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Sixth Committee
Working Group on the Scope and Application of the
Principle of Universal Jurisdiction

Non-paper by Chile

The purpose of this document is to facilitate the discussions regarding universal jurisdiction and to outline various aspects that the Working Group should take into consideration. This exercise does not prejudge the final outcome but it is designed primarily to obtain, from delegations, information and criteria concerning fundamental concepts relating to universal jurisdiction with a view to conducting an evaluation of the current state of the issue.

1. Concept of universal jurisdiction

Delegations are being asked to discuss what the concept of universal jurisdiction covers. There is no commonly accepted definition of the concept of universal jurisdiction in international law and there are a variety of ideas regarding what it should cover. Accordingly, delegations can express their views regarding the following aspects of the subject:

- What is meant by the concept of universal jurisdiction, what it includes and what it does not include. Is it considered to be a principle under international law?
- What could be considered its broadest extension.
- The discussion should also focus on possible variations (broad or restrictive) of the said concept.
- It would be useful to consider the rationale for universal jurisdiction. In particular, it would be helpful to receive views and guidance concerning whether it should always be based on international law.

2. Basic concepts: Jurisdiction. Bases for jurisdiction: principles of extraterritorial application

Delegations might discuss certain basic concepts regarding the treatment of this issue, which are necessary for an understanding of the issue of universal jurisdiction.



- Start with the premise of the concept of jurisdiction and what States mean by jurisdiction. In particular, they could talk about criminal jurisdiction.
- In this connection it would be worth discussing the most common bases for the establishment of jurisdiction and the most common situations that give rise to extraterritorial jurisdiction, whether based on domestic legislation or pursuant to the application of a treaty.
- Consideration could be given to the differences and similarities between extraterritorial criminal jurisdiction and universal jurisdiction.
- The discussion could provide guidance as to whether extraterritorial national jurisdiction exercised pursuant to a treaty with regard to specific crimes constitutes universal jurisdiction or is merely the application of the extraterritoriality of the law.

3. Elements associated with universal jurisdiction

Related to the application of universal jurisdiction, there are certain elements that are based on the rule of law and on legal systems. Delegations can discuss the following elements:

- They might discuss the links between the sovereignty of States and universal jurisdiction.
- They might discuss whether there is a need to establish in their domestic systems certain crimes of universal jurisdiction for the purpose of exercising preferential territorial jurisdiction.
- Delegations might express their views on the need to administer justice and how that relates to universal jurisdiction.
- Discussions could be held on the need to ensure the exercise of independent and effective jurisdiction and how that relates to universal jurisdiction.
- Delegations could discuss whether the forum State should have priority for trying the offence.
- Is the rationale for universal jurisdiction the need to make sure that there is no impunity for the most serious offences under international law?

4. Possible principles for its implementation

Discussions should focus on determining whether there are any universally accepted principles that are applicable to universal jurisdiction. The debate could cover the following elements:

- It would be appropriate to discuss ways of avoiding improper use of this institution. Should it be used as a factor in the operation of international criminal justice?
- Should international law regulate the exercise of universal jurisdiction?
- It would be worth discussing whether universal jurisdiction should be exercised exclusively by States rather than by international criminal courts.
- Delegations could discuss whether universal jurisdiction is always subsidiary in nature.

- Delegations should discuss the aims of universal jurisdiction. In this connection, it would be worth considering the avoidance of impunity for serious offences as being an essential goal.

5. Recognition in international treaties. National legislation. Case law of national courts. Case law of international tribunals.

Some international treaties and national legislation set forth rules on universal jurisdiction. The case law of domestic courts and, in some instances, that of international tribunals, have addressed the situation of universal jurisdiction. It is hoped that the discussion will be conducted along the following lines:

- Delegations might identify the universally accepted treaties that recognize the principle of universal jurisdiction.
- Delegations might consider the need for universal jurisdiction to be established in treaties and incorporated into the domestic legal order, and, in the event that such an approach is to be taken, determine in what sort of treaties.
- Delegations might discuss what would happen if two States claimed to be competent by virtue of universal jurisdiction and what solutions could be provided. Do any examples exist in international law?
- Delegations might discuss the international criminal jurisdiction exercised by the international criminal tribunals with the aim of distinguishing it from universal jurisdiction.
- They might discuss how the exercise of universal jurisdiction relates to the complementary jurisdiction of the International Criminal Court.

6. Concepts associated with universal jurisdiction

Universal jurisdiction has been associated with a number of concepts which can be considered triggers of jurisdiction, but which can differ from universal jurisdiction. An effort should be made to establish the possible relationship between such concepts and universal jurisdiction, and identify situations that give rise to universal jurisdiction.

- Delegations might discuss the relationship between the exercise of universal jurisdiction and the obligation to extradite and prosecute.
- A discussion should take place on the elements that distinguish the obligation to extradite and prosecute from universal jurisdiction, especially as regards the fact that the obligation to extradite and prosecute stems from treaties and can relate to any category of offence. In addition, a decision might be taken on the elements that relate to such an obligation.
- There should be a discussion of the precedence that an extradition request from the forum State has over the exercise of universal jurisdiction.
- Delegations might discuss the relationship between the immunity of State officials from criminal jurisdiction and universal jurisdiction. Is it proper to apply immunity in such cases?
- There should be a discussion of whether, in a situation involving universal jurisdiction, it is germane to make a distinction between immunity from

jurisdiction invoked before an international tribunal and immunity invoked before a domestic court.

- Consideration should be given to the question whether the exercise of universal jurisdiction is proper where an amnesty law exists.

7. Conditions for the exercise of universal jurisdiction

Discussion is aimed at investigating what possible conditions for the exercise of universal jurisdiction delegations believe to be appropriate, in particular in light of the guidance provided by international law.

- Delegations might examine the principles of international law that govern the exercise of universal jurisdiction.
- Delegations might examine the question of what offences should call into play the exercise of universal jurisdiction.
- There could be a discussion on whether the exercise of universal jurisdiction should be restricted to certain international offences prohibited by jus cogens or whether universal jurisdiction might arise for offences under non-peremptory international law or offences not having jus cogens status.
- There could be discussion of whether the offences that fall within the purview of the International Criminal Court could provide a basis for determining which offences can be investigated and punished through the exercise of universal jurisdiction.
- Delegations might discuss the possibility of establishing an obligation of judicial cooperation with a State exercising universal jurisdiction.
- There could be discussion of whether the presence of an alleged offender in the territory of the State exercising universal jurisdiction is an essential requirement for the exercise of such jurisdiction or whether universal jurisdiction may be exercised in the absence of the alleged offender. If the offender's presence is identified as a necessary condition, there should be a discussion of whether it is appropriate to require the presence of the offender in order for the exercise of jurisdiction to be called into play.
- There could be a discussion of the possibility of applying the principles of international law to the exercise of universal jurisdiction with the aim of avoiding its unrestricted exercise.
- Delegations might discuss the need for or desirability of a responsible and sensible application of universal jurisdiction. There might also be discussion of how to ensure its reasonable exercise.

8. Possible courses of action

Delegations might discuss what course of action should be taken in dealing with the topic in future.

- Consideration might be given to whether there is a need for expert reports to complement the Working Group's consideration of the topic.
- The discussion might address the question of what outcome is being sought through consideration of the topic of the scope and application of the principle

of universal jurisdiction. Is the aim to produce a binding instrument, guidelines or principles?

- Consideration might be given to whether at some stage in the Working Group's deliberations on the topic, the International Law Commission might be asked to take up the topic or whether the Commission might produce a study to guide the work of the Sixth Committee.
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