

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

Chair: Mr. Gustavo Ramírez Baca (Costa Rica)

I. Introduction

1. Pursuant to General Assembly resolution 76/118, of 9 December 2021, the Sixth Committee decided, at its first meeting, on 3 October 2022 to establish a Working Group to continue its consideration of the scope and application of universal jurisdiction, without prejudice to the consideration of this topic and related issues in other forums of the United Nations. Pursuant to the same resolution, the General Assembly decided that the Working Group should be open to all Member States and that relevant observers to the Assembly would be invited to participate in the work of the Working Group.

2. At the same meeting, the Sixth Committee elected Mr. Gustavo Ramírez Baca (Costa Rica) to serve as Chair of the Working Group, replacing Mr. Rodrigo A. Carazo (Costa Rica), who was no longer available to serve in that capacity. The Working Group pays tribute to Mr. Carazo for his contribution to its work.

3. The Working Group had before it the various reports of the Secretary-General on the scope and application of the principle of universal jurisdiction dating back to 2010: A/77/186 (2022), A/76/203 (2021), A/75/151 (2020), A/74/144 (2019), A/73/123 and Add.1 (2018), A/72/112 (2017), A/71/111 (2016), A/70/125 (2015), A/69/174 (2014), A/68/113 (2013), A/67/116 (2012), A/66/93 and Add.1 (2011) and A/65/181 (2010). The Working Group also had before it the non-paper previously submitted by Chile (A/C.6/66/WG.3/DP.1), the Informal Paper of the Working Group (A/C.6/66/WG.3/1), which contains a roadmap on the methodology and issues for discussion, as well as the 2016 Informal Working Paper prepared by the Chair, which has been discussed in previous sessions of the Working Group.

II. Proceedings of the Working Group

4. The Working Group held two meetings on 14 and 21 October. It conducted its work in the framework of informal consultations. Pursuant to resolution 76/118, the Working Group focused its work on the question “what should be the role and purpose of universal jurisdiction.” It also held a discussion on the way forward. The plenary debate on the item, held at the 12th and 13th meetings of the Sixth Committee, on 12 and 13 October 2022, provided some useful information regarding positions of delegations.

III. Informal summary

5. The present informal summary is for reference purposes only and is not an official record of the proceedings. At its first meeting, on 14 October, in my capacity as Chair, I offered an overview of past proceedings, including

the discussions that had led to the Informal Working Paper, reiterating that the issues raised in the Informal Working Paper were intended to be illustrative and are without prejudice to future proposals made by delegations or to their positions. The Informal Working Paper did not reflect consensus among delegations and was expected to be subject to further deliberation. I reminded delegations that no modifications to the Informal Working Paper had been introduced to the text since 2016. No further modifications were made at the current session to the Informal Working Paper. The 2016 text remains the working text of the Working Group.

6. To promote an exchange of views during both meetings of the Working Group, and to have a better appreciation of views of delegations on the item, delegations were invited to address the following two questions, bearing in mind the invitation in operative paragraph 3 of 76/118, of 9 December 2021, that the Working Group consider and comment on the question “what should be the role and purpose of universal jurisdiction”:

(a) “What should be the role of universal jurisdiction?”; and

(b) “What should be the purpose of universal jurisdiction?”.

7. In response to these questions, delegations who spoke generally noted that the main role of universal jurisdiction was to fight impunity in the context of the most serious crimes under international law, and the avoidance of safe havens for perpetrators of such crimes. The view was expressed highlighting that universal jurisdiction should be understood as the jurisdiction of States to prosecute their nationals wherever they are located, emphasizing also that nationality, in the context of universal jurisdiction, is the justification for a State to protect and to prosecute individuals. While some delegations justified the establishment of universal jurisdiction on the basis of the international character or dimension of a number of crimes,

others pointed towards a principle of effectiveness in the prosecution of specific crimes, or expressed that universal jurisdiction should be restricted to the prosecution of piracy at high seas. Some delegations expressed concern on the possible misuse or political abuse of universal jurisdiction, and their potential to tamper with fundamental principles of international law, such as sovereign equality, and reiterated the historical reasons of the introduction of the item in the agenda of the General Assembly. A view was expressed that the exercise of universal jurisdiction should be strictly subsidiary to the exercise of jurisdiction of the State on the basis of the nationality principle or territoriality principle. Some delegations reiterated that there was no consensus on the principle of universal jurisdiction under international law, or emphasized the divergent notions of the principle by Member States, questioning the usefulness of the debate in the Working Group and in the Sixth Committee without a general understanding of what it meant. The point was made that the work of the Sixth Committee on universal jurisdiction could focus on the negative aspects of universal jurisdiction, such as its potential conflict with other principles of international law. I also wish to note that at the request of the delegation of Sierra Leone, a non-paper by Sierra Leone providing views of that delegation on the question “what should be the role and purpose of universal jurisdiction” was shared with delegations after the Working Group completed its work.

8. Delegations also shared their views on how to better achieve the mandate entrusted to the Working Group, seeking the best way to proceed. The importance and usefulness of the dialogue in the Sixth Committee and, in particular, in the Working Group, was noted. It was also noted that such work could be further advanced if there was some working understanding of the meaning of universal jurisdiction, which at the present moment did not

seem to be the case. It was also noted that, due to the lack of a common understanding on the concept of universal jurisdiction, the debate in the Working Group or the Sixth Committee would not lead to productive results. Moreover, a view was expressed that the future consideration of the topic and next steps of the debate could better be addressed under agenda item “Revitalization of the work of the General Assembly”.

Mr. Chair,

9. I remain committed to working closely with all delegations and I look forward to receiving their ideas and input in the coming intersessional period.
10. I request the Committee to take note of the present oral report.

This concludes my oral report. Thank you.