

Summary record of the 12th meeting – A/C.6/73/SR.12

Agenda item 87

A/C.6/73/SR.12

United Nations – General Assembly – Seventy Third Session – Official Record – Original: English – Distribution date 21 January 2019
Sixth Committee

Summary record of the 12th meeting

Held at Headquarters, New York, on Thursday, 11 October 2018, at 10 a.m.

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

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

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

Contents

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

Agenda item 147: Administration of justice at the United Nations

In the absence of Mr. Biang (Gabon), Mr. Luna (Brazil), Vice-Chair, took the Chair.

The meeting was called to order at 10.10 a.m.

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

- 1 **Mr. Irimia Arosemena** (Panama) said that his delegation welcomed the ongoing discussions on universal jurisdiction, the exercise of which could facilitate access to justice for victims of crimes that threatened international peace and security. However, in order to prevent improper use of such jurisdiction, it was important to reach consensus on a precise definition of the concept. In particular, the difference between universal jurisdiction and extraterritorial jurisdiction should be clarified. It was also important to continue compiling evidence on the existence, or the non-existence, of norms that supported the exercise of universal jurisdiction against the perpetrators of the most serious international crimes and to determine whether such norms were customary or treaty-based. In addition, the topic of universal jurisdiction could not be discussed in isolation from the relevant aspects of international criminal law. Correct interpretation of the scope and the limits of States' rights and obligations would facilitate the proper application of universal jurisdiction without infringing the rights of other States or of accused persons.

- 2 Discussions on the application and scope of universal jurisdiction should be approached from a technical perspective and should not be influenced by political considerations. For that reason, and also because the international community had made little progress on the topic thus far, his delegation was of the view that it should remain on the long-term programme of work of the International Law Commission. As a technical body, the Commission could help to advance the Sixth Committee's work on the topic, which was of crucial importance in the fight against impunity.
- 3 **Ms. Weiss** (Israel) said that her delegation considered the decision by the International Law Commission to include the topic of universal criminal jurisdiction in its long-term programme of work to be premature and counterproductive. Universal jurisdiction should continue to be addressed within the Sixth Committee for several reasons. First, while it was unquestionably important to ensure that the perpetrators of the most serious crimes of international concern were brought to justice, all too often universal jurisdiction was used primarily to advance a political agenda or to attract media attention, rather than to promote the rule of law. It was therefore better for States to continue deliberations on the topic within the Sixth Committee, which operated on the basis of consensus.
- 4 In addition, identifying State practice in relation to universal jurisdiction presented a major challenge because the vast majority of the relevant legal data – including on the types of complaints filed, the identity of the States that received such complaints and the manner in which they were handled – remained confidential. There was thus a significant risk that reliance on publicly available material, which was the only material available to the International Law Commission, would present a distorted picture of State practice and provide a poor basis for proper legal analysis.
- 5 Moreover, the Commission's work on the closely related topics of crimes against humanity, peremptory norms of general international law (*jus cogens*) and immunity of State officials from foreign criminal jurisdiction might overlap with and influence its work on universal jurisdiction. Only after the Commission's work on those topics was completed would it be appropriate and beneficial to consider the question of the proper forum for the study of universal jurisdiction.
- 6 As her delegation had stated before, it was necessary to be sure that the principle of subsidiarity was honoured and that universal jurisdiction mechanisms were used only as a last resort. Moreover, her delegation warned against the potential for political abuse of universal jurisdiction mechanisms and stressed the importance of adopting safeguards against such unacceptable abuse.
- 7 **Mr. Nguyen** Nam Duong (Viet Nam) said that universal jurisdiction should be defined and applied in keeping with the principles enshrined in the Charter of the United Nations and in international law, including sovereign equality of States, non-interference in the internal affairs of other States and the immunity of State officials. Only the most serious international crimes should be subject to universal jurisdiction, and it should apply only as a last

- resort and as a complement to the exercise of national or territorial jurisdiction by a State with a stronger link to the crimes. Furthermore, universal jurisdiction should be exercised by a State only when the alleged perpetrator was present in its territory, and only after the possibility of extradition had been discussed with the State in which the crime had occurred and with the alleged perpetrator's State of nationality, subject to the principle of dual criminality.
- 8 His Government viewed universal jurisdiction as an important tool for combating the most serious crimes and preventing impunity. Its Criminal Code as amended in 2015 provided for universal jurisdiction in the case of certain crimes, in accordance with the international treaties to which Viet Nam was a party. Viet Nam had thus demonstrated its commitment to ensuring that perpetrators of the most serious international crimes were brought to justice and that the rule of law was upheld at the national and international levels.
 - 9 To ensure that universal jurisdiction was exercised in good faith and in an impartial manner, his delegation supported the development of common standards relating to its scope and application. It also believed that the Committee's discussions would benefit from a review of the decisions and judgments of the International Court of Justice and the relevant work of the International Law Commission in order to help settle unresolved issues regarding the definition, scope and application of the principle, the list of serious international crimes subject to universal jurisdiction and the conditions for its application.
 - 10 **Mr. Phiri** (Zambia) said that, although views on the definition of universal jurisdiction varied and its scope was still under consideration, it was generally agreed that, where specific criteria were satisfied, serious crimes clearly prohibited under international law should be subject to universal jurisdiction under customary international law. The aim of universal jurisdiction was to promote global accountability by bringing perpetrators to justice. It placed an obligation on countries, and gave them the latitude, to punish serious crimes and to prevent their territories from being used as de facto safe havens for the perpetrators of such crimes. The exercise of universal jurisdiction was particularly important where countries with links to the crime were unable or unwilling to investigate and prosecute the perpetrators.
 - 11 The international community could not rely on the goodwill of States to guarantee the prosecution of perpetrators of atrocious crimes such as genocide, crimes against humanity, war crimes, slavery and torture. An appropriate legal framework that compelled or empowered countries either to extradite or to prosecute was needed. All Member States should therefore ensure that the provisions of relevant treaties were incorporated into their domestic law and/or enact or expand universal jurisdiction statutes.
 - 12 Zambia had ratified and domesticated a number of treaties, including the Southern African Development Community Protocols on Mutual Legal Assistance in Criminal Matters and on Extradition and the United Nations Convention against Transnational Organized Crime. Steps were also being taken to incorporate the principle of universal jurisdiction into national laws, such

as the new anti-terrorism law of 2018, which covered cases where there was no extradition agreement in force between Zambia and the other State concerned. His Government was also willing to enter into cooperation agreements with foreign authorities and law enforcement agencies in order to ensure that the perpetrators of terrorist acts were brought to justice. It had commenced the process of drafting a bill to incorporate the provisions of the Rome Statute of the International Criminal Court into Zambian law, which would contribute to cooperation in curbing international crimes. His delegation urged States to enhance the application of the principle of universal jurisdiction as a complement to national criminal jurisdiction. It also encouraged further cooperation between the United Nations and the International Criminal Court.

- 13 Of course, the constraints of *realpolitik* and the restrictions of diplomacy sometimes made it difficult to implement universal jurisdiction. The inconsistent and sometimes unpredictable manner in which universal jurisdiction had been applied had caused friction among States, especially when its application appeared to be politically motivated and to target particular countries or types of countries, or where there was an apparent abuse of legal processes or a subjective interpretation of customary international law. Selective application of universal jurisdiction could prove counterproductive and undermine the fight against impunity.
- 14 The question of whether sitting Heads of State and Government and other high-level officials might be subject to prosecution in the International Criminal Court, in special tribunals or in the courts of other countries or territories remained unresolved, particularly where the country concerned was not a party to the Rome Statute. The decision of the African Union in January 2018 to request, through the General Assembly, an advisory opinion from the International Court of Justice on the relationship between articles 27 and 98 of the Rome Statute was therefore timely and would, he hoped, yield a final resolution to the question of whether Heads of State of non-party States were immune from arrest by States parties to the Rome Statute.
- 15 While there could be merit in a study of the topic by the International Law Commission, the Sixth Committee should not relinquish its responsibility to address and resolve questions relating to universal jurisdiction.
- 16 **Ms. Gaye** (Senegal) said that her Government had incorporated the principle of universal jurisdiction into its domestic law in 2007. In addition, Senegal was a party to several international instruments that dealt with matters that might give rise to the exercise of universal jurisdiction.
- 17 Questions remained about universal jurisdiction, particularly concerning the type of crimes it covered. In order to ensure that collective efforts to implement it would not be undermined by concerns regarding its scope and its potential misuse, it must be exercised in good faith, not in a selective manner, and in line with the principles of international law, including State sovereignty, non-interference in the internal affairs of States and the sovereign equality of States. Complementarity, too, should come into play, meaning that universal jurisdiction could be exercised only when States could not or

- would not investigate or prosecute the alleged perpetrators of crimes. Domestic courts had the primary responsibility to carry out investigations or prosecutions of crimes committed by their nationals, on their territory or in other places under their jurisdiction.
- 18 While noting the inclusion of the topic in the long-term programme of work of the International Law Commission, her delegation hoped that the Sixth Committee would continue its discussions on universal jurisdiction. In order to take account of all concerns and ensure credibility in the application of universal jurisdiction, the Committee's debate should be oriented towards reaching consensus on a definition of the concept and on its scope.
 - 19 **Ms. Kalb** (Austria) said that her delegation supported the concept of universal jurisdiction as part of the common fight against impunity for international crimes. However, a considerable amount of confusion continued to surround the concept. An in-depth academic analysis would help to avoid misunderstandings and would serve to inform a thorough discussion of the topic within the Sixth Committee. Her delegation therefore welcomed the decision by the International Law Commission to include the topic "Universal criminal jurisdiction" in its long-term programme of work and encouraged the Commission to take into consideration in its deliberations the relevant work of the Sixth Committee and the views of Member States. As to the outcome of the Commission's work, her delegation would favour the development of guidelines to assist States.
 - 20 It was necessary to arrive at a definition of the concept of universal jurisdiction and to elucidate its scope. The Commission should examine all the different forms of jurisdiction, including jurisdiction to legislate, to adjudicate and to enforce, and should also consider the limits of those forms of jurisdiction. For example, it was her Government's view that jurisdiction to adjudicate should be restricted to trials in the presence of the accused and that jurisdiction to enforce judgments delivered by a State exercising universal jurisdiction should be limited by considerations relating to the sovereignty of other States.
 - 21 Universal criminal jurisdiction, as exercised by States on the basis of either a treaty or customary international law, had to be clearly distinguished from the jurisdiction of international courts and tribunals, such as the International Criminal Court and the international criminal tribunals for the former Yugoslavia and for Rwanda. Universal jurisdiction must also be considered separately from the issue of immunity of State officials.
 - 22 **Mr. Al-Sugair** (Saudi Arabia) said that the principle of universal jurisdiction had been formulated with the laudable objective of fighting impunity. However, it was too early for the principle to be enshrined in international law. Clear standards and mechanisms had yet to be put in place in order to apply the principle and define its scope. Many Member States, including his own, had drawn attention to other formal and substantive obstacles to its application, notably the principles set forth in the Charter of the United Nations and international law, such as the immunity of foreign officials and the sovereign equality of States ... Any attempt to apply universal jurisdiction with-

out regard for those principles would be counterproductive and would leave the door open for politicization. Similarly, any national law that was inconsistent with the Charter and international law deserved condemnation. The enormous diversity in the way judicial proceedings were conducted under the domestic laws of States also constituted an obstacle to the application of the principle.

- 23 His delegation noted the decision by the International Law Commission to include the topic of universal criminal jurisdiction in its long-term programme of work but was of the view that further study within the Sixth Committee was needed in order to define the scope and application of the principle of universal jurisdiction. It therefore called on all Member States to continue exploring ways to apply universal jurisdiction in keeping with the Charter and the principles of international law, in order to achieve their shared goal of finding an effective way to combat impunity.
- 24 **Mr. Jaitoh** (Gambia) said that his Government categorically rejected any form of impunity and accepted the principle of universal jurisdiction as enshrined in the Constitutive Act of the African Union. It was concerned, however, about the prevailing uncertainty regarding the scope and application of universal jurisdiction and about its abuse. Indeed, it had been abuse of the principle that had originally prompted the Group of African States to request the inclusion of the topic in the agenda of the General Assembly. Invoking universal jurisdiction where it was not necessary could infringe on State sovereignty and thereby undermine the peace and security of States.
- 25 His delegation recognized universal jurisdiction as a principle of international law and called for clear guidance as to which crimes met the threshold for the exercise of such jurisdiction. It took note of the view, expressed by many delegations, that the purpose of universal jurisdiction was to ensure that individuals who committed grave offences, such as war crimes, genocide and crimes against humanity, did not enjoy impunity. In the application of universal jurisdiction, it was important to respect other norms of international law, including the sovereign equality of States, the territorial jurisdiction of States and the immunity of State officials. His delegation called upon all States to work together with a view to adopting measures to put an end to the abuse and political manipulation of universal jurisdiction.
- 26 The decision by the International Law Commission to place the topic on its long-term programme of work seemed to be aimed at ending the deadlock in the Sixth Committee's discussions on the matter and providing a way forward. Nevertheless, the topic remained of keen interest to African Member States, and it should remain on the agenda of the Committee in order to ensure full deliberations on the outstanding issues.
- 27 **Mr. Coulibaly** (Mali) said that universal jurisdiction was a fundamental tool for ensuring punishment in cases of serious violations of international law, such as those that continued to be committed by terrorist groups and drug traffickers. It was, however, important to define universal jurisdiction and to clarify its scope and application. The principles of sovereign equality of States, non-interference in their internal affairs and immunity of State offi-

- cials, especially Heads of State and Government, must be respected in the exercise of such jurisdiction.
- 28 In line with its international commitments, Mali had put in place a national legal framework to reinforce the fight against terrorism, including through the punishment of perpetrators and the protection of victims. In that connection, he welcomed the historic decision of the International Criminal Court to convict the Malian terrorist Ahmad Al Faqi Al Mahdi for the destruction of mausoleums and historical sites in Timbuktu during the occupation of the northern part of the country by terrorists in 2012. His Government would continue to honour its national and international commitments to universal and independent justice.
- 29 **Mr. Gumende** (Mozambique) said that the question of the application of universal jurisdiction was of great importance to all Member States and was of particular concern to the African States. His delegation considered it inappropriate for individual States to attempt to apply the principle until an international consensus on the matter had been reached, since unilateral application of universal jurisdiction could disrupt the internationally accepted legal system. Universal jurisdiction should be exercised only after the international community had established the criteria for its application, determined its compatibility with the Charter of the United Nations and other relevant instruments of international law and identified the crimes that could be subject to universal jurisdiction and the circumstances in which they could be invoked. Universal jurisdiction could be considered legitimate only if it was exercised with respect for the principles of the sovereign equality of all States, non-interference in the internal affairs of States and the immunity of State officials, in particular Heads of State.
- 30 His Government strongly condemned the application of universal jurisdiction for political motives or reasons other than those allowed under international law. However, it could be an important tool for the prosecution of perpetrators of certain serious crimes, such as those related to the slave trade, trafficking in human beings, air and maritime piracy, terrorism and related acts, abduction, organized crime and genocide. His Government would never condone impunity and stood ready to share experiences and best practices on the issue with other Member States.
- 31 **Mr. Nasimfar** (Islamic Republic of Iran) said that the rationale for universal jurisdiction appeared to be that certain particularly grave crimes must be considered as being committed against the community of nations as a whole rather than against 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.

- 32 An expansion of the list of crimes considered to be subject to universal jurisdiction would not be compatible with the purposes of such jurisdiction. Furthermore, 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 such crimes would risk creating judicial chaos. Moreover, the majority of the judges had indicated that the application of universal jurisdiction in absentia was unknown to conventional 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.
- 33 As Member States had yet to develop a common understanding of the concept of universal jurisdiction, it would not be advisable for the International Law Commission to take up the topic at the current stage. Continued deliberations in the Sixth Committee would give Member States an opportunity to consider the various aspects of universal jurisdiction with a view to identifying its scope and the limits of its application and preventing any inappropriate use of such jurisdiction.
- 34 **Mr. Bawazir** (Indonesia), noting that the Committee's discussions on universal jurisdiction had become all the more important in the light of current humanitarian crises, said that it was critical to close legal gaps in order to end impunity and protect the rights of victims. Lack of clarity as to the scope and application of universal jurisdiction could lead to inappropriate and even abusive application of domestic law in respect of foreign nationals and could undermine fundamental principles of international law, such as that of immunity of State officials from foreign criminal jurisdiction. A cautious approach was therefore required. Without clear guidance and agreement on the scope and application of the principle of universal jurisdiction, the necessary cooperation between States to ensure investigation and prosecution would not occur and conflict could be triggered between the State of nationality of the perpetrator and the State applying universal jurisdiction.
- 35 Universal jurisdiction should be exercised with full respect for the principles enshrined in the Charter of the United Nations, including those of good faith, sovereign equality of States and territorial integrity. Universal jurisdiction should also be complementary to national and territorial jurisdiction and should be exercised only on an exceptional basis, when the State where the crime had been committed or the State of nationality of the perpetrator was unable or unwilling to exercise its jurisdiction. Accordingly, it was important to improve the capacity of States to ensure the investigation and prosecution of the gravest crimes.

- 36 In order to prevent abuses in the application of universal jurisdiction, its scope must be limited to the most heinous crimes. The principle of universal jurisdiction must also be distinguished from the obligation to extradite or prosecute, which was often broader in scope. Universal jurisdiction had long been recognized and applied in respect of piracy, but few States had provided for its application in respect of other crimes. His delegation supported the Secretariat's efforts to gather information on relevant State practice and *opinio juris*. It also supported continued discussion on universal jurisdiction within the Sixth Committee and was of the view that it would be premature for the International Law Commission to take up the topic.
- 37 **Mr. Nyan Lin Aung** (Myanmar) said that, despite the efforts of the Sixth Committee, there was still no international consensus on the definition and scope of the principle of universal jurisdiction, the conditions under which it might be exercised and the procedure for its application. The absence of such a consensus created the potential for abusive application of universal jurisdiction by some States or groups of States, which would undermine established rules and principles of international law, including the principles enshrined in the Charter of the United Nations. Selectivity and manipulation in the application of the principle of universal jurisdiction could transform it into a political instrument rather than a legal mechanism.
- 38 Universal jurisdiction must be complementary to existing bases of jurisdiction recognized under international law, especially nationality and territoriality. The main responsibility for the exercise of criminal jurisdiction lay with the State where the crime had taken place. In addition, the national sovereignty, territorial integrity and political independence of every State must be strictly respected. His delegation shared the concern expressed by many others about the implications of the application of universal jurisdiction for the immunity of State officials.
- 39 **Ms. Mōnōko** (Lesotho) said that the principle of universal jurisdiction was an integral part of international law that enabled the dispensation of justice in places where it would otherwise be unimaginable. However, the definition of the principle itself was not the issue before the Committee. The topic had been placed on its agenda with the sole aim of determining the scope and application of universal jurisdiction in the wake of abuses thereof. It was her delegation's hope that the deliberations on the topic would return to a focus on the real issues before the Committee.
- 40 If applied appropriately, universal jurisdiction was an effective way to combat impunity internationally, but if abused it could endanger international law and security. Her delegation repudiated such abuse, which was contrary to the principles of sovereign equality and independence of States. It was essential to avoid arbitrary or selective application of the principle of universal jurisdiction. Her delegation noted in that regard the oft-repeated criticism of universal jurisdiction, namely that it was open to misuse by States to usurp the sovereignty of other States, particularly African States. Her delegation further drew attention to the various resolutions of the African Union

expressing grave concerns about misuse of the principle of universal jurisdiction in violation of the immunity of State officials.

- 41 *Ms. Kremžar (Slovenia), Vice-Chair, took the Chair.*
- 42 **Mr. Luna** (Brazil) said that, as a basis for jurisdiction, universal jurisdiction was of an exceptional nature compared with the more consolidated principles of territoriality and nationality. Although the exercise of jurisdiction was primarily the responsibility of the State concerned in accordance with the principle of the sovereign equality of States, combating impunity for the most serious crimes was an obligation set out in numerous international treaties. Universal jurisdiction should be exercised only in full compliance with international law; it should be subsidiary to domestic jurisdiction and limited to specific crimes; and it must not be exercised arbitrarily or in order to fulfil interests other than those of justice.
- 43 A shared understanding of the scope and application of universal jurisdiction was necessary in order to avoid its improper or selective application. In that connection, his delegation reiterated the need for the Committee's working group on the topic to take an incremental approach in its discussions. The working group should continue to seek an acceptable definition of the concept and could also consider the kinds of crimes to which such jurisdiction would apply, as well as its subsidiary nature.
- 44 His delegation welcomed the decision by the International Law Commission to include the topic of universal criminal jurisdiction in its long-term programme of work and encouraged the Commission to move the topic to its current programme of work as early as possible. Simultaneous discussion of universal jurisdiction by the Commission and the Sixth Committee would offer an opportunity to revitalize the relationship between the two bodies. The General Assembly might request the Commission to provide a legal analysis on specific questions and report back at the following session. It might, for example, ask the Commission to consider whether, for universal jurisdiction to be applied, the consent of the State where a crime had taken place or the presence of the alleged criminal in the territory of the State wishing to exercise jurisdiction were required. One of the most contentious issues was how to reconcile universal jurisdiction with the jurisdictional immunities of State officials. At the current stage of discussion, it would be premature for either the Committee or the Commission to consider the adoption of uniform international standards on the matter.
- 45 Under Brazilian law, the principles of territoriality and nationality were recognized as bases for exercising criminal jurisdiction. The country's courts could exercise universal jurisdiction over the crime of genocide and other crimes, such as torture, which Brazil had a treaty obligation to suppress. Under Brazilian law, it was necessary to enact national legislation to enable the exercise of universal jurisdiction over a specific type of crime; such jurisdiction could not be exercised on the basis of customary international law alone.
- 46 **Ms. Ighil** (Algeria) said that, while the international community had a shared responsibility to seek justice and combat heinous crimes, abuse of the princi-

ple of universal jurisdiction undermined efforts to prevent impunity and affected the credibility of international law. Her Government wished to register its concern about the selective, politically motivated and arbitrary application of universal jurisdiction without due regard for international justice and equality. It was important to recall, in that connection, that the African Heads of State and Government had condemned the selective application of universal jurisdiction to African States, especially by the International Criminal Court, which had focused almost exclusively on Africa while ignoring unacceptable situations in other parts of the world.

- 47 Universal jurisdiction must be exercised in good faith, with due respect for basic principles of international law, including the sovereign equality of States, political independence and non-interference in the internal affairs of States. It should be considered a complementary mechanism and a measure of last resort; it could not override the right of a State's national courts to try crimes committed in the national territory. Furthermore, the immunities granted to Heads of State and Government and other senior officials under international law must be respected. A cautious approach should be taken in any discussion of immunity, given the sensitive nature of the issue. At the request of the Group of African States, the agenda of the General Assembly now included an item entitled "Request for an advisory opinion from the International Court of Justice on the consequences of legal obligations of States under different sources of international law with respect to immunities of Heads of State and Government and other senior officials".
- 48 Her delegation, while noting the decision by the International Law Commission to include the topic of universal criminal jurisdiction in its long-term programme of work, was of the view that the Committee's working group should further consider whether it was timely and appropriate to refer the topic of universal jurisdiction to the Commission. The Committee's deliberations should focus on the scope and definition of universal jurisdiction and on the identification of clear rules for its application.
- 49 *Mr. Luna (Brazil), Vice-Chair, resumed the Chair.*
- 50 **Mr. Islam** (Bangladesh) said that a pragmatic approach was needed in order to prevent the possible abuse of universal jurisdiction for political reasons. Such jurisdiction could be asserted in prosecuting the most serious international crimes, but it should not supplant other jurisdictional bases such as territoriality and nationality. The information in the Secretary-General's report (A/73/123 and A/73/123/Add.1) revealed the broad range of crimes that States considered to be subject to universal jurisdiction and the international legal instruments referred to by Governments in that connection. It was important to continue to share information on national laws and practices and the evolution thereof. His delegation supported the suggestion put forward by the Movement of Non-Aligned Countries that consideration be given to the establishment of a mechanism to monitor the application of universal jurisdiction (see A/C.6/73/SR.10), possibly under the aegis of the working group. That suggestion could be discussed during the intersessional period, particularly in view of the lack of consensus on referring the topic of

universal jurisdiction to the International Law Commission. His delegation also noted the work of the International Committee of the Red Cross (ICRC) to monitor and support developments in national courts, especially in relation to grave breaches of international humanitarian law. Bangladesh was open to further discussions with ICRC in that regard.

- 51 **Mr. Abdullahi** (Nigeria) said that his Government recognized the importance of universal jurisdiction – a cardinal principle of international law – in preventing impunity. While the exercise of universal jurisdiction was meant to ensure that the perpetrators of heinous crimes did not go unpunished, the principle continued to be controversial because it allowed States to claim criminal jurisdiction over an accused person irrespective of where the alleged crime had been committed and of the accused person's nationality. Universal jurisdiction should be exercised in good faith and in accordance with other principles of international law, including State sovereignty and the immunity of State officials.
- 52 The primary responsibility for investigating and prosecuting serious crimes lay with the State that had territorial jurisdiction. Universal jurisdiction should be a complementary mechanism and should be used only as a last resort to ensure that perpetrators could be held accountable where the territorial State was unable or unwilling to exercise its jurisdiction. If cooperation with the State where a crime had been committed was possible, especially through agreements on extradition or mutual legal assistance, universal jurisdiction must not be used prematurely.
- 53 The working group should continue its efforts to clarify the definition, scope and application of the principle of universal jurisdiction in order to prevent its misuse to settle political scores and in order to address the concerns of many Member States, including African States, which respected the principle but were troubled by the uncertainty surrounding its scope and the possibility of bias in its application. Given the technical nature of the subject matter, it would be useful if the International Law Commission could contribute to the discussion.
- 54 **Archbishop Auza** (Observer for the Holy See) said that his delegation was grateful to the Committee for the important work it was doing to further the cause of justice and prevent impunity. Genocide, war crimes and crimes against humanity most often affected those living at the margins of society, such as the poor and ethnic or religious minorities, and the international community had a shared responsibility to act on their behalf. Naturally, the scope of universal jurisdiction should extend to threats or attempts to commit war crimes and crimes against humanity, particularly when they forced the massive displacement of migrants and refugees.
- 55 The establishment of universally agreed jurisdictional norms that would ensure that the worst violations of fundamental human rights were investigated and prosecuted and the perpetrators punished was a laudable goal. Nevertheless, it was important to find the right balance between the duty to ensure that those responsible for the most serious crimes were held accountable and the need to respect the sovereign equality of States, the principle of

non-interference in their internal affairs and the immunity of State officials. Any set of norms developed should be consistent with fundamental principles of criminal justice, including those of *nullum crimen, nulla poena sine lege*, due process, presumption of innocence and non-refoulement. Such norms should also be firmly rooted in subsidiarity: to the extent that the territorial State or the State of nationality of the alleged perpetrator was willing and able to prosecute, the community of nations should defer to it. Moreover, a State wishing to exercise universal jurisdiction should have some concrete link to the facts or to the parties in the case, such as the presence of the accused or of the victims in its territory. Universal jurisdiction should not be used as a means of justifying prosecutions in absentia or “forum shopping”. Particular attention should be given to the procedural conditions that must be met in order to set aside the jurisdictional immunities of public officials. In addition, mechanisms should be developed to ensure that the exercise of universal jurisdiction did not generate inter-State conflict.

- 56 His delegation supported further work by the Committee on the topic, including through the working group, with a view to creating a rules-based system for the application of universal jurisdiction. A starting point for that work might be a review of national laws and practice with a view to identifying the crimes generally subject to prosecution at the national level on the basis of universal jurisdiction; determining what conditions, if any, had to be met under national laws for the application of universal jurisdiction in respect of such crimes; and examining any instances in which universal jurisdiction had been the basis for the prosecution of crimes in Member States. His delegation also supported the decision by the International Law Commission to include the topic in its long-term programme of work. The Commission’s work on the draft articles on crimes against humanity and on the immunity of State officials from foreign criminal jurisdiction might make a useful contribution to the work on universal jurisdiction.
- 57 **Mr. Harland** (Observer for the International Committee of the Red Cross) said that universal jurisdiction was one of the key tools for ensuring that serious violations of international humanitarian law were prevented or, when they did occur, investigated and prosecuted. The Geneva Conventions of 1949 and Additional Protocol I thereto stipulated that States parties had an obligation to search for persons alleged to have committed acts defined therein as grave breaches, regardless of their nationality, and to either prosecute or extradite them. Other international instruments, such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, placed a similar obligation on States parties to vest in their courts some form of universal jurisdiction over serious violations of the rules set out therein. In addition, State practice and *opinio juris* had helped to consolidate a customary rule whereby States had the right to exercise universal jurisdiction over serious violations of international humanitarian law.
- 58 States had the primary responsibility for investigating and prosecuting alleged perpetrators of serious violations of international humanitarian law. When States with jurisdictional links to the crime failed to do so, however,

the exercise of universal jurisdiction by other States could serve as an effective mechanism to ensure accountability and prevent impunity. ICRC had now identified 117 States that had established some form of universal jurisdiction over serious violations of international humanitarian law. There had been a steady increase in the number of prosecutions by such States: in 2017, investigations had been launched in over 20 cases involving such violations, and a number of judgments had been delivered, which demonstrated that States were using universal jurisdiction effectively to address impunity gaps; it also sent an important message to victims that accountability was not just an aspirational goal.

- 59 ICRC continued to promote the prevention and punishment of serious violations of international humanitarian law by supporting States in strengthening their national criminal law and in establishing universal jurisdiction over such violations, including through the production of practical tools and technical documents. ICRC encouraged States to ensure that any conditions they attached to the application of universal jurisdiction were aimed at increasing its effectiveness and predictability and that they did not unnecessarily restrict the possibility of bringing suspected offenders to justice.

Agenda item 147: (...)¹

The meeting rose at 12.50 p.m.

1 For the purpose of this journal the Summary Record of this meeting has been reduced to only include Agenda item 87, paragraphs 1-59.