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Chair: Mr. Manongi..... (United Republic of Tanzania)

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

Agenda item 83: The scope and application of the principle of universal jurisdiction *(continued)*
(A/69/174)

Election of the Chair of the Working Group on the scope and application of the principle of universal jurisdiction

1. **The Chair** said that, since its establishment in 2010, the Working Group on the scope and application of the principle of universal jurisdiction had been chaired by Mr. Ulibarri (Costa Rica), who was no longer available. He understood that there was general support for Ms. Guillén-Grillo (Costa Rica) to chair the Working Group, and he took it that the Committee wished to elect her.

2. *It was so decided.*

3. **Ms. Mwaipopo** (United Republic of Tanzania) said that the precise scope of universal jurisdiction varied from country to country and that a mechanism was required that would cater for universality differentiated from selectivity of application. States needed to find common ground for the implementation of universal jurisdiction as an international legal principle providing uniform guidance to national courts in prosecuting perpetrators of international human rights violations. Moreover, the related rights and obligations of States should be clarified in order to minimize potential misapplication.

4. Universal jurisdiction was a key means of combating impunity, but it could not supersede the principles of territoriality, sovereignty and sovereign equality of States or other principles enshrined in the Charter of the United Nations, including the political independence of States and non-interference in their internal affairs. Nor should its application violate the immunities granted under international law to Heads of State, diplomatic personnel and other high-ranking officials. It was important for States to agree on how to take the matter forward and, in particular, on a definition that would distinguish it from other concepts such as international criminal jurisdiction, the obligation to extradite or prosecute and other related principles and rules of international law.

5. **Mr. Sarki** (Nigeria) said that the topic of universal jurisdiction should continue to be discussed within the intergovernmental context of the United

Nations. Any agreement thereon must be subject to the approval of Member States in accordance with the principles of territoriality and sovereign independence of States. The scope of universal jurisdiction needed to be defined in order to ensure its unbiased application and guard against its selective application for political purposes. It was an important principle of international law aimed at combating impunity and serving also as a mechanism to ensure accountability for the most serious crimes; it complemented and strengthened the principle of the rule of law at both the national and the international levels.

6. Different views had been expressed concerning the need to distinguish the principle from the question of immunity and from other related concepts, such as international criminal jurisdiction, the obligation to extradite or prosecute and *jus cogens*. It had also been held that the principle should likewise be applicable to other crimes, that international law and the Charter of the United Nations should guide its application and that the approval of the State or States possessing territorial and national jurisdiction needed to be obtained before it could be applied.

7. The principle had emerged as a major tool in the global crusade to prevent and repress violations of international humanitarian law and other international crimes. It should be exercised in good faith in accordance with other principles of international law, including the rule of law, sovereign equality of States and the immunity of State officials in the lawful performance of their duties; such immunity should not be sacrificed in the name of universal jurisdiction. The primary responsibility for investigating and prosecuting serious international crimes lay with the State possessing territorial jurisdiction; universal jurisdiction was a complementary mechanism for ensuring accountability where a State was unable or unwilling to exercise its jurisdiction.

8. Nigeria had contributed extensively to the evolution of the principle of universal jurisdiction in criminal matters as developed within the International Criminal Court and was also continuing to work with other States parties to the Rome Statute to ensure that its application by the Court was equitable and practical, especially where it might affect a State's political stability. The 1949 Geneva Conventions and Additional Protocol I thereto provided the legal basis not only for authorizing the exercise of universal jurisdiction but also for such jurisdiction becoming

necessary and mandatory in the event of grave breaches of international humanitarian law. It was advisable, however, that it should be used, so far as possible, only as a last resort, after exhausting the possibility of cooperating with the State where the crime had been committed, and it should not offer stronger countries a means of depriving less endowed countries of their prosecutorial authority. States should also seek additional mechanisms, either under the existing international legal system or through bilateral agreements, to promote international cooperation in the investigation and prosecution of crimes.

9. His delegation encouraged all Member States to participate actively in the discussions on the scope and application of that important principle in order to give it legitimacy and credibility in accordance with acceptable international law and suggested that the International Law Commission might be requested to contribute thereto.

10. **Mr. Israfilov** (Azerbaijan) said that the principle of universal jurisdiction had a valuable part to play in strengthening the rule of law at the national and international levels, protecting common values and maintaining the international legal order, having regard to the nature, scale and consequences of the crimes involved and the unacceptability of impunity for the perpetrators. It was essential to end impunity, not only in order to hold perpetrators accountable, but also for the sake of sustainable peace, truth, reconciliation, the rights and interests of victims and the well-being of the international community at large.

11. In Azerbaijan, the criminal courts had jurisdiction under national law over acts falling within the scope of universal jurisdiction. While international treaties provided for the exercise of such jurisdiction with regard to various offences, State practice was largely limited to war crimes, crimes against humanity and crimes against peace.

12. The primary responsibility for investigating and prosecuting serious international crimes lay with the State possessing territorial jurisdiction; universal jurisdiction was a complementary mechanism to hold perpetrators accountable and end impunity when that State was unable or unwilling to exercise jurisdiction and no international judicial mechanism could be invoked. The application of the principle was particularly important in situations of armed conflict, including those involving prolonged foreign military

occupation, since past wrongs left unpunished hindered progress towards peace and could play a key role in the emergence of new conflicts and the commission of new crimes. Efforts to ensure accountability must be free of selectivity and political motivation.

13. His delegation encouraged the Committee to continue its examination of the topic and considered the establishment of the Working Group to have been a positive development. It shared the view that a thorough legal study of the issue was required.

14. **Mr. Gumende** (Mozambique) said that the issue under consideration was of particular concern to African States since their leaders had been a major target of attempts by individual European judges to apply the principle of universal jurisdiction. The unilateral prosecution of some African leaders was a clear violation of the norms of international law. Its legal and political implications should be reflected upon, as any attempt to apply the principle unilaterally would endanger and disrupt the global legal system.

15. While it was necessary to fight impunity and strengthen the criminal justice system, the application of universal jurisdiction should be regulated at the international level and should be compatible with the relevant international legal instruments and with the Charter of the United Nations, in particular its non-negotiable principles relating to the sovereign equality and territorial integrity of all States, non-interference in their internal affairs and immunity of State officials, in particular Heads of State. The international community also needed to identify the crimes subject to universal jurisdiction and the circumstances in which it could be invoked.

16. While strongly condemning any application of the principle of universal jurisdiction that was politically motivated, his delegation recognized that it was an important tool for the prosecution of perpetrators of certain heinous crimes under international treaties and that its proper application should strengthen the rule of law at the national and international levels. His delegation remained open to sharing information and practices with other Member States.

17. **Mr. Rao** (India) said that his Government remained convinced that the perpetrators of crimes should be brought to justice and that procedural technicalities, including lack of jurisdiction, should not prevent them from being punished. The bases for

criminal jurisdiction included territoriality, which related to the place of commission of the offence; nationality, which related to the nationality of the accused and, in the practice of some States, the nationality of the victim; and the protective principle, which related to the national interests affected. The common feature of those jurisdictional theories was the connection between the State asserting jurisdiction and the crime committed.

18. In the case of universal jurisdiction, there was no link between the State claiming jurisdiction and the offender; its rationale lay in the fact that certain offences affected the interests of all States, even when unrelated to the State assuming jurisdiction. While piracy on the high seas was the only crime over which claims of universal jurisdiction were undisputed under the United Nations Convention on the Law of the Sea, various international treaties provided for such jurisdiction in respect of certain other crimes, such as genocide, war crimes, crimes against humanity and torture.

19. What was at issue was whether the jurisdiction provided for under those treaties could be converted into a commonly exercisable jurisdiction, irrespective of whether the other State or States concerned were parties to them. Questions remained concerning the basis for extending such jurisdiction; the relationship between universal jurisdiction and laws on immunity, pardon and amnesty; and harmonization with domestic law. Furthermore, the principle of universal jurisdiction must not be confused with or be allowed to short-circuit the widely recognized obligation to extradite or prosecute.

20. **Mr. Adamov** (Belarus) said that, while the question of universal jurisdiction was a legal one, it had a very important political dimension; proposals to expand its scope should therefore be considered with caution. It could only be based on the norms of international law, in the form of either universal, multilateral treaties or of customary law, as in the case of piracy.

21. The criteria for applying universal jurisdiction were clearly established. The crime must be deemed to harm the interests of every member of the international community without exception. Crimes that met that criterion were crimes against peace, war crimes, crimes against humanity, piracy, human trafficking and transnational organized trafficking in drugs and

weapons. Any unilateral move to expand the list of situations subject to the jurisdiction of a State's national legislation could not be regarded as anything other than an extraterritorial application; that contravened the generally accepted principles of international law and, first and foremost, the principle of the sovereign equality of States. His delegation welcomed the contribution made by recent decisions of the International Court of Justice to clarifying aspects of the scope and application of the principle of universal jurisdiction. It should be borne in mind, however, that those decisions related to specific situations; it would be short-sighted to take them as a basis for wide-ranging conclusions.

22. **Mr. Lasri** (Morocco) said that the principle of universal jurisdiction offered an exception to the traditional rules of international criminal law in that it enabled any State that had accepted that principle under the terms of a treaty to exercise extraterritorial criminal jurisdiction in respect of the perpetrators or victims of the most serious types of crime affecting the international community, regardless of the nationality of the perpetrators or victims of such crimes or the place of their commission. Its purpose was to combat impunity and punish certain crimes that required a more wide-ranging jurisdiction.

23. While Moroccan law did not recognize the principle of universal jurisdiction, it did contain a number of provisions that came within its scope. The draft revised Moroccan Criminal Code recognized as crimes a number of acts covered by universal jurisdiction; in cases where the crime was committed outside the territory of Morocco, its national jurisdiction was regulated by the Code of Criminal Procedure. That Code also, as currently being drafted, established the non-applicability of the statute of limitations to serious crimes.

24. Although the Moroccan judicial system was based essentially on the principles of territorial or personal jurisdiction, it covered criminal acts subject to universal jurisdiction and, in addition, contained no provision to impede the exercise of such a principle or facilitate impunity. Universal jurisdiction was an optional principle and not a binding rule; it served preventatively as a means of remedying shortcomings in the domestic judicial system in the event of serious crimes being committed.

25. As a party to the four Geneva Conventions and their Additional Protocols, and having withdrawn its reservation to article 20 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Morocco recognized the obligation to extradite or prosecute as a basis for jurisdiction other than that deriving from the principle of universal jurisdiction under the Rome Statute. However, acts of torture and other cruel, inhuman or degrading treatment or punishment together with enforced disappearances were clearly established as crimes in Moroccan legislation. Furthermore, in matters of judicial cooperation with regard to extradition, article 713 of the Code of Criminal Procedure stipulated that international conventions took precedence over national laws.

26. **Ms. Byaje** (Rwanda) said that the purpose of universal jurisdiction was to ensure that the perpetrators of heinous crimes did not enjoy impunity anywhere in the world. It was therefore a matter of regret that, while some States had extradited or prosecuted participants in the 1994 genocide against the Tutsi, a number of genocide fugitives, including nine indicted by the International Criminal Court for Rwanda, were still enjoying safe haven in States Members of the United Nations. She recalled Security Council resolution 2150 (2014), which urged Member States to cooperate in the arrest and prosecution of those nine fugitives and to investigate, arrest, prosecute or extradite all other fugitives accused of genocide residing on their territories.

27. While, therefore, her Government supported the appropriate exercise of universal jurisdiction, it strongly rejected the misuse of indictments of African leaders by non-African judges, which hampered their ability to conduct international relations and had a negative impact on the political, social and economic development of the States concerned. Such indictments violated the principle of sovereign equality of States and the immunity of Heads of State and other high-ranking State officials, since they had the effect of subjecting the officials of African States to the jurisdiction of European States. Indictments issued by low-level judges against foreign officials exercising representative functions on behalf of their States tended to undermine the dignity of those officials and put at risk friendly relations between sovereign States. They smacked of colonialism.

28. Abuse of the principle of universal jurisdiction could undermine international law, order and security, particularly if countries that had been victims of abusive international warrants were to resort to the principle of reciprocity in order to defend themselves. Arrest warrants issued on the basis of such abuse should be withdrawn, as requested by the African Heads of State and Government. Her delegation supported ongoing discussions towards the adoption of the new framework that would prevent that principle from being applied in arbitrary or politically motivated ways.

29. **Mr. Zewdu** (Ethiopia) said that African countries, including Ethiopia, were fully resolved to fight impunity, as was reflected in the Constitutive Act of the African Union, which empowered the Union to intervene in the internal affairs of member States in response to war crimes, crimes against humanity and genocide. Clearly, some crimes could require the exercise of universal jurisdiction. What was questionable was how far such jurisdiction could be exercised in a non-selective, non-political manner and not as a means of advancing foreign policy goals. There were empirical grounds for scepticism on that score, notably the prosecutions instituted and the arrest warrants issued by certain foreign courts against sitting African leaders and other high-ranking officials in violation of the immunity granted to them under international law.

30. The principle of universal jurisdiction should be applied in tandem with recognized rules of international law and in accordance with the principle of State sovereignty. The primary responsibility for bringing the perpetrators of crimes to justice lay with the State where the crime had been committed. The principle should be invoked only as complementary jurisdiction for serious crimes affecting all humanity; it should be applied with due regard for the immunities granted under international law to foreign State officials exercising representative functions on behalf of their respective governments.

31. The absence of a generally accepted definition of universal jurisdiction and a lack of consensus on offences that were subject to it had made it difficult to strike an appropriate balance between bringing perpetrators to justice and limiting the scope and application of the principle in order to guard against politicization. Differing approaches had resulted in subjective considerations that were undermining the

common resolve to combat impunity. His delegation wished to stress the importance of regulating the scope and application of the principle to avert the risk of it being applied arbitrarily and called on the Committee to continue to explore the possibility of developing a consistent standard in that regard.

32. **Mr. Elhamamy** (Egypt) said that universal jurisdiction was a tool that could be used to prosecute perpetrators of the most serious crimes under international law. It was, however, exercised abusively by politicians and legislators in non-African States to indict some while acquitting others. In their selective application of the principle of universal jurisdiction, purportedly in the name of global justice, they often neglected the crime of aggression. That reflected their arbitrary and subjective approach, which did not serve justice but, rather, affected the credibility of international law and the fight against impunity.

33. Universal jurisdiction should always be exercised in good faith and with due regard for the principles of international law, including the sovereign equality of States, territorial jurisdiction and the immunity of State officials, as recognized by the International Court of Justice. It should also require the consent of the governmental authority and the presence of the accused person in the territory where proceedings were taking place. His delegation was aware of the complex legal, political and diplomatic issues surrounding the principle of universal jurisdiction and intended to participate actively in the Committee's work on the subject, which should aim at establishing clear rules to ensure the reasonable application of that principle and its compatibility with international law.

34. **Mr. Hitti** (Lebanon) said that, while universal jurisdiction was vital to ensure justice and put an end to impunity, it had to be applied in accordance with the Charter of the United Nations, in particular the principles of sovereign equality of States and non-interference in their internal affairs. However, the international community must first agree on which crimes should be subject to universal jurisdiction. There was a growing international consensus that piracy, torture, crimes against humanity, genocide, war crimes and ethnic cleansing were the most serious crimes. Those crimes then needed to be defined in a unified way under international law, since otherwise there could be inconsistencies in the application of such jurisdiction. Those two concerns could be addressed through an international convention.

35. Primary responsibility for the prosecution of alleged perpetrators of the most heinous crimes lay with the States concerned, by way either of territorial or of personal jurisdiction. When States were unwilling or unable to prosecute, universal jurisdiction should then be invoked, based on the principle of complementarity, and the courts applying such jurisdiction should act as subsidiary organs. Complementarity was a solid guarantee that the principles of State sovereignty and non-intervention in internal affairs would be safeguarded and that perpetrators would not be able to be prosecuted before different courts for the same crime. The aim was to avoid arbitrariness and selectivity in the exercise of universal jurisdiction, which must be applied in good faith and in accordance with due process, so as not to become a politically motivated instrument.

36. His delegation welcomed the deliberations of the Working Group on the topic and urged that the International Law Commission should be asked to prepare a study aimed at addressing the concerns raised and reconciling the different positions of States on the matter.

37. **Mr. Absoul** (Jordan) said that universal jurisdiction was an important mechanism, particularly for ensuring that the perpetrators of serious crimes did not enjoy impunity, by complementing the action of States that were either unable or unwilling to prosecute them. It was therefore crucial to reach a common understanding of its scope and application and to bridge the gaps between the various positions of Member States in the interest of international justice. Customary law offered a good basis for determining the criteria for the application of universal jurisdiction. A study should be prepared on the topic, which should also be referred to the International Law Commission, in order to define the legal position and thereby limit politicization and selectivity in the application of the principle. He reiterated the readiness of his delegation to participate constructively in the discussions, both within the Committee and in other forums.

38. **Ms. Pham Thi Thu Huong** (Viet Nam) said that, while universal jurisdiction was an important instrument for combating impunity for international crimes, its misuse could infringe State sovereignty and violated the general principles enshrined in the Charter of the United Nations. Her delegation therefore supported efforts to develop international standards or guidelines that would clearly set out the range of

crimes subject to the principle and the conditions under which it could be invoked. Those crimes should be limited to the most serious crimes of international concern, including genocide, crimes against humanity and war crimes.

39. Universal jurisdiction should be applied in good faith, with much caution and within a well-founded legal framework in order to avoid any abuse that might violate the principles of sovereign equality and non-interference in the internal affairs of other States. It should be regarded as a last resort and complementary to other jurisdictions with a stronger link to the crimes, such as territorial jurisdiction or nationality jurisdiction. It should not be exercised in cases where the crime could be prosecuted by the State where it had occurred or the State of nationality of the alleged perpetrators or of the victims. In addition, a State should exercise universal jurisdiction over a crime only when the alleged perpetrator was present in its territory.

40. Her delegation welcomed information and observations from States on the scope and application of universal jurisdiction, including their national rules and judicial practice, and looked forward to the outcome of the deliberations of the Working Group, which should help to advance the discussion of the topic.

41. **Ms. Zarrouk Boumiza** (Tunisia) said that universal jurisdiction was an important mechanism for strengthening the rule of law, ensuring equitable justice and combating impunity. However, it must be exercised in strict compliance with the Charter of the United Nations and basic principles of international law, such as the sovereign equality of States, and only in exceptional circumstances and without selectivity or abuse.

42. A clear, consensus-based definition of the principle was required in order to dispel the legitimate concerns of several Member States as to the scope of its application. The Committee should therefore continue, through its Working Group, to give further thought to the various aspects of the matter.

43. Universal jurisdiction was distinct from, but complementary to, the jurisdiction of international criminal tribunals, which also had a key role in international efforts to end impunity. The International Criminal Court, in particular, was making a major contribution to those efforts. Its success in promoting

peace and international justice and the esteem in which it was currently held in the international community were reflected in the increased number of countries that had acceded to the Rome Statute since 2002 — 122, Tunisia among them. However, the Court dealt with serious crimes only after the fact; a mechanism for preventing them was also needed.

44. For that reason, her Government had proposed the establishment of an international constitutional court as an advisory jurisdictional body tasked with ensuring respect for democratic principles and human rights, to follow up the continuing efforts by the United Nations and regional organizations to develop a collection of texts for the protection of human rights and fundamental freedoms. Such a court would also be empowered to decide on the proper conduct of elections and serious violations of the democratic principles enshrined in the Universal Declaration of Human Rights and international instruments. It would also have a no less important function as a source of advice in drafting national constitutions. It would encourage Governments to give effect to universal principles of democracy and public freedoms, which would in turn meet the aspirations of peoples for freedom, justice and democracy without violence or undue suffering.

45. **Mr. Gharibi** (Islamic Republic of Iran) said that a common understanding of the principle of universal jurisdiction had yet to be developed. The key question was whether and to what extent the Committee should engage in codification and development of the topic. In many legal systems, extraterritorial jurisdiction had to be treaty-based: crimes could be prosecuted only when designated as such in a treaty to which the State concerned was a party and when the main intent of prosecution was to ensure that they did not go unpunished.

46. His delegation viewed universal jurisdiction as a treaty-based exception in the exercise of criminal jurisdiction. The prevailing principle was that of territorial jurisdiction, which barred States from exercising criminal jurisdiction beyond their borders and was central to the principle of sovereign equality of States. Universal jurisdiction was not specifically addressed under Iranian legislation and did not appear to have ever been invoked by his country's domestic courts. However, the 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 accused, provided that the accused was present in Iranian territory.

47. The Islamic Republic of Iran was a party to many international instruments, including several counter-terrorism treaties. While almost all those instruments included the obligation to extradite or prosecute, that concept should not be confused with the principle of universal jurisdiction. None of the bilateral agreements on extradition and mutual legal assistance concluded by his Government contained any reference to universal jurisdiction.

48. The main concern with regard to the concept of universal jurisdiction was that its application could conflict with certain fundamental principles of international law, in particular the immunity of State officials from foreign criminal jurisdiction, which emanated from the sovereign equality of States. The doctrine was also said to have been used selectively. There was a continuing debate over the nature of the crimes to which such jurisdiction might apply, the conditions for and limits on its application, and the possible need for a link between the suspect and the prosecuting State and for the presence of the alleged offender in the forum State.

49. Criminal jurisdiction over foreign nationals should be exercised without bias and in good faith. It should not be applied in an arbitrary manner or violate the immunities granted under international law to Heads of State and Government, diplomatic personnel and other incumbent high-ranking officials. Leaving the interpretation of international crimes to national courts would have adverse effects on the stability and integrity of international law.

50. **Mr. Waweru** (Kenya) said that where the principle of universal jurisdiction was applicable, it should be exercised fairly, uniformly and consistently, without abuse or selectivity, and without undermining the essential principles governing relations among States. The concept of universal jurisdiction was distinct from the work of the International Criminal Court, which was complementary to national criminal jurisdiction and ensured that effective prosecution measures were taken at the national level, with enhanced international cooperation and, where necessary, capacity-building. The preamble of the Rome Statute, while recognizing the primacy of

national criminal jurisdictions, recalled that it was the duty of every State to exercise its criminal jurisdiction over the perpetrators of serious crimes.

51. Universal jurisdiction should be exercised in good faith and in accordance with other principles of international law. The rule of law should be maintained, and impartial, prompt and fair hearings should be guaranteed. The current superficial and erroneous interpretation and implementation of the Rome Statute in relation to Kenya was highly prejudicial to the national, regional and international interests of that country, which was an active, cooperating State party with a rich history of local jurisprudence. It was an interpretation driven by a political agenda rather than by a concern to combat impunity or seek lasting peace or justice; it was having a disruptive effect on Kenya's democratically elected Government and its people; it had pushed the State into a constitutional crisis and forced it to perform legal gymnastics in order to meet its international obligations under that instrument.

52. The insistence that the President of Kenya should personally attend the status conference of the International Criminal Court — which he had agreed to do, despite extraordinary public duties, after first delegating full presidential powers to a deputy, thereby protecting the sovereignty of the State — ran counter to the very fabric of the Rome Statute. It was unacceptable; no State should ever be placed in such circumstances.

53. The current debate was not only about the application of the principle of universal jurisdiction and the future management of international justice in the world; it was also about the future management of cases of impunity and violence; and how States related to each other in the context of the international justice system. The international community should refrain from adopting a narrow and agenda-driven interpretation of the role of universal jurisdiction that excluded other processes relevant to international and national peace. Instead, it should advocate an inclusive and carefully calibrated system with clear benchmarks, transparency and achievable standards, and should be willing to examine and amend the system in order to respond to the complexity of global democracies and social realities. Kenya, for its part, would take an active part in the work of the Working Group on the topic.

54. **Ms. Geoghegan** (Observer for the International Committee of the Red Cross) said that universal jurisdiction played a vital role in the enforcement of international humanitarian law. When States were unable or unwilling to meet their obligation to prosecute alleged perpetrators of serious violations in their territory or under their jurisdiction, and when international courts could not exercise jurisdiction, the exercise of universal jurisdiction by other States offered a subsidiary basis for ensuring accountability and addressing the impunity gap.

55. The Geneva Conventions of 1949 and Additional Protocol II established mandatory universal jurisdiction over such violations, while a number of other international instruments recognized that States must assert universal jurisdiction to prosecute serious violations of those Conventions, including in an armed conflict. Under customary international humanitarian law, States could exercise universal jurisdiction over war crimes committed during international and non-international armed conflicts.

56. Many States had adopted legislation establishing universal jurisdiction over grave breaches of the Geneva Conventions and Additional Protocol I, as well as violations of other instruments and war crimes listed in the Statute of the International Criminal Court. How the principle of such jurisdiction could be applied in practice had been demonstrated by recent international court decisions and legal initiatives by States. The most common condition that States attached to the exercise of universal jurisdiction over war crimes was that there should be a link between the accused person and the forum State, such as that person's presence in the prosecuting State or the consent of a governmental authority. The conditions for opening criminal proceedings or for justifying a refusal to do so should, in any case, be clearly defined at the national level; they should strengthen the effectiveness of predictability of the principle of universal jurisdiction, rather than limit its application.

57. Mindful of the challenges associated with the implementation of universal jurisdiction, the International Committee of the Red Cross considered it essential for States to continue to engage in the necessary national capacity-building and to enact appropriate national legislation to prosecute war crimes on the basis of both national and extraterritorial jurisdiction, including universal jurisdiction. That would deter such crimes from being committed and

allow perpetrators to be prosecuted. States should also improve international judicial cooperation in international criminal matters. The International Committee of the Red Cross had developed expert legal and technical resources on State practice in the prevention and repression of war crimes through the national implementation of international humanitarian law and stood ready to support States in their efforts to build an effective system against impunity.

Agenda item 76: Report of the United Nations Commission on International Trade Law on the work of its forty-seventh session (*continued*) (A/69/17)

58. **Mr. AlIbraheem** (Kuwait) said that his delegation attached great importance to the work of the United Nations Commission on International Trade Law and commended it for the finalization of the draft convention on transparency in treaty-based investor-State arbitration. The Commission played a crucial role in strengthening the rule of law at the national and international levels and increasingly so in the field of trade relations. The promotion of the rule of law in commercial relations should be an integral part of the United Nations agenda in relation to the rule of law: a favourable environment for trade and investment was a key to conflict prevention and post-conflict reconstruction.

59. His country's membership of the Commission reflected its interest in the development of national trade legislation, which was linked to the Government's current development plans. In that connection, his delegation attached great importance to the quantum leap in electronic legislation. With the development of e-commerce, electronic legislation could help to fight cybercrime, which caused losses in the hundreds of billions of dollars every year.

60. His delegation called for a strengthening of the role of the Commission in the area of international trade and for further efforts to promote international economic relations. The Commission could make a major contribution to resolving international trade disputes and was an important means whereby the United Nations could guide the development of e-commerce and electronic legislation.

The meeting rose at 4.50 p.m.