



Statement by H.E. Archbishop Bernardito Auza
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Sixth Committee, Agenda Item 87:
The scope and application of the Principle of universal jurisdiction
New York, 9 October 2018

Mr. Chair,

My Delegation would like to thank once again this Committee for the important work it performs in furthering the cause of justice in the world, particularly as it relates to the issue of redressing genocide, war crimes and crimes against humanity.

In a sense, this debate is an extension of this Committee's discussion on the rule of law. When the most egregious crimes are met with impunity, the rule of law in fact has broken down at its most fundamental level.

Genocide, war crimes and crimes against humanity more often than not affect those who live at the margins of society, the poor and the members of ethnic and religious minorities, thus heightening our shared responsibility to act on their behalf. Those crimes not only harm those immediately in their path, but they also injure – and indeed lessen – all of us. As such, the creation of universally agreed jurisdictional norms that would ensure that the worst violations of fundamental human rights are investigated, prosecuted and punished is a laudable goal.

Mr. Chair,

As we are all aware, there is an unquestionable tension between the Sovereign equality among States, the principle of non-interference and the immunity of State officials, on one hand, and the duty to hold accountable those responsible for the most serious crimes, on the other. Our common humanity requires us to persevere in the delicate and difficult task of finding a balance between sovereign concerns and the need to hold accountable the perpetrators of the most heinous crimes.

Just as the rule of law requires holding the perpetrators accountable, it also dictates that we do so within the bounds of the principle of legality. Thus, any set of norms that this body may develop on universal jurisdiction not only has to be consistent with the fundamental principles of criminal justice (*nullum crimen, nulla poena sine lege*, the right to due process, the presumption of innocence, non-refoulement, etc.), but it must be also firmly rooted in the principle of subsidiarity. Universal jurisdiction should in effect be subsidiary to the jurisdiction of the State in which the crime took place and of the State of nationality of the

alleged perpetrator. To the extent that they are willing and able to prosecute those crimes, the community of nations ought to defer to them.

Moreover, in order to exercise universal jurisdiction, the State of the forum should have some concrete link to the facts or to the parties in the case, such as the presence of the accused or of the victims in its territory. Universal jurisdiction should not justify prosecutions in absentia, forum shopping or the unwarranted interference in the internal affairs of other States. In addition, in light of the principle of the Sovereign equality among States, particular attention must be given to the procedural conditions that must be met in order to set aside the jurisdictional immunities of public officials. While universal jurisdiction might be an effective method for punishing crimes of international significance, it is indispensable to develop mechanisms to prevent that the exercise of that jurisdiction generates inter-State conflicts.

Naturally, universal jurisdiction should also comprehend the threat and the attempt to commit war crimes and crimes against humanity, particularly when they force the displacement of migrants and refugees.

Mr. Chair,

Much work remains to be done if this Committee is to create a rule-based system for the application of universal jurisdiction. My Delegation supports further work on this topic, including through the Working Group for further study and concrete recommendations on the creation of jurisdictional norms established by Resolution 70/119. As suggested in the Working Group last year, a starting point could be reviewing national laws to seek commonality in what crimes are subject to prosecution on the basis of universal jurisdiction under States' national laws; what conditions, if any, exist in national laws on the applicability of universal jurisdiction for such crimes; and what instances exist, if any, in which universal jurisdiction has been the basis for jurisdiction in the prosecution of crimes in Member States. Such inquiries into national State practice could help move the discussion to the next level.

My Delegation supports the International Law Commission's moving this topic onto its long-term program of work. Its previous work on the draft articles on crimes against humanity and on the immunity of State officials from foreign criminal jurisdiction might indeed contribute to the development of the law on this issue.

Solidarity imposes unified and resolute action in the face of impunity. We owe to every victim our commitment to take action to deter future atrocities, so that their terrible suffering or death endured will not have been in vain.

Thank you, Mr. Chair.