

## **The scope and application of the principle of universal jurisdiction**

### **Oral report of the Chair of the Working Group**

*Chair:* Ms. Shara Duncan-Villalobos (Costa Rica)

#### **I. Introduction**

1. Pursuant to General Assembly resolution 72/120 of 7 December 2017, the Sixth Committee decided, at its 1st meeting, on 3 October 2018, to establish a Working Group to continue to undertake a thorough discussion of the scope and application of universal jurisdiction. Pursuant to the same resolution, the Assembly decided that the Working Group should be open to all Member States and that relevant observers to the General Assembly would be invited to participate in the work of the Working Group.
2. At the same meeting, the Sixth Committee elected Ms. Shara Duncan-Villalobos (Costa Rica) to serve as Chair of the Working Group.
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/73/123 and Addendum 1, A/72/112, A/71/111, A/70/125, A/69/174, A/68/113, A/67/116, A/66/93 and Add.1 and A/65/181), as well as the various oral reports of the chair on the work of the Working Group (2017 (A/C.6/72/SR.28), 2016 (A/C.6/71/SR.31), 2015

(A/C.6/70/SR.27), 2014 (A/C.6/69/SR.28), 2013 (A/C.6/68/SR.23) and 2012 (A/C.6/67/SR.24)). The Working Group also had before it the Informal Paper of the Working Group (A/C.6/66/WG.3/1), which contains agreements on the methodology, as well as an enumeration of issues for discussion, commonly referred to as the “roadmap”. Finally, the Working Group had before it the Informal Working Paper that had been discussed in previous sessions of the Working Group.

## **II. Proceedings of the Working Group**

4. The Working Group held two meetings, on 11 and 17 October 2018. It conducted its work in the framework of informal consultations. The Working Group was convened against the backdrop of the plenary debate at the 10th, 11th and 12th meetings of the Sixth Committee, held on 9, 10 and 11 October 2018.

5. This summary is for reference purposes only and is not an official record of the proceedings. At its first meeting, on 11 October, in my capacity as Chair, I presented an overview of past proceedings, including the discussions that had led to the drawing up and refinement of the Informal Working Paper. As in past years, I reiterated the understanding that the issues raised in the Informal Working Paper were intended to be illustrative and without prejudice to future written or oral proposals made by delegations. Furthermore, the document was without prejudice to the positions of delegations. It 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 and emphasized that delegations’ input as to the way forward for the Working Group was needed.

6. With the aim of catalysing substantive discussions, I invited delegations during the first meeting, on 11 October, to address the following three questions, which had been circulated to delegations in advance: (i) “What crimes are subject to prosecution on the basis of universal jurisdiction under your country’s national laws?”; (ii) “What are the conditions, if any, to the applicability of universal jurisdiction for such crimes?”; and (iii) “What are the instances, if any, in which universal jurisdiction has been the basis of jurisdiction in the prosecution of crimes in your country.” A number of delegations shared information in response to these questions, with several delegations providing information on the crimes to which universal jurisdiction would apply under their national law and, in some cases, the conditions to such application. Amongst the delegations that provided information with respect to the third question, no delegation provided an instance in which universal jurisdiction had been the basis for jurisdiction in the prosecution of crimes in such delegation’s country. The exchange demonstrated the diversity of views as well as possible areas of convergence. It essentially tracked the information that Governments have provided as reflected in the various reports of the Secretary-General on the subject. One delegation questioned the relevance of the discussion given that, in that delegation’s view, universal jurisdiction as a concept did not enjoy consensus.

7. At the second meeting of the Working Group, on 17 October, some delegations shared their views on the decision taken by the International Law Commission at its last session to put the topic “Universal criminal jurisdiction” on its long-term programme of work and the potential implications of such decision on the consideration of the present item before the Sixth Committee and/or by the Working Group. I noted to the Working Group that there has been on-going discussion in previous sessions of the

Working Group as to whether the item in whole, or in part, should be referred to the Commission. Certain delegations noted that the inclusion of such topic on the long-term programme of work did not necessarily mean that the Commission would work on the topic, while one delegation noted a potential distinction between the topic as formulated by the Commission and the present item. During our discussions, delegations remained divided and there was no consensus on this issue. Some delegations voiced support for the decision taken by the Commission and, furthermore, for the Commission to move the topic to its programme of work and start considering it, while others suggested that the Commission's work could be limited to considering certain technical questions relevant to the scope and application of the principle of universal jurisdiction, with a view to contributing to the work of the Sixth Committee. Other delegations, however, maintained that consideration of the topic by the Commission, whether as the result of a decision by the Commission or as a result of the referral to the Commission by the Committee was premature and that the Working Group remained the proper, and, for certain delegations, the exclusive, forum for discussion related to the present item at the current stage.

8. The Working Group also considered the related question of how to proceed with the item in the Sixth Committee at future sessions of the General Assembly. While some support was expressed for the rationalization of the work of Assembly, which would lead to the consideration by the Sixth Committee of the item biennially and/or in the establishment of the Working Group biennially, a number of delegations expressed the view that the item should continue to be considered annually and the yearly establishment of the Working Group should remain unchanged. Some delegations also reiterated general support for the usefulness of the dialogue in the Working

Group, noting that such dialogue was part of the confidence-building exercise that could be seen as central to the work of the Working Group.

10. This is my second year as Chair of the Working Group. I believe that is fair to say that there is a certain impasse in our work. It is linked partly to the lack of agreement on the intended output of the Working Group, but it is not limited to it. This impasse may well be unavoidable given the lack of agreement on the issues that have informed the roadmap. That being said, there is no doubt that this item encompasses vital issues of importance to Member States and it is the very function of our Committee to provide the necessary guidance. In this connection, I would once again urge interested delegations to use the intersessional period to consult with each other with the aim of identifying the potential outcome of the Working Group that would both make use of the time wisely and also be appropriate to the nature of the topic.

12. I remain firmly committed to working closely with all delegations and I look forward to receiving your ideas and input in the coming intersessional period.

Thank you.