime affected the scope of the immunities and if so, to what extent. It should be noted that members of the Court had held widely diverging views on those questions. It might also be pertinent, as other

delegations had suggested, to examine the complementary nature of universal jurisdiction.

10. **Mr. Lundkvist** (Sweden) said that the principle of universal jurisdiction was enshrined in international law and was an important tool in the fight against impunity for serious international crimes such as genocide, crimes against humanity, war crimes or torture. All States Members of the United Nations shared the common goal of bringing to justice those responsible for such crimes, and providing redress for the victims. The exercise of universal jurisdiction was a matter of national competence, based on the principles of international law. National judicial systems must be governed by the rule of law, and must ensure impartiality and fairness in the investigation and prosecution of international crimes.

11. His delegation proposed that the topic of the scope and application of universal jurisdiction should be examined by the International Law Commission in the framework of its work on the closely related topic of the obligation to extradite or prosecute. States would not have that obligation if they lacked jurisdiction, and the obligation was therefore inextricably linked with universal jurisdiction. If the topic were referred to the Commission, Member States should nevertheless continue to contribute their views.

12. **Mr. Khan** (Indonesia) said that the principle of universal jurisdiction was of great relevance to all Member States in their efforts to put an end to impunity for serious crimes under international law. The principle was based on the notion that some crimes were so harmful to international interests that States were entitled, and even obliged, to bring proceedings against their perpetrators.

13. Although the principle of universal jurisdiction was recognized in treaties and customary international law, the national judiciary in many legal systems could not apply it in the absence of national legislation, whereas in other systems, the judiciary could do so in reliance on treaties and on customary international law. Since national judicial systems were an essential part of State sovereignty, every State had the right to interpret the law and to determine whether its own national law conformed to its international legal obligations. Currently, courts in some States were prepared to consider indictments involving universal jurisdiction relating to persons accused of committing serious crimes under international law. The challenge

however was to avoid abuse of the principle in the form of politically motivated prosecutions.

14. Indonesia had ratified a number of treaties that could supplement domestic provisions in the application of universal jurisdiction. However, there was no international consensus as to which crimes, apart from piracy, fell within the scope of universal jurisdiction. In the view of his delegation, the exercise of that jurisdiction must be treaty-based. The principle of universal jurisdiction was ambiguous, and its application had been selective and indicative of double standards. States should exercise universal jurisdiction in good faith and in accordance with their rights and obligations under international law. The scope and application of the principle should be thoroughly reviewed in the Working Group, which should be tasked to produce a clear definition of the concept and of the crimes covered by it.

15. **Ms. Telalian** (Greece) said that the sources of the principle of universal jurisdiction lay in international treaty and customary law, as well as in the national legislation of many States. The Institute of International Law, in its resolution entitled “Universal criminal jurisdiction with regard to the crime of genocide, crimes against humanity and war crimes”, had stressed that the primary basis of universal jurisdiction was customary international law. However, the exact scope and limits of universal jurisdiction and the conditions under which it should be exercised remained highly controversial.

16. States seemed to be in agreement concerning the grave nature of the crimes over which universal jurisdiction should be exercised. The term should be understood as a basis of jurisdiction enabling States to exercise jurisdiction, on behalf of the international community, over the most serious crimes, irrespective of the place where the crimes had been committed, the nationality of the offenders and the victims, or any other link between the crime and the forum State. The key rationale for universal jurisdiction was the need to combat impunity. Universal jurisdiction was an important complementary mechanism in the collective system of criminal justice. By comparison with piracy or terrorist offences, which represented a material threat to the citizens of all nations, States seemed to need more encouragement to take action against grave human rights violations.

17. The principle of universal jurisdiction must, however, be applied with caution and in good faith in order to avoid abuse and political manipulation and ensure respect for other principles of international law, including the rule of law, the sovereign equality of States and non-interference in the internal affairs of other States. As an exception to the territorial principle, since the State where the crime had been committed was in most cases the most appropriate forum in which to prosecute it, universal jurisdiction should be exercised only when the territorial State was unwilling or unable to establish and exercise its jurisdiction. The application of the principle might also be subject to the physical presence of the alleged offender in the territory of the forum State.

18. Greece had incorporated into its criminal law definitions of the crime of genocide, crimes against humanity and war crimes, consistent with the definitions in the Statute of the International Criminal Court. Greek penal legislation linked the principle of universal jurisdiction to the application of the territorial principle, as well as to the active and passive nationality principles. Under Greece’s Penal Code, its courts had jurisdiction over certain crimes committed abroad, regardless of the nationality of the offender and the locally applicable laws.

19. Universal jurisdiction had not yet become an effective tool for combating impunity because of the existing uncertainties surrounding its scope and application, inadequate or nonexistent national legislation, the politicization of the issue and the granting by Governments of immunities and amnesties. While ready to participate in the Working Group, her delegation considered that the question of universal jurisdiction should be examined by the International Law Commission in the context of its consideration of the topic of the obligation to extradite or prosecute (*aut dedere aut judicare*).

20. **Ms. Quezada** (Chile) said that jurisdiction was an essential element of the rule of law and was inherent in the sovereignty of States. The proliferation of legislation in recent years to permit the exercise of universal jurisdiction, but without uniformity and in disregard of the traditional rules governing jurisdiction, namely those relating to territory, the nationality of the offender and in some cases the nationality of the victim, had generated confusion and legal uncertainty. It was therefore necessary for the international community to define the key elements of the principle,

its scope and application and the exceptions to its application in order to avoid discordance among the different judicial systems

21. In her delegation's view, universal jurisdiction should be essentially restrictive and should be applied only to serious crimes defined by international law. Universal jurisdiction was recognized in Chile in the case of piracy, as defined in the United Nations Convention on the Law of the Sea, and war crimes, as defined in the 1949 Geneva Conventions and Additional Protocol I of 1977. Universal jurisdiction could, however, be applied on the basis of international law, especially treaty law, in order to prevent impunity for crimes against humanity, war crimes and genocide.

22. The basic jurisdictional principle was territoriality. The courts of the State in which the crime had occurred had primary jurisdiction to investigate and punish them. States should exercise universal jurisdiction only when the State normally responsible for doing so was unwilling or unable to investigate and prosecute the crime. However, universal jurisdiction should not be based solely on a State's own domestic legislation, but rather on an international treaty widely accepted by States.

23. The jurisdictional immunities recognized by international law should be interpreted and applied in a manner consistent with combating impunity for grave international crimes. The international community should resolve doubts concerning the proper application of the principle of jurisdiction and the possibility of abuse by devising rules to resolve such situations, either by traditional means of recourse to the courts or by other methods.

24. **Mr. Wilson** (United Kingdom) said that the principle of universal jurisdiction, understood as the ability of a State to prosecute crimes in its domestic courts in the absence of any link between the crime and the prosecuting State, was an essential mechanism in the fight against impunity for the most serious international crimes. In his delegation's view, it had been established for only a small number of specific crimes, including piracy, grave breaches of the Geneva Conventions and other war crimes. International courts and tribunals were not designed to investigate and prosecute all crimes within their jurisdiction. They could deal only with a small number, so prosecutions at the domestic level remained a vital component of the

quest to achieve justice and ensure that the perpetrators of serious crimes could not evade it.

25. Given the diversity of views on the scope of universal jurisdiction, national laws and courts were not amenable to regulation by international mechanisms. National laws or court decisions which were said to contravene the principles of international law would be attributable to the State concerned, and any dispute on the matter could be resolved through the normal mechanisms of international dispute settlement.

26. Prosecutions based on universal jurisdiction occurred rarely in practice, but the possibility of resorting to universal jurisdiction should be fully considered where appropriate. The United Kingdom had amended its legislation to require that the Director of Public Prosecutions must give consent before an arrest warrant could be issued when it was sought in relation to crimes falling under universal jurisdiction. The available evidence of such a crime must be sufficient to provide a reasonable prospect of conviction, and it must be in the public interest to prosecute. That amendment ensured that the system of private prosecutions could not be abused but that impunity could be combated by issuing arrest warrants where that was justified in respect of crimes of universal jurisdiction.

27. **Ms. Mäkelä** (Finland) said that the principle of universal jurisdiction was an important tool for ensuring accountability. When a case could not be tried in the State where the crime had been committed, or in a State with some link of active or passive nationality, or on other grounds of jurisdiction recognized in international law, universal jurisdiction enabled the authorities of a different State to arrest and prosecute the alleged perpetrators. There were, however, significant advantages to be gained from trying a case in the jurisdiction where the crime had taken place, including the possibility for victims to participate and for victims and affected communities to be aware of the efforts being made to bring alleged perpetrators to justice.

28. It was generally agreed that international customary law allowed for universal jurisdiction with regard to certain international crimes, but views differed as to its scope. It was still being debated whether the presence of the alleged perpetrator in the State exercising jurisdiction was a requirement, whether universal jurisdiction was complementary or

secondary to other grounds of jurisdiction, and whether an amnesty granted by the territorial State would bar prosecution in another State. Issues relating to immunities had also been raised. Her delegation looked forward to discussing those issues in the Working Group but considered that they could be clarified through study by the International Law Commission, which was already considering two related topics, the obligation to extradite or prosecute and the immunity of State officials from foreign criminal jurisdiction.

29. Her delegation did not see a need to establish a new regulatory mechanism for the exercise of universal jurisdiction. If disputes arose the States concerned could have recourse to the existing dispute resolution mechanisms, especially the International Court of Justice. Universal jurisdiction was an established principle of international law, applied by national courts, whose independence must be respected. Impunity was no longer an option, and there should be no attempt to limit the scope or application of the principle of universal jurisdiction in such a way as to suggest otherwise.

30. **Mr. Somdah** (Burkina Faso) said that universal jurisdiction ignored the traditional criteria of connection with the crime by allowing an offender to be prosecuted anywhere. However, national legislation and practice on universal jurisdiction differed. The political difficulties caused by recourse to universal jurisdiction were illustrated by its abusive application by certain States. The principle should be exercised in good faith, with respect for other principles and rules of international law. For universal jurisdiction to be applicable by national courts, there must be a specific legal basis for it, a sufficiently clear definition of the crime and its constituent elements and national mechanisms for applying it. His delegation was concerned that national courts could abuse universal jurisdiction by indicting foreign nationals regardless of any immunity they possessed, so endangering friendly relations among States and restricting the ability of States to act at the international level.

31. In ratifying the Geneva Conventions, Burkina Faso had accepted universal jurisdiction on that basis, but had never exercised it. In common with all other African States, it was in favour of the principle of universal jurisdiction and was determined to combat impunity, guided by article 4 (h) of the Constitutive Act of the African Union (2004) and having regard to

its decisions of 1 July 2008 and 4 February 2009 on the abuse of the principle.

32. African States lacked capacity to exercise universal jurisdiction. It would be necessary to strengthen judicial capacity at the national level in order to combat grave crimes, envisage specialized training in investigating and prosecuting such crimes, improve judicial cooperation among States and specify the appropriate level of jurisdiction. However, States members of the African Union had made considerable progress, sufficient to substitute for the exercise of universal jurisdiction, in combating impunity on the basis of territorial jurisdiction. Some African countries had resorted to alternative justice mechanisms, such as the Truth and Reconciliation Commissions in South Africa and Sierra Leone. Others had called for the establishment of special international courts and tribunals to deal with grave international crimes committed on their territory, or had become parties to the Statute of the International Criminal Court.

33. His delegation welcomed the efforts made since January 2009 by the African Union and the European Union to clarify their respective approaches to the question of universal jurisdiction. It was essential to define the characteristics of universal jurisdiction, distinguishing between the jurisdiction of international criminal courts and the exercise of concurrent jurisdiction by individual States on the basis of their national legislation.

34. **Mr. Wambura** (Kenya) said that, unless the scope and application of the principle of universal jurisdiction were carefully defined and regulated within acceptable norms and in keeping with the other principles of international law, the unilateral application of universal jurisdiction by States in accordance with their domestic law could be abused, with negative implications for international peace and security. The principle of universal jurisdiction was a vital tool for achieving justice and combating impunity. However, the primary responsibility to exercise jurisdiction in all cases lay with the territorial State. Extraterritorial jurisdiction could be invoked as a secondary means when States were unwilling or unable to deal with a particular serious case. Care must be taken to prevent the selective use of universal jurisdiction to serve political ends.

35. The principles on which the United Nations and diplomatic relations were based included the sovereign

equality of States, respect for territorial integrity and peaceful coexistence among States. Those principles must be upheld and acceptable ways found of applying the principle of universal jurisdiction without undermining the accepted principles of international law that governed the current international social order. Universal jurisdiction should be seen as complementary to other international norms and not a new peremptory norm. A lack of consensus on its scope and application would undermine the rule of law at the international level.

36. A range of international treaties and conventions recognized the principle as applying to piracy, genocide, war crimes and crimes against humanity. Kenya was a party to several of those instruments, and its new Constitution had provided that the general principles of international law and the provisions of treaties to which Kenya was a party formed part of the law of Kenya. In his delegation's view, international treaties provided an acceptable basis for determining which were the crimes to which universal jurisdiction applied. The principle should be applied in good faith, without discrimination or selectivity, and should not replace the primacy of national jurisdiction.

37. **Mr. Oyarzun** (Spain) said that the reports provided by the Secretary-General on the principle of universal jurisdiction, including the one currently before the Committee (A/66/93 and Add.1), confirmed that the practice of universal jurisdiction was both widespread and generally accepted at the international level and was not associated exclusively with a particular regional group or legal system. Nor could it be concluded from the report that universal jurisdiction was being selectively exercised by States.

38. Universal jurisdiction was an effective instrument in combating impunity for grave crimes of a particular kind. However, there was no uniform interpretation of the principle or of its defining elements, nor was there any uniform understanding as to the particular circumstances in which it could be exercised. The task facing the Sixth Committee and its Working Group was therefore a significant one, to which his delegation intended to make an active contribution.

39. In view of the legal complexity of the question of universal jurisdiction, however, it should be referred to the International Law Commission, which would place the focus on the technical issues involved, rather than the political aspects of the question. Moreover, the

Commission was currently dealing with the topics of the obligation to extradite or prosecute and the immunity of State officials from foreign criminal jurisdiction, issues that had been repeatedly raised in connection with the question of universal jurisdiction. Both those topics would take high priority on the Commission's agenda in the quinquennium beginning in 2012. Moreover, some of its members had drawn attention to the need to take a new, integrated approach to those topics, including their connection with the principle of universal jurisdiction. Entrusting the topic to the Commission, which should take into account the outcome of the work of the Sixth Committee and its Working Group, would therefore offer obvious advantages and would strengthen the relationship between the Commission and the Sixth Committee.

40. **Ms. Ní Mhuircheartaigh** (Ireland) said that, although the topics of universal jurisdiction, other categories of extraterritorial jurisdiction, the jurisdiction of international criminal tribunals and the question of immunities were interrelated, those concepts should be considered and applied separately. Her delegation understood universal jurisdiction to be the exercise of jurisdiction over an offence irrespective of the place in which it was committed, the nationality of the accused, the nationality of the victim or any other link with the country. Under Irish law the exercise of extraterritorial jurisdiction of any type, including universal jurisdiction, was an exception and was possible only in the most limited circumstances, such as in cases of torture or grave breaches of the Geneva Conventions. Prosecutions were a matter for the Director of Public Prosecutions and the police, two agencies which operated independently of the Government.

41. Her delegation was especially interested in the comments of States on the nature of the issue for discussion in chapter IV of the Secretary-General's report (A/66/93 and Add.1). However, the proposal set out in paragraph 168 that an international commission should be established, under the authority of the General Assembly, to act as a "regulatory body on the exercise of universal jurisdiction" would not, in her delegation's view, be compatible with the purpose or character of universal jurisdiction. Ireland was also concerned at the proposal for either a general or a specific moratorium on the exercise of universal jurisdiction pending full discussion of the question in the General Assembly. It preferred the proposal by

Switzerland, reflected in paragraph 149 of the report, that because of its legal and technical character, the topic could usefully be referred to the International Law Commission, which was already dealing with the topics of the obligation to extradite or prosecute and the immunity of State officials from foreign criminal jurisdiction. The Sixth Committee could subsequently discuss the topic further in the light of the work done by the Commission. The technical aspects of the agenda item should not obscure the reality that universal jurisdiction might often be the last defence against impunity.

42. **Mr. Baghaei Hamaneh** (Islamic Republic of Iran) said that the establishment of the Working Group to consider the question of universal jurisdiction was an opportunity to assess how much progress had been made so far. There was no common understanding of the doctrine or principle of universal jurisdiction, nor was there any certainty as to which crimes could be prosecuted by that means. The only crime universally recognized as one falling under universal jurisdiction was piracy, which could be prosecuted under both customary international law and treaties, especially the United Nations Convention on the Law of the Sea.

43. In the view of his delegation, criminal jurisdiction lay primarily with the territorial State. There was no Iranian legislation dealing specifically with universal jurisdiction, but the Iranian Islamic Penal Code recognized the jurisdiction of national courts over crimes punishable under international treaties to which the Islamic Republic of Iran was a party, irrespective of the location of the crime or the nationality of the offender, provided the alleged offender was present in Iranian territory.

44. The main concern with regard to the concept of universal jurisdiction was that it could conflict with some fundamental principles of international law, in particular the principle of immunity of State officials from foreign criminal jurisdiction, which emanated from the sovereign equality of States. Moreover, it had been said that the doctrine had been used selectively and to further political agendas. There was a continuing debate over the range and nature of the international crimes to which universal jurisdiction might apply and the question of a connecting link between the suspect and the prosecuting State.

45. His delegation took the view that State officials of any country enjoyed immunity from the criminal

jurisdiction of foreign courts and that criminal jurisdiction of any kind should be exercised in accordance with the relevant provisions of the treaties establishing the acts in question as crimes and with the conditions for the exercise of jurisdiction by the State party concerned. The scope of universal jurisdiction and the conditions for its exercise should be defined in accordance with the provisions of the relevant treaty. In the case concerning the *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, several judges of the International Court of Justice had pointed out that universal jurisdiction *in absentia* was unknown to international law. For that reason, many States had amended their legislation to require the presence of the accused in the forum State as a necessary condition for exercising criminal jurisdiction.

46. **Ms. Noland** (Netherlands) said that universal jurisdiction was an important tool in the fight against impunity for the most serious crimes under international law. It contributed to the implementation of the principle of complementarity enshrined in the Statute of the International Criminal Court. The continued study of the topic should be first and foremost an international law study, dealing with both substance and procedure. The issues to be clarified could include the question of whether the presence of an accused person in the State exercising jurisdiction was a prerequisite, as it was under the International Crimes Act in the Netherlands, and the relationship between universal jurisdiction and other bases of jurisdiction, including territoriality. With regard to disputes arising from the exercise of universal jurisdiction, however, there was already sufficient provision for their settlement in international law and existing dispute settlement mechanisms, and there was no need to establish a new international regulatory body.

47. The question of procedure should be discussed in a legal context, in preparation for future work in the Sixth Committee, and it might be useful to request the International Law Commission to study it. The Commission could work on the topic in conjunction with related topics, such as the obligation to extradite or prosecute and the immunity of State officials from foreign criminal jurisdiction. Work on universal jurisdiction should also take account of the work done by others, such as the Technical Ad Hoc Expert Group

of the African Union and the European Union on the principle of universal jurisdiction.

48. **Mr. Hill** (United States of America) said that the Working Group set up to examine the topic should deal with the definition of universal jurisdiction, which his delegation understood as the assertion of criminal jurisdiction by a State for certain grave offences where the only link to the crime was the presence in its territory of the alleged offender; other delegations, however, had different views on that question. The Working Group might also consider the scope of the principle, in other words, the crimes to which universal jurisdiction should apply. Other questions included the relationship between universal jurisdiction and treaty-based obligations, as well as the need to ensure that decisions to exercise universal jurisdiction were made appropriately, including in cases where other States had a claim to exercise jurisdiction. His delegation looked forward to considering those question in as practical a manner as possible.

49. **Mr. Leandro Vieira Silva** (Brazil) said that the aim of universal jurisdiction was to deny impunity to individuals allegedly responsible for extremely serious crimes defined by international law that by their gravity shocked the conscience of all humanity and violated imperative norms of international law. Universal jurisdiction constituted an exception to the more consolidated principles of territoriality and active and passive personality as a basis for jurisdiction. Although the exercise of jurisdiction was primarily the responsibility of the territorial State in accordance with the principle of the sovereign equality of States, combating impunity for the most serious crimes was an obligation contained in numerous international treaties. Universal jurisdiction should only be exercised in accordance with international law and principles. It should be subsidiary in nature and limited to specific crimes, and it must not be exercised arbitrarily or to fulfil interests other than those of justice.

50. His delegation supported an incremental approach to discussion on universal jurisdiction. The Working Group's first step should be to try to arrive at an acceptable definition. A proper definition and a shared understanding of the scope and application of universal jurisdiction were necessary to avoid improper or selective application of the principle. The Working Group should then address the question of the kinds of crimes to which it would apply and its subsidiary character vis-à-vis territoriality and personality as

bases of jurisdiction. At the appropriate time, the questions of whether there was a need for the formal consent of the State where the crime took place or the presence of the alleged perpetrator in the territory of the State wishing to exercise jurisdiction should be considered. It would also be advisable to avoid prosecution in multiple forums, which could violate the rights of the accused.

51. One of the most contentious issues was how to reconcile universal jurisdiction with the jurisdictional immunities of State officials. His delegation hoped that Member States could show flexibility in agreeing on some core elements in due course. At the current stage of discussion, it was premature to consider the adoption of uniform standards on the matter.

52. Brazilian legislation recognized the principles of territoriality and active and passive personality as a basis for exercising criminal jurisdiction. Universal jurisdiction could be exercised by national tribunals in relation to the crime of genocide and other crimes, such as torture, which Brazil had a treaty obligation to suppress. National legislation was required to enable the exercise of universal jurisdiction; hence, it was not possible to exercise universal jurisdiction on the basis of customary international law alone, since the lack of specific legislation would result in a violation of the principle of legality.

53. Brazil was currently making the necessary changes in its criminal law to make it compatible with the obligations arising from the Rome Statute of the International Criminal Court. Although there was a difference between universal jurisdiction and the exercise of criminal jurisdiction by international tribunals, those two institutions shared a common objective: to deny impunity to those accused of serious international crimes.

54. **Mr. Nejmeddine Lakhal** (Tunisia) said that combating impunity was a noble objective to which the entire international community aspired. In that light, universal jurisdiction was a fundamental element of the rule of law, but it must be exercised in strict conformity with the basic principles of international law, including the sovereign equality of States. The international community must agree on a clear definition of universal jurisdiction and determine its scope with precision, so as to avoid abusive or selective application. The principle of universal jurisdiction derived from the responsibility to protect a

fundamental universal value, namely, to ensure that the most serious crimes of concern to the international community as a whole did not go unpunished. In view of the complexity of the principle of universal jurisdiction, it should be further studied on the basis of the principles of international law accepted by the whole international community, having regard to the legitimate concerns of all Member States.

55. Tunisia appealed to the international community for assistance in extraditing persons indicted for crimes committed before and during the revolution of 14 January 2011, and also in recovering assets misappropriated by the former President and his family, which were sorely needed in the current transition to democracy.

56. **Mr. Gumende** (Mozambique) recalled that the question of universal jurisdiction had been brought to the attention of the Sixth Committee by African States concerned at abuses of the principle by individual judges in some European States, whose indictments had focused primarily on African leaders entitled to immunity under international law. For universal jurisdiction to be exercised effectively, States required not only legislation providing a clear definition of the principle and specifying the penalties to be imposed and the procedure to be followed, but also the willingness to exercise universal jurisdiction without political motivation. States should only prosecute cases under universal jurisdiction when they were motivated solely by the demands of justice. His delegation was opposed to any form of political selectivity or double standards in applying the principle of universal jurisdiction. Mozambique would engage with other Member States in applying it in good faith and in accordance with its rights and obligations under international law.

57. The institution of universal jurisdiction, understood as the power of States to punish certain crimes, regardless of where and by whom they had been committed, was in principle universally accepted. By strengthening the protection of human rights, the principle of universal jurisdiction could be seen as complementary to national protective mechanisms. The crimes that fell within international jurisdiction were war crimes, genocide, crimes against humanity and aggression, all of which violated the international order. Without tolerating impunity for those crimes, Mozambique underscored its support for the position of the African States, whose leaders had been the

victims of the selective application of the principle of universal jurisdiction

58. **Mr. Sul** Kyung-hoon (Republic of Korea) said that universal jurisdiction in the strict sense was established only for piracy and war crimes. It could be exercised even where there was no treaty-based obligation to prosecute those crimes and was an essential mechanism in the fight against impunity. Under its current laws, the Republic of Korea allowed for the exercise of universal jurisdiction in accordance with treaties and customary international law, provided that the accused was present in its territory. The obligation to extradite or prosecute was not synonymous with universal jurisdiction, but it was inextricably linked. A State having no connection to the crime in question could exercise jurisdiction by virtue of being a party to international treaties incorporating the obligation *aut dedere aut judicare*.

59. Universal jurisdiction should be exercised in a manner compatible with other existing rules of international law, in a responsible and judicious way, and it should not be misused for political purposes. Given the legal and technical character of the principle, the expert advice of the International Law Commission should be sought to provide States with a better basis for discussion.

60. **Mr. Young** (Observer for the International Committee of the Red Cross) said that the International Committee of the Red Cross (ICRC) attached particular importance to the establishment by States of proper sanctions for serious violations of international humanitarian law within their domestic legal frameworks. The principle of universal jurisdiction contributed to comprehensive deterrence and suppression of such violations and was a concept firmly rooted in international humanitarian law.

61. The 1949 Geneva Conventions provided for mandatory universal jurisdiction over grave breaches of the Conventions. States parties were required to search for suspected offenders, regardless of their nationality and the place where the alleged offence was committed, and either bring them before their own courts or hand them over to another State party for trial. Additional Protocol I extended that obligation to the grave breaches defined therein. Other international instruments, such as the Second Protocol to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and the 2006

International Convention for the Protection of All Persons from Enforced Disappearance, contained a similar obligation.

62. State practice had also confirmed as a norm of customary international law the right of States to exercise universal jurisdiction over all war crimes other than grave breaches, including serious violations of common article 3 of the Geneva Conventions and Additional Protocol II, committed in non-international armed conflicts, and other war crimes such as those included in the Rome Statute of the International Criminal Court. ICRC was pleased to observe that many States had taken that approach when implementing at the domestic level the principle of complementarity underpinning the Rome Statute. It was also encouraging that numerous States had given effect to their obligations in their legislation. Several individuals had been prosecuted in national courts for grave breaches of the Geneva Conventions or other war crimes on the basis of some form of extraterritorial jurisdiction.

63. Some States had attached conditions to the exercise of universal jurisdiction, such as the presence of the accused before proceedings were instituted, or allowed for prosecutorial discretion. In the view of ICRC, such conditions should be aimed at increasing predictability and should not unnecessarily restrict the possibility of prosecuting alleged offenders.

64. Universal jurisdiction was not the only means of fighting impunity. Territorial and personal jurisdiction should remain the chief instruments for doing so, and the priority for States should be to investigate and, where appropriate, prosecute war crimes allegedly committed on their territory or by their nationals. Only if they failed to act should universal jurisdiction or recourse to international criminal tribunals remain options to ensure that the crimes did not go unpunished. Appropriate legislation at the national level would combine prevention with enforcement and could deter serious violations of international humanitarian law while permitting the prosecution of perpetrators.

65. ICRC appealed to all States to ensure that they had an appropriate legal framework in place and to provide the necessary resources for its full application. It welcomed the decision taken by some States, in enacting legislation, to conduct a thorough review of all their obligations under international humanitarian

law. The ICRC Advisory Service on International Humanitarian Law had provided technical support, advice and documentation to States for that purpose and would continue to do so, as well as taking part in further discussion of the topic either at the United Nations or in their capitals.

*The meeting rose at 5.05 p.m.*