

The scope and application of the principle of universal jurisdiction		
Informal Working Paper prepared by the Chairperson for discussion in the Working Group¹		
<i>I. 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. • 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
(b) Relevant components;	<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. 	

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.

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

	-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).	<p>courts and tribunals, and other forms of jurisdiction that assist in ensuring accountability for crimes under international law.</p> <ul style="list-style-type: none"> • Universal jurisdiction is characterised by the seriousness of certain crimes under international law and may permit a national court to exercise its 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.
(c) Distinction from other related concepts	<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). 	
<i>2. Scope of universal jurisdiction:</i>		<i>Points for further discussion: scope</i>
(a) Crimes under universal jurisdiction.	<p>This preliminary list is intended to stimulate discussion of the crimes 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 	<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 the basis of a treaty or a rule of customary international law. • In the absence of an obligation arising from a treaty or under customary international law making the exercise of universal jurisdiction mandatory, the exercise of universal jurisdiction is permissible and States may exercise universal jurisdiction subject to the applicable rules of international law.

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.

	<ul style="list-style-type: none"> f. Genocide g. Piracy h. Slavery i. Terrorism j. Torture k. Transnational organized crime l. War crimes 	<ul style="list-style-type: none"> • 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. • 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.
<p>3. Application:</p>		<p>Points for further discussion: application⁴</p>

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

<p>(a) Conditions for application</p>	<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. • States should undertake to ensure that any action taken in their application 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.
<p>(b) Criteria for exercising jurisdiction</p>	<ul style="list-style-type: none"> - Fight impunity - Avoidance of abuse/ misuse - Not politically motivated, arbitrary or discriminatory/selective - Last resort/complementary/exceptional - 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 	

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).

<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 	<ul style="list-style-type: none"> • 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. • 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
<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 	
<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> 	

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.

	<ul style="list-style-type: none"> - 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>justice.</p> <ul style="list-style-type: none"> • 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.
<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 	<ul style="list-style-type: none"> • 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. • 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

		<p>technical assistance to one another, consistent with their obligations under international law.</p> <ul style="list-style-type: none">• 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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