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Summary record of the 13th meeting
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Chair: Mr. Milano (Vice-Chair) . . . . . (Italy)
later: Mr. Chindawongse . . . . . (Thailand)

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23-20086 (E)

In the absence of Mr. Chindawongse (Thailand), Mr. Milano (Italy), Vice-Chair, took the Chair.

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

Agenda item 84: The scope and application of the principle of universal jurisdiction
(*continued*) (A/78/130)

1. **Mr. Ganou** (Burkina Faso) said that when a State with primary jurisdiction was unable or unwilling to act, the exercise of universal jurisdiction could be one of the most appropriate mechanisms for combating impunity for international crimes and the last resort available to victims to have their cases heard. The primary rationale of the principle of universal jurisdiction was that States had an obligation to respect and enforce the rights of the international community as a whole. Burkina Faso had reaffirmed its commitment to combating impunity for the most serious crimes by including the principle in its Criminal Code and Code of Criminal Procedure. On the basis of those Codes, the courts of Burkina Faso could exercise their jurisdiction over international crimes such as war crimes, genocide and crimes against humanity, irrespective of where they were committed or of the nationality of the perpetrator or the victim.

2. As a State party to the Rome Statute of the International Criminal Court, Burkina Faso had adopted a law on the determination of jurisdiction and the procedure for implementing the Rome Statute, which called for its courts to exercise universal jurisdiction over crimes falling under the material jurisdiction of the Court. Burkina Faso was also a party to several multilateral and regional conventions that provided for the exercise of universal jurisdiction in certain cases.

3. As an exception to the criminal law principles of territoriality and nationality, the principle of universal jurisdiction must be applied with caution, in good faith and in strict compliance with the fundamental principles enshrined in the Charter of the United Nations, the relevant universal instruments and the rules of general international law. In addition, the principle and the limits of its application must be clearly defined so as to avoid its misuse and abuse.

4. National courts invoking universal jurisdiction must respect the sovereignty of States and not exercise such jurisdiction against State representatives who enjoyed immunity from jurisdiction and immunity from enforcement. In order to maintain a consensus on the scope and application of such jurisdiction, it should be exercised only in respect of the most serious international crimes, including terrorism and the financing of terrorism, genocide, war crimes, crimes against humanity, slavery, torture and trafficking in persons, and only as a last resort where the State that had jurisdiction was unable or unwilling to prosecute the alleged perpetrators.

5. In its discussions on the scope and application of the principle, the Committee must not overlook the legitimate concerns of certain delegations, including his own.

6. **Ms. Flores Soto** (El Salvador) said that universal jurisdiction was an institution of international law that helped to prevent impunity for the most serious crimes. At both the national and the international levels, States had an obligation to prevent and investigate such crimes and to identify and punish those responsible, irrespective of where the crimes were committed or the nationality of the perpetrators or the victims. Universal jurisdiction was complementary to other forms of jurisdiction.

7. In order for universal jurisdiction to be applied effectively, it was essential to ensure not only that the necessary procedural capacity and access to justice systems existed at the national level, but also that the acts in question had been appropriately criminalized in domestic law. El Salvador had a legal framework for the application of the principle of universal jurisdiction. Specifically, article 10 of its Criminal Code provided for the application of Salvadoran criminal law to crimes that affected internationally protected rights or involved serious violations of universally recognized human rights, regardless of where such crimes were committed. The Criminal Code incorporated, under the heading “crimes against humanity”, several serious crimes, including those recognized under international law and, in particular, under the Rome Statute, to which El Salvador was a party.

8. In the consideration of the topic of universal jurisdiction, it was important to examine the practice of national courts. In El Salvador, the most recent jurisprudence on the matter was judgment No. 414-2021 of the Constitutional Chamber of the Supreme Court of Justice, dated 5 January 2022, in which the Chamber had held that the non-applicability of a statute of limitations to serious international crimes, recognized under international law and the Rome Statute, enabled the application of universal jurisdiction to combat and end impunity and ensure justice, truth and full reparation for victims. The Chamber had further held that States had an international obligation to ensure the effective repression of crimes against humanity and war crimes and that the imprescriptible nature of those crimes was a peremptory norm of general international law (*jus cogens*).

9. Her delegation also affirmed that the principle of universal jurisdiction was of a subsidiary nature and that it was applicable when there was an obstacle to or a lack of specific interest in prosecution in the State in which the crimes had occurred. Her delegation believed that it was important to ensure greater representativeness in the deliberations on universal jurisdiction and therefore encouraged further and more in-depth discussions within the Committee's working group on the topic.

10. **Ms. Arumpac-Marte** (Philippines) said that universal jurisdiction, as a generally accepted principle of international law, was considered a part of Philippine law. For her country, as a rule, jurisdiction was territorial in nature, such that universal jurisdiction was an exception arising from an imperative need to preserve international order. It allowed any State to assert criminal jurisdiction over certain offences, even if the act occurred outside its territory and even if the perpetrators or victims were not its nationals. Because universal jurisdiction was exceptional, its scope and application must be limited and clearly defined. The immunity of State officials under international law, in particular, must be preserved and respected. The unrestrained invocation and abuse of universal jurisdiction would only undermine the principle. The offences to which it applied must be confined to violations of *jus cogens* norms deemed so fundamental to the existence of a just international order that States could not derogate from them, even by agreement. The rationale was that the crime was so egregious that it was considered to have been committed against all members of the international community, such that every State had jurisdiction over it.

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

12. **Mr. Konfourou** (Mali) said that after gaining independence in 1960, his country had ratified a number of international legal instruments concerning the atrocities against humanity committed during the Second World War, including the Geneva Conventions of 1949 and their Additional Protocols. At the domestic level, the principle of universal jurisdiction was enshrined in the country's Criminal Code and Code of Criminal Procedure, and reaffirmed in the Countering Human Trafficking and Migrant Smuggling Act, which gave the courts of Mali jurisdiction over crimes recognized under international law and over terrorist acts committed by Malian or non-Malian nationals, irrespective of where they were committed. Such offences were not subject to any statute of limitations in Mali.

13. The principle of universal jurisdiction made it possible to combat impunity effectively, as it deprived criminals who committed heinous acts of safe haven. By adopting an appropriate legal framework, his Government had given itself the means to punish the perpetrators of crimes. The crisis in Mali since January 2012 had led to the commission of atrocities against the civilian population and the destruction of world-renowned cultural sites, in particular the mausoleums of Timbuktu. In line with the principle of universal jurisdiction, the Government had referred those cases to the International Criminal Court. It welcomed the historic sentence handed down in the case against Ahmad Al Faqi Al Mahdi and was following with interest the ongoing case against Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud.

14. The application of the principle of universal jurisdiction must be based on subsidiarity and must also be subject to the fundamental principles of criminal justice, namely equality before the law, the right to a fair trial and the presumption of innocence. Moreover, a balance must be maintained between the needs of justice and the preservation of the sovereign rights of States, including those of State sovereignty and the immunity of State officials from foreign criminal jurisdiction. The exercise of universal jurisdiction also called for greater cooperation between States and for the harmonization of laws. It was therefore necessary to seek convergence on the definition and scope of the principle of universal jurisdiction.

15. **Ms. Bhat** (India) said that those who committed crimes should not go unpunished merely because of procedural technicalities, such as lack of jurisdiction. However, asserting jurisdiction and exercising it were altogether different matters. It was widely recognized that criminal jurisdiction could be exercised on the basis of territoriality, nationality or the protective principle. Those jurisdictional theories required a connection between the State asserting jurisdiction and the offence. The principle of universal jurisdiction was a different type of jurisdictional theory, which lacked proper legal backing at the national and international levels. A State invoking universal jurisdiction could claim jurisdiction when there was no direct connection to the offence, provided that the offence was one that affected the interests of all States.

16. Several treaties obliged States parties either to try an accused person or to hand the person over for trial in another State, in accordance with the obligation to extradite or prosecute (*aut dedere aut judicare*).

However, that obligation should not be confused with the principle of universal jurisdiction. Moreover, unanswered questions remained regarding the basis for extending the application of such jurisdiction and its relationship with laws relating to immunity, pardon and amnesty. Piracy was currently the only crime in respect of which the applicability of universal jurisdiction was undisputed under general international law. In her delegation's view, universal jurisdiction should be understood as the jurisdiction of States to prosecute their nationals wherever they were located. It was important to avoid misuse of the principle of universal jurisdiction, given that the concept and the definition thereof remained unclear.

17. **Mr. Kanu** (Sierra Leone) said that his delegation remained concerned that, after more than a decade of discussions in the Committee on the current agenda item, very little progress had been made, despite the increase in State practice based on the universality principle. Sierra Leone applied that principle in a limited manner. Under its Geneva Conventions Act of 2012, the country recognized universal jurisdiction only in connection with grave breaches of the Geneva Conventions of 1949 and the Additional Protocols thereto. The Act covered violations of international humanitarian law committed by Sierra Leone nationals or persons of any other nationality inside or outside Sierra Leone.

18. His delegation shared the concerns of the Group of African States regarding the lack of action to curb misuse and abuse of the universality principle and urged the Committee to ensure that those concerns were fully reflected in the draft resolution on the current agenda item. It remained of the view that there was a genuine possibility of progress being made on the topic, including through the discussions on the relevant elements of a working concept of universal jurisdiction in the working group to be established during the seventy-ninth session of the General Assembly.

19. His delegation saw great merit in separating the legal issues surrounding the topic from the policy concerns. The Committee could continue to address the policy questions, while the International Law Commission could assist the Committee in considering the technical and legal aspects of the topic. His delegation renewed its call for the Commission to move the topic of universal criminal jurisdiction to its current programme of work. It was particularly interested in the codification of practice in the application of universal jurisdiction in relation to sexual and gender-based crimes and invited the Commission to develop draft provisions thereon.

20. **Mr. Ouro-bodi** (Togo) said that holding perpetrators of the most serious violations of international law accountable was an important step towards ending impunity and ensuring justice for victims. Universal jurisdiction, like the jurisdiction of international tribunals, could fill the jurisdictional gap left when States were unable or unwilling to prosecute those responsible for international crimes. At the same time, universal jurisdiction offered a striking example of the potential conflict that could arise, and the delicate synergy that must be maintained, between the imperatives of national sovereignty and non-interference in the internal affairs of States and those of preventing and punishing the most serious violations of human rights and international humanitarian law.

21. The scope of universal jurisdiction must therefore be limited, and it must complement and not contradict the jurisdiction of the national courts of the State in which the crime was committed, which had primary responsibility for prosecution. Abuse of the principle of universal jurisdiction by certain States was a clear violation of the sovereignty and territorial integrity of other States that undermined their stability and threatened international law, peace and security. Indeed, the increasing politicization of the principle and, especially, its selective application were detrimental to the cause of justice and to international peace.

22. In order to maintain a consensus on the scope and application of universal jurisdiction, it should be exercised only in respect of the most serious international crimes, including terrorism and the financing of terrorism, genocide, war crimes, crimes against humanity, slavery, torture, trafficking in persons and hostage-taking. Article 164 of the new Penal Code of Togo added apartheid crimes to the list of serious violations over which Togolese courts had jurisdiction, whether they were committed inside or outside the national territory and irrespective of the nationality of the perpetrator or any accomplices. Togo was also a party to several international instruments that included a general obligation to extradite or prosecute.

23. Universal jurisdiction could not be applied effectively unless it was supplemented by mutual legal cooperation and assistance mechanisms. Moreover, as its application was often limited by domestic laws, in particular those on statutes of limitation, admissibility of complaints, immunity and amnesty, there was a need to harmonize such mechanisms within a multilateral framework. Such jurisdiction must be applied in accordance with other fundamental principles of international law, in particular the sovereign equality of States, non-interference in the internal affairs of States and the immunity of State officials from jurisdiction.

The principle of universal jurisdiction should also be implemented in a framework of transparent international cooperation.

24. **Ms. Taye** (Ethiopia) said that, in the face of rising transnational crime and growing interconnectedness of national interests, States must modify their law enforcement strategies and their capacity to investigate and prosecute crimes. Her country had long recognized in its domestic law the principle of universal jurisdiction over crimes such as genocide, crimes against humanity, war crimes, terrorism, money-laundering and all crimes proscribed under treaties to which it was a party. It also recognized the applicability of the principle to offences relating to the illicit manufacture and trafficking of drugs, trafficking in persons and the production of indecent images and publications.

25. Universal jurisdiction should only be used as a last resort and only in the event that the countries with direct links to the offence in question failed to take appropriate action. The universality principle should not be confused with the jurisdiction of the International Criminal Court or of ad hoc mechanisms, which derived from specific agreements between States. The arbitrary and politically motivated application of the principle by some courts should not be allowed to undermine the principle of State sovereignty. The utilization of the principle against leaders of African countries was deeply problematic and regrettable. Universal jurisdiction was an instrument for combating impunity, but its scope and application required careful scrutiny in order to ensure its credibility and legitimacy.

26. **Ms. Ajayi** (Nigeria) said that her delegation remained concerned about the uncertainty surrounding the application of the principle of universal jurisdiction. It therefore called upon the international community to adopt measures that would put an end to the abuse and political manipulation of the principle and ensure that its scope was clearly defined. Universal jurisdiction was an important principle of international law intended to prevent impunity, promote adherence to and respect for the rule of law and fundamental freedoms worldwide and punish those in leadership positions responsible for the most appalling crimes and atrocities. Perpetrators of heinous crimes must not be permitted to escape prosecution by fleeing to territories outside those where the crime was committed. It was therefore imperative for all States to adopt laws and measures enabling such persons to be prosecuted wherever they were apprehended, under the principle of universal jurisdiction.

27. As a party to the Rome Statute of the International Criminal Court, Nigeria had contributed to the evolution of the principle of universal jurisdiction in criminal matters as developed within the Court, and it continued to work with other States parties to ensure that the Court's application of the principle was equitable and practical, especially in cases where it was likely to have an impact on the political stability of any State. Nigeria had enacted several laws to curb impunity for crimes against humanity and war crimes, including the Terrorism Prevention Act of 2022, the Boko-Haram Proscription Order of 2013, the Federal High Court Practice Direction Order of 2014 and the Administration of Criminal Justice Act of 2015.

28. The principle of universal jurisdiction should, to the extent possible, be used only as a last resort. It must not be used recklessly by States to assert jurisdiction prematurely or hastily when there was a possibility of cooperation with the State where the crime had been committed, especially on the basis of extradition or mutual legal assistance agreements. Universal jurisdiction must not be used by stronger countries to force their domestic legal systems on less powerful countries by depriving them of prosecutorial authority. Her delegation appealed to the international community to address the constructive criticisms of all concerned parties in relation to the applicability of the principle of universal jurisdiction. Properly articulated communication and awareness-raising would help to engender trust and encourage greater cooperation among Member States on the matter and avoid the appearance of bias and political motivation in the use of the principle.

29. **Mr. Alwasil** (Saudi Arabia), emphasizing that the goal of the principle of universal jurisdiction was to combat impunity, said that his delegation welcomed the ongoing efforts to study the scope and application of the principle with a view to arriving at a practical way of implementing it, with clear standards, rules and mechanisms for determining the crimes that should be subject to such jurisdiction. Universal jurisdiction should be exercised in accordance with the principles enshrined in the Charter of the United Nations and international law, especially State sovereignty, sovereign equality and the immunity of State officials who enjoyed immunity under international law.

30. His delegation called upon all Member States to continue studying ways of exercising and enforcing universal jurisdiction in keeping with the Charter and working towards the common goal of combating impunity.

31. **Mr. Kattanga** (Tanzania), recalling that the current item had been included in the agenda of the General Assembly at the request of his Government on

behalf of the Group of African States, said that there remained a pressing need to achieve a consensus and understanding among Member States on the foundation and scope of the principle of universal jurisdiction. His delegation therefore called for continued constructive discussion on the principle, without politicization. It encouraged all Member States to participate in the forthcoming discussions of the Committee's working group on the topic, which would focus on the relevant elements of a working concept of universal jurisdiction.

32. His Government fully supported the principle of universal jurisdiction as a means of combating impunity and ensuring that the perpetrators of genocide, crimes against humanity and war crimes were punished. It was concerned, however, about the ad hoc and arbitrary application of such jurisdiction, particularly in respect of African leaders. The application of universal jurisdiction must be consistent with international law and the conduct of international relations. The definition of the principle and the rules for its application must be clearly established in order to avoid selectivity, abuse and political motivation in its use.

33. His delegation appealed to States to show flexibility in the discussions on the topic and to work towards providing a sound basis for a legal framework for the application of universal jurisdiction in accordance with the provisions of the Charter of the United Nations and the principles and norms of customary international law.

34. **Ms. Pham** Nha (Viet Nam) said that the principle of universal jurisdiction was an important legal tool for ensuring that the perpetrators of the most serious international crimes, such as genocide and war crimes, did not go unpunished. However, the lack of a clear and generally accepted definition of the concept and a shared understanding of its scope and limits might lead to improper or selective application of the principle.

35. Universal jurisdiction should be applied in keeping with the principles enshrined in the Charter and in international law, including the sovereign equality of States, non-interference in the domestic affairs of States and the immunity of State officials from foreign criminal jurisdiction. 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.

36. Her Government viewed universal jurisdiction as an important tool for combating the most serious crimes and preventing impunity. The country's 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. To ensure that universal jurisdiction was exercised in good faith and in an impartial manner, her delegation believed that common standards or guidelines relating to its scope and application should be developed.

37. **Mr. Moriko** (Côte d'Ivoire) said that it was worth recalling that the topic of universal jurisdiction had been included in the agenda of the General Assembly at the request of the Group of African States with the aim of enabling Member States to prosecute, on the basis of such jurisdiction, the perpetrators of serious crimes such as piracy, slavery, torture, genocide, war crimes and crimes against humanity, even if committed outside their territory and irrespective of the nationality of the perpetrators. By raising the issue at the level of the General Assembly, the African States had wished to contribute to the effort to combat impunity at the international level. That was why they had been concerned about the arbitrary application of the principle of universal jurisdiction, in particular in respect of sitting African Heads of State. The Group had therefore urged all Member States to apply the principle in accordance with international law.

38. The position of the African States had not changed. Universal jurisdiction must be applied in accordance with the principles enshrined in the Charter of the United Nations, including the sovereign equality of States, non-interference in their internal affairs and the right to self-determination. That position was clearly set out in the African Union Model National Law on Universal Jurisdiction over International Crimes. In the application of universal jurisdiction, priority must be given to the jurisdiction of the State in whose territory the crime was alleged to have been committed, as conditions in that State would be most conducive to the conduct of an investigation. Only if that State was unwilling or unable to prosecute could a third State or a competent court take up the case.

39. Universal jurisdiction should not be exercised in respect of high-ranking State officials who enjoyed

immunity under international law, except in situations covered by a treaty to which the forum State and the State of nationality of the officials were parties and which prohibited such immunity.

40. **Mr. Saranga** (Mozambique) said that it was important to continue the discussions on the scope and application of the principle of universal jurisdiction with a view to reaching a consensus on the relevant elements of a functional concept of such jurisdiction. While the practice of States regarding the scope and application of the principle of universal jurisdiction was not uniform, there did seem to be enough common ground to find a consensus on the application of the principle to serious crimes, within the framework of the established rules of international law. Consent and cooperation, if regulated within the multilateral system, could help to limit excessive, abusive or improper application of the principle.

41. Universal jurisdiction should be complementary to the national jurisdiction of the country in question; it should be exercised in good faith and in accordance with the principles of international law and those enshrined in the Charter of the United Nations, including State sovereignty and non-interference in the internal affairs of States, territoriality, nationality and diplomatic immunity. The selective and manipulative use of universal jurisdiction by some States was not acceptable. Another State could prosecute an offender only when the territorial State or the State with the closest connection to the crime had shown reluctance or inability to exercise its jurisdiction.

42. His country's criminal jurisdiction was sufficiently comprehensive to prevent impunity for nationals and foreigners for serious crimes committed in the Mozambican territory or abroad when the offender was in Mozambique and had not been tried elsewhere. Moreover, the country's legal framework for judicial cooperation and mutual legal assistance with other States and international organizations prevented impunity for crimes subject to universal jurisdiction.

43. *Mr. Chindawongse (Thailand) took the Chair.*

44. **Mr.** Scott **Tan** (Singapore) said that the principle of universal jurisdiction contributed to the global fight against impunity, as it provided a means of holding perpetrators responsible for the crimes they committed. Certain crimes were so heinous and of such exceptional gravity that their commission shocked the conscience of all humanity. The international community had a common interest in and shared responsibility for combating such crimes and ensuring justice for victims. Universal jurisdiction should not be the primary basis for the exercise of criminal jurisdiction. The State in whose territory the crime had occurred or the State of nationality of the alleged perpetrator bore the main responsibility for exercising jurisdiction.

45. Universal jurisdiction should be invoked only as a last resort, in situations where no State was able or willing to exercise jurisdiction on the basis of the territoriality or nationality principles. Furthermore, the principle of universal jurisdiction should be applied only to particularly grave crimes that affected the international community as a whole and that were generally agreed to warrant the exercise of such jurisdiction.

46. Universal jurisdiction was a principle of customary international law and should be distinguished from the exercise of jurisdiction provided for in treaties or the exercise of jurisdiction by international tribunals constituted under specific treaty regimes, each of which had their own specific set of considerations, juridical bases, objectives and rationales. Lastly, universal jurisdiction existed within the larger international legal order and could not be exercised in isolation from, or to the exclusion of, other applicable principles of international law, such as the immunity of State officials from foreign criminal jurisdiction, State sovereignty and territorial integrity.

47. **Mr. Lahsaini** (Morocco) said that the aim of universal jurisdiction was to establish effective mechanisms to ensure accountability and put an end to impunity for the most serious crimes under international law. Universal jurisdiction was a complex and sensitive issue, however, and it had not yet been possible to reach a consensus on a definition and a legal framework establishing its scope. It must be recognized that, like other international principles and rules, the principle of universal jurisdiction could be used for political ends or for reasons unrelated to its intended purpose. In order to prevent such misuse or abuse, it was essential to ensure that State sovereignty, especially in judicial matters, was respected.

48. Moroccan criminal law was based on the principles of territoriality, legality and personality, with territorial jurisdiction taking precedence over all other forms. Nevertheless, the domestic legal system also encompassed measures that partially reflected the spirit of universal jurisdiction. Under article 10 of the Criminal Code, Moroccan criminal law applied to anyone on Moroccan territory, subject to the exceptions provided for in domestic and international law. Moroccan courts also had competence to prosecute any Moroccan citizen who had committed outside Morocco a major or minor offence under articles 707 and 708 of the Code of Criminal Procedure. Morocco had adopted

the principle of universal jurisdiction in respect of terrorism. Act No. 86-14 of 20 May 2015 provided that Moroccan courts had the power to try any individual who had committed or participated in the commission of a terrorist offence outside Morocco.

49. **Ms. Nyakoe** (Kenya) said that her delegation had no question about the utility of universal jurisdiction for grave international crimes. However, the scope of such jurisdiction must be clear and it must be exercised in tandem with other deterrent mechanisms. Universal jurisdiction should not be invoked arbitrarily or used in pursuit of narrow political interests. Such abuse could easily undermine the stability of States and pose a real threat to international peace and security.

50. The application of universal jurisdiction must always be guided by the cardinal principle of complementarity. It should be applied consistently within a clear and comprehensive conceptual framework that set out its exact parameters, scope and limitations and reflected the complexities and realities of global democracies. Lastly, such jurisdiction should be exercised in accordance with the principles of sovereign equality and territorial integrity of States and with respect for the immunities accorded to State officials under international law.

51. **Ms. Güç** (Türkiye) said that ensuring individual criminal accountability for the most serious crimes under international law was pivotal to collective efforts to strengthen the rule of law and maintain global peace and security. States bore the primary responsibility for preventing impunity for such crimes. Universal jurisdiction was an exceptional and subsidiary procedure and should be exercised as a last resort, in strict compliance with fundamental principles of international law, such as the sovereign equality of States and non-interference in their internal affairs. While the principle of universal jurisdiction might serve as an effective mechanism for combating impunity in specific contexts, it was imperative to heed the legitimate concerns expressed by many delegations regarding its scope and the potential for its misuse. If used for political purposes, universal jurisdiction could erode human rights, disrupt the international social order and infringe on State sovereignty.

52. The principle of universal jurisdiction was embedded in her country's domestic laws, and Turkish courts were empowered, subject to strict criteria, to exercise jurisdiction over certain serious crimes, irrespective of the nationality of the perpetrator or the place where the crime was committed. Moreover, Türkiye was a party to numerous bilateral and multilateral treaties that included provisions concerning the obligation to extradite or prosecute, which was closely intertwined with the concept of universal jurisdiction and which offered an alternative path for ensuring accountability for serious international crimes. It was important to strike a balance between preventing impunity for serious international crimes and ensuring the legitimacy of universal jurisdiction and respect for the fundamental principles of international law and international relations.

53. **Mr. Tun** (Myanmar) said that States had primary responsibility for preventing and punishing serious international crimes, including genocide, ethnic cleansing, crimes against humanity and war crimes. Perpetrators of such crimes must be held accountable through credible national judicial systems. The international community and the United Nations could and should play an important role in promoting the rule of law and strengthening justice systems at the national level, especially in conflict situations. Universal jurisdiction was complementary to, not a replacement for, the criminal justice systems of States. Its application was important and sometimes necessary when States were unable or unwilling to prosecute perpetrators of serious international crimes. A case in point was where the rule of law at the national level had been destroyed and widespread impunity was not being addressed by competent international bodies such as the Security Council and the International Criminal Court. The application of the principle would complement the work of such bodies and strengthen efforts to end impunity.

54. His delegation shared the concerns expressed about the potential for abuse of the principle of universal jurisdiction and the legal and political implications of such abuse for international law and the conduct of international relations. It was important to delimit the scope of the principle and to determine how it could be applied effectively and in accordance with international law and the Charter of the United Nations to combat impunity. His delegation therefore supported continued deliberations on the topic within the Committee and encouraged the International Law Commission to move the topic of universal criminal jurisdiction to its current programme of work.

55. Since the military coup in 2021, the illegal military junta had been conducting a campaign of brutal violence against the civilian population of Myanmar. Multiple massacres had been committed by the military forces across the country, and the junta had thus far murdered over 4,100 civilians, including children, and driven some 1.7 million people from their homes. Evidence of the serious international crimes being committed in Myanmar was being collected and preserved by the Independent Investigative Mechanism for Myanmar.

His delegation hoped that such evidence would be made available not only for current international judicial proceedings, but also for future national and international accountability efforts, including proceedings involving the application of universal jurisdiction.

56. In the current environment in Myanmar, it was impossible to conduct credible investigations into the allegations of serious international crimes perpetrated under the illegal military junta, and, consequently, impunity was widespread. The Security Council had not addressed the issue effectively, despite the overwhelming evidence of serious international crimes and repeated calls from the people of Myanmar. Until democracy and the rule of law were restored, his Government supported any good-faith exercise of universal jurisdiction to hold the military junta accountable for their past and ongoing atrocities. At the same time, his delegation again urged the United Nations, in particular the Security Council, to take decisive and timely action to save the lives of innocent civilians in Myanmar.

57. **Mr. Alblooshi** (United Arab Emirates) said that his Government stressed the need for international cooperation in order to end impunity, especially for the most serious international crimes. Universal jurisdiction should be limited to specific crimes. Such jurisdiction was extraordinary and was only complementary to the jurisdiction of the State where the crime was committed. The principle of universal jurisdiction should be applied in accordance with the Charter of the United Nations and international law and the principle of the sovereign equality of States. It should not be politicized or used against Heads of State and Government or high-ranking State officials who enjoyed immunity under international law. His Government therefore reiterated its position that article 7 of the International Law Commission's draft articles on immunity of State officials from foreign criminal jurisdiction did not reflect international law, State practice or international jurisprudence.

58. Given the discrepancies in legal systems and domestic laws, States should enhance their judicial cooperation in criminal matters in order to ensure that perpetrators of serious crimes were held to account. In that connection, his Government had enacted Federal Act No. 39/2006, on international judicial cooperation in criminal matters. The United Arab Emirates had also entered into a number of agreements with various States on legal assistance in criminal matters, extradition and the transfer of convicted persons, thus helping to bolster the scope and application of the principle of universal jurisdiction.

59. **Mr. Khaddour** (Syrian Arab Republic) said that it was important to acknowledge that the principle of universal jurisdiction was often applied for political reasons, thus leading countries to apply it selectively in some cases but not in others, even when the cases were similar. Although many countries had adopted laws on universal jurisdiction, claiming that their aim was to protect human rights and combat impunity, the decision to apply those laws was the result of a political calculation. Individuals were prosecuted on the basis of universal jurisdiction only if their prosecution would not entail too heavy a political price or if the political benefits of prosecution were deemed to be greater than the costs.

60. Universal jurisdiction should not be confused with the jurisdiction exercised by the International Criminal Court in accordance with articles 17 and 18 of the Court's Rome Statute. It was a subsidiary form of jurisdiction that could never be considered equivalent to or a replacement for national jurisdiction based on the territoriality or nationality principles. Before initiating any legal proceedings, the judicial authorities of a State invoking universal jurisdiction must ensure that no similar proceedings were being conducted by a State with jurisdiction based on one of those principles.

61. Universal jurisdiction could be applied only if the State with primary jurisdiction was unable or unwilling to prosecute. However, care must be taken to ensure that States could not invoke universal jurisdiction simply by claiming that another State was unable or unwilling to exercise its national jurisdiction. The principle of universal jurisdiction must never be applied in an arbitrary or haphazard manner, nor should it be used for political ends. Not only would such misuse of the principle render it ineffective in preventing impunity, but it could also increase tensions in international relations and result in judicial chaos.

62. Given the profound differences of opinion on the topic, his delegation was of the view that the Committee should focus on reaching a consensus on the idea that national courts should restrict their application of universal jurisdiction to crimes such as piracy, genocide, trafficking in persons and slavery, which were unanimously agreed to warrant the invocation of such jurisdiction. His delegation also believed that it would be premature to refer the topic to the International Law Commission.

63. **Mr. Bouchedoub** (Algeria) said that universal jurisdiction was warranted only for exceptionally serious crimes that shocked the conscience of humanity as a whole, such as war crimes, the crime of genocide and crimes against humanity. Such jurisdiction should

be exercised only as an exception to jurisdiction based on the territoriality or active or passive personality principles and only to prevent impunity in cases where national courts were unable or unwilling to exercise their national jurisdiction. Universal jurisdiction complemented but did not replace national jurisdiction; primary responsibility for prosecuting perpetrators of such crimes rested with the State in which the crime was committed or with the State of nationality of the perpetrator or the victim.

64. Universal jurisdiction should be invoked only on an exceptional basis, when national courts were unable or unwilling to exercise jurisdiction. It should be applied in accordance with the fundamental principles of international law enshrined in the Charter of the United Nations, including good faith, sovereign equality of States, non-interference in their internal affairs and the immunity of State officials from foreign criminal jurisdiction. Any arbitrary, illegitimate or selective application of the principle would merely undermine the credibility of international efforts to combat impunity.

65. It was clear from the Committee's previous deliberations that Member States did not have a shared understanding of the principle of universal jurisdiction, and that there were significant divergences among domestic laws regarding the crimes that should be subject to such jurisdiction. Any expansion of the list of relevant crimes without a prior consensus would undermine international efforts to prevent impunity, which was the purpose of the principle of universal jurisdiction. His delegation encouraged the Committee's working group to endeavour to determine the scope of universal jurisdiction and identify clear rules for its application with a view to achieving a widespread consensus and avoiding misuse of the principle for political purposes.

66. **Ms. Essaias** (Eritrea) said that universal jurisdiction was complementary to and not a substitute for national jurisdiction. The primary responsibility for investigating and prosecuting certain crimes under international law should lie with the State where the alleged crime was committed, as that State had the strongest nexus to the crime. Additionally, the application of the principle should be in conformity with the principles of sovereign and diplomatic immunity, as provided for under customary international law, and the principles of sovereign equality, political independence and territorial integrity of States and non-interference in their internal affairs.

67. Her delegation shared the serious concerns of the Group of African States regarding the abuse of the principle of universal jurisdiction by foreign courts. It was illegal and unacceptable that certain States had been invoking criminal justice mechanisms to pursue their vested interests while evading any kind of accountability for crimes allegedly perpetrated by their nationals in other countries. That approach epitomized double standards and selectivity in the application of international justice. Previous discussions on the topic had shown that there was considerable divergence regarding the list of offences that could be subject to the application of universal jurisdiction and regarding the role of customary international law in that regard. Her delegation called for a cautious approach in defining the scope and application of the principle.

68. **Ms. Sayej** (Observer for the State of Palestine) said that the Palestinian people were starving to death and being denied water, medicine, electricity, fuel and food, all while being savagely bombed, besieged, displaced and killed en masse in full view of the world. Israel had dropped over 6,000 bombs, including on hospitals and on families attempting to flee to safety. Thousands of people, including children, had been killed. The Special Rapporteur on the situation of human rights in the Palestinian Territory occupied since 1967 had warned that the international community might be witnessing a repeat of the 1948 Nakba, and an Israeli Knesset member had confirmed that the goal was a Nakba that would overshadow the Nakba of 1948.

69. The actions of Israel raised a couple of questions: How could a publicly stated policy of collective punishment and indiscriminate killing by an occupying Power be justified? What did the collective failure to hold Israel accountable for its crimes say about the dangers of impunity or the importance of accountability? As the Committee spoke of accountability and international justice, Israeli impunity continued. Her delegation called on the international community to uphold the rules that humanity had put in place to prevent exactly what was currently happening in Gaza and what had been happening in Palestine for the previous 75 years.

70. **Mr. Apraxine** (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 investigated and prosecuted. Under the 1949 Geneva Conventions and Additional Protocol I thereto, States parties were obligated to search for suspected perpetrators of grave breaches of international humanitarian law, regardless of their nationality, and to either prosecute or extradite them. States parties were also required to make sufficient provision for universal jurisdiction in their national laws to enable them to

prosecute or extradite perpetrators of grave breaches of the Conventions.

71. 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 jurisdiction over the crimes set out therein. In addition, State practice and *opinio juris* had crystallized into a customary rule whereby States had the right to exercise universal jurisdiction over serious violations of international humanitarian law. The International Committee of the Red Cross (ICRC) welcomed the recent adoption of the Ljubljana-The Hague Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes Against Humanity, War Crimes and Other International Crimes, which was the most recent example of recognition of the importance of the principle of universal jurisdiction in a multilateral treaty.

72. ICRC continued to support States in their efforts to strengthen their national criminal legislation and establish universal jurisdiction over serious violations of international humanitarian law. Although States might well attach conditions to the application of such jurisdiction, any such conditions must be intended to increase the effectiveness and predictability of its exercise, not to unnecessarily restrict the prospects for international justice.

Statements made in exercise of the right of reply

73. **Ms. Rubinshtein** (Israel) said that she did not blame the Palestinian representative, even though she had used hateful anti-Semitic tropes that had been used against the Jewish people for generations. The representative feared for her people who had been living for 16 years under the brutal rule of Hamas, a terrorist organization that took their money, schools and hospitals and used them for terrorist purposes. Indeed, as reported by the United Nations Relief and Works Agency for Palestine Refugees in the Near East, Hamas had stolen fuel and medical supplies meant for refugees from the Agency's premises in Gaza City. While Israel was taking every precaution to protect the civilian population in Gaza, as required by international humanitarian law, Hamas had ordered civilians not to evacuate, but rather to stay and remain in danger.

74. Sixteen years of abuse by Hamas had been hard on everyone in Gaza. Hamas had intentionally launched its attack on Gaza in the early morning hours of 7 October 2023 with the aim of murdering and kidnapping Israeli civilians, especially children. There could be no justification for the attack, which had nothing to do with political aspirations and could not be understood. Angry, frustrated human beings did not rape and murder families in their homes, nor did they decapitate babies, and they certainly did not post images of such acts online for the world to see. Those were acts of sheer cruelty, not anger or frustration. The people of Israel and the Palestinian people had been plagued by the same murderous organization, with one notable difference: the people of Israel felt for every Palestinian under the rule of Hamas. It was regrettable that the Palestinian representative had not expressed similar sentiments and unequivocally condemned Hamas.

75. **Ms. Sayej** (Observer for the State of Palestine) said that it was incredible that the Israeli representative would accuse her delegation of using anti-Semitic tropes when it had questioned how people could rationalize the savagery and barbarism occurring in Gaza. The representative claimed that Israel was doing what it could to protect civilians, as required by international humanitarian law, but in fact Israel had absolved itself of its responsibility as an occupying Power. Her people had been suffering for 75 years under Israeli oppression and a system of apartheid that sustained all the violence and must come to an end. The statement by the representative of Israel was not surprising; it was basically an extension of what Israeli officials had been saying over the previous week as they dehumanized the Palestinian people. There was not much that could be said in response to someone who could not recognize the humanity of two million people who were being bombed and besieged and who, instead, sought to rationalize such savagery.

Agenda item 77: Report of the United Nations Commission on International Trade Law on the work of its fifty-sixth session (A/78/17)

76. **Ms. Sabo** (Chair of the United Nations Commission on International Trade Law (UNCITRAL)), introducing the Commission's report on the work of its fifty-sixth session (A/78/17), said that the Commission had finalized six legislative texts, four of which related to investor-State dispute settlement reform. The UNCITRAL Model Provisions on Mediation for International Investment Disputes contained a set of treaty provisions on mediation intended for inclusion in past and future investment agreements, while the UNCITRAL Guidelines on Mediation for International Investment Disputes explained the benefits of mediation and how it could be used to resolve investment disputes. Both texts aimed to promote the use of mediation, which was currently underutilized, in investment disputes and facilitate the amicable settlement of such disputes.

77. The Code of Conduct for Arbitrators in International Investment Dispute Resolution and the Code of Conduct for Judges in International Investment Dispute Resolution set out key obligations of adjudicators involved in investor-State dispute settlement, emphasizing their duty of independence and impartiality, expanding disclosure requirements and introducing rules on "double-hatting", a situation in which an adjudicator functioned as a counsel in another proceeding involving similar legal issues. The Code of Conduct for Judges would eventually apply to the adjudicators appointed to serve in a standing mechanism for resolving investment disputes. Also in the area of dispute settlement, the Commission had adopted the guidance text on early dismissal and preliminary determination for inclusion in the UNCITRAL Notes on Organizing Arbitral Proceedings, the aim of which was to assist arbitration practitioners and users in understanding the discretionary power of arbitral tribunals under the UNCITRAL Arbitration Rules and other arbitration rules.

78. The Commission had also adopted the UNCITRAL Guide on Access to Credit for Micro-, Small and Medium-sized Enterprises, which built on its previous work in the field of secured transactions, in particular the UNCITRAL Model Law on Secured Transactions. In the Guide, the Commission examined regulatory and policy measures that could help reduce barriers to access to credit, such as credit guarantee schemes, rules and guidance on fair lending practices and the promotion of financial literacy. It also provided recommendations aimed at preventing gender-based discrimination against women business owners, who often faced higher barriers than men in obtaining credit.

79. With regard to future work, Working Group I would start work on a draft model law on warehouse receipts; Working Group II would continue working on the topics of technology-related dispute resolution and adjudication; Working Group III would continue its work on the reform of investor-State dispute settlement, focusing on the establishment of an advisory centre on international investment law and guidance on dispute prevention and mitigation; Working Group IV would continue working in parallel on the formulation of default rules on data provision contracts and principles on automated contracting; Working Group V would continue its work on civil asset tracing and recovery and on applicable law in insolvency proceedings; and Working Group VI would continue its consideration of a new international instrument on negotiable cargo documents.

80. The Commission had taken note of activities undertaken by its secretariat to advance the work on the impact of the coronavirus disease (COVID-19) pandemic on international trade law and had authorized the secretariat to finalize and publish the document entitled "COVID-19 and international trade law instruments: a legal toolkit by the UNCITRAL secretariat". On the topic of climate change mitigation, adaptation and resilience, the Commission had commended the secretariat for having organized the Colloquium on Climate Change and International Trade Law to consider areas in which international trade law could effectively support the achievement of climate action goals set by the international community, to consider the scope and value of legal harmonization in those areas and to consider the need for international guidance for legislators, policymakers, courts and dispute resolution bodies.

81. The Commission had requested the secretariat to consult with all States Members of the United Nations with a view to developing a more detailed study on the aspects of international trade law related to voluntary carbon credits. It had also requested the secretariat to finalize its work on the preparation of a guidance document on legal issues relating to the use of distributed ledger systems in trade, to continue to implement its stocktaking project on dispute resolution in the digital economy and to put forward proposals for possible legislative work, with a focus on the recognition and enforcement of electronic awards and electronic notices of arbitration and their service.

82. The Commission had reiterated the importance of coordinating the activities of organizations active in the field of international trade law, which was a core element of the Commission's mandate, as a means of avoiding duplication of effort and promoting efficiency, consistency and coherence in the unification and harmonization of international trade law. The Commission had emphasized the importance of closer coordination among the organizations concerned when formulating or considering proposals for future work and when taking up new projects, in order to prevent inconsistency and avoid unduly burdening their respective secretariats with commitments to participate in and follow up on projects being carried out concurrently by other organizations.

83. The Commission had also engaged in non-legislative activities aimed at raising awareness and promoting the effective understanding of the Commission's texts, providing legislative advice and assistance to States on the adoption and use of those texts and building capacity to support their effective use, implementation and uniform application. Key achievements reported by the secretariat included its continued efforts to meet the increasing demand for

non-legislative activities, including the focus on beneficiary countries with lower levels of development, and the milestones reached in the implementation of formal agreements with Governments, in particular those of China, the Hong Kong Special Administrative Region of China and Saudi Arabia.

84. The Commission had continued to expand its engagement with academic partners, including through the UNCITRAL Asia-Pacific Day, the UNCITRAL Latin America and the Caribbean Day and the inaugural UNCITRAL Africa Day. It had also expanded its online and social media presence and made greater use of videoconferences and webinars, which had increased interest in the Commission among a broader audience. Three new e-learning modules had been issued, on mediation, public procurement and public-private partnerships, and commercial arbitration. The Commission was grateful to those States and organizations that had contributed to the UNCITRAL trust funds and the repository of published information under the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration.

85. The Commission had emphasized the benefits of the Case Law on UNCITRAL Texts (CLOUT) system as a tool to support continued and sustained capacity-building in the use and implementation of UNCITRAL texts, noted with interest the progress made towards a rejuvenation of CLOUT, and expressed its gratitude to the secretariat for compiling cases and establishing CLOUT partnerships. It had also expressed appreciation to the secretariat for its continued efforts to update the existing digests of case law on UNCITRAL texts and ensure their wide dissemination. As had been the practice since 2008, the Commission would transmit to the General Assembly comments on the Commission's current role in promoting the rule of law and the achievement of the Sustainable Development Goals. In formulating those comments, the Commission had been mindful of the subtopic identified for the Committee's upcoming debates on the rule of law, namely the use of technology to advance access to justice for all.

86. At its previous session, the Commission had considered possible adjustments to its methods of work in the light of the experience gained from the sessions held during the COVID-19 pandemic, including livestreaming of sessions to allow for remote participation. During the fifty-sixth session, the Commission had been informed that the secretariat had incurred costs for livestreaming, provision for which was not currently included in the regular budget. Strong support had been expressed for continued livestreaming of sessions as a means of promoting greater inclusiveness and transparency, and the secretariat had been requested to continue the practice, within its existing resources. The Commission had confirmed that Working Group III, and any other working group when the need arose, could use the final meeting of its sessions for substantive deliberations, rather than for the adoption of the report on the work of the session, and continue the practice of adopting the report by a written procedure. The Commission had agreed that each working group should decide how and when informal meetings would be organized by the secretariat in the periods between its sessions and that the agendas of such meetings should be agreed by the working group and announced in advance.

87. Lastly, the Commission had heard a proposal for streamlining the omnibus resolutions on the Commission's report and had requested the secretariat to facilitate an open and flexible intersessional consultative process among States Members of the United Nations with a view to developing guidelines on streamlining and simplifying the texts of future resolutions. The secretariat had been asked to report back to the Commission on those efforts at its next session.

88. **Ms. Joubin-Bret** (Secretary of the United Nations Commission on International Trade Law) said that the fifty-seventh session of the Commission would take place in New York, as would the first part of the working group sessions. Working Group III would continue its work on investor-State dispute settlement reform; that work would be delivered as part of a package that would take the form of a multilateral convention still to be negotiated. The secretariat would continue to organize informal meetings with a view to enabling Member States to gain a better understanding of the topics being discussed in Working Group III and promote greater participation in the Commission's investor-State dispute settlement reform efforts. A number of texts were being finalized, especially in the area of digital trade, for presentation to the Commission and to the Committee in 2024. The secretariat would also be finalizing its stocktaking project on dispute resolution in the digital economy.

89. She wished to thank all the Governments that had collaborated with the secretariat during the previous year, including the Government of China, which had hosted the signing ceremony for the United Nations Convention on the International Effects of Judicial Sales of Ships. Fifteen countries had already signed the Convention and a number of others were considering doing so. Regarding the UNCITRAL omnibus resolution for the current session, the secretariat stood ready to offer briefings on the UNCITRAL texts being presented for adoption and to collaborate with and support Member States in the effort to streamline the resolution.

The meeting rose at 1 p.m.