

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” by the Working Group. The Working Group also had before it (a) an informal compilation of “Multilateral and other instruments”, and (b) an informal compilation containing “Excerpts from decisions of international tribunals” which may be relevant in relation to the work of the Working Group, both prepared by the Secretariat, pursuant to an understanding reflected in the 2010 report of the Sixth Committee on the item (A/65/474, para. 4). Finally, the Working Group had before it the Chairperson’s Informal Working Paper that had been distributed and discussed in previous sessions of the Working Group. This Informal Working Paper served as a basis for our discussions. Copies of the Informal Working Paper are available in the room and on Unite Connections.

II. Proceedings of the Working Group

4. The Working Group held three meetings, on 13, 14 and 21 October 2016. It conducted its work in the framework of informal consultations. The Working Group was convened against the backdrop of the plenary debate at the 13th, 14th and 15th meetings of the Sixth Committee, held on 11, 13 and 14 October 2016.

5. This summary is for reference purposes only and is not an official record of the proceedings. At its first meeting, on 13 October, in my capacity as Chairperson, 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 is both customary and important, I stressed that it was understood that the issues raised in the Informal Working Paper were illustrative and without prejudice to future written or oral proposals made by delegations. Furthermore, the document was without prejudice to the positions of delegations; did not reflect consensus among delegations; and was expected to be subject to further deliberation.

6. The Working Group proceeded to discuss the third column of the to>tion.

13. It appears to the Chairperson therefore that choices about the potential outcome of this work must be made by the Working Group and by the Sixth Committee. However, after six years of hard work, I believe that since we have been able to advance our discussions and now have a “Third Column” that captures the stage of said discussions, the group may use the elements of that column as the basis for future work.

Dear Colleagues

The intellectually stimulating nature of the topic, as well as the range of approaches that delegations have taken at the domestic level, suggests that it would be possible to discuss the item *ad infinitum*. That may well be the wish of delegations, although such an activity would be best left to the plenary of the Sixth Committee, if it were not best left beyond the Sixth Committee altogether. As I have expressed before, the Working Grouparar, 17.25 -3(ou).1(f)-0.

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

The scope and application of the principle of universal jurisdiction		
Informal Working Paper prepared by the Chairperson for discussion in the Working Group ¹		
1. Definition of the concept of universal jurisdiction:		Points for further discussion: definition
(a) The role and purpose of universal jurisdiction;	<ul style="list-style-type: none"> - To combat impunity - To protect the rights of victims - Achieving international justice/promoting justice - To address the most serious crimes of concern to the international community as a whole 	<p>" The goal of universal jurisdiction is to combat impunity and protect the rights of victims of the most serious crimes of concern to the international community as a whole.</p> <p>" The principle reflects a commitment to promote justice.</p>

¹ This Informal Working Paper, prepared by the Chairperson, is for the purpose of facilitating further discussion in the light of previous exchanges of views within the Working Group. It merges various informal papers developed in the course of the work of the Working Group (2011, 2012, 2013, 2014). It is understood that the issues raised in the present document are illustrative, and are without prejudice to future proposals made by delegations. This document is without prejudice to positions of delegations; does not reflect consensus among delegations; and is expected to be subject to further discussion at a later stage. In developing this document, account has been taken of the sources set out in the "Agreements on methodology" section of the Informal Working Paper of the Working Group (A/C.6/66/WG.3/1); the informal compilations prepared by the Secretariat (A/C.6/66/WG.3/INF.1 and INF.2); compilations of information shared by Governments, included in the reports of the Secretary-General on this topic (A/65/181, A/66/93 and Add.1., A/67/116, A/68/113, A/69/174, A/70/125 and A/71/111); and oral statements made by delegations to the Sixth Committee and in the Working Group on this topic. The present document attempts to attain a best possible balance between precision and flexibility, given the stage of the discussions and it is recognised that the various elements identified are interlinked.

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” Nothing in the present points should be interpreted limiting or prejudicing in any way existing or developir

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- Last resort/complementary/exceptional
 - Jurisdictional links (with territoriality, nationality, etc.)/conflict of competing jurisdiction
 - Consultations among concerned States.
 - Inability and/or unwillingness to prosecute
 - National amnesties
 - Prosecutorial fiat and discretion
 - Good faith
 - Judiciousness
- ” States should undertake to ensure that any action taken in the exercise of universal jurisdiction is not politically motivated, arbitrary or discriminatory; and the misuse or abuse of universal jurisdiction should be prevented at all times.
- ” In their application of universal jurisdiction, States should abide by applicable international law obligations concerning the immunity of State officials from foreign criminal jurisdiction, in particular with respect to Heads of State and Government.

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(d) Role of national judicial -
systems

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” States should take the necessary steps to ensure that, exercise of universal jurisdiction, any trial of an alleged perpetr

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Points for further discussion: scope

- ” The exercise of universal jurisdiction under national law by a State for crimes under international law may be on the basis of a treaty or a rule of customary international law.
- ” In the absence of an explicit obligation arising from a treaty or under customary international law making
- ” the exercise of universal jurisdiction mandatory, the exercise of jurisdiction is permissible and States may exercise universal jurisdiction subject to the applicable rules of international law.
- ” Each State should, when applying the principle of universal jurisdiction, take into account the core legal principle *nulla poena sine lege* and *nullum crimen sine lege*.
- ” For purposes of the present points, the most serious crimes of concern to the international community as a whole, and in respect of which universal jurisdiction is exercisable, include:
 - (a) Crimes against humanity,
 - (b) Genocide,
 - (c) Piracy,
 - (d) Slavery,
 - (e) Torture,
 - (f) War crimes.
- ” The application of universal jurisdiction to the crimes listed above is without prejudice to the potential application of universal jurisdiction with respect to other crimes under international law.
- ” Nothing in the present points should be interpreted as interfering or prejudicing in any way existing or developing rules of international law with respect to crimes under international law.

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Points for further discussion: application

- ” States should undertake to ensure that any action taken in their application of universal jurisdiction is in conform with the principles and purposes of the Charter of the United Nations and guided by the Declaration on Principle International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the

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is encouraged to inform and consult such other States with primary jurisdictional ties, in the process of initiating proceedings against any alleged perpetrator.¹³

- ” States may promulgate national legislation with respect to their exercise of universal jurisdiction.
- ” National judicial systems acting in the exercise of universal jurisdiction should pay due regard to international law.
- ” Where national authorities have prosecutorial discretion over a crime in the exercise of universal jurisdiction, the exercise of such discretion may take into account considerations and factors, including, but not limited to:
 - (a) the obligations of the State under international law, including any action taken or being taken in any other jurisdictional fora;
 - (b) an examination of the practical difficulties of proceeding, including witness access and availability and evidence gathering;
 - (c) the public interests at stake;
 - (d) international law; and,
 - (e) the interests of justice.
- ” A State may, under its national law, condition its exercise of universal jurisdiction to the presence of an perpetrator in its territory.
- ” A State may, under its national law, also condition its exercise of universal jurisdiction to the consent of a competent high authority, such as an Attorney General or a similar authority.

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perpetrator: (a) complies with due process standards, including the presumption of innocence, the right to a fair trial, the right to an adequate and effective appeals process; (b) guarantees judicial and prosecutorial impartiality and independence; and (c) accords respect for the rights of victims and the protection of witnesses.

” States should take the necessary steps to render mutual judicial assistance and cooperation to each other in investigation and prosecution of crimes in the exercise of universal jurisdiction, including, inter alia, respect to the specific challenges in the gathering of evidence and preserving its integrity and, as appropriate, to provide technical assistance to one another, consistent with their obligations under international law.

” States should take the necessary steps to render assistance to each other in relation to requests for the extradition of an alleged perpetrator of crimes subject to universal jurisdiction, consistent with their obligations under international law.