

Chairman that had been presented annexes to my oral report of the sixty-seventh session, reflecting the stage of consideration of the preliminary elements for a working concept of universal jurisdiction, and the other containing an informal list of crimes falling within the scope of universal jurisdiction were re-circulated. The latter informal discussion paper formed the basis of discussion on the scope of

also as an informal discussion paper, a list of crimes under universal jurisdiction under Part 2 of the roadmap (“Scope of universal jurisdiction”). As part of the record of the discussion, the requested list was included as an Annex to the Oral Report of the Chairman. Due to lack of time, the list was not subject to any discussion in the Working Group last year. Therefore, the Working Group commenced discussion on the scope of universal jurisdiction by turning to that list at its first informal meeting on 23 October, and continued the discussion at the following two meetings on 24 and 25 October. Throughout the discussion, and given its preliminary and informal character, the list was revised on several occasions to reflect comments by delegations. The revised versions of the list were made available to delegations and placed in the e-Room. To fully reflect the discussions undertaken, the last revised version of the preliminary and informal list compiled at the present session is made available as an informal paper of the Chairman.

8. The last revised version of the list presents a set of possible crimes that could form part of the scope of the principle of universal jurisdiction, it being understood that the listed crimes did not reflect consensus among delegations and without any prejudice to their positions. It was further understood that the list of crimes was merely preliminary and illustrative as opposed to being indicative and/or exhaustive, and that discussion will resume at a later stage. To present this informal and preliminary list in this way appeared preferable to the approach taken in the first revised version of the list which had put several crimes in brackets to indicate that there had been a particular number of comments on those crimes on whether or to include them in the list. A number of delegations had pointed to possibilities of confusion if brackets were retained in the text. As a general comment on the scope of the principle of universal jurisdiction, several delegations noted that this issue

was closely interlinked with and dependent on other elements of the roadmap. It was recognized that the separation of the different elements in the roadmap was due to the preliminary character of the discussion, and was mainly intended as a method to better organize the exchange of positions.

9. The last revised version of the informal list of the Chairman presents the crimes in alphabetical order. This approach was preferred to two other alternatives which had been discussed throughout the informal consultations, but which both posed difficulties to some delegations. One alternative was to put the crimes in chronological order based on their emergence under international law. This

specifically addressing those crimes, and could therefore likewise be regarded as “treaty-based”.

10. The enumeration of crimes on the list bears the heading “crimes under universal jurisdiction” corresponding to the roadmap. Given that the crimes previously grouped had been merged into one list in alphabetical order, some delegations stated a preference for the heading of the list to refer to “international crimes under universal jurisdiction” to better reflect the international character of those crimes. It was understood that future discussions of the Working Group would reflect further upon the nature of the sources of the crimes in the list.

11. It was noted that there may be certain overlap and consequent redundancy in the list, as certain crimes were in fact clusters of crimes and comprised other crimes which were listed individually. As examples, “transnational organized crime” including “corruption” and “crimes against humanity” as including “torture” were cited. Some delegations however suggested that “corruption” deserved to be mentioned in its own right, given the fact that it is addressed by the United Nations Convention against Corruption. Likewise, it was pointed out that “torture” deserved to be listed as a separate item, as that would only reach the threshold of a “crime against humanity” if it was widespread or systematic.

12. As regards specific crimes on the list, delegations expressed diverging views. While delegations viewed “piracy” as a crime that fell within the scope of universal jurisdiction on the basis of both the United Nations Convention on the Law of the Sea and customary international law, with the view expressed by some of them that universal jurisdiction may only apply to the crime of piracy, several delegations suggested that the list should encompass more than merely that crime. Some delegations argued for the list to be as inclusive as possible to demonstrate the diversity of already

existing State practice, whereas other delegations emphasized that the list should reflect as much as possible common agreement. In this regard, several delegations expressed the view that to elaborate an exhaustive list would be inappropriate. Some delegations recalled that not all States were parties to the international treaties which address in a specific manner certain crimes enumerated on the list. The suggestion was also made that the principle of universal jurisdiction would not necessarily encompass all crimes for which international criminal tribunals have jurisdiction. It was also noted that the concept of universal jurisdiction was not yet reflected in international treaties, but was rather an expanding doctrinal concept which should not serve as panacea for "all evils in the world".

13. Some delegations expressed concern about the inclusion of the item "crimes against peace/crime of aggression". These delegations noted in particular that the 2010 amendments on the crim

17. Questions surrounding the interaction of States seeking to exercise universal jurisdiction with other States possessing overlapping jurisdictionalities to an alleged offense were raised by some delegations, and the connected issues comprising international assistance and cooperation were also noted. The importance of understanding the relationship between international and national law was underlined.

18. Delegations also raised the need for future discussions on the interrelationships and distinctions of the principle of universal jurisdiction from other concepts of international law, including: the concept of *aut dedere aut judicare*; the complementary but distinct role of the jurisdiction of international criminal tribunals to provide accountability and fight impunity for international crimes; the potential role that the international settlement of disputes may play in the practical exercise of universal jurisdiction; and the international legal responsibility that States may incur for the abuse or misuse of universal jurisdiction.

19. As Chairman, I subsequently circulated an informal discussion paper that set out issues that had been raised during the discussions on the application of universal jurisdiction. This informal discussion paper was prepared by reference to comments made by delegations during this session of the Working Group, as well as comments and observations made by delegations in previous sessions of the Working Group, of the Sixth Committee in plenary, and through written contributions. The informal discussion paper intended to place all of the raised issues within the corresponding sub-sections of Part 3 of the roadmap, namely the six identified findings of sub-sections (a) to (f). This preliminary and informal list, which was subject to refinement in

the light of the discussions on 25 October, is made available as a second informal paper from the Chair.

20. I hope that this discussion paper on the application of universal jurisdiction, which constitutes the third and final part of the roadmap, serves to provide a marker of issues for further discussions. It does not pretend to reflect consensus and does not preclude further examination and debate on all components of the roadmap.

3. Referral to the International Law Commission

21. During the discussions within the Working Group, the delegations of Switzerland, Czech Republic, Guatemala and Liechtenstein proposed that the International Law Commission (ILC) be requested to undertake a study of certain aspects of the item that would assist the Sixth Committee and the Working Group to continue its work. Several delegations were supportive of or open to this proposal, with some delegations highlighting that it would complement and not supersede the work of the Sixth Committee. Other delegations considered the proposal interesting but suggested that it was premature at this stage of the discussions. Several delegations noted that much more time would be needed to consider and discuss the proposal in future sessions. Other delegations stated that discussion of the item needed to remain within the Sixth Committee exclusively at this point. Different viewpoints were raised as to whether the presence of other related topics on the current agenda of the ILC, including that of immunities of State officials from foreign criminal jurisdiction and of the obligation to extradite or prosecute (*aut dedere aut judicare*), argued for or against requesting the assistance of the ILC on this topic. This remains an issue that is within the prerogative of delegations to consider.

22. The Chair is once again strongly encouraged by the level of interest and participation shown by delegations during the discussions. I am grateful to all delegations for their useful, insightful and helpful comments. It is strongly believed that the Working Group is proceeding well at a considered but productive pace. It is my sincere hope that in the future the Working Group will build further upon the work undertaken thus far. Since the Working Group has undertaken a preliminary discussion of all issues identified in the roadmap, the interessional period could be used to concretize the views of delegations on the way forward. Having a text that deals with the issues highlighted in a normative way would certainly help to advance discussions, and it is my hope that delegations, in their wisdom, can meaningfully work towards that goal.

Thank you.

INFORMAL PAPER BY THE CHAIRMAN 1

Working Group on the scope and application of universal jurisdiction

Informal discussion paper

Part 2 (A/C.6/66/WG.3/DP.1): Scope of universal jurisdiction

Chairman's preliminary list of crimes under universal jurisdiction¹

This preliminary list of crimes is illustrative, not indicative and/or exhaustive; it is without prejudice to positions of delegations; does not reflect consensus among delegations; and is expected to be subjected to further discussion at a later stage. It is organized in English alphabetical order and was provided to stimulate discussion.

- a. Apartheid
- b. Corruption

INFORMAL PAPER BY THE CHAIRMAN 2

Working Group on the scope and app

(c) Procedural aspects

- National amnesties
- Prosecutorial fiat and discretion
- Presen