

1. New Zealand welcomes the opportunity to provide observations on the scope and application of the principle of universal jurisdiction, for the Secretary-General's report to the General Assembly at its 77th session.
2. New Zealand recognises universal jurisdiction as a well-established principle of international law, which entitles any State to prosecute the most serious crimes of international concern in its national courts, regardless of where they were committed or the nationality of the perpetrators or the victims. These serious international crimes are piracy, genocide, war crimes, crimes against humanity, slavery, and torture. They violate the interests of all States and as such it is in the interests of the international community as a whole to hold perpetrators to account by ensuring these crimes are prosecuted, either in national courts or competent international courts or tribunals.
3. The basis for universal jurisdiction is in treaties and customary international law. The Geneva Conventions of 1949 provides for States to exercise universal jurisdiction for grave breaches of their provisions.¹ Article 105 of the UN Convention of the Law of the Sea also makes piracy *jure gentium* subject to universal jurisdiction. Article 5 of the Convention Against Torture is also allows exercise of universal jurisdiction by States in certain circumstances. The remainder of the serious crimes listed are subject to a permissive form of universal jurisdiction under customary international law, as demonstrated by the number of States which have enacted universal jurisdiction in their domestic law for a number of these offences.
4. Although there has been considerable international progress in this area, New Zealand considers that primary responsibility for investigating and prosecuting serious international crimes rests with the Territorial State in which the criminal conduct was alleged to have occurred, or the State of nationality of the accused. Those States are in the best position to achieve justice, given their access to evidence, witnesses and victims. Universal jurisdiction is a complementary framework to ensure that persons accused of such crimes can be held accountable in circumstances where these States with primary responsibility is unwilling or unable to exercise jurisdiction.
5. Universal jurisdiction is subject to other rules of international law, including human rights protections for due process and a fair trial, and principles relating to diplomatic relations, privileges, and immunities. New Zealand supports the work of the International Law Commission on this aspect of immunities its draft articles on immunity of State officials from foreign criminal jurisdiction, which have been provisionally adopted. New Zealand considers that immunity *rationae personae* applies to certain office holders during their term of office,² and would preclude prosecution under the principle of universal jurisdiction, however immunity *rationae materiae* does not apply to the most serious international crimes (such as genocide, crimes against humanity, war crimes and torture), which is consistent with the principle of universal jurisdiction. For example, as torture by definition has to be committed by a person acting in an official capacity, and it would defeat the purpose of universal criminal

¹ Geneva Convention I, Article 49; Geneva Convention II, Article 50; Geneva Convention III, Article 129, Geneva Convention IV, Article 146).

² *Arrest Warrant case (Democratic Republic of the Congo v Belgium)* [2002] ICJ Rep 3.

- jurisdiction (foreseen by the Convention Against Torture) for those officials to be immune by reason of their official status.
6. New Zealand has enacted legislation establishing jurisdiction in respect of the most serious international crimes. The Crimes of Torture Act 1989 (NZ) allows prosecution for acts of torture committed within or outside New Zealand,³ provided the individual is located in New Zealand, is a New Zealand citizen, or the acts occurred in New Zealand. The International Crimes and International Criminal Court Act 2000 (NZ) allows prosecution for genocide, crimes against humanity, specified war crimes, committed within or outside New Zealand; regardless of the nationality of the accused or whether the accused was in New Zealand at the time the offence occurred or when the charging decision was made.⁴ Judicial practice in New Zealand on this topic is sparse and New Zealand has not exercised universal jurisdiction to date.
 7. Recent events in Ukraine have highlighted the possible application of universal jurisdiction as a means to deter and punish the most serious international crimes, where there is credible evidence they have been committed. New Zealand notes with interest the investigations opened by national prosecution services into alleged war crimes in Ukraine, which may rely on the principle of universal jurisdiction. These efforts are important to complement the jurisdiction of the ICC over such crimes. New Zealand also notes the exercise of universal jurisdiction by the Higher Regional Court in Koblenz, Germany in its conviction of two former Syrian Government officials for crimes against humanity. New Zealand takes an interest in the development and application of the principle of universal jurisdiction in such cases and benefits from information sharing in the United Nations to further understanding of international criminal law and related principles.
 8. New Zealand is willing to work constructively with other States on this issue, to ensure that perpetrators and would-be perpetrators of the most serious international crimes are deterred and held to account.

³ See section 3. As well as acts for the purpose of aiding, abetting, inciting, counselling or procuring an act of torture; an attempt or conspiracy to commit an act of torture.

⁴ See section 8.