

The scope and application of the principle of universal jurisdiction
Oral report of the Chairperson of the Working Group

Chair: Ms. Georgina Guillén-Grillo (Costa Rica)

I. Introduction

1. Pursuant to General Assembly resolution 70/119 of 14 December 2015, the Sixth Committee decided, at its 1st meeting, on 3 October 2016, to re-establish a working group to continue to undertake a thorough discussion of the scope and application of universal jurisdiction. Pursuant to the same resolution, the Assembly decided that the Working Group should be open to all Member States and that relevant observers to the General Assembly would be invited to participate in the work of the Working Group.
2. At the same meeting, the Sixth Committee re-elected Ms. Georgina Guillén-Grillo (Costa Rica) as Chair of the Working Group.
3. The Working Group had before it the 2016, 2015, 2014, 2013, 2012, 2011 and 2010 reports of the Secretary-General on the scope and application of the principle of universal jurisdiction (A/71/111, A/70/125, A/69/174, A/68/113, A/67/116, A/66/93 and Add.1 and A/65/181), as well as the oral reports of the Chairperson on the work of the Working Group in

2015 (A/C.6/70/SR.27), 2014 (A/C.6/69/SR.28), 2013 (A/C.6/68/SR.23) and 2012 (A/C.6/67/SR.24). The Working Group also had before it the Informal Paper of the Working Group (A/C.6/66/WG.3/1), which contains agreements on the methodology, as well as an enumeration of issues for discussion, commonly referred to as the “Roadmap” by the Working Group. The Working Group also had before it (a) an informal compilation of “Multilateral and other instruments”, and (b) an informal compilation containing “Excerpts from decisions of international tribunals” which may be relevant in relation to the work of the Working Group, both prepared by the Secretariat, pursuant to an understanding reflected in the 2010 report of the Sixth Committee on the item (A/65/474, para. 4). Finally, the Working Group had before it the Chairperson’s Informal Working Paper that had been distributed and discussed in previous sessions of the Working Group. This Informal Working Paper served as a basis for our discussions. Copies of the Informal Working Paper are available in the room and on Unite Connections.

II. Proceedings of the Working Group

4. The Working Group held three meetings, on 13, 14 and 21 October 2016. It conducted its work in the framework of informal consultations. The Working Group was convened against the backdrop of the plenary debate at the 13th, 14th and 15th meetings of the Sixth Committee, held on 11, 13 and 14 October 2016.

5. This summary is for reference purposes only and is not an official record of the proceedings. At its first meeting, on 13 October, in my capacity as Chairperson, I presented an overview of past proceedings, including the discussions that had led to the drawing up and refinement of

the Informal Working Paper. As is both customary and important, I stressed that it was understood that the issues raised in the Informal Working Paper were illustrative and without prejudice to future written or oral proposals made by delegations. Furthermore, the document was without prejudice to the positions of delegations; did not reflect consensus among delegations; and was expected to be subject to further deliberation.

6. The Working Group proceeded to discuss the third column of the Informal Working Paper, on the pillar of application. This third column sought to move the work of the Working Group forward, presenting the preliminary elements of the second column in suggested normative pointers. After a number of important contributions from delegations, a number of revisions were made to this third column on application, and they are reflected in the updated Informal Working Paper, primarily focusing on the manner in which the pointers were presented.

7. At the close of the second meeting of the Working Group, the Chairperson proposed that such normative pointers be included for the first two pillars identified in the Roadmap, namely on definition of the principle of universal jurisdiction and on the scope of the principle. As each of the three pillars are interdependent in seeking to examine this topic, it was important for the Working Group to discuss all three pillars within the framework of normative pointers presented in the third column.

8. Within the pillar on definition, the normative elements flow directly from the second column, and refer both to the focus of the Working Group on the topic as well as to the intrinsic nature of this form of jurisdiction. To reflect the discussions on this column that took place during the third meeting of the Working Group, a separation of elements of definition was introduced. This focused on, firstly, the gravity of the crimes at issue and,

secondly, the jurisdictional connection to the State seeking to exercise universal jurisdiction.

9. I now turn to the pillar on the scope of the principle on universal jurisdiction. Drawing on all of the sources set out in footnote 1 of the Informal Working Paper, and the statements made by delegations during the Sixth Committee plenary examination of this agenda item, a number of additional points focussing on the question of the scope of universal jurisdiction were added in column three than what emanate directly from those listed in column two. This was intended to seek to achieve a compromise among positions expressed by delegations. It was recalled that when the informal paper on “Scope” was presented by the Chair of the Working Group in 2012, the initial draft reflected a set of potential categories of crimes for which the principle of universal jurisdiction may be applicable. These broad categories relied on all the sources that had been laid out in what is now footnote 1 to the Informal Working Paper. It also drew upon the terminology employed by the International Law Commission in its work on a Draft Code of crimes against the peace and security of mankind by focusing on “core crimes” and “treaty crimes”. Accordingly, the list provided a non-exhaustive illustrative list of core crimes and potential crimes for which the treaty-based application of the principle of universal jurisdiction arise. Several of those crimes listed under the core crimes heading may of course be set out in a treaty, but a distinction was drawn between such core crimes and the purely treaty-based presence of the principle. This list was the subject of detailed comment and there was a sense that the Working Group might need to explore the possibility of having a shorter list, a generic formulation, or a combination of the two approaches.

10. The list as currently presented, together with the other points included on scope, attempt to provide a middle ground between the positions of delegations. On the one hand, the list focuses on those core crimes which have received support from States for their potential application of the universal jurisdiction. On the other hand, it acknowledges the presence of treaty-based forms of universal jurisdiction (whether described as “quasi universal jurisdiction” or some other terminology), while also indicating that developments in international law remain open in the practice of States.

11. Based on the discussions on the third column for these two pillars, the Chairperson revised the first two bullet points presented for scope, in order to seek greater clarity. These points focus, respectively, on the sources of potentially applicable crimes subject to the exercise of universal jurisdiction as treaty or customary international law, and that absent a specific obligation making the application of universal jurisdiction mandatory, its exercise was subject to the decision of individual States.

12. The Working Group has certainly achieved progress over its now six years of work. The Working Group moved from a very concise Roadmap, outlining areas to focus in the work upon, through individual discussion papers, to a combined set of elements on each of the three pillars, and now to a full set of normative pointers covering all three pillars. This progress should be recognized and all delegations commended for their fruitful and engaged contribution to the advancement of the Working Group over these sessions. As is clear from comments made in both the plenary debate and within the Working Group, delegations remain divided about the possibility of sending some aspects of the consideration of universal jurisdiction to the International Law Commission, as has been proposed on several occasions by a number of delegations.

13. It appears to the Chairperson therefore that choices about the potential outcome of this work must be made by the Working Group and by the Sixth Committee. However, after six years of hard work, I believe that since we have been able to advance our discussions and now have a “Third Column” that captures the stage of said discussions, the group may use the elements of that column as the basis for future work.

Dear Colleagues

The intellectually stimulating nature of the topic, as well as the range of approaches that delegations have taken at the domestic level, suggests that it would be possible to discuss the item *ad infinitum*. That may well be the wish of delegations, although such an activity would be best left to the plenary of the Sixth Committee, if it were not best left beyond the Sixth Committee altogether. As I have expressed before, the Working Group should not be a repetition of the Sixth Committee debate. Alternatively, I would urge interested delegations to use the intersessional period to consult with each other so as to focus on the potential outcome of the Working Group that would both make use of the time wisely and also be appropriate to the nature of the topic.

12. With my impending departure from New York, let me thank all delegations again for their support during my chairing of this Working Group. It has been a wonderful experience and I am very grateful for your involvement, openness and interest. It has been an honor to work with all of you, dear colleagues! I remain firmly committed to working closely with all delegations to further our work and cooperation on this vital topic, and I am certain my successor as chair will enjoy the same level of support and cooperation as I have.

Thank you.

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The scope and application of the principle of universal jurisdiction

Oral report of the Chairperson of the Working Group

ANNEX

The scope and application of the principle of universal jurisdiction		
Informal Working Paper prepared by the Chairperson for discussion in the Working Group¹		
<i>1. Definition of the concept of universal jurisdiction:</i>		<i>Points for further discussion: definition</i>
(a) The role and purpose of universal jurisdiction;	<ul style="list-style-type: none">- To combat impunity- To protect the rights of victims- Achieving international justice/promoting justice- To address the most serious crimes of concern to the international community as a whole	<ul style="list-style-type: none">● The goal of universal jurisdiction is to combat impunity and protect the rights of victims of the most serious crimes of concern to the international community as a whole.● The principle reflects a commitment to promote justice.

¹ This Informal Working Paper, prepared by the Chairperson, is for the purpose of facilitating further discussion in the light of previous exchanges of views within the Working Group. It merges various informal papers developed in the course of the work of the Working Group (2011, 2012, 2013, 2014). It is understood that the issues raised in the present document are illustrative, and are without prejudice to future written or oral proposals made by delegations. This document is without prejudice to positions of delegations; does not reflect consensus among delegations; and is expected to be subject to further discussion at a later stage. In developing this document, account has been taken of the sources set out in the “Agreements on methodology” section of the Informal Paper of the Working Group (A/C.6/66/WG.3/1); the informal compilations prepared by the Secretariat (A/C.6/66/WG.3/INF.1 and INF.2); the compilations of information shared by Governments, included in the reports of the Secretary-General on this topic (A/65/181, A/66/93 and Add.1., A/67/116, A/68/113, A/69/174, A/70/125 and A/71/111); and oral statements made by delegations to the Sixth Committee and in the Working Group on this topic. The wording chosen attempts to attain a best-possible balance between precision and flexibility, given the stage of the discussions and it is recognised that the various elements that have been identified are interlinked.

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<p>(b) Relevant components;</p>	<p>Essential elements of a working concept of Universal Jurisdiction</p> <ul style="list-style-type: none"> -Focused on criminal matters.² -Exercised by national courts/tribunals. -Exercised exceptionally/exceptional character. -Based on the nature of certain crimes under international law, and not on any other jurisdictional connection to the State exercising universal jurisdiction (including territoriality, nationality, passive personality or protective principles, as recognized under international law). 	<ul style="list-style-type: none"> • The focus of the present points is limited to universal jurisdiction in respect of criminal matters; they are without prejudice to universal jurisdiction in respect of civil matters. • Universal jurisdiction is distinct from, yet complementary to, <i>inter alia</i>, the obligation to extradite or prosecute (<i>aut dedere aut judicare</i>), the jurisdiction of international courts and tribunals, and other forms of jurisdiction that assist in ensuring accountability for crimes under international law. • Universal jurisdiction may permit a national court to exercise jurisdiction when other jurisdictional connections to the State are not present, including where the alleged crime was committed, the nationality of the alleged perpetrator, the nationality of the victim, or any other jurisdictional connection, recognized under international law, and universal jurisdiction is defined by action with respect to the most serious crimes of concern to the international community.
<p>(c) Distinction from other related concepts</p>	<p>Distinct from:</p> <ul style="list-style-type: none"> -Jurisdiction of international criminal courts/tribunals, including hybrid criminal tribunals. -Obligation to extradite or prosecute (<i>aut dedere aut judicare</i>). -Other forms of jurisdiction (including, territoriality, nationality, passive personality or the protective principles, as recognized under international law). 	
<p><i>2. Scope of universal jurisdiction:</i></p>		<p><i>Points for further discussion: scope</i></p>
<p>(a) Crimes under universal jurisdiction.</p>	<p>This preliminary list is intended to stimulate discussion of the crimes</p>	<ul style="list-style-type: none"> • The exercise of universal jurisdiction under national law by a State for crimes under international law may be on

² Other matters (i.e. universal civil jurisdiction) are not disregarded, but the focus of the Working Group is on universal criminal jurisdiction.

	<p>which may be subject to universal jurisdiction.³</p> <ul style="list-style-type: none"> a. Apartheid b. Corruption c. Crimes against humanity d. Crimes against peace/crime of aggression e. Enforced disappearances f. Genocide g. Piracy h. Slavery i. Terrorism j. Torture k. Transnational organized crime l. War crimes 	<p>the basis of a treaty or a rule of customary international law.</p> <ul style="list-style-type: none"> • In the absence of an explicit obligation arising from a treaty or under customary international law making the exercise of universal jurisdiction mandatory, the exercise of jurisdiction is permissible and States may exercise universal jurisdiction subject to the applicable rules of international law. • Each State should, when applying the principle of universal jurisdiction, take into account the core legal principles of <i>nulla poena sine lege</i> and <i>nullum crimen sine lege</i>. • For purposes of the present points, the most serious crimes of concern to the international community as a whole, and in respect of which universal jurisdiction is exercisable, <u>may</u> include: <ul style="list-style-type: none"> (a) Crimes against humanity, (b) Genocide, (c) Piracy, (d) Slavery, (e) Torture, (f) War crimes. • The application of universal jurisdiction to the crimes listed above is without prejudice to the potential application of universal jurisdiction with respect to other crimes under international law.
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³ This preliminary list, intended to stimulate discussion of the crimes which may be subject to universal jurisdiction, is organized in English alphabetical order. It is without prejudice to the question of the appropriateness of composing a list at all. The question of the scope of the principle of universal jurisdiction could be constructed on the basis of rights/obligations under treaty law and/or customary international law, to serve as parameters to determine which crimes can be exercised under universal jurisdiction.

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		<ul style="list-style-type: none"> • Nothing in the present points should be interpreted as limiting or prejudicing in any way existing or developing rules of international law with respect to crimes under international law.
3. Application:		<i>Points for further discussion: application⁴</i>
(a) Conditions for application	<ul style="list-style-type: none"> - International law, including the Charter of the United Nations - <i>Nulla poena sine lege/nullum crimen sine lege</i> - International human rights/IHL obligations - Immunity⁵ - Discretionary/obligatory nature of the principle 	<ul style="list-style-type: none"> • States should⁶ undertake to ensure that any action taken in their application of universal jurisdiction is in conformity with the principles and purposes of the Charter of the United Nations and guided by the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.⁷ • States should undertake to ensure that any action taken in their application of universal jurisdiction is in accordance with their rights and obligations under international law⁸ and with the principle of good faith.
(b) Criteria for exercising jurisdiction	<ul style="list-style-type: none"> - Fight impunity - Avoidance of abuse/ misuse - Not politically motivated, arbitrary or discriminatory/selective 	

⁴ These proposed points take into account the various sources set out in the “Agreements on methodology” section of the Informal Paper of the Working Group (A/C.6/66/WG.3/DP.1). In particular, they bear in mind the informal papers prepared by the Chairman of the Working Group for discussion and considered in the Working Group; the various resolutions of the General Assembly on the item; the compilations of all written observations provided by Governments and relevant observers, included in the reports of the Secretary-General on this topic (A/65/181, A/66/93 and Add.1, A/67/116, A/68/113, A/69/174 and A/70/125); and statements made by delegations in the Sixth Committee and comments in its Working Group on the topic, together with the informal compilations prepared by the Secretariat (A/C.6/66/WG.3/INF.1 and INF.2). It is understood that the issues raised in the points of discussion are without prejudice to future written or oral proposals made by delegations. These points are without prejudice to positions of delegations; do not reflect consensus among delegations; and are expected to be subject to further discussion at a later stage.

⁵ It is recognized that there are multiple dimensions to this tier (including that application of the principle must be consistent with other principles of international law).

⁶ The question of the obligatory and/or hortatory nature of the discussion points was raised during the 3rd meeting of the WG during the 70th session. It remains an open issue and is subject to further discussions among delegations.

⁷ General Assembly resolution 2625 (XXV) of 24 October 1970.

⁸ The reference to ‘international law’ includes all sources of international law (Article 38 of the Statute of the International Court of Justice).

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	<p style="text-align: right;">Last resort/complementary/exceptional</p> <ul style="list-style-type: none"> - Jurisdictional links (with territoriality, nationality, etc.)/conflict of competing jurisdiction - Consultations among concerned States. - Inability and/or unwillingness to prosecute - National amnesties - Prosecutorial fiat and discretion - Good faith - Judiciousness 	<ul style="list-style-type: none"> ● States should undertake to ensure that any action taken in their exercise of universal jurisdiction is not politically motivated, arbitrary or discriminatory; and the misuse or abuse of universal jurisdiction should be prevented at all times. ● In their application of universal jurisdiction, States should abide by applicable international law obligations concerning the immunity of State officials from foreign criminal jurisdiction, in particular with respect to Heads of State, Heads of Government and Ministers for Foreign Affairs. ● Unless a specific treaty obligation provides otherwise, a State possessing primary jurisdictional ties for prosecuting crimes that could be subject to the exercise of universal jurisdiction would include the State in whose territory the alleged crime has been committed or the State of nationality of the alleged perpetrator. ● Universal jurisdiction should be exercised exceptionally, when a State possessing primary jurisdictional ties is unable or unwilling to bring criminal proceedings against an alleged perpetrator. A State seeking to exercise universal jurisdiction is encouraged to inform and consult such other States with primary jurisdictional ties, in the process of initiation of any proceedings against any alleged perpetrator.⁹ ● States may promulgate national legislation with respect to their exercise of universal jurisdiction.
<p>(c) Procedural aspects</p>	<ul style="list-style-type: none"> - Presence/absence of alleged offender - <i>Ne bis in idem</i>/double jeopardy - Statute of limitations - International due process guarantees (including, <i>inter alia</i>, the presumption of innocence, the right to a fair trial, the right to minimum trial guarantees in full equality, the right to an adequate and effective appeals process) - Establishment of a prima-facie case before proceeding - Judicial independence - Prosecutorial independence - Prosecutorial discretion - International comity - Challenges of evidence gathering/preservation in the exercise of universal jurisdiction 	

⁹ The question of the relationship between the exercise of universal jurisdiction and international courts and tribunals was raised during the 3rd meeting of the WG during the 70th session. It remains an open issue and is subject to further discussions among delegations.

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<p>(d) Role of national judicial systems</p>	<ul style="list-style-type: none"> - Exercisable by national judicial systems - Primacy of national justice systems/complementary/role of complementarity - Implementation of obligations under international law - Necessity for national legislation - Relationship between international law and domestic law 	<ul style="list-style-type: none"> ● National judicial systems acting in the exercise of universal jurisdiction should pay due regard to international law. ● Where national authorities have prosecutorial discretion over a crime in the exercise of universal jurisdiction, the exercise of such discretion may take into account considerations and factors, including, but not limited to: (a) the obligations of the State under international law, including any action taken or being taken in any other jurisdictional fora; (b) an examination of the practical difficulties of proceeding, including witness access and availability and evidence gathering; (c) the public interests at stake; (d) international comity; and, (e) the interests of justice. ● A State may, under its national law, condition its exercise of universal jurisdiction to the presence of an alleged perpetrator in its territory. ● A State may, under its national law, also condition its exercise of universal jurisdiction to the consent of a competent high authority, such as an Attorney-General or the Public Prosecutor or their equivalent. ● A State may, under its national law, condition its exercise of universal jurisdiction to ensure that statutes of limitations are not applicable to certain crimes. ● States should take the necessary steps to ensure that, in the exercise of universal jurisdiction, an alleged perpetrator is not to be exposed to multiple prosecutions for the same conduct (<i>ne bis in idem</i>), provided that any previous proceedings were conducted in good faith, in accordance with international norms and standards.
<p>(e) Interaction with other concepts of international law</p>	<ul style="list-style-type: none"> - Interaction with immunity - Abuse - Distinction from <i>aut dedere aut judicare</i> - Complementary to jurisdiction of international criminal tribunals - Role of the settlement of disputes - Questions of State responsibility for wrongful acts in the exercise of universal jurisdiction, including, as appropriate, its abuse 	
<p>(f) International assistance and cooperation.</p>	<ul style="list-style-type: none"> - Mutual assistance and cooperation in criminal matters (investigations, prosecution, evidence, judicial cooperation) - Technical assistance and cooperation in the conduct of criminal matters (investigations, prosecution, evidence, judicial cooperation) - Extradition 	

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		<ul style="list-style-type: none">• States should take the necessary steps to ensure that, in the exercise of universal jurisdiction, any trial of an alleged perpetrator: (a) complies with due process standards, including the presumption of innocence, the right to a fair trial, and the right to an adequate and effective appeals process; (b) guarantees judicial and prosecutorial impartiality and independence; and (c) accords respect for the rights of victims and the protection of witnesses.• States should take the necessary steps to render mutual judicial assistance and cooperation to each other in the investigation and prosecution of crimes in the exercise of universal jurisdiction, including, <i>inter alia</i>, with respect to the specific challenges in the gathering of evidence and preserving its integrity and, as appropriate, to provide technical assistance to one another, consistent with their obligations under international law.• States should take the necessary steps to render assistance to each other in relation to requests for the extradition of an alleged perpetrator of crimes subject to universal jurisdiction, consistent with their obligations under international law.
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Points for further discussion

The following points below correspond to the third column of the Informal Working Paper prepared by the Chairperson for discussion in the Working Group (attached).

Points for further discussion: definition

- The goal of universal jurisdiction is to combat impunity and protect the rights of victims of the most serious crimes of concern to the international community as a whole.
- The principle reflects a commitment to promote justice.
- The focus of the present points is limited to universal jurisdiction in respect of criminal matters; they are without prejudice to universal jurisdiction in respect of civil matters.
- Universal jurisdiction is distinct from, yet complementary to, *inter alia*, the obligation to extradite or prosecute (*aut dedere aut judicare*), the jurisdiction of international courts and tribunals, and other forms of jurisdiction that assist in ensuring accountability for crimes under international law.
- Universal jurisdiction may permit a national court to exercise jurisdiction when other jurisdictional connections to the State are not present, including where the alleged crime was committed, the nationality of the alleged perpetrator, the nationality of the victim, or any other jurisdictional connection, recognized under international law, and universal jurisdiction is defined by action with respect to the most serious crimes of concern to the international community.

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Points for further discussion: scope

- The exercise of universal jurisdiction under national law by a State for crimes under international law may be on the basis of a treaty or a rule of customary international law.
- In the absence of an explicit obligation arising from a treaty or under customary international law making
- the exercise of universal jurisdiction mandatory, the exercise of jurisdiction is permissible and States may exercise universal jurisdiction subject to the applicable rules of international law.
- Each State should, when applying the principle of universal jurisdiction, take into account the core legal principles of *nulla poena sine lege* and *nullum crimen sine lege*.
- For purposes of the present points, the most serious crimes of concern to the international community as a whole, and in respect of which universal jurisdiction is exercisable, may include:
 - (a) Crimes against humanity,
 - (b) Genocide,
 - (c) Piracy,
 - (d) Slavery,
 - (e) Torture,
 - (f) War crimes.
- The application of universal jurisdiction to the crimes listed above is without prejudice to the potential application of universal jurisdiction with respect to other crimes under international law.
- Nothing in the present points should be interpreted as limiting or prejudicing in any way existing or developing rules of international law with respect to crimes under international law.

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Points for further discussion: application

- States should¹⁰ undertake to ensure that any action taken in their application of universal jurisdiction is in conformity with the principles and purposes of the Charter of the United Nations and guided by the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.¹¹
- States should undertake to ensure that any action taken in their application of universal jurisdiction is in accordance with their rights and obligations under international law¹² and with the principle of good faith.
- States should undertake to ensure that any action taken in their exercise of universal jurisdiction is not politically motivated, arbitrary or discriminatory; and the misuse or abuse of universal jurisdiction should be prevented at all times.
- In their application of universal jurisdiction, States should abide by applicable international law obligations concerning the immunity of State officials from foreign criminal jurisdiction, in particular with respect to Heads of State, Heads of Government and Ministers for Foreign Affairs.
- Unless a specific treaty obligation provides otherwise, a State possessing primary jurisdictional ties for prosecuting crimes that could be subject to the exercise of universal jurisdiction would include the State in whose territory the alleged crime has been committed or the State of nationality of the alleged perpetrator.
- Universal jurisdiction should be exercised exceptionally, when a State possessing primary jurisdictional ties is unable or unwilling to bring criminal proceedings against an alleged perpetrator. A State seeking to exercise universal jurisdiction

¹⁰ The question of the obligatory and/or hortatory nature of the discussion points was raised during the 3rd meeting of the WG during the 70th session. It remains an open issue and is subject to further discussions among delegations.

¹¹ General Assembly resolution 2625 (XXV) of 24 October 1970.

¹² The reference to 'international law' includes all sources of international law (Article 38 of the Statute of the International Court of Justice).

is encouraged to inform and consult such other States with primary jurisdictional ties, in the process of initiation of any proceedings against any alleged perpetrator.¹³

- States may promulgate national legislation with respect to their exercise of universal jurisdiction.
- National judicial systems acting in the exercise of universal jurisdiction should pay due regard to international law.
- Where national authorities have prosecutorial discretion over a crime in the exercise of universal jurisdiction, the exercise of such discretion may take into account considerations and factors, including, but not limited to: (a) the obligations of the State under international law, including any action taken or being taken in any other jurisdictional fora; (b) an examination of the practical difficulties of proceeding, including witness access and availability and evidence gathering; (c) the public interests at stake; (d) international comity; and, (e) the interests of justice.
- A State may, under its national law, condition its exercise of universal jurisdiction to the presence of an alleged perpetrator in its territory.
- A State may, under its national law, also condition its exercise of universal jurisdiction to the consent of a competent high authority, such as an Attorney-General or the Public Prosecutor or their equivalent.
- A State may, under its national law, condition its exercise of universal jurisdiction to ensure that statutes of limitations are not applicable to certain crimes.
- States should take the necessary steps to ensure that, in the exercise of universal jurisdiction, an alleged perpetrator is not to be exposed to multiple prosecutions for the same conduct (*ne bis in idem*), provided that any previous proceedings were conducted in good faith, in accordance with international norms and standards.
- States should take the necessary steps to ensure that, in the exercise of universal jurisdiction, any trial of an alleged

¹³ The question of the relationship between the exercise of universal jurisdiction and international courts and tribunals was raised during the 3rd meeting of the WG during the 70th session. It remains an open issue and is subject to further discussions among delegations.

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perpetrator: (a) complies with due process standards, including the presumption of innocence, the right to a fair trial, and the right to an adequate and effective appeals process; (b) guarantees judicial and prosecutorial impartiality and independence; and (c) accords respect for the rights of victims and the protection of witnesses.

- States should take the necessary steps to render mutual judicial assistance and cooperation to each other in the investigation and prosecution of crimes in the exercise of universal jurisdiction, including, *inter alia*, with respect to the specific challenges in the gathering of evidence and preserving its integrity and, as appropriate, to provide technical assistance to one another, consistent with their obligations under international law.
- States should take the necessary steps to render assistance to each other in relation to requests for the extradition of an alleged perpetrator of crimes subject to universal jurisdiction, consistent with their obligations under international law.