United Nations A/C.6/76/SR.14

General Assembly
Seventy-sixth session

Official Records

Distr.: General
27 May 2022

Original: English

Sixth Committee

Summary record of the 14th meeting
Held at Headquarters, New York, on Thursday, 21 October 2021, at 3 p.m.

Chair: Mr. García López (Vice-Chair) . . . . . (Spain)

Contents

21-15295 (E)

In the absence of Ms. Al-Thani (Qatar), Mr. García López (Spain), Vice-Chair, took the Chair.

The meeting was called to order at 3 p.m.

Agenda item 81: United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law (*continued*) (A/76/404)

1. **Ms. Hanlumyuang** (Thailand) said that her delegation commended the efforts of the Codification Division and the concerned Member States, organizations and institutions to maintain the Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law, despite the limitations resulting from the coronavirus disease (COVID-19) pandemic. By fostering a better understanding of international law, the Programme made a significant contribution to the promotion of the rule of law.

2. The dissemination of legal knowledge must be inclusive and targeted at a wide audience. To that end, greater use should be made of digital means, such as podcasts, online courses and lectures recorded off-site, in the Programme of Assistance. Her delegation noted with appreciation the continuing efforts to expand the collection of lectures and materials of the United Nations Audiovisual Library of International Law. The Library's website should be updated and redesigned to make it more user-friendly and appealing to the younger generation, and more recent videos should be uploaded. Thailand would support the use of more assistants and interns to help with the preparation of materials for the website. Her delegation encouraged Member States to ensure that their national treaty databases were accessible through the relevant section of the website.

3. Thailand was committed to resuming its role as host of the regional course in international law for Asia-Pacific as soon as conditions allowed. It was pleased that arrangements had been made to hold the course virtually in 2021; however, the provision of effective remote learning tools should not replace in-person training. Participants in in-person courses benefited not only from the substantive training but also from the opportunity to build professional networks with their peers and interact with lecturers. The regional course was one of the key platforms for promoting international law in the Asia-Pacific region.

4. With regard to funding, it was crucial that the Programme of Assistance be supported by predictable and adequate resources. Thailand therefore hoped that regular budget funding would continue to be allocated and that Member States would continue to make voluntary financial or in-kind contributions.

5. **Ms. Othman** (Malaysia) said that her delegation commended the Codification Division for exploring innovative ways to pursue the objectives of the Programme of Assistance despite the continuing challenges posed by the pandemic. In that regard, Malaysia welcomed the development of the remote self-paced learning curriculum and the delivery of online workshops as an interim means of capacity-building and was pleased that the alumni of the Programme continued to benefit from interactive online sessions. Her delegation hoped that the recipient of the 2020 Hamilton Shirley Amerasinghe Memorial Fellowship on the Law of the Sea would be able to commence her fellowship in 2022. While the opportunities for in-depth exchanges and long-lasting bonds created with in-person training could not be replicated online, information and communications technology should be used to disseminate knowledge of international law to a broader audience.

6. The Audiovisual Library had an important role to play in ensuring the continuation of the activities of the Programme of Assistance during the current challenging times. International law training materials should continue to be disseminated in hard copy and on USB flash drives. Given the importance of the Programme of Assistance in instilling the rule of law in international relations, her delegation supported the allocation of regular budget funds to ensure the Programme's continued effectiveness and further development. Malaysia also welcomed the voluntary contributions made by Member States. It was honoured to participate in the Advisory Committee on the Programme of Assistance and would continue to support the activities under the Programme.

7. **Ms. Lahmiri** (Morocco) said that the Programme of Assistance continued to play a crucial role in strengthening the rule of law, enhancing international peace and security and promoting friendly and cooperative relations among States. Thanks to the Programme, generations of practitioners, judges and diplomats had been able to enhance their understanding of international law. The large number of candidates for the regional programmes and fellowships and the increasing use of the Audiovisual Library indicated that the Programme was relevant and that there was a growing demand for capacity-building activities for Member States.

8. Morocco had been pleased to host the External Programme of the Hague Academy of International Law in Rabat in 2019. It had welcomed the holding of the

regional course for Africa in February 2020 and was disappointed that the pandemic had subsequently prevented the regional course for Latin America and the Caribbean and the International Law Fellowship Programme from being held in person. Her delegation welcomed the swift implementation of the remote self-paced learning curriculum by the Codification Division but wished to highlight that it was an interim measure designed to mitigate the impact of the unavoidable cancellation of in-person courses. In-person courses had clear benefits and should be resumed as soon as possible. The Audiovisual Library made a significant contribution to online learning and had been a particularly important resource during the pandemic. Her delegation welcomed efforts to increase the accessibility of the Library's Lecture Series through podcasts and other tools.

9. Morocco welcomed the voluntary contributions made by Member States and international organizations for the implementation of the Programme of Assistance. In the long term, the Programme should be funded sustainably through a combination of regular budget resources and voluntary contributions.

10. **Ms. Kim** Moon Young (Republic of Korea) said that, in order for international law to become truly international, it must be disseminated and more widely appreciated. The Programme of Assistance would have the greatest impact when Member States were involved in efforts to reach the intended beneficiaries and expand the pool of beneficiaries. Specifically, Member States could increase awareness of resources such as the Lecture Series within the academic sphere and make use of them when training their civil servants and diplomats. Her Government's efforts to promote the dissemination of public international law included an annual moot court competition and an award for the best thesis on a relevant topic. In-person lectures and training courses at the Seoul Academy of International Law and the Yeosu Academy of the Law of the Sea would resume later in 2021.

11. Her delegation hoped that the regional courses would soon return to an in-person format. However, it would be useful to continue to provide remote training, based on the curriculum developed by the Office of Legal Affairs during the pandemic, and to make it available to a broader audience. The podcast of the Audiovisual Library could also be a useful tool for widening the Programme's reach. Shorter lectures, such as those in the Library's Mini-Series, could be used to introduce the general public to the basics of international law. A conscious effort should be made to take the diversity of legal traditions into account in the design and development of initiatives under the Programme, with a view to addressing geographical imbalances. Her delegation would continue to explore ways to promote the teaching, study, dissemination and wider appreciation of international law.

12. **Mr. Bouchedoub** (Algeria) said that, since its establishment, the Programme of Assistance had fostered a deeper understanding of international law, thereby strengthening international peace and security, promoting friendly relations and cooperation among States and supporting the rule of law at the national and international levels. The growing demand for the regional courses in international law was a testament to their importance as a means to build capacities. Faced with the circumstances caused by the COVID-19 pandemic, the Codification Division had shown dynamism and flexibility by enabling the courses and, in particular, the regional course for Africa, to continue in the form of remote self-paced learning. His delegation hoped, however, that the Codification Division would promote a better balance among the six official languages in order to level the playing field and ensure that candidates from all African countries could take part; in 2021, applications had been received from only 27 African States. His delegation also appreciated the International Law Fellowship Programme. It hoped that a network of graduates of the Programme of Assistance would be established, and that, in view of the pandemic, graduates would be provided with online continuous learning activities. It welcomed the publication of the *United Nations Juridical Yearbook* and, in English and French versions, of the *International Law Handbook: Collection of Instruments*. It hoped that the latter would be published in the remaining official languages.

13. His delegation welcomed the steps taken to bridge the digital divide by catering for users without high-speed Internet. It was important also to increase the linguistic variety in the holdings of the Audiovisual Library, in order to ensure that a variety of legal systems and schools of thought were represented.

14. His delegation hoped that the regional courses and the International Law Fellowship Programme would continue to receive funding from the regular budget, and that the number of fellowships funded from that budget would be increased. Because personal interaction was essential for fostering knowledge of international law and friendly relations among States, conventional in-person training programmes should resume as the pandemic receded.

15. **Mr. Ashley** (Jamaica) said that the Programme of Assistance met a critical need for capacity-building in international law and diplomacy, especially in developing States. Training in international law

supported the rule of law, facilitated wider and more effective participation in the multilateral system and strengthened the capacity of all States to interact meaningfully in the context of their bilateral engagements.

16. His delegation commended the Codification Division for its efforts over the past year to plan and execute the various activities under the Programme of Assistance, in spite of the continuing challenges posed by the COVID-19 pandemic. It was unfortunate that it had not been possible to hold the regional course for Latin America and the Caribbean in person in 2021. However, his delegation was grateful that an online version had been held and that a representative of his country had been able to participate. Jamaica welcomed the plans to resume in-person training programmes in 2022, since in-person activities provided unique advantages in terms of promoting in-depth discussions, interaction and cooperation among participants and also strengthened relationships between States. His delegation also welcomed the organization of education activities for alumni of the training programmes.

17. Jamaica appreciated the allocation of regular budget resources to the Programme of Assistance, as well as the voluntary financial and in-kind contributions made by Member States and international organizations. Such support would ensure the sustainability of the Programme and promote the achievement of its objectives.

18. **Mr. Proskuryakov** (Russian Federation) said that his delegation appreciated the efforts made by the Office of Legal Affairs to implement the Programme of Assistance despite the COVID-19 pandemic and to make optimal use of budgetary resources and voluntary contributions. While the remote training offered in place of the United Nations regional courses in international law and the International Law Fellowship Programme during the reporting period had obvious advantages, it could not replace the unique experience of interacting in person with practitioners and scholars of international law. His delegation hoped that courses offered as part of the Programme of Assistance would be held in person in the future and that fellowships would once again be provided to deserving candidates.

19. His delegation welcomed the ongoing efforts of the Codification Division to add material to the Audiovisual Library, but expected that printed materials would continue to be distributed, in particular the *International Law Handbook: Collection of Instruments* and the *Reports of International Arbitral Awards*. In its efforts to strengthen the rule of law, the Secretariat should focus on promoting the teaching, study, dissemination and wider appreciation of international law and should prioritize programmes that advanced that objective when allocating funding. His delegation also wished to acknowledge the valuable personal contribution of the staff of the Office of Legal Affairs to the maintenance and development of the Programme.

Agenda item 86: The scope and application of the principle of universal jurisdiction (A/76/203)

20. **Mr. Ghorbanpour Najafabadi** (Islamic Republic of Iran), speaking on behalf of the Movement of Non-Aligned Countries, said that the principles enshrined in the Charter of the United Nations, in particular the sovereign equality and political independence of States and non-interference in their internal affairs, should be strictly observed in any judicial proceedings. The exercise by the courts of another State of criminal jurisdiction over high-ranking officials who enjoyed immunity under international law violated the principle of State sovereignty; the immunity of State officials was firmly established in the Charter and in international law and must be respected. It should be borne in mind that the present item had been added to the agenda of the Committee in 2009, at the initiative of the Group of African States, with a view to clarifying the scope and application of the principle of universal jurisdiction and preventing its abuse.

21. Universal jurisdiction provided a tool for prosecuting the perpetrators of certain serious crimes under international treaties. However, it was necessary to clarify several questions in order to prevent its misapplication, including the range of crimes that fell within its scope and the conditions for its application. The Movement was alarmed about the legal and political implications of the misapplication of universal jurisdiction with regard to the immunity of State officials and the sovereignty of States. In that connection, it was particularly concerned about the application of universal jurisdiction in respect of certain States members of the Movement. The Committee might find the decisions and judgments of the International Court of Justice and the work of the International Law Commission useful in its debate. Any unwarranted expansion of the list of crimes that could be prosecuted through the application of universal jurisdiction must be avoided.

22. The Movement would participate actively in the work of the working group on the topic. The discussions therein should be aimed at identifying the scope and limits of the application of universal jurisdiction; consideration should be given to establishing a monitoring mechanism to prevent abuse. Universal jurisdiction could not replace other jurisdictional bases,

namely territoriality and nationality. It should be asserted only for the most serious crimes and could not be exercised to the exclusion of other relevant rules and principles of international law, including State sovereignty, the territorial integrity of States and the immunity of State officials from foreign criminal jurisdiction.

23. In the view of the Non-Aligned Movement, it was premature at the current stage to request the International Law Commission to undertake a study on the topic of universal jurisdiction. The Movement would continue to pursue the common goal of mutual respect among States, which involved, among other things, maintaining the rule of law around the world and ensuring the proper, responsible and judicious application of universal jurisdiction.

24. **Ms. Lahmiri** (Morocco), speaking on behalf of the Group of African States, said that the scope and application of the principle of universal jurisdiction had been included in the agenda of the General Assembly since its sixty-third session at the request of the Group, which had been concerned about the abusive application of the principle, particularly against African officials. However, in the period of more than 10 years since then, very little progress had been made. It was in the interests of all States to agree on how to address the abuse and misuse of the principle of universal jurisdiction.

25. While the Group respected the principle of universal jurisdiction, which was enshrined in the Constitutive Act of the African Union, it remained concerned about the abuse of the principle and the uncertainties regarding its scope and application. Over the past decade, the challenging discussions on the agenda item had resulted in very little progress. The Group reiterated that its grave concern regarding the applicability of the principle of universal jurisdiction did not pertain to what was being done collectively through multilateral processes or the world community but rather to the indictment by individual judges in non-African States of incumbent African Heads of State and Government, Ministers for Foreign Affairs and other senior officials who were entitled to immunity under international law. Despite their concerns, African States and the African Union Commission had cooperated in the Committee's work, including by contributing information and observations and participating in the activities of the working group.

26. The Committee could and must take steps to address the propensity of non-African States to invoke the principle of universal jurisdiction in cases involving Africans outside the multilateral processes, without the consent of African States, and without applying the cooperation safeguards of the international system. The Group had evidence, however, of the use of the principle of universality in Africa with the consent and cooperation of the African States concerned, and in line with their commitment to end impunity for atrocity crimes. Consent and cooperation, when regulated within the multilateral system, could help to limit the abuse and misuse of the principle of universal jurisdiction. Furthermore, universal jurisdiction must be complementary to the national jurisdiction of the country concerned and must not be applied in a manner inconsistent with the principles of international law, including sovereignty, non-interference in the internal affairs of States, sovereign immunity and diplomatic immunity.

27. Agreement must be reached on specific safeguards and conditions to regulate the assertion of universal jurisdiction. The African Union Model National Law on Universal Jurisdiction over International Crimes had the potential to ensure the harmonization of national laws, thereby minimizing the potential for abuse and misuse of the principle.

28. **Ms. Popan** (Representative of the European Union, in its capacity as observer), speaking also on behalf of the candidate countries Albania, Montenegro, North Macedonia and Serbia; the stabilization and association process country Bosnia and Herzegovina; and, in addition, Georgia and the Republic of Moldova, said that the most serious crimes of concern to the international community as a whole must not go unpunished. Ensuring that justice was done was not only important in itself but also brought relief to victims, decreasing the desire for revenge, and helped to prevent future conflicts.

29. The views and practices of States concerning the scope and application of the principle of universal jurisdiction varied widely. The European Union considered that the primary responsibility for investigating a crime and prosecuting its perpetrators lay with the State or States having a direct link to the crime. However, universal criminal jurisdiction enabled a State to prosecute perpetrators of the most serious international crimes wherever they occurred and whatever the nationalities of the perpetrators and the victims.

30. *Aut dedere aut judicare* was an important principle of treaty law, 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)*, and its significance was increasingly being underscored in State practice relating to prosecutions based on universal jurisdiction. The

investigation and prosecution of international crimes at the national level required close cooperation between national authorities. The European Union had established the European Network for investigation and prosecution of genocide, crimes against humanity and war crimes to facilitate such cooperation among its member States. Moreover, all States members of the European Union had an obligation to take all necessary measures to inform law enforcement authorities of the presence of alleged perpetrators in their territories and to ensure the exchange of information between national law enforcement and immigration authorities.

31. **Ms. Fielding** (Sweden), speaking on behalf of the Nordic countries (Denmark, Finland, Iceland, Norway and Sweden), said that universal jurisdiction was increasingly being recognized at the national and international levels as a fundamental principle of criminal law. As a general rule, primary responsibility for investigating and prosecuting international crimes rested with the territorial State or the State of nationality of the accused. However, when those States did not take legal action, the exercise of universal jurisdiction by other States could serve as an important tool for ensuring accountability and delivering justice for victims.

32. The domestic laws of the Nordic countries allowed universal jurisdiction to be exercised in respect of certain crimes. It was worth noting that the courts of several European countries had pursued cases against State and non-State actors in connection with, for example, atrocities in Syria, generally on the basis of universal jurisdiction. The Nordic countries encouraged States that had not yet done so to amend their domestic laws to allow for the exercise of universal jurisdiction over serious international crimes.

33. Some delegations had expressed concern about the potential abuse of the principle of universal jurisdiction. The Nordic countries continued to caution against developing an exhaustive list of crimes to which universal jurisdiction would apply but stressed that the misuse of prosecutorial powers should be prevented. The Nordic countries called upon States to adopt national laws, in line with the Rome Statute of the International Criminal Court, to ensure the direct prosecution of the most serious crimes of concern to the international community and establish a more effective framework for cooperation with international courts.

34. The International Criminal Court provided an avenue for prosecution when States did not exercise jurisdiction. Other bodies at the international level, such as the International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011, the Independent Investigative Mechanism for Myanmar and the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/Islamic State in Iraq and the Levant, had an important role to play in assisting national, regional and international entities that had or that might have jurisdiction in the future.

35. **Mr. Roughton** (New Zealand), speaking also on behalf of Australia and Canada, said that universal jurisdiction was a well-established principle of international law applicable to the most serious international crimes, such as piracy, genocide, war crimes, crimes against humanity, slavery and torture. Those acts were established as crimes under customary international law. Universal jurisdiction was an important mechanism for ensuring that the perpetrators of such atrocities could not find safe havens, even if the territorial State was unwilling or unable to exercise jurisdiction.

36. As a general rule, the primary responsibility for investigating international crimes and prosecuting the perpetrators rested with the State in which the crime was committed or the State of nationality of the perpetrator. Those States were in the best position to ensure that justice was done, given their access to evidence, witnesses and victims. Universal jurisdiction should be exercised in good faith and in compliance with other principles and rules of international law, including those concerning diplomatic relations and privileges and immunities. Moreover, it must be applied in a manner consistent with the rule of law and the right to a fair trial.

37. Australia, New Zealand and Canada all had laws establishing their jurisdiction in respect of the most serious international crimes. The prosecution of those crimes was in the interest of all States. The three countries encouraged Member States that had not already done so to incorporate universal jurisdiction into their domestic laws and to cooperate to hold perpetrators to account. They also welcomed recent cases in which universal jurisdiction had been exercised, such as the prosecutions of Syrian nationals in Germany for crimes against humanity committed in Syria. Such efforts were particularly important in cases in which the International Criminal Court did not have jurisdiction. Australia, Canada and New Zealand reiterated their willingness to work constructively with other States to deter the most serious international crimes and ensure that the perpetrators of such crimes were held to account.

38. **Mr. Wong** (Singapore) said that the principle of universal jurisdiction was based on the recognition that some crimes were of such exceptional gravity that their commission shocked the conscience of all humanity. The international community had a common interest in and shared responsibility for combating such crimes and ensuring justice for victims. The principle of universal jurisdiction should be applied only to particularly grave crimes that affected the international community as a whole and that were generally agreed to warrant the exercise of universal jurisdiction. In order to determine whether a crime was subject to universal jurisdiction, State practice and *opinio juris* must be examined thoroughly. As a principle of customary international law, universal jurisdiction should be distinguished from the exercise of jurisdiction provided for in treaties or the exercise of jurisdiction by international tribunals constituted under specific treaty regimes, each of which had their own specific set of juridical bases, rationales, objectives and considerations.

39. Universal jurisdiction could not be exercised in isolation from, or to the exclusion of, other applicable principles of international law, such as the immunity of State officials from foreign criminal jurisdiction, the sovereignty of States and territorial integrity. Universal jurisdiction should not be the primary basis for the exercise of criminal jurisdiction; it should be invoked only as a last resort, in situations where no State was able or willing to exercise jurisdiction based on other links, such as territoriality or nationality. His delegation encouraged Member States to reach a consensus on key aspects of the topic, in order to establish a solid foundation for further work.

40. **Mr. Kanu** (Sierra Leone) said that his delegation remained concerned that, after more than a decade of discussions in the Committee on the current agenda item, very little progress had been made, despite the increase in State practice based on the universality principle. As reflected in the report of the Secretary-General (A/76/203), a court in one Member State was currently hearing a case concerning war crimes, aggravated crimes against humanity and murders committed outside its territory. That case concerned a national of Sierra Leone, and the alleged crimes had been committed in a third country. His Government had cooperated with the foreign court's request for mutual legal assistance in the form of witness depositions. However, it should be noted that Sierra Leone recognized universal jurisdiction only in connection with grave breaches of the Geneva Conventions of 1949 and the 1977 Additional Protocols thereto. His Government's consent to the request for mutual legal assistance was highly exceptional and should not be understood to set a precedent with regard to the exercise of universal jurisdiction over nationals of Sierra Leone or with regard to the provision of mutual legal assistance by the competent authorities of Sierra Leone without the necessary clarity or safeguards.

41. While Sierra Leone remained committed to ensuring accountability for atrocity crimes, it considered that the process leading to the exercise of universal jurisdiction in respect of its national in the above-mentioned case had been less than satisfactory, highlighting the need for clarity as to the scope and application of the principle of universal jurisdiction. The Committee and the International Law Commission should work together to provide much-needed guidance that was consistent with the rules and principles of international law. As the chances of making substantial progress under the present agenda item seemed to become slimmer with every passing year, incremental progress should be sought through substantive discussions in which the legal issues and the policy concerns were addressed separately. For that reason, his delegation welcomed the interest that the Commission had shown in assisting the Committee with the technical aspects of the question.

42. Given that the working methods of the seventy-fifth session of the General Assembly had hindered the progress of the Committee's work, Sierra Leone wished to reiterate the three suggestions that it had made at that session on the basis of the informal working paper prepared by the Chair of the working group of the Committee on the topic (A/C.6/66/WG.3/1) which, while not binding, represented a shared understanding of the issues of interest to all delegations. First, the working group should take up at least one policy question; an example could be found in his delegation's written statement, available in the eStatements section of the *Journal of the United Nations*. Second, the Committee should mandate the Secretary-General to carry out a review of the material he had collected on State practice and of the whole debate on the topic in the Committee over the past 10 years, so as to identify the specific issues on which there was broad agreement and those on which there were divergences of opinion. The Secretary-General could also identify the general trends in the debate, without reaching firm conclusions. Third, it might be useful if the International Law Commission produced a report addressing the question, set out in the non-paper submitted by Chile (A/C.6/66/WG.3/DP.1), of what was meant by the concept of universal jurisdiction, what it included and did not include, and whether it was considered to be a principle under international law. Such a report could help to focus the substantive discussions in the Committee and the

working group, without prejudging the outcome, which was a matter for States. His delegation hoped that those suggestions would help build confidence among delegations and encourage more substantive discussion.

43. **Mr. Asiabi Pourimani** (Islamic Republic of Iran) said that the widely accepted rationale for the principle of universal jurisdiction was that certain particularly grave crimes were considered to affect the interests of all States rather than a specific State and that, in order to avoid impunity, the accused should be prosecuted in the country of arrest, regardless of where the crime had been committed. While the existence of the principle of universal jurisdiction was not disputed, Member States did not have a common legal and conceptual understanding of universal jurisdiction or of the crimes to which it could be applied. In particular, views on the intersection between universal jurisdiction and the immunities of certain high-ranking officials varied. In addition, national laws varied in terms of which crimes were subject to universal jurisdiction. Any non-consensus-based expansion of the list of crimes subject to universal jurisdiction would be incompatible with the purposes of the principle. In circumstances where there was no international legal basis for the exercise of universal jurisdiction, the broad interpretation and application of the principle by forum States must not be considered as establishing a precedent.

44. As indicated by several of the 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)*, conferring jurisdiction upon the courts of every State in the world to prosecute crimes that were subject to universal jurisdiction would risk creating judicial chaos. Furthermore, one of the judges had indicated in his separate opinion that universal jurisdiction in absentia was unknown to international law. Whatever the source of universal jurisdiction, its selective application could prejudice such cardinal principles of international law as equal sovereignty of States and immunity of State officials from foreign criminal jurisdiction. His Government viewed universal jurisdiction as a treaty-based exception in the exercise of criminal jurisdiction. It should not replace territorial jurisdiction, which was central to the principle of sovereign equality of States, and it should be asserted only for the most heinous crimes. Its application to less serious crimes could call its legitimacy into question. Given the divergence of views and the lack of consistent State practice, consideration of the topic by the International Law Commission would not produce satisfactory results.

45. **Mr. Gala López** (Cuba), affirming his 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. His delegation was concerned about 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.

46. The General Assembly's main objective with regard to universal jurisdiction should be the development of a set of international rules or guidelines in order to prevent abuse of the principle and thereby safeguard international peace and security. Universal jurisdiction should be exercised by national courts in strict compliance with the principles of sovereign equality, political independence and non-interference in the internal affairs of other 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 complementary in nature and should be invoked only in cases in which there was no other way to bring proceedings against the perpetrators and prevent impunity. Moreover, the absolute immunity granted under international law to Heads of State, diplomatic personnel and other high-ranking officials must not be called into question, nor should long-standing and universally accepted international principles and norms be violated under the cover of universal jurisdiction. Lastly, the principle should be applied only to crimes against humanity.

47. **Ms. Arumpac-Marte** (Philippines) said that universal jurisdiction, as a generally accepted principle of international law, was considered a part of Philippine law. For her country, as a rule, jurisdiction was territorial in nature, such that universal jurisdiction was an exception arising from an imperative need to preserve international order. It allowed any State to assert criminal jurisdiction over certain offences, even if the act occurred outside its territory and even if the perpetrators or victims were not its nationals. Because universal jurisdiction was exceptional, its scope and application must be limited and clearly defined. The unrestrained invocation and abuse of universal

jurisdiction would only undermine the principle. The offences to which it applied must be confined to violations of *jus cogens* norms deemed so fundamental to the existence of a just international order that States could not derogate from them, even by agreement. The rationale was that the crime was so egregious that it was considered to have been committed against all members of the international community, such that every State had jurisdiction over it.

48. The process of defining the scope and application of the principle of universal jurisdiction should be State-led and should remain within the purview of the Sixth Committee, rather than being referred to the International Law Commission.

49. **Mr. Altarsha** (Syrian Arab Republic) said that universal jurisdiction was a complement to national jurisdiction and could not under any circumstances be a substitute for it. Moreover, Member States had not reached agreement on its definition or scope. Certain Governments applied the principle in a highly inconsistent manner, which made it difficult to achieve its objectives, namely upholding justice and preventing impunity, in a non-discriminatory manner, especially since those Governments had not been held accountable for their brazen violations of international law and the Charter of the United Nations.

50. The politicization of the principle raised genuine concerns as to what form of justice would exist if a few Governments were allowed to apply the principle arbitrarily and issue politicized and unjust judgments. Such an approach would undermine the basic purpose of the principle, not to mention respect for the sovereign equality, unity and territorial integrity of States and for the immunity of State officials from foreign criminal jurisdiction. Over the past few years, attempts had been made to politicize and distort the noble value of justice for political gain, with a view to targeting specific States or whole continents. A case in point was the International Criminal Court, whose credibility had been undermined by the practices of certain States. Another was the so-called International, Impartial and Independent Mechanism, an illegal and illegitimate body that had been established on spurious grounds in order to target the Syrian Arab Republic, without coordinating with or seeking permission from its Government. The establishment of the Mechanism clearly defied the provisions of the Charter and the prerogatives of the Security Council. Universal jurisdiction could not be exercised without regard for the principles of international law and authoritative international resolutions, and its application must not be tainted by political chicanery.

51. **Mr. Guerra Sansonetti** (Bolivarian Republic of Venezuela) said that the crimes for which universal jurisdiction could be invoked needed to be clearly established at the international level and limited to those that, because of their seriousness, were of concern to the international community as a whole. States had an obligation to exercise their criminal jurisdiction in order to hold the perpetrators of such crimes to account. Universal jurisdiction should be exercised by recognized international courts and should remain complementary to the actions and national jurisdiction of States. It was therefore applicable only to prevent impunity in cases in which national courts were unable or unwilling to exercise their jurisdiction.

52. Universal jurisdiction should be exercised in strict compliance with the principles of sovereign equality, political independence and non-interference in the internal affairs of States as enshrined in the Charter of the United Nations. His delegation therefore noted with concern the growing tendency to establish fact-finding mechanisms intended to replace entities established within national justice systems, which amounted to the arbitrary and illegitimate application of the principle of universal jurisdiction. Such weaponization of justice was part of a strategy of "regime change", which continued to cause suffering, chaos and destruction around the world.

53. His Government was committed to combating impunity and ensuring accountability and justice, particularly in cases involving crimes against humanity, in order to maintain international peace and security and strengthen the rule of law. The working group of the Sixth Committee should continue to examine closely the scope and application of the principle of universal jurisdiction.

54. **Mr. Molefe** (South Africa) said that, as a strong proponent of a rules-based international order, his country supported the use of universal jurisdiction to combat impunity for the most serious international crimes. The definition of the principle, and the rules for its application, must be clearly established in order to prevent selective and politically motivated application. His delegation therefore welcomed the considerable progress that had been made so far with regard to the various points for discussion set out in the 2016 informal working paper prepared by the Chair of the working group. His delegation welcomed the broad consensus that the exercise of universal jurisdiction should not be politically motivated, arbitrary or selective. Politicization could result in the use of universal jurisdiction being abandoned altogether.

55. The primary responsibility for investigating and prosecuting international crimes lay with the State in which the crime was committed or with the State of nationality of the perpetrator or the victim; universal jurisdiction could be exercised only when the State that would ordinarily have jurisdiction was unable or unwilling to prosecute. It was important to establish frameworks for mutual legal assistance to address the cross-border challenges that often arose in the investigation and prosecution of crimes subject to universal jurisdiction. In that regard, his Government had supported efforts to negotiate a convention on international cooperation in the investigation and prosecution of the crime of genocide, crimes against humanity and war crimes.

56. The domestic law of South Africa provided for extraterritorial jurisdiction over the crime of genocide, war crimes, crimes against humanity, terrorist activities, piracy, civil aviation offences, nuclear-related offences and mercenary activities. There was broad agreement among States that universal jurisdiction was applicable in respect of certain crimes under customary international law, such as piracy, the slave trade, war crimes, crimes against humanity, genocide and torture. The identification of other crimes that might be subject to universal jurisdiction would form an important part of the work of the working group. Such discussions, and related international cooperation initiatives, were essential to closing the jurisdictional gaps that often allowed the perpetrators of the most serious crimes to evade justice.

57. **Mr. Almansouri** (Qatar) said that impunity was a key factor in the proliferation of grave crimes around the world. Closing legal loopholes with a view to putting an end to such crimes and protecting the rights of victims would require concerted international efforts to strengthen the rule of law at the national and international levels. 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.

58. His delegation viewed universal jurisdiction as an important tool for combating terrorism and a means of fulfilling the obligation to extradite or prosecute under the four Geneva Conventions of 1949 and their Additional Protocols. The Criminal Code of Qatar allowed the country 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.

59. **Ms. Thomann** (Liechtenstein) said that it was encouraging to see that national judiciaries were invoking universal jurisdiction to prosecute those responsible for atrocities, including in the recent trial in Germany of a Syrian national in connection with crimes against humanity committed in Syria. The Committee's discussions on universal jurisdiction should be aimed at closing the significant jurisdictional gaps that continued to allow perpetrators of the most serious crimes of international concern to act with impunity.

60. An increasing number of States recognized that universal jurisdiction was an effective tool for ensuring accountability for crimes such as genocide, war crimes and crimes against humanity. The primary responsibility for prosecuting the perpetrators of the most serious international crimes rested with the States on whose territory the crimes had been committed, although other jurisdictional links, such as the nationality of the perpetrator and the nationality of the victims, were also widely accepted. Where those States were unwilling or unable to prosecute the perpetrators, other States should be able to do so on the basis of universal jurisdiction. The scope of universal jurisdiction was sufficiently clear in existing treaty law and customary international law. While her country had not yet exercised universal jurisdiction, it had ratified all relevant treaties at the European and international levels.

61. Universal jurisdiction was a critical component of the international criminal justice system, as it helped to ensure that the large number of perpetrators operating beyond the jurisdictional reach of the International Criminal Court were brought to justice. Given that the political dynamic of the Security Council generally prevented it from referring cases to the Court, alternatives such as the exercise of universal jurisdiction – with support from United Nations evidence-gathering mechanisms, such as the International, Impartial and Independent Mechanism – were very important. It would be useful for the International Law Commission to formulate guidelines or conclusions clarifying the nature, scope and limits of universal jurisdiction and the necessary procedural safeguards.

62. **Mr. Liu** Yang (China) said that the concept of universal jurisdiction had political, legal and diplomatic dimensions. Notable differences of opinion remained between countries on whether and how to apply universal jurisdiction to crimes other than piracy. Most

international treaties and State practice that had been invoked as examples of the exercise of universal jurisdiction concerned "extradite or prosecute" provisions in relevant international treaties or the exercise of extraterritorial jurisdiction. In those cases, the State exercising jurisdiction had links to the perpetrator or the offence. Thus, they did not concern true universal jurisdiction.

63. In recent years, courts in some countries had exercised extraterritorial jurisdiction, which was neither consistent with international law nor widely accepted. There were even examples of politically motivated vexatious litigation and violations of the immunity of State officials from foreign jurisdiction. Such cases were nothing but abuses of universal jurisdiction and breaches of international law that served only to destabilize international relations.

64. The scope and application of the principle of universal jurisdiction had been included in the agenda of the Committee to ensure that countries defined universal jurisdiction in a prudent manner, in order to prevent the destabilization of international relations. A State establishing and exercising universal jurisdiction must comply with the purposes and principles of the Charter of the United Nations and the basic principles of international law, such as sovereign equality of States and non-interference in the internal affairs of States, and respect the rules of immunity recognized under international law. Doing so would balance the need to combat impunity against the need to safeguard international relations.

65. **Mr. Butt** (Pakistan) said that, while the imperative underlying the principle of universal jurisdiction was to uphold the ideals of accountability and justice by holding to account the perpetrators of certain egregious crimes, fundamental differences regarding the nature, scope and application of the principle continued to prevent consensus on the matter. The selective use and manipulation of the principle by some States undermined the credibility of international law and efforts to combat impunity. The scope and application of the principle of universal jurisdiction must be addressed cautiously and in an objective manner that took into account customary international law and *opinio juris*.

66. Universal jurisdiction was subordinate to, and not a substitute for, territorial and national jurisdictions. The State in whose territory the crime was committed should have primary responsibility for prosecution, since it was the State most affected by the crime and best placed to gather evidence. Moreover, prosecution in the territorial State made it easier for victims to witness the proceedings. In accordance with the principle of complementarity, which had been recognized by various international courts and tribunals, another State could prosecute the crime only if the territorial State was unwilling or unable to do so.

67. Universal jurisdiction should be exercised only in respect of grave crimes that affected the international community as a whole and that were generally agreed to be subject to universal jurisdiction, such as war crimes, crimes against humanity and genocide. Consistent moral and legal standards must be applied to all such serious crimes; otherwise, any calls for accountability would smack of double standards, especially when egregious crimes were being committed in full view of the international community.

68. Treaty obligations to extradite or prosecute should not be understood as, or used to infer the existence of, universal jurisdiction. Treaty-based jurisdiction was conceptually and legally distinct from universal jurisdiction proper. A detailed analysis of State practice and *opinio juris* was needed in order to identify the existence of a customary rule of universal jurisdiction over a particular crime. Furthermore, universal jurisdiction could not be exercised in isolation from, or to the exclusion of, other applicable principles of international law, such as the sovereignty of States, territorial integrity and the immunity of State officials from foreign criminal jurisdiction, The principle of universal jurisdiction should not be a licence to undermine the sovereignty of States, but rather a means, in full conformity with the principles of international law and the Charter of the United Nations, of ensuring that perpetrators did not use jurisdictional gaps to evade justice.

69. **Mr. Simcock** (United States of America) said that, despite the long history of the issue of universal jurisdiction as part of international law relating to piracy, basic questions remained about how it should be exercised in relation to universal crimes and about the views and practices of States relating to the topic. His delegation had always participated in the discussions on a number of important issues regarding universal jurisdiction, such as its definition, scope and application, and wished to continue exploring the issue in as practical a manner as possible.

70. **Ms. Weiss Ma'udi** (Israel), recalling her delegation's remarks on the agenda item at previous sessions, said that it was of critical importance to combat impunity and to ensure that the perpetrators of the most serious crimes of international concern were brought to justice. At the same time, her Government shared the concern that, all too often, actors attempting

to advance political agendas used the principle of universal jurisdiction to file spurious complaints in jurisdictions that had no connection, or a tenuous connection, to the alleged incident in question. Such complaints not only undermined the principles of sovereignty, subsidiarity and comity, but were also detrimental to the shared interest of combating impunity and sometimes even had an adverse impact on diplomatic relations. To maintain the integrity of domestic judicial procedures, it was crucial to ensure that, alongside legislation that enabled the use of universal jurisdiction, States enacted legislative, regulatory or policy safeguards to prevent abuse of the principle.

71. Given the continued divergence of views among States, it was premature for any decisions to be reached regarding core issues such as a possible list of crimes in respect of which universal jurisdiction could be exercised, the legal status of the principle or the conditions for its application. In that regard, the decision of the International Law Commission to include the topic "Universal criminal jurisdiction" in its long-term programme of work was premature and counterproductive and lacked the requisite consensus, since almost 20 Member States, representing a variety of views and political outlooks, as well as a major regional group, had objected to the decision in the context of the Committee. In addition, identifying State practice in relation to universal jurisdiction presented a major challenge because of the lack of publicly available data. In particular, when national prosecutors decided to refrain from pursuing a case after determining on the basis of relevant State practice that immunity applied, such decisions were generally not published and would therefore not be able to inform the Commission's work.

72. The principle of universal jurisdiction must be applied in a manner consistent with other principles of international law, including the principles of State sovereignty, reciprocity and immunity. Israel shared the view that there was no exception or limitation to the immunity of State officials from foreign criminal jurisdiction. Furthermore, determinations on the applicability of immunity must be made at the highest levels in the forum State and only after consultation with the State of citizenship of the official in question. Indeed, a decision to institute a criminal investigation risked violating the foreign official's immunity under customary international law. Attempts to abuse the principle of universal jurisdiction in order to advance political goals must therefore be curbed; they threatened the stability of international relations and the sovereign equality of States. Given the complexity and sensitivity of the topic of universal jurisdiction and the potential for misinterpretation or abuse of the principle, it would be preferable for States to continue their deliberations on the topic within the Committee.

73. **Ms. de Souza Schmitz** (Brazil) said that her delegation welcomed the establishment of a working group on the topic of universal jurisdiction and reiterated the need for an incremental approach to the discussion. The working group's first task should be to find a consensual definition of universal jurisdiction and a shared understanding of the scope of its application, so as to prevent the selective use of the principle. Universal jurisdiction could be a tool for the prosecution of individuals alleged to have committed serious crimes that violated peremptory norms of international law. The exercise of jurisdiction irrespective of the link between the crime and the prosecuting State was an exception to the principles of territoriality and nationality; States with such a link had primary jurisdiction. The exercise of universal jurisdiction should also be limited to specific crimes and must not be arbitrary or designed to satisfy interests other than those of justice. The working group would also need to consider other questions, such as the crimes that would trigger the universality principle, the need for the formal consent of the State with primary jurisdiction, the need for the presence of the alleged offender in the territory of the State wishing to exercise universal jurisdiction, the relationship between universal jurisdiction and other norms, such as the principle of *aut dedere aut judicare*, and the compatibility of universal jurisdiction with the immunity of State officials. Member States would need to be flexible on those matters in order to make progress.

74. In Brazil, the exercise of criminal jurisdiction was based first and foremost on the principle of territoriality, although extraterritorial jurisdiction was sometimes exercised on the basis of the active personality or passive personality principles. Under the Brazilian Criminal Code, the principle of universal jurisdiction was accepted only in exceptional circumstances and subject to clear and objective conditions. Brazilian law was applicable to the crime of genocide committed abroad if the perpetrator was a national or a resident of Brazil. Under certain circumstances, Brazil could also exercise jurisdiction over crimes such as torture that it had undertaken to repress through international treaties, even when they were perpetrated abroad. National legislation was required in order to exercise universal jurisdiction or to bring charges for an action or omission considered a crime under international law. Universal jurisdiction could therefore not be exercised over a crime under customary international law alone, because the lack of specific legislation to that end would result

in a violation of the principle of legality. Moreover, Brazil under no circumstances exercised universal jurisdiction in absentia.

75. Lastly, although there was a distinction between universal jurisdiction and the exercise of criminal jurisdiction by international tribunals, both were aimed at denying impunity to the perpetrators of serious international crimes, and they should be complementary to each other.

76. **Ms. Flores Soto** (El Salvador) said that universal jurisdiction played a key role in combating impunity for the most serious crimes of international concern and enabling victims to seek justice, truth and reparation. El Salvador had a solid legal framework for the application of the principle. Specifically, article 10 of the Criminal Code provided for the application of Salvadoran criminal law to crimes committed by any person in a place not subject to the jurisdiction of El Salvador, if those crimes affected rights that were internationally protected by specific agreements or rules of international law. The Constitutional Chamber of the Supreme Court of Justice had referred in a judgment to the definition set out in the Princeton Principles on Universal Jurisdiction, according to which certain crimes were so harmful to international interests that States were entitled, and even obliged, to bring proceedings against the perpetrator, regardless of where the crime was committed or the nationality of the perpetrator or the victim. Other court judgments established the applicability of universal jurisdiction to the most serious crimes of international concern, such as genocide and violation of the laws and customs of war, or extended its applicability to acts of transnational organized crime, such as drug trafficking, trafficking in persons and the financing of terrorism, on the basis of the relevant conventions. Furthermore, in accordance with the principle of subsidiarity, universal jurisdiction could be exercised by the national courts only when the State in which the crime had occurred was unable or unwilling to prosecute. The national legal framework and case law thus provided the foundation for the application of universal jurisdiction, in line with the various international legal instruments for the protection of human rights to which El Salvador was a party and which, in accordance with the Constitution, formed part of national law. Lastly, her delegation saw merit in the suggestions made by the representative of Sierra Leone and the comments made by the representative of Brazil.

77. **Mr. Al Reesi** (Oman) said that, in his delegation's view, the principle of universal jurisdiction applied in cases of grave crimes when the State in which the crime was committed was unwilling or unable to prosecute. It should not detract from the principles of State sovereignty, immunity of State officials and non-interference in the internal affairs of States. Oman was a party to a range of regional and international instruments on combating international crimes, in addition to numerous bilateral agreements on extradition, mutual legal assistance and combating terrorism, drug trafficking and cybercrime. In recent years, his Government had adopted laws on extradition and on combating money-laundering and the financing of terrorism.

78. **Mr. Košuth** (Slovakia) said that there was increasing acceptance of universal jurisdiction in national legal systems, as well as a growing body of relevant State practice. In that regard, Slovakia welcomed the decision handed down by a court in Germany in February 2021 in connection with crimes against humanity committed by a Syrian national in Syria. Slovakia had continuously voiced its support for the application of universal jurisdiction in relation to crimes of concern to the international community as a whole, namely, piracy, crimes against humanity, war crimes, genocide and torture. Universal jurisdiction complemented other well-established jurisdictional bases, such as territoriality and personality, and thus helped to close the impunity gap. In the absence of universal acceptance of the Rome Statute of the International Criminal Court and of a truly universal framework for mutual legal assistance, universal jurisdiction remained a guarantee of accountability.

79. His delegation hoped that a more detailed legal debate on universal jurisdiction would help to alleviate the sensitivities associated with the principle. The International Law Commission was the body best placed to engage in such a debate and would contribute to the objective, unpoliticized examination of the principle. It should therefore move the topic "Universal criminal jurisdiction" to its current programme of work. It could also explore aspects of civil jurisdiction over claims brought by victims in cases tried on the basis of universal criminal jurisdiction.

80. **Ms. Jiménez Alegría** (Mexico) said that her delegation welcomed the inclusion of the topic "Universal criminal jurisdiction" in the long-term programme of work of the International Law Commission and encouraged the Commission to move the topic to its current programme of work now that it had completed the consideration of a number of other topics. With regard to the application of the principle of universal jurisdiction, a number of fundamental issues, such as the subsidiary nature of universal jurisdiction in relation to jurisdiction based on traditional links to the crime in question, such as territoriality, and the distinction between universal jurisdiction and the

principles of extradite or prosecute (*aut dedere aut judicare*) and international criminal jurisdiction, appeared to have been resolved or were close to being resolved. However, a number of issues, such as the application of universal jurisdiction in absentia, still required clarification. Her delegation believed that, while universal jurisdiction was fundamentally derived from the State's prescriptive jurisdiction, the presence or absence of the alleged offender in the State's territory was an issue related to the State's enforcement jurisdiction.

81. It was important to identify the crimes that should be subject to universal jurisdiction; the 2016 informal working paper prepared by the Chair of the working group was relevant in that regard. In her delegation's view, there were two possible approaches: a list of crimes could be produced, or the nature of particular acts could be considered on a case-by-case basis. It was also necessary to determine whether the long-term objective was to produce a binding instrument or only guidelines or principles. That would help to clarify the best methods of cooperation in cases of concurrent universal jurisdiction and ensure respect for the principle of *ne bis in idem*. Her delegation supported the proposal to biennalize the work of the working group, while continuing the Committee's consideration of the topic on a yearly basis.

82. Universal jurisdiction was a politically sensitive topic, since the misuse of the principle could give rise to selective and arbitrary prosecutions. Her delegation reiterated its commitment to working towards a legal regime for universal jurisdiction that would safeguard against such misuse.

83. **Mr. Zoungrana** (Burkina Faso) said that the principle of universal jurisdiction embodied the moral duty of all humanity to combat impunity and was often the only way for the victims of the worst crimes to achieve justice. Burkina Faso had reaffirmed its commitment to the principle by including it in the Criminal Code and the Code of Criminal Procedure, adopted in 2018 and 2019, respectively. On the basis of those Codes, the courts of Burkina Faso had jurisdiction over international crimes such as war crimes, genocide and crimes against humanity, irrespective of where they were committed or of the nationality of the perpetrator, accomplice or victim. A law establishing the procedures and competent authorities for implementing the Rome Statute of the International Criminal Court in Burkina Faso had also been adopted.

84. In order for universal jurisdiction to be applied effectively, gaps in national laws should be filled not only through bilateral agreements but also through effective multilateral mechanisms for judicial cooperation and mutual assistance in criminal matters. For that reason, his delegation encouraged the United Nations to strengthen the legal assistance it offered to those States that requested it.

85. In order to preserve consensus on the scope and application of universal jurisdiction, it should be exercised only in respect of the most serious international crimes, including terrorism and the financing of terrorism, genocide, war crimes, crimes against humanity, slavery, torture and trafficking in persons. It should be applied only when the State with primary jurisdiction was unable or unwilling to prosecute the alleged perpetrators, and in compliance with the fundamental principles of international law enshrined in the Charter of the United Nations, such as the sovereign equality of States, non-interference in their internal affairs and the immunity of State representatives.

86. **Mr. Rittener** (Switzerland) said that it was regrettable that no international consensus had been reached to date on the definition and scope of universal jurisdiction. In view of the highly legal and technical nature of the topic, Switzerland reaffirmed its proposal that it be taken up by the International Law Commission. A comprehensive legal study of the practical application of the principle would provide a solid basis for future constructive discussions.

87. Universal jurisdiction helped to ensure that individuals guilty of the most serious crimes were brought to justice in cases where no other court was seized of the matter. For that reason, Switzerland recognized and applied the principle if the alleged perpetrator of crimes committed abroad was present in Swiss territory and was not extradited or transferred to an international criminal court recognized by Switzerland. In June 2021, the Federal Criminal Court had handed down its first judgment on the basis of universal jurisdiction in a case concerning a former member of an armed group, who had been found guilty of numerous war crimes and sentenced to 20 years in prison. The judgment had not yet entered into force.

88. Cooperation between States was essential for the prosecution of the most serious international crimes. Mutual legal assistance played a key role in the gathering of evidence. Switzerland was committed to facilitating such assistance – for example, it had recently amended its Federal Act on International Mutual Assistance in Criminal Matters to provide for cooperation with bodies such as the International, Impartial and Independent Mechanism – and called on all States to take similar steps. Various legal proceedings

currently under way in several States on the basis of universal jurisdiction demonstrated the relevance of the principle, as did the recent landmark judgment handed down in Germany in connection with crimes against humanity committed by a Syrian national in Syria.

89. **Mr. Zukal** (Czechia) said that universal jurisdiction was an important tool for bringing the perpetrators of the most heinous crimes to justice. In the interest of all States, crimes against humanity and other crimes under international law that violated universal values, whenever and wherever committed, must be prosecuted and punished, not only to hold perpetrators accountable but also to provide justice for victims and prevent the commission of such crimes in the future.

90. Universal jurisdiction served as a guarantee against impunity in that it allowed States to investigate and prosecute crimes, irrespective of the nationality of the perpetrators or of the place where the crimes had been committed. At the same time, those States with a link of territoriality or personality to the crime in question retained primary responsibility for bringing the perpetrators to justice. Universal jurisdiction was a generally recognized principle of international law that Czechia, like many other States, had incorporated into its national law. The question of its scope and application was a purely legal one, and discussions should not be burdened by the political considerations that inevitably came into play in the debates of the Committee. The working group on the topic had been unable to make significant progress.

91. Universal jurisdiction was a practical area of international law, and legal certainty regarding its scope and application was desirable. His delegation had therefore proposed that the issue be referred to the International Law Commission, which, as an independent expert body, could provide a thorough legal analysis of the disputed aspects of universal jurisdiction that would not only further the debate in the Committee but also demonstrate the Committee's commitment to strengthening its interaction with the Commission. The Committee would still retain final responsibility for the treatment of the topic.

92. **Ms. Bhat** (India) said that those who committed crimes should not go unpunished merely because of procedural technicalities, such as lack of jurisdiction. The principle of universal jurisdiction, which allowed a State to bring criminal proceedings in respect of certain crimes, irrespective of the place of commission and the nationality of the perpetrator or the victim, constituted an exception to the general criminal law principles requiring a territorial or nationality link with the crime, the perpetrator or the victim. Its application was justified by the need to prevent the perpetrators of grave crimes that affected the international community as a whole from obtaining safe haven or from using loopholes in general criminal law to escape prosecution.

93. The applicability of universal jurisdiction to the crime of piracy formed part of customary international law and was also codified in the United Nations Convention on the Law of the Sea. In her delegation's view, the set of crimes besides piracy to which universal jurisdiction applied was limited. A careful analysis of State practice and *opinio juris* was needed in order to identify the existence of a customary rule of universal jurisdiction over a particular crime. Treaty obligations to extradite or prosecute should not be understood as, or used to infer the existence of, universal jurisdiction. Treaty-based jurisdiction was conceptually and legally distinct from universal jurisdiction proper. Every effort must be made to avoid misuse of the principle, given the lack of clarity on the question of which crimes were subject to universal jurisdiction.

94. **Ms. Langerholc** (Slovenia) said that, although there was currently no accepted definition of universal jurisdiction, it could be described as criminal jurisdiction based solely on the nature of the crime, as distinct from the traditional bases of jurisdiction, which typically required some kind of connection based on, for example, territoriality or nationality between the State exercising jurisdiction and the conduct at issue. In accordance with the principle of universal jurisdiction, States could exercise national criminal jurisdiction over certain crimes, such as war crimes, crimes against humanity, genocide, slavery and torture, in the interest of the international community as a whole. While there appeared to be a strong correlation between violations of *jus cogens* and the exercise of universal jurisdiction, the principle did not apply solely to violations of *jus cogens*.

95. Universal jurisdiction served to ensure accountability and provide justice for victims by complementing the jurisdiction of competent national courts, which had primary jurisdiction over crimes occurring within the territory of the State concerned. In recent years, universal jurisdiction had increasingly been exercised by States in the fight against impunity for the most heinous international crimes. Slovenia called upon all States to assist courts at the national and international levels in prosecuting serious international crimes and to fill gaps in national laws by establishing effective multilateral mechanisms for judicial cooperation and mutual assistance in criminal matters.

96. Given the continued divergence of views among States as to the scope and application of universal

jurisdiction and the lack of meaningful progress on the topic, a legal study by the International Law Commission leading to draft guidelines or draft conclusions would be of great use to Member States, international organizations, courts and tribunals, as well as scholars and practitioners of international law. The topic was ripe for progressive development and codification, given the availability of extensive State practice, precedent and doctrine. A study by the Commission could provide clarity regarding the legal definition of the principle and the scope of and conditions for its application.

97. **Mr. Abdelaziz** (Egypt) said that universal jurisdiction should be a complement to, rather than a substitute for, national jurisdiction. Recourse to it should be limited to cases in which the States where such crimes were committed were unwilling or unable to exercise jurisdiction. States exercising universal jurisdiction should refrain from abusing the principle or using it for political purposes. The exercise of universal jurisdiction should be limited by general international law and customary international law and, above all, by respect for the principles of sovereignty of States, non-interference in their internal affairs, the immunity of Heads of State and Government and high-level officials, and diplomatic immunity.

98. Care should be taken to avoid excessively expanding the scope of universal jurisdiction to crimes committed abroad that did not meet conventional standards for the exercise of criminal jurisdiction. As stated in the report of the Secretary-General (A/76/203), the European Court of Human Rights had, in *Hanan v. Germany*, pointed to the negative consequences of excessively broadening the scope of application of the Convention for the Protection of Human Rights and Fundamental Freedoms. In the joint partly dissenting opinion appended to the *Hanan* judgment, reference was further made to the possibility that deducing the jurisdictional link in the meaning of article 1 of the Convention from the existence of a national law obligation to institute criminal proceedings might discourage States from adopting such an obligation and risk undermining the engagement of States parties with the International Criminal Court.

99. It might be useful for the Committee to focus its discussions on areas where there was agreement among delegations, such as international cooperation and the consent of the State in which the crime was committed, both of which were key components for the dispensing of criminal justice on the basis of the principle of universal jurisdiction. His delegation was of the view that the topic should not be moved to the current programme of work of the International Law Commission until the Sixth Committee and its working group had arrived at a consensus.

100. **Ms. Betachew Berhanu** (Ethiopia) said that States must ensure that their law enforcement agencies were able to address the challenges posed by transnational crime, which had become more common and more difficult to control as a result of technological advancement and globalization. Ethiopia had long recognized in its domestic law the principle of universal jurisdiction over crimes such as genocide, crimes against humanity, war crimes, terrorism, money-laundering and all crimes proscribed under treaties to which it was a party. It also recognized the applicability of the principle to offences relating to the illicit manufacture and trafficking of drugs, human trafficking and the production of indecent images and publications.

101. Universal jurisdiction should complement the mandates of domestic courts with direct connections to the crime in question and should be considered only as a last resort, in the event that those courts failed to take appropriate action. Moreover, the universality principle should not be confused with the jurisdiction of the International Criminal Court or of ad hoc mechanisms, which derived from specific agreements between States. State sovereignty must not be undermined by the arbitrary or politically motivated application of the principle of universal jurisdiction. In that regard, the use of the principle against the Heads of State and Government and other leaders of African countries was deeply problematic and regrettable. Appropriate consensus-based rules must therefore be put in place to monitor the use of universal jurisdiction and ensure that it was exercised in accordance with the principle of the sovereignty of States and other principles of international law. The scope and application of universal jurisdiction should be carefully considered, to ensure that it was a credible and legitimate tool for combating impunity. The technical aspects of its enforceability, in terms of international legal cooperation, should also be examined.

The meeting rose at 6 p.m.