Translated from French

Observations by Belgium on the scope and application of the principle of universal jurisdiction

1. Belgium has the honour to transmit, below, pursuant to paragraph 1 of General Assembly resolution 64/117, its observations on the principle of universal jurisdiction (paras. 2-7) and the application of that principle in international law (paras. 8-12) as well as information on its domestic legal rules (paras. 13-17) and judicial practice (paras. 18-19).

2. Universal criminal jurisdiction is the ability of a State to prosecute the perpetrator of a crime committed abroad, by an alien against an alien, where such action does not directly threaten the vital interests of the prosecuting State. Accordingly, this jurisdiction does not derive from the classic factors for connection to a State, namely the place of the crime and the nationality of the perpetrator or that of the victim.

3. The judicial authorities of the State in the territory of which a crime was committed are generally the first to be competent to search for and try the perpetrators of the crime.

4. However, certain crimes concern the entire international community because of their exceptional gravity. Universally condemned, these crimes cannot go unpunished and must therefore be universally suppressed. Any State which exercises its jurisdiction in respect of such crimes is acting in the interests of the international community, not simply in its own interest.

5. It is for this reason that all States mu

9. The multiplicity of multilateral treaties which include an *aut dedere aut judicare* clause clearly points to the existence of a consensus within the international community that the perpetrators of the crimes covered by these treaties should not go unpunished, irrespective of their whereabouts. The obligation to extradite or prosecute obliges States to establish their jurisdiction in relation to persons suspected of international crimes who are present in their territory, irrespective of their nationality, the nationality of the victims or the place of commission of the crime. The States parties to a treaty which includes an *aut dedere aut judicare* obligation must therefore incorporate universal jurisdiction into their legislation without prejudice to the possibility of the courts and tribunals of monist States exercising jurisdiction on the direct basis of international law. According to a majority of treaties, however, the obligation to exercise universal jurisdiction is subject to the prior refusal of a State to extradite the suspect to a State which has made such a request.[1]

10. Some treaties oblige States parties to establish their jurisdiction, even their universal jurisdiction, and to prosecute the perpetrators of crimes covered by these treaties, whether or not there has been a request for extradition by another State. States are at liberty to extradite suspects, however, if they do not wish to prosecute them. This type of *aut dedere aut judicare* obligation is found, in particular, in the four Geneva Conventions of 12 August 1949,[2] in the Convention against Torture of 10 December 1984[3] and also in the International Convention for the Protection of

13. Belgium was one of the pioneers in the establishment of universal jurisdiction in respect of grave crimes under international humanitarian law. The act of 16 June 1993 which transposed to Belgium law the system of suppression established by the four Geneva Conventions of 1949 and their two protocols of 1977 on the protection of victims of war was extended to the crime of genocide and crimes against humanity by an act of 10 February 1999. Thus, victims of war crimes, crimes against humanity and crimes of genocide may complain before the Belgian courts irrespective of the place of the crime, the nationality of the perpetrator or that of the victim. Under this act, Belgian courts were accorded absolute universal jurisdiction in order to suppress the most serious crimes affecting the international community.

14. The application of this very far-reaching law gave rise to a number of problems in practice, however, deriving from the combined application of several provisions: the possibility of initiating proceedings in absentia and of opening a case by instituting civil indemnification proceedings before an examining magistrate, and the exclusion of immunities as an obstacle to prosecution. As mentioned in the

(b) Sexual mutilation of females;[8]

(c) Non-respect for certain rules applicable to the activities of marriage bureaux;[9]

(d) Acts of corruption;[10]

(e) Acts of terrorism;[11]

(f) Any offence in respect of which international treaty or customary law require that it should be suppressed regardless of the country in which it was committed and of the nationality of the perpetrator(s).[12]

17. As mentioned above, application to an examining magistrate by instituting civil indemnification proceedings is no longer possible, with the exception of cases where an offence is perpetrated wholly or partly in Belgium or where the alleged perpetrator of an offence is Belgian or resides primarily in Belgium. When he receives a complaint, the federal prosecutor refers it to the examining magistrate for investigation. Nevertheless, the law provides for several grounds which may justify a decision not to initiate proceedings or a decision on inadmissibility taken either by the indictment division, at the behest of the federal prosecutor (a, b and c), or directly by the federal prosecutor (d).[13] This is what happens when one of the following situations obtains:

(a) The complaint is manifestly unfounded;

(b) The facts cited in the complaint do not con.i/P ⁄M ov