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Summary record of the 12th meeting
Held at Headquarters, New York, on Tuesday, 20 October 2008, at 10 a.m.

Chairperson: Mr. Benmehidi . . . . . (Algeria)
later: Mr. Stastoli (Vice-Chairperson) . . . . . (Albania)

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09-56865 (E)

The meeting was called to order at 10.15 p.m.

Agenda item 142: Administration of justice at the United Nations (*continued*) (A/C.6/64/L.2 and 3)

Oral report by the Chairman of the Working Group on administration of justice at the United Nations

1. **Mr. Hamaneh** (Islamic Republic of Iran) (Vice-Chairman), speaking on behalf of Mr. Sivaguranathan, Chairman of the Working Group on administration of justice at the United Nations, reported on the outcome of the Working Group's meetings. The Committee had established the Working Group on 5 October 2009 (A/C.6/64/SR.1) and had decided that it would be open to all United Nations Member States and to members of specialized agencies or of the International Atomic Energy Agency (IAEA). The Working Group had had before it the report of the Ad Hoc Committee on the Administration of Justice at the United Nations (A/64/55), the report of the Secretary-General on the outcome of the work of the Joint Appeals Board during 2007 and 2008 and between January and June 2009 and statistics on the disposition of cases and work of the Panel of Counsel (A/64/202), the report of the Secretary-General on approval of the rules of procedure of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal (A/64/229), the report of the Secretary-General on the practice of the Secretary-General in disciplinary matters and possible criminal behaviour, 1 July 2008 to 30 June 2009 (A/64/269) and the report of the Secretary-General on the activities of the Office of the United Nations Ombudsman and Mediation Services (A/64/314).

2. The Working Group had held four meetings on 5, 6 and 9 October 2009. On 6 October it had met with the Presidents of the United Nations Appeals Tribunal and the United Nations Dispute Tribunal, two judges of the Dispute Tribunal and the Registrar of the two Tribunals. The Presidents and Registrar had answered delegations' questions regarding the rules of procedure and other aspects of the Tribunals' work. On 5 and 6 October, informal consultations on various outstanding legal issues, including the scope *ratione personae* of the new system, had been held under the coordination of Mr. Fitschen (Germany).

3. The Working Group had recommended the adoption of a draft resolution whereby the General Assembly would approve the rules of procedure of the two Tribunals (A/C.6/64/L.2) and a draft decision on the future work on outstanding legal aspects of the agenda item (A/C.6/64/L.3). It had also recommended that the Chairman should prepare a letter to the President of the General Assembly identifying information and elements that, in the Committee's view, would need to be covered in the reports requested from the Secretary-General in Assembly resolution 63/253 for consideration at the sixty-fifth session of the Assembly, and requesting that the letter should be brought to the attention of the Chairman of the Fifth Committee and circulated as a document of the General Assembly (A/C.5/64/3). The proposed text of that letter had been circulated to delegations.

4. **The Chairman** said that if there was no objection, he would take it that the Committee wished him to send the letter to the President of the General Assembly without delay.

5. *It was so decided.*

Draft resolution A/C.6/64/L.2

6. *Draft resolution A/C.6/64/L.2 was adopted.*

Draft decision A/C.6/64/L.3

7. *Draft decision A/C.6/64/L.3 was adopted.*

Agenda item 84: The scope and application of universal jurisdiction (A/63/237 and Rev.1; General Assembly decision 63/568)

8. **The Chairman** drew attention to two letters to the Secretary-General dated 21 January 2009 and 29 June 2009, respectively, from the Permanent Representative of Tanzania on behalf of the Group of African States, requesting the inclusion of an agenda item on the scope and application of universal jurisdiction in the agenda of the sixty-fourth session of the General Assembly. In its decision 63/568, the Assembly had decided to include the new item in the agenda and had recommended that it should be considered by the Sixth Committee.

9. **Mr. Rose** (Australia), speaking on behalf of the CANZ group of countries (Australia, Canada and New Zealand), thanked the Group of African States for proposing the agenda item and the delegations of Liechtenstein and the United Republic of Tanzania for hosting a panel discussion on the principle of universal

jurisdiction, held in New York on 6 October 2009. The panel had clarified that principle by distinguishing it from what it was not, including the application of nationality or passive personality jurisdiction or the exercise of jurisdiction by international criminal tribunals.

10. Universal jurisdiction was a long-established principle of international law which vested in every State the competence to exercise, on behalf of the international community, criminal jurisdiction over individuals responsible for the most serious crimes of international concern, no matter where those crimes occurred. The principle had been developed in customary international law in order to prevent pirates from enjoying impunity or safe haven and had since been extended to include genocide, war crimes, crimes against humanity, slavery and torture, which, owing to their nature or exceptional gravity, were the joint concern of all members of the international community.

11. The primary responsibility for investigating serious international crimes lay with the State where the crime occurred (the "territorial State"); where it had an effective legal framework, the need for other States to assert jurisdiction was diminished since the territorial State was best placed to obtain evidence, secure witnesses and enforce sentences and, perhaps most importantly, to ensure that the "justice message" was delivered to affected communities. However, many such crimes went unpunished, including where the accused moved to another country. He therefore called on all States to incorporate grave crimes into their domestic law and to provide each other with practical assistance in promoting the rule of law and developing the capacity of domestic criminal justice systems to prosecute such crimes. Universal jurisdiction served as a complementary mechanism; State practice suggested that in the rare cases where a national court had asserted such jurisdiction, there had been a link between the offence and the forum State such as the presence of the accused person in the latter's territory.

12. National courts should exercise all forms of extraterritorial jurisdiction in good faith and in a manner consistent with the principles and rules of international law in order to ensure that the desire to end impunity did not in itself generate abuse. Fair trial guarantees, including the right of accused persons to be present at their trials and to be tried without delay, judicial independence and impartiality must be maintained so that the underlying principle was not manipulated for political ends. States should cooperate with national courts in prosecutions involving universal jurisdiction by providing assistance, including mutual legal assistance, in order to ensure that the court had sufficient evidence to prosecute.

13. **Mr. Ben Lagha** (Tunisia), speaking on behalf of the Group of African States, reiterated the Group's position as reflected in African Union decisions Assembly/AU/Dec.199 (XI) and Assembly/AU/Dec.213 (XII) and in article 4 (h) of its Constitutive Act. The Group recognized the importance of respect for international norms in applying the principle of universal jurisdiction without abuse or politicization and was deeply concerned at the abuse of that vaguely defined principle.

14. There were significant practical challenges and complex legal questions to be addressed, including the manner in which universal jurisdiction interacted with other principles of international law such as the sovereign equality of States and the immunity of officials under customary international law, which had not been respected in several recent cases. The cardinal principle of the immunity of heads of State should not be called into question or re-examined, as the International Court of Justice had noted in the case concerning the *Arrest Warrant of 11 April 2000* (*Democratic Republic of the Congo v. Belgium*).

15. Arbitrary, ad hoc invocation of the principle of universal jurisdiction, particularly in respect of African officials enjoying immunity under international law, was a matter of grave concern and threatened to undermine the very tenets of international law that the principle sought to uphold. Moreover, the imprudent or untimely exercise of universal jurisdiction could disrupt the quest for peace and national reconciliation in nations struggling to recover from violent conflict or political oppression; it should be exercised with prudence, judicial independence, impartiality and fairness.

16. The concept of universal jurisdiction had long and broad historical antecedents, but some countries were moving dangerously and unilaterally to widen its scope to include jus cogens crimes in the absence of a sound, legal and consensual basis for such expansion. The concept required clear, transparent definitions and mechanisms in order to ensure its impartial and objective application and prevent abuse. The General

Assembly, through the Committee, was the ideal forum for deliberations on the topic.

17. **Mr. Alday González** (Mexico), speaking on behalf of the Rio Group, said that the Group welcomed the General Assembly's decision to allocate the agenda item to the Committee and stressed that the discussion should be conducted within the parameters of international law.

18. Universal jurisdiction was defined by norms of customary and conventional international law because the crimes that fell within its scope were a matter of concern to the entire international community, even where they did not affect directly the interests of the prosecuting State. The norms of international law that governed it distinguished it from other forms of jurisdiction with which it might be confused, such as the extraterritorial exercise of criminal law or the exercise of criminal jurisdiction by international judicial bodies.

19. Although the Committee did not have a report or other primary document on which to base its discussion of the topic, it was important to avoid duplicating the efforts of other bodies of the Organization, including the International Law Commission's work on the topic of obligation to extradite or prosecute (*aut dedere aut judicare*). Debate could be as broad as the Committee wished it to be; at the moment, however, consideration of the matter was at a preliminary stage that required dialogue, study of the internationally applicable norms and clarity as to delegations' wishes for the future of the agenda item. It would be premature to envisage a concrete outcome at the current session.

20. **Mr. Al Habib** (Islamic Republic of Iran), speaking on behalf of the Movement of Non-Aligned Countries, said that the Movement attached considerable importance to the agenda item and urged all States to reflect on the issue in order to identify the scope of application of universal jurisdiction and to prevent inappropriate recourse to it. The principles enshrined in the Charter of the United Nations, and particularly the sovereign equality of States, their political independence and non-interference in their internal affairs, must be strictly observed during judicial proceedings and the involvement of incumbent high-ranking officials should be handled in accordance with international law. The exercise of criminal jurisdiction by national courts in respect of officials of other States under the principle of universal jurisdiction involved the fundamental international law principle of the sovereignty of States. The immunity of State officials, which was deeply rooted in the Charter and firmly established in international law, should be fully respected.

21. There were questions and controversies concerning the principle of universal jurisdiction, including the range of crimes that fell within its scope and the conditions for its application. Its invocation against some member countries of the Movement had caused alarm at its legal and political implications for the immunity of State officials and, consequently, for the sovereignty of the States concerned. Further clarification was needed in order to prevent misapplication, including through expansion of the list of crimes to which it applied. The decisions and judgments of the International Court of Justice and the International Law Commission could be helpful to the Committee's discussions. The Movement countries stood ready to share information on their practice and to consider all options and, if necessary, mechanisms.

22. **Mr. Morier** (Switzerland) said that his Government attached great importance to the effort to combat impunity. Justice played an essential role in crime suppression and prevention and while States had the primary responsibility to prosecute persons who fell within their jurisdiction, crimes such as genocide, crimes against humanity, war crimes and torture were particularly offensive to the international community and must not go unpunished. For that reason, Switzerland, like other States, had provided its judiciary with the means to exercise jurisdiction over such crimes even in the absence of traditional jurisdictional links.

23. Swiss courts exercised universal jurisdiction only where the crime involved was of a particularly serious nature, where Switzerland was committed to its prosecution under an international agreement, where the suspect was present on Swiss territory, where the individual was not extradited for prosecution by another State with primary — for example, territorial — jurisdiction, where there was a risk that the crime might go unpunished and where no other competent body with jurisdiction was able to prosecute. In some cases, it was the sole means of ensuring that justice was done and that the guilty party did not find refuge in another State.

24. The panel discussion hosted by the delegations of the United Republic of Tanzania and Liechtenstein had shown the lack of consensus on the concept of universal jurisdiction in the practice of national courts and in international treaties. A thorough discussion of both aspects of the issue therefore seemed opportune. Owing to the legal and technical nature of the question and to the inevitable political considerations, it should first be entrusted to the experts of the International Law Commission, particularly as the Commission was already considering the closely related issue of the obligation to extradite or prosecute and any overlapping or parallel development was to be avoided.

25. **Ms. Valenzuela Díaz** (El Salvador) said that universal jurisdiction was useful in combating impunity and strengthening international justice because it existed independently of the place in which a crime was committed or the nationality of the perpetrator, and because the crimes to which it applied fell within the scope of international law and were a source of particular concern to States. El Salvador's Penal Code established that its criminal law was also applicable to crimes committed by any person in a place not subject to its jurisdiction, provided that they affected assets that were protected internationally by specific agreements or norms of international law or that they entailed a serious violation of universally recognized human rights.

26. Lastly, she noted that the International Criminal Court had universal jurisdiction under its Rome Statute and that the new Government of El Salvador was committed to promoting respect for the primary international human rights instruments, including the Statute of the Court.

27. **Mr. Urbina** (Costa Rica) recalled that 2009 marked the sixtieth anniversary of the signing of the Fourth Geneva Convention, article 146 of which required the High Contracting Parties to search for and bring before their courts the perpetrators of a restricted group of crimes, regardless of their nationality, the victim's nationality or the place in which the crime was committed. It was time to update the principle of universal jurisdiction, without politicizing the issue, in order to better combat impunity and build a sustainable peace in post-conflict societies while avoiding the use of double standards. A background report prepared by the International Law Commission would make discussion of the topic more fruitful. However, the Commission would first need to know the positions taken by as many Member States as possible so that it could set clear limits to the topic.

28. There could be no peace without justice. As a member of the General Assembly and the Security Council, his delegation had supported the development of international law and the establishment of new institutions designed to reduce the frequency of the most heinous crimes, prevent them from going unpunished and ensure that the victims were compensated. Costa Rica's Minister for Foreign Affairs had served as President of the Assembly of States Parties of the International Criminal Court. More recently, as a member of the Security Council, his delegation had supported the work of the Special Court for Sierra Leone, the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia and had endorsed the Presidential statement of 16 June 2008 (S/PRST/2008/21), in which the Council had urged the Government of Sudan and all other parties to the conflict in Darfur to cooperate fully with the International Criminal Court in order to put an end to impunity for the crimes committed there. As current President of the Human Security Network, Costa Rica had recently organized a ministerial meeting at which a declaration on transitional justice had been adopted.

29. Universal jurisdiction had a role to play in both criminal and civil law. It should be viewed as a secondary mechanism that complemented the national courts and came into play only when the State responsible for prosecuting a crime or ensuring compensation was unable or unwilling to do so. It should be restricted to a limited number of crimes, which should include not only those covered by the Rome Statute or mentioned in paragraphs 138 and 139 of the 2005 World Summit Outcome Document (A/RES/60/1) but also, as stipulated in various multilateral instruments, systematic torture, extrajudicial execution and enforced disappearance. The provisions of those instruments relating to due process guarantees and international standards, including with regard to the rights of accused persons and to statements by and protection of witnesses, must be respected during universal jurisdiction proceedings. So-called absolute universal jurisdiction, whereby trials were conducted in the absence of the accused, and imposition of the death penalty should be prohibited.

30. His delegation recognized that the granting of amnesty could facilitate the conclusion of peace agreements. However, amnesty could not be extended to all crimes without threatening the sustainability of peace; it should never be granted for universal jurisdiction offences, which should be subject to prosecution by any State and at any time. Similarly, the term "immunity" should be interpreted restrictively and should exclude perpetrators of the aforementioned crimes.

31. **Mr. Nhleko** (Swaziland) said that the discussion of the question of universal jurisdiction was opportune since there was currently a pervasive discontent with regard to its application and scope. Abuse of the principle by national courts played into the hands of those who believed that the principle itself was a recipe for judicial anarchy. It was therefore important to clarify the concept and to establish common ground with regard to its application.

32. The International Court of Justice and the International Criminal Court were institutions based on international consent. However, despite the popular belief that there was general agreement with regard to application of the principle of universal jurisdiction, it was interpreted in different ways by different national judicial systems. Some considered that it applied only to piracy, while others believed that it should also cover hijacking, terrorism, genocide, war crimes, crimes against peace, crimes against humanity and torture.

33. The diversity of legal systems around the world created a risk of subjective interpretation of the principle, and many countries lacked the capacity to try extraterritorial criminal cases. Clear legal guidelines were needed and the scope of the principle should be determined. It was also necessary to consider ways to reduce the incidence of double jeopardy, the likelihood of which increased with the application of universal jurisdiction. His delegation welcomed the fact that some countries had repealed their universal jurisdiction laws and replaced them with narrower legislation aimed at avoiding a judicial free-for-all.

34. The lack of institutional foundation for universal jurisdiction only compounded the confusion. The use of national judicial systems alone was unsatisfactory since the laws which mandated application of the principle were sometimes inadequate; indeed, in some countries there was no relevant legislation at all, owing to a belief that it was not a prerequisite for the institution of legal proceedings on the basis of universal jurisdiction. That left open the possibility of "vendetta laws" targeting specific groups. A carefully considered international monitoring mechanism was therefore essential.

35. The issue of immunities had also generated disgruntlement. No sitting head of State or practising State official should be indicted on the basis of universal jurisdiction, as the International Court of Justice had ruled in the *Arrest Warrant* case. Such immunity was not for individual benefit, but solely for the purpose of the successful execution of State duties on behalf of countries and peoples. It was also a prerequisite for the sovereignty and equal treatment of States. Although it was understandable that some countries had reservations regarding the Court's jurisdiction, it presided over all disputes relating to universal jurisdiction. It was unthinkable that the ad hoc application of universal jurisdiction by a Member State could supersede the authority of two international judicial institutions that were widely supported by the international community.

36. His delegation was willing to continue discussing the issue of universal jurisdiction; the adoption of a resolution would be a good way to ensure that the General Assembly remained seized of the matter in the future.

37. **Mr. Tladi** (South Africa) said that his delegation did not question the lawfulness of the principle of universal jurisdiction in respect of specific international crimes. Although the judgment of the International Court of Justice in the *Arrest Warrant* case was limited to the question of immunity from the exercise of universal jurisdiction, other judgments of the Court included pertinent observations on universal jurisdiction and its status in international law. Moreover, as Judges Higgins, Kooijmans and Buergenthal had observed in their joint separate opinion in the *Arrest Warrant* case, the absence of national legislation establishing universal jurisdiction did not necessarily indicate that the exercise of universal jurisdiction would be unlawful, since States were not required to legislate up to the full scope of the jurisdiction allowed by international law. The joint separate opinion further stated that there was nothing in the national case law in question which evidenced an opinio juris on the illegality of such a jurisdiction.

38. His delegation's acceptance of universal jurisdiction for certain international crimes of a serious nature was based on its support for the effort to combat impunity and the search for justice. Nonetheless, there were practical challenges and legal complexities relating to the application of universal jurisdiction which required clarification. His delegation hoped that the Court would clarify the legal complexities in the case concerning *Certain Criminal Proceedings in France* (*Republic of the Congo v. France*). However, the General Assembly, as the primary deliberative body of the international system, should also weigh in on the matter.

39. A proper, legally sound foundation for consideration of the issue of universal jurisdiction should be laid. Although numerous definitions of the concept had been put forward, there was general agreement on its basic elements: it involved the exercise of jurisdiction by a State over a person suspected of a crime committed outside its territory, where neither the suspect nor the victim had the nationality of that State and where its national interest had not been harmed. The exercise of jurisdiction by international tribunals or courts was distinct from universal jurisdiction not merely because the scope of such tribunals was not geographically universal but, more importantly, because universal jurisdiction was by definition exercised by States.

40. One of the concerns with regard to the application of universal jurisdiction was the potential politicization of the principle. In his separate opinion in the *Arrest Warrant* case, Judge Rezek had pondered what the reaction of some European countries would have been if a judge in the Congo had accused their leaders of crimes purportedly committed by them or on their orders. In the context of international law, there had been intense academic debate as to whether norms such as jus cogens and erga omnes obligations actually amounted to cultural imperialism.

41. A related political issue was the selective application of universal jurisdiction. Was it merely coincidental that to date, universal jurisdiction had been exercised only in respect of the officials of small and powerless States? Was it possible to envision situations in which the leaders of powerful countries were hauled before foreign courts on the basis of universal jurisdiction? Those questions were not an attempt to avoid the exercise of universal jurisdiction or to obtain impunity for the perpetrators of atrocities in less powerful countries. Rather, they were necessary if the legitimacy of the exercise of universal jurisdiction was to be protected from attack.

42. Those political challenges were exacerbated by the fact that States could unilaterally place an arrest warrant issued under universal jurisdiction in the International Criminal Police Organization (INTERPOL) communication system without prior verification by the INTERPOL General Assembly that the warrant met the requirements of its Constitution, namely that it was not politically motivated. That problem should be addressed within the INTERPOL framework.

43. There were also legal questions that needed to be resolved, the first of which was the scope of universal jurisdiction beyond treaty law. In his delegation's view, there were crimes other than piracy for which universal jurisdiction could be exercised in the absence of a treaty. However, caution was required: given the potential for abuse, universal jurisdiction outside a treaty relationship should be applicable only to those crimes regarded by the international community as the most heinous, namely slavery, genocide, war crimes and crimes against humanity. In their joint separate opinion in the *Arrest Warrant* case, Judges Higgins, Kooijmans and Buergenthal had drawn parallels between those crimes and piracy, which was deemed to be subject to universal jurisdiction not only because it occurred on the high seas but because it was harmful to the interests of all; in other words, there was an erga omnes interest to be protected. It would be difficult to argue that genocide and slavery were less harmful to erga omnes interests than piracy.

44. The most complex question to be resolved was that of immunities and, specifically, whether only heads of State enjoyed full immunity under customary international law or whether such immunity also applied to Ministers for Foreign Affairs and other senior officials. That issue had not been conclusively addressed in the *Arrest Warrant* case and should be considered further. The question of whether there was a time limit on such immunity and, if so, whether it was the same for all categories of officials also required further discussion. Lastly, it might be wondered whether the extent of immunities was affected by the fact that crimes to which universal jurisdiction was applicable potentially fell within the jus cogens category, as suggested in the dissenting opinion of Judge van den Wyngaert in the *Arrest Warrant* case.

45. With regard to future work on the scope and application of universal jurisdiction, the complexities of the topic made it particularly appropriate for consideration by a body such as the International Law Commission. However, given the sensitivity and urgency of the issue, the length of time likely to be taken by the Commission was a disadvantage. It would not be appropriate to request a specific advisory opinion on the matter from the International Court of Justice since the Court had considered and was considering cases on related subjects. Therefore, as a first step, the Secretary-General should be requested to prepare a report on the basis of Member States' input.

46. **Mr. Liu** Zhenmin (China), noting African Union decision Assembly/AU/Dec.199 (XI), adopted in July 2008, on the abuse of the principle of universal jurisdiction, expressed his Government's sympathy for the legitimate concerns of African States in that regard, including with regard to the negative impact of such abuse on the political, economic and social development of the States concerned and on their ability to conduct international relations. His delegation hoped that those concerns would be addressed in a timely and appropriate manner.

47. It was fitting for the General Assembly to consider the scope and application of so-called "universal jurisdiction" in order to prevent abuse and to maintain international law and the stability of international order. His delegation hoped that a thorough exchange of views among Member States would lead to a clear and common understanding of issues such as the definition of universal jurisdiction, the international legal basis for its exercise and the criteria for and limits on its application.

48. Universal jurisdiction was currently only an academic concept and did not yet constitute an international legal norm. On the basis of the principle of sovereign equality, it was well established in international law that a State could exercise jurisdiction within its own territory and was entitled to immunity from the jurisdiction of other States. Although, under international law, States could exercise jurisdiction over piracy that occurred on the high seas, the relevant law did not apply to State-to-State relations. In the past few decades, the obligation to extradite or prosecute had been incorporated into a number of international conventions in order to enhance cooperation in combating international crimes. While that obligation was sometimes invoked as the basis for exercising universal jurisdiction, it was not equivalent to such jurisdiction; it was a treaty obligation applicable only to States parties to the instrument in question. Such treaties always set out the specific conditions under which the obligation applied, and those conditions differed from one treaty to another.

49. When exercising their jurisdiction, States should respect the immunity enjoyed by other States under international law, including the immunity of heads of State and other officials, diplomatic and consular personnel and the property of States; they should not compromise the rights enjoyed by other States under international law.

50. His Government agreed with the conclusion, expressed in the aforementioned African Union decision, that the abuse of universal jurisdiction endangered international law. Under the regime of State responsibility, such abuse by a domestic judicial organ of one State violated the legitimate rights of other States and should entail the corresponding international responsibility.

51. So-called "universal jurisdiction" was a sensitive legal issue, and States should avoid exercising it over other States until a common understanding of the concept and its application was reached. Nonetheless, his delegation supported continued discussion of the topic by the General Assembly. If, after in-depth discussion, the Assembly concluded that the principle of universal jurisdiction had not been established in current international law, the debate need go no further in the Committee.

52. **Mr. Mukongo Ngay** (Democratic Republic of the Congo) said that the establishment of the ad hoc tribunals and the International Criminal Court had provided a means of combating impunity for jus cogens crimes at the international level. However, impunity was also combated at the national level through the application of universal jurisdiction. Two examples were the prosecution of Adolf Eichmann by Israel in 1961 for his involvement in the Holocaust and the prosecution of a number of Rwandan nationals in Belgian courts for crimes committed during the 1994 genocide. While some took the view that the Court's establishment would render universal jurisdiction obsolete, his delegation believed that it remained a legitimate principle. Moreover, the limits on the jurisdiction of the Court and the ad hoc tribunals and

the large number of cases brought before national courts showed that universal jurisdiction was a central element of efforts to combat impunity.

53. Despite the increasing importance of universal jurisdiction, recent examples of its application had provoked impassioned reactions and diplomatic tensions. The current initiative by the African Union was merely the tip of the iceberg. Nonetheless, international criminal justice was a reality; even if the perpetrators of grave international crimes evaded the ad hoc tribunals and the International Criminal Court, universal jurisdiction meant that they could not be sure of escaping with impunity.

54. An objective approach was needed in order to achieve an equitable solution. It was right for States to exercise universal jurisdiction so as to ensure that cases of torture, war crimes, crimes against humanity and genocide did not go unpunished. However, consensus should be reached on a number of matters. Many States had not yet introduced the domestic legislation necessary for the criminalization and prosecution of various international crimes, which made cooperation between them difficult. Care must therefore be taken to ensure that no single State or group of States had a monopoly on the imposition of punishment. In a recent case, for example, a judge exercising universal jurisdiction had investigated a number of State representatives, most of them from the southern hemisphere. On the other hand, if all United Nations Member States were to exercise universal jurisdiction, chaos would ensue. In the context of globalization, it was more necessary than ever to establish order in international relations.

55. The immunity enjoyed by certain officials often made it difficult for a State to exercise universal jurisdiction. In that regard, attention should be paid to the judgment of the International Court of Justice in the *Arrest Warrant* case.

56. In order to achieve greater acceptance of the principle of universal jurisdiction, international consensus on its meaning and application needed to be reached. His delegation was open to all proposals aimed at determining legal criteria and equitable arrangements for its application so that it could take its rightful place in the effort to combat impunity.

57. *Mr. Stastoli (Albania), Vice-Chairman, took the Chair*.

58. **Ms. Rodríguez-Pineda** (Guatemala) said that international peace and security must be based on principles of universal justice. In recent years, there had been a number of cases in which States had been unable to reconcile their national interests with the requirements of international law, particularly humanitarian and human rights law. The United Nations was the most appropriate forum in which to discuss the matter. Her Government wished to reaffirm its commitment to combating impunity at every level within the rule of law.

59. The principle of universal jurisdiction was a procedural tool whose application was limited by the international nature of the crimes that gave rise to it and which should be invoked only when conventional jurisdiction could not be applied. A number of misconceptions about that principle should be dispelled; for example, the obligation to extradite or prosecute did not arise only from universal jurisdiction. Lastly, she highlighted the role of national courts as the main forum in which universal jurisdiction would be considered and put to the test. Given the nature of the crimes that gave rise to such jurisdiction and the fact that its application was obligatory in such cases, national courts and accountability mechanisms at all levels should be strengthened.

60. The Committee's deliberations would help ensure that universal jurisdiction achieved the desired objectives and would foster unity in pursuit of the fundamental values set out in the Charter of the United Nations. Her delegation stood ready to participate in those deliberations.

61. **Mr. Muita** (Kenya) said that the principle of universal jurisdiction was rooted in the belief that certain crimes were so serious that they offended humanity as a whole, and that therefore all States had a responsibility to bring the perpetrators to justice. It was a crucial tool for enabling victims of grave international crimes, such as war crimes, crimes against humanity and genocide, to obtain redress where the State in which the crime had been committed was unable or unwilling to conduct an effective investigation and trial. Its application also reduced the number of safe havens where those responsible for such crimes could enjoy impunity. The African States supported the principle of universal jurisdiction, which was recognized in the Constitutive Act of the African Union. However, shortcomings in its application had raised concern, which did not augur well for the rule of

law and could undermine support for the principle. The African Union's position in that regard had always been consistent.

62. The concept of universal jurisdiction was distinct from the work of the International Criminal Court in that it related to the obligation of national courts to investigate and prosecute grave international crimes. The Court's jurisdiction was limited to crimes committed after the entry into force of its Rome Statute, which, moreover, had not been universally ratified. The need for effective application of universal jurisdiction therefore remained relevant; in other words, where the Court's jurisdiction could not be invoked, the principle of universal jurisdiction should apply. However, there should be fairness, uniformity and consistency in its application in order to guard against the risk of exploitation.

63. The United Nations should play a central role in addressing the issue of universal jurisdiction. The Secretary-General should therefore prepare a report on State practice in that area.

64. **Mr. Koterec** (Slovakia) said that Member States had the common goal of combating impunity and ensuring that the perpetrators of atrocities were brought to justice and that adequate redress was provided for the victims. The Committee was the appropriate forum for discussion of the issue of universal jurisdiction, which should be considered within the framework of international law. The concept was not a new one; it was generally accepted that customary international law permitted the exercise of such jurisdiction over piracy, the slave trade and trafficking in persons, and its application to the *delicta juris gentia* — genocide, torture, crimes against humanity and grave breaches of the 1949 Geneva Conventions — was widely recognized. Cases involving national prosecution of allegedly international crimes were not limited to a particular region but existed worldwide. The term "universal jurisdiction" related primarily to the competence of national courts as distinguished from that of international criminal courts and tribunals.

65. His delegation was not convinced that it would be feasible to establish an international regulatory body with competence to review or handle complaints by individual States against other States' exercise of universal jurisdiction. To do so would be incompatible with States' rights and obligations under national and international law and with the principles of separation of powers and the independence of the judiciary.

66. **Ms. Masrinuan** (Thailand) said that academics and jurists had written extensively on the subject of universal jurisdiction, which was closely related to the obligation to extradite or prosecute; while the two rules of international law were conceptually distinct, they were both instrumental in combating impunity. Since the latter was part of the ongoing work of the International Law Commission, it was timely for the Committee to consider the former as a stand-alone topic.

67. Thailand's legislation provided for universal jurisdiction over acts of piracy and over specific criminal offences established in international conventions to which it was a party, such as human trafficking and aircraft hijacking. States recognized and exercised various types of jurisdiction in response to the growing concern that the perpetrators of heinous crimes might go unpunished. A report containing information about national legislation and practice would therefore be useful at the current stage of the Committee's work.

68. It was often said that universal jurisdiction over serious crimes was part of customary international law. However, some national courts extended their jurisdiction to include crimes established in particular conventions on the basis of universal jurisdiction. In order to dispel confusion with certain treaty-based forms of extraterritorial jurisdiction or jurisdiction derived from obligations in respect of international tribunals, the substantive and personal scope of universal jurisdiction must be clearly defined. At a later stage, the principle should also be examined in light of other rules of international law.

69. **Mr. Chávez** (Peru) said that Peru was a party to the primary international instruments in the areas of humanitarian law and combating impunity. Universal jurisdiction was a matter of interest to all States since any State could either exercise it or find it exercised against its nationals. The so-called "principle" of universal jurisdiction was not, in fact, a principle of international law but a form of jurisdiction recognized under that law. It was, moreover, distinct from the jurisdiction exercised by the international criminal tribunals; while the two institutions had the same objective — avoiding impunity — universal jurisdiction could be exercised only by States.

70. It was important to consider the specific offences to which such jurisdiction was applicable under international treaties and customary international law and to determine which treaties provided for it and how they regulated it; what the offences classified as jus cogens had in common and what effects they produced; whether a State could exercise universal jurisdiction in the absence of a specific provision of its domestic law to that effect; whether a link between the State and the accused, such as the latter's presence in its territory, was required; which State's right to prosecute should prevail in the event of competing jurisdiction; how the exercise of universal jurisdiction related to the immunities regime, not only in the case of heads of State or Government and foreign ministers, but of other government officials and the staff of international organizations; what the effects of amnesty laws were; what the due process standard was and whether universal jurisdiction could be exercised in respect of persons arrested following an abduction or illegal rendition; how the evidential regime was regulated; how sentences were regulated; how accused persons' exercise of their rights, including with respect to visits from relatives, was guaranteed; and, above all, how the victim's right to participate in the trial and to receive compensation was regulated. Those issues had been raised before the courts of various countries during universal jurisdiction trials and had given rise to parliamentary debate on the regulation of such jurisdiction at the national level.

71. While the topic of universal jurisdiction had political ramifications, they should not bias delegations' legal arguments on its scope and application; otherwise, the Committee might be diverted into endless discussions that would lead nowhere. The work of the International Law Commission on the topic of the obligation to extradite or prosecute (*aut dedere aut judicare*) and on the immunity of State officials from foreign criminal jurisdiction were linked, albeit indirectly, to the issue of universal jurisdiction; it was therefore important to avoid duplication of effort and to use all relevant information on the issue at hand. It was particularly necessary for the Committee to hear the views of different States on the scope and application of such jurisdiction in order to decide how best to proceed. His delegation would prefer to entrust the matter to the Commission, but it was prepared to consider other options.

72. **Mr. Eriksen** (Norway) said that the traditional justification for the exercise of universal jurisdiction was that, under treaty or customary international law, a crime committed outside the State against a person who was not a national of that State was nevertheless of such a serious nature that it was of concern to the international community and was therefore directed against all States. One of the major achievements of international relations and international law over the past decades was the shared understanding that there should be no impunity for serious crimes; all States subscribed to that principle, which was embodied in the establishment of the International Criminal Court.

73. The principle of universal jurisdiction was an important contribution to the effort to combat impunity, but it had not been precisely defined and questions arose as to the crimes to which it should apply. New treaties, State practice and the views of international tribunals and scholars would gradually provide more clarity and substance on the principle. The Committee should therefore proceed with caution in order to ensure that, with less than full knowledge, it did not engage in an activity that could later prove fruitless. It was also important not to infringe on the status of independent courts and prosecuting authorities or to overlap with the work of other bodies, particularly the International Law Commission since part of its work on the topic of the obligation to extradite or prosecute (*aut dedere aut judicare*) would involve the relationship of that obligation to universal jurisdiction.

74. Lastly, universal jurisdiction was a safety net that could come into play when other jurisdictions were not utilized. Following the principle of bona fide application, it should be exercised only in the interest of justice; any attempt to assert jurisdiction for purely political reasons must be rejected and all other relevant principles of international law must be observed.

75. **Mr. Mwaipopo** (United Republic of Tanzania) said that while universal jurisdiction was a well-established principle of international law, there was insufficient clarity of doctrine to ensure its effective implementation. The norm-setting role of the United Nations could not be overstated and he hoped that the Committee would address the controversy surrounding the concept, which arose not from the question of its validity, but from that of its scope and application. It was imperative to establish clear mechanisms for impartial, uniform exercise of such jurisdiction by all States, equally and without limitations, so that national

courts could properly adjudicate cases in which there was little understanding of a fragile political situation and no control over the witnesses and evidence needed for prosecution. A uniform set of guidelines or standards would help the courts meet the challenge of prosecuting the perpetrators of international human rights violations in accordance with the rule of law and would clarify the rights and obligations of States in order to address the threat of abusive, disruptive prosecutions.

76. **Ms. Gasri** (France) said that it would be useful for the Committee to dispel the misunderstandings that had arisen in connection with the principle of universal jurisdiction. The concept, which had never been defined in any convention, implied a derogation from the classic forms of national courts' jurisdiction over crimes committed within the territory of the State, by or against one of its nationals or against its interests. Such jurisdiction could apply only to acts which were universally condemned and which required, to the extent possible, a global effort to combat them. Thus, it was an essential tool in combating impunity.

77. The obligation to exercise universal jurisdiction was established in several international conventions, although it was seldom referred to in that manner and was limited to cases where the accused was present in the territory of the prosecuting State. The related obligation to extradite or prosecute was generally established in the same conventions in order to ensure harmonious cooperation among States. However, international law also gave States the right to extend the jurisdiction of their national courts to include certain heinous crimes, independently of any treaty provision.

78. Universal jurisdiction, which was exercised by national courts, should not be confused with the jurisdiction of international tribunals or with the question of whether any court was competent to prosecute an individual who enjoyed immunity under international law. Its validity was rooted in the independence of the judiciary, which was an essential condition of the rule of law.

79. **Mr. Bühler** (Austria) said that there was considerable confusion and misapprehension with regard to the concept of universal jurisdiction; some States viewed its exercise as an encroachment on their sovereignty or even as a breach of international law. He suggested that the Committee should use the definition provided by the Institut de Droit International in its resolution on universal criminal jurisdiction with regard to the crime of genocide, crimes against humanity and war crimes, adopted in Krakow on 26 August 2005: "Universal jurisdiction in criminal matters … means the competence of a State to prosecute alleged offenders and to punish them if convicted, irrespective of the place of commission of the crime and regardless of any link of active or passive nationality, or other grounds of jurisdiction recognized by international law."

80. In considering the matter, the Committee should be guided by seven principles. First, the focus should be on universal jurisdiction in criminal matters, not on overall jurisdiction or extraterritorial jurisdiction in civil matters. Second, the jurisdiction of international courts and tribunals should be excluded from the topic. Third, universal jurisdiction presupposed the absence of any of the traditional links — territoriality, nationality, passive personality or the protective principle — with the State asserting jurisdiction at the time of commission of the alleged offence.

81. Fourth, universal jurisdiction could be based on either treaty or customary international law; numerous treaties obliged States parties to exercise such jurisdiction over the crimes defined therein, although that obligation was typically limited to cases where the subject was subsequently present in the territory of the forum State. In practice, its exercise was usually treaty-based; of greater interest to the Committee, however, were cases in which States asserted universal jurisdiction solely on the basis of customary international law. It seemed generally accepted that they were entitled to do so in respect of genocide, crimes against humanity, war crimes, torture and piracy. Thus, universal jurisdiction was an important tool for combating impunity, a primary goal of the United Nations.

82. Fifth, universal jurisdiction in the context of interest to the Committee did not involve the State's jurisdiction to enforce, but only to prescribe and adjudicate. Sixth, it must be distinguished from questions of immunity, as the International Court of Justice had done in the *Arrest Warrant* case: "It should further be noted that the rules governing the jurisdiction of national courts must be carefully distinguished from those governing jurisdictional immunities: jurisdiction does not imply absence of immunity, while absence of immunity does not imply

jurisdiction.” In the current context, the immunities of State officials in foreign criminal proceedings were of particular concern and were already under consideration by the International Law Commission. The Court had clarified, in the *Arrest Warrant* case, that “it is only where a State has jurisdiction under international law in relation to a particular matter that there can be any question of immunities in regard to the exercise of that jurisdiction”. And, seventh, universal jurisdiction must be distinguished from the duty to extradite or prosecute, which, as in the case of immunities, could arise only after jurisdiction had been established under international law.

83. Section 64 of Austria’s Penal Code, which provided for application of the State’s criminal law to acts committed outside its territory, irrespective of whether they were crimes under the laws of the *locus delecti*, was based on the passive personality principle and the protective principle. The provision also covered crimes which Austria was bound to prosecute under international law, such as hijacking of aircraft and terrorist offences. Under Section 65, Austrian criminal law could be applied to criminal acts committed by foreigners abroad only if those acts were punishable under the laws of both Austria and the *locus delecti*, if the perpetrator was present in Austria and if, for reasons other than the nature of the crime, he or she could not be extradited. That double criminality rule reflected the requirement that both States must share a common concern of prosecution and constituted an effective barrier against abuse of jurisdiction. Thus, the exercise of jurisdiction under the Penal Code could not be considered “purely” universal since it could not be asserted without those links or restrictions.

84. **Mr. Retzlaff** (Germany) said that genocide, crimes against humanity and war crimes were the most serious crimes of concern to the international community as a whole, since they threatened the peace, security and well-being of the world. It was therefore a common goal of all States to ensure that those crimes did not go unpunished. Effective prosecution must be ensured by taking national measures and enhancing international cooperation.

85. With regard to prosecution at the national level, the principle of universal jurisdiction was a legitimate and useful tool for the prevention of impunity and customary international law clearly allowed it to be invoked for international crimes. A number of treaties, such as the 1949 Geneva Conventions and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, even obliged States parties to apply it. In that context, the concept of universal jurisdiction could be considered to be universally recognized.

86. It was the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes. Responsibility for prosecution lay first and foremost with those States on whose territory the crime had been committed or whose nationals had committed the crime or fallen victim to it. However, if a State was not in a position to fulfil that duty, universal jurisdiction could serve as a complementary safeguard. The more crimes were effectively prosecuted at the national level, the less need there would be for recourse to such jurisdiction.

87. Universal jurisdiction was one element in a range of approaches to combating impunity for international crimes. Another was the Rome Statute of the International Criminal Court, to which Germany was a State party, and he reaffirmed his Government’s commitment to supporting the Court’s universality and integrity.

88. Germany was willing to cooperate with all States in order to ensure that the available instruments were applied as effectively as possible with a view to preventing impunity for international crimes. Universal jurisdiction helped ensure that the perpetrators of atrocities were brought to justice and that the victims were provided with redress.

89. **Mr. Haapea** (Finland) said that while the gravest crimes known to man had a long history and, all too often, the perpetrators had escaped with impunity, since the early 1990s the international demand for accountability had grown. The establishment of the ad hoc tribunals by the Security Council and of the International Criminal Court were significant developments in that regard. However, their jurisdiction, which was not equivalent to universal jurisdiction, and their resources were limited. Therefore, action by national courts was of the utmost importance in ensuring that the perpetrators of the crimes in question were brought to justice. Some of those proceedings were based on the principle of universal jurisdiction, while others were initiated on the basis of the nationality of the victims. It was preferable for cases to be tried in the territory of the

State where the crime had been committed, but for various reasons that was not always possible.

90. The principle of universal jurisdiction was not a novelty; it was generally agreed that customary international law allowed its use with regard to certain crimes. In addition, many conventions obliged States parties to extradite or prosecute persons suspected of acts prohibited by the instrument in question. That obligation was distinct from the principle of universal jurisdiction, although the two concepts were related. It was important to bear in mind that the principle simply provided a jurisdictional basis for a national court to prosecute; it did not reduce the burden of proof required for a conviction, or affect the immunities granted under international law or the due process requirements. The International Law Commission, in its deliberations on the obligation to extradite or prosecute and the immunity of State officials from foreign criminal jurisdiction, was already considering important issues relating to the scope and application of universal jurisdiction. Dialogue with the Commission would therefore provide clarification in that regard.

91. Although the principle of universal jurisdiction dated back to the aftermath of the Second World War, it had recently become the subject of greater public awareness and debate. It had been recognized in Finland's Penal Code — for example, with regard to the crime of genocide — since the early 1960s, but only in 2009 had a charge of genocide been brought for the first time on the basis of universal jurisdiction against a person residing in Finland, who had been arrested after his name had appeared on a list of suspects published by the authorities of his country of nationality. The investigators had since made several trips outside Finland in order to collect evidence, and the local court dealing with the issue had held hearings abroad in order to interview witnesses. The trial had received a great deal of attention, and there had been a public debate as to whether it was for the Finnish court to undertake such a task. Irrespective of the merits of the case, that question of principle had been answered with an unequivocal "yes" by the Minister for Foreign Affairs and the Minister of Justice. His Government was committed to promoting international accountability and would not shy away from applying the principle of universal jurisdiction where there was a risk that failure to do so could result in impunity.

92. The independence of the courts applying universal jurisdiction must be respected, and its scope and application must not be restricted in any way that might suggest otherwise. His delegation welcomed the open and frank debate in the Committee, but impunity was not an option.

93. **Mr. Ajawin** (Sudan) said that the scope and application of universal jurisdiction had been included in the General Assembly's agenda as a result of the efforts of African countries, which were gravely concerned about the abuse and misuse of the principle by some developed countries in respect of African leaders. The main contention of those States was that continued abuse could jeopardize not only respect for international law and the conduct of international relations, but also the political, economic and social development of States. Many African countries, including the Sudan, were gravely concerned about selectivity and double standards on the part of some developed countries in the application of universal jurisdiction. There was a perception that the doctrine had been heavily politicized and had lent momentum to certain negative trends, such as the militarization of international relations, disregard for multilateralism and erosion of commitment to the Charter of the United Nations and the cardinal principles of international law. The exercise of universal jurisdiction by non-African countries against African heads of State and other State officials entitled to jurisdictional immunities was a violation of the sovereign equality of African States and restricted their capacity to act as subjects of international law.

94. The principle of universal jurisdiction was still in its infancy and there was no international consensus as to its scope and application or on the safeguards and rules of evidence associated with it. The lack of legal clarity with regard to its application had led the International Court of Justice to reaffirm diplomatic immunity as a cardinal and well-established principle of customary international law. Any attempt to redefine that immunity could therefore lead to confusion, insecurity and legal anarchy.

95. Piracy and slavery were the crimes traditionally considered to be subject to universal jurisdiction. However, there was a misconception that if States were signatories to the Universal Declaration of Human Rights and parties to the Convention on the Prevention and Punishment of the Crime of Genocide and the Convention against Torture and Other Cruel, Inhuman

or Degrading Treatment or Punishment, their citizens were automatically subject to the principle of universal jurisdiction. Not only was that contention academically and intellectually false, it also ignored the noble intentions of the drafters of those instruments, who had believed that they were stating general principles rather than enacting laws that would be enforced by national courts against the citizens of other States. As Henry Kissinger had written in a 2001 article published in *Foreign Affairs*, "a universal standard of justice should not be based on the propositions that a just end warrants unjust means, or that political fashion trumps fair judicial procedures". Moreover, excessive reliance on universal jurisdiction could undermine the political will to sustain the humane norms of international behaviour. The controversial principle of universal jurisdiction should be the subject of exhaustive and open-minded discussion. Extreme caution must be exercised in order to avoid substituting the tyranny of judges for the tyranny of governments.

96. **Ms. Štiglic** (Slovenia) said that certain crimes were so serious and harmful that they affected the fundamental interests of the entire international community, which must therefore act to promote justice and accountability. Universal jurisdiction applied to such crimes because they were universally condemned and because all States had a shared interest in proscribing them and prosecuting their perpetrators. States' assertion of universal jurisdiction was governed by both customary and conventional international law. In general, it was accepted that customary law allowed the exercise of universal jurisdiction over the crimes of piracy, slavery, genocide, crimes against humanity, war crimes and torture. In other cases, international treaties provided for the parties' obligation to extradite or prosecute.

97. When States exercised universal jurisdiction in accordance with internationally recognized standards of due process, including respect for the rights of the accused, they were defending not only their own interests and values, but also those of the international community as a whole. The ad hoc international tribunals and the International Criminal Court also played a vital role in combating impunity, but their jurisdiction was subject to limits of a geographical, territorial, personal or temporal nature and was therefore not equivalent to universal jurisdiction. For example, where a situation was referred to the International Criminal Court by a State party or the Court's Prosecutor initiated an investigation, the Court had jurisdiction only if the alleged offence had been committed in the territory or by a national of a State party, although those restrictions did not apply if the situation was referred to the Court by the Security Council. Moreover, the Court's jurisdiction was complementary to that of national courts: it could act only when the State concerned was unwilling or unable to do so.

98. Further discussion of the issue was necessary and welcome. Her Government had always advocated for the victims of grave international crimes and for the protection of human rights and dignity. The culture of impunity for such crimes must end if post-conflict societies were to enjoy sustainable peace.

99. **Mr. Ben Lagha** (Tunisia) said that although universal jurisdiction had enormous potential as a supplementary tool in the fight against impunity, its scope and application outside the context of conventions needed to be clarified. Its ambiguous and controversial nature had been highlighted by the *Arrest Warrant* case: although the International Court of Justice had not been requested to rule on the question of universal jurisdiction, in that case the matter had been addressed in separate and dissenting opinions. The ambiguity arose from the fact that substantial areas were left to the discretion of States and that the application of the concept of universal jurisdiction had expanded beyond the confines of treaties, raising issues relating to conflicts of jurisdiction and to the hierarchy of extraterritorial jurisdiction.

100. In recent years there had been numerous jurisdictional conflicts between States, many of which had had the potential to threaten international peace and security. Moreover, the sparsity and lack of uniformity of State practice in the exercise of universal jurisdiction indicated a lack of normative development that created a significant risk of bias and selectivity. Where the application of such jurisdiction led to the indictment of State officials, politicization seemed inevitable and politically driven "show trials" could result.

101. In order to be a viable tool in combating impunity, the doctrine of universal jurisdiction required strict separation between the judicial and executive powers. However, State practice indicated that the advisability of prosecution and the decision to prosecute were sometimes subject to political

considerations; for example, some codes of criminal procedure provided that prosecution could be dispensed with if it would pose a risk of serious detriment to the State or other public interests. Universal jurisdiction also conflicted with the notion of State sovereignty and violated the immunity of State officials; the latter principle, well established in customary international law, had been recognized by the International Court of Justice in the *Arrest Warrant* case. For all those reasons, the question of universal jurisdiction merited thorough discussion at the United Nations.

102. **Mr. Janssens de Bisthoven** (Belgium) said that the application of universal jurisdiction was an essential tool in combating impunity for grave international crimes and providing the victims with proper redress. Nonetheless, it was a tool of last resort in cases where there was a risk that the perpetrators of genocide, crimes against humanity, war crimes or torture might escape justice because both the State in which the crime was alleged to have been committed and the State of nationality of the suspect or the victims were unwilling or unable to prosecute. His Government shared the view that States should initiate proceedings against the alleged perpetrators of grave international crimes, whether on the basis of universal jurisdiction or of other, more traditional, types of jurisdiction such as territoriality or the nationality of the perpetrator or the victim. Prosecutions of foreign nationals on the basis of universal jurisdiction were relatively rare in comparison to those based on other types of extraterritorial jurisdiction.

103. The proposal to establish an international regulatory body to handle complaints arising from the abuse of the principle of universal jurisdiction was incompatible both with the principle of the independence of the judiciary and with the rights and obligations of States under international law. Inevitable conflicts of jurisdiction could be resolved satisfactorily by applying the specific rules contained in treaties or, in the absence of such rules, the dispute settlement mechanisms provided for by international law.

104. **Mr. Karanouh** (Lebanon) said that universal jurisdiction was a critical and sensitive subject, which required serious consideration in view of its impact at both the national and international levels and of the fact that it transcended borders and nationalities. A scientific and objective approach was instrumental to elucidating its scope and application, determining the role of States and identifying the crimes concerned in order to preclude its arbitrary use as a political tool that deflected it from its intended purpose. In short, a clearly drawn framework would eliminate potential confusion, particularly in cases where the scope and application of such jurisdiction conflicted with the sovereignty and equality of States. The same could be said of the question of immunities and related international laws and customs.

105. **Mr. El-Ghodben** (Libyan Arab Jamahiriya) said that the statements of previous speakers clearly demonstrated that universal jurisdiction was a principle firmly established in international law for the fundamental purpose of combating impunity for such grave offences as piracy, slavery, torture, ethnic cleansing, war crimes and crimes against humanity. That purpose should be taken into account when the principle was applied by national courts, which must avoid doing so arbitrarily in order to prevent any repetition of past instances in which its scope had been improperly extended through selectivity and unilateral interpretations. The regrettable errors of certain national judicial bodies during the past two years were a source of deep and legitimate concern to the member States and highest organs of the African Union, which had on three occasions called for a dispassionate review aimed at ensuring that universal jurisdiction was neither abused nor arbitrarily applied. Indeed, the inclusion of the current item on the agenda of the General Assembly was the culmination of such efforts by the African Union.

106. Limitation of the scope and application of such jurisdiction was predicated on firm legal principles articulated in the reports of independent and impartial experts, both African and non-African, on the basis of the case law of the International Court of Justice, General Assembly resolutions and the Constitutive Act, communiqués and resolutions of the African Union. The general legal view was that the scope of application of the principle was limited by international law without prejudice to efforts to combat impunity for serious crimes, including as set forth in article 4 (h) of the Constitutive Act of the African Union. The Committee was the appropriate forum for a more comprehensive discussion of the subject with a view to a correct understanding of the principle and its application and to agreement on transparent, objective mechanisms and controls.

The meeting rose at 1 p.m.