

7 October 2011
English
Original: Spanish

Sixth Committee
Working Group on the Scope and Application of the
Principle of Universal Jurisdiction

Non-paper by Chile

The purpose of this document is to facilitate the discussions regarding universal jurisdiction and to outline various aspects that the Working Group should take into consideration. This exercise does not prejudice the final outcome but it is designed primarily to obtain, from delegations, information and criteria concerning fundamental concepts relating to universal jurisdiction with a view to conducting an evaluation of the current state of the issue.

1. Concept of universal jurisdiction

Delegations are being asked to discuss what the concept of universal jurisdiction covers. There is no commonly accepted definition of the concept of universal jurisdiction in international law and there are a variety of ideas regarding what it should cover. Accordingly, delegations can express their views regarding the following aspects of the subject:

- What is meant by the concept of universal jurisdiction, what it includes and what it does not include. Is it considered to be a principle under international law?
- What could be considered its broadest extension.
- The discussion should also focus on possible variations (broad or restrictive) of the said concept.
- It would be useful to consider the rationale for universal jurisdiction. In particular, it would be helpful to receive views and guidance concerning whether it should always be based on international law.

2. Basic concepts: Jurisdiction. Bases for jurisdiction: principles of extraterritorial application

Delegations might discuss certain basic concepts regarding the treatment of this issue, which are necessary for an understanding of the issue of universal jurisdiction.



- Start with the premise of the concept of jurisdiction and what States mean by jurisdiction. In particular, they could talk about criminal jurisdiction.
- In this connection it would be worth discussing the most common bases for the establishment of jurisdiction and the most common situations that give rise to extraterritorial jurisdiction, whether based on domestic legislation or pursuant to the application of a treaty.
- Consideration could be given to the differences and similarities between extraterritorial criminal jurisdiction and universal jurisdiction.
- The discussion could provide guidance as to whether extraterritorial national jurisdiction exercised pursuant to a treaty with regard to specific crimes constitutes universal jurisdiction or is merely the application of the extraterritoriality of the law.

3. Elements associated with universal jurisdiction

Related to the application of universal jurisdiction, there are certain elements that are based on the rule of law and on legal systems. Delegations can discuss the following elements:

- They might discuss the links between the sovereignty of States and universal jurisdiction.
- They might discuss whether there is a need to establish in their domestic systems certain crimes of universal jurisdiction for the purpose of exercising preferential territorial jurisdiction.
- Delegations might express their views on the need to administer justice and how that relates to universal jurisdiction.
- Discussions could be held on the need to ensure the exercise of independent and effective jurisdiction and how that relates to universal jurisdiction.
- Delegations could discuss whether the forum State should have priority for trying the offence.
- Is the rationale for universal jurisdiction the need to make sure that there is no impunity for the most serious offences under international law?

4. Possible elements associated with universal jurisdiction

- Delegations should discuss the aims of universal jurisdiction. In this connection, it would be worth considering the avoidance of impunity for

jurisdiction invoked before an international tribunal and immunity invoked before a domestic court.

- Consideration should be given to the question whether the exercise of universal jurisdiction is proper where an amnesty law exists.

7. Conditions for the exercise of universal jurisdiction

Discussion is aimed at investigating what possible conditions for the exercise of universal jurisdiction delegations believe to be appropriate, in particular in light of the guidance provided by international law.

- Delegations might examine the principles of international law that govern the exercise of universal jurisdiction.
- Delegations might examine the question of what offences should call into play the exercise of universal jurisdiction.
- There could be a discussion on whether the exercise of universal jurisdiction should be restricted to certain international offences prohibited by jus cogens or whether universal jurisdiction might arise for offences under non-peremptory international law or offences not having jus cogens status.
- There could be discussion of whether the offences that fall within the purview of the International Criminal Court could provide a basis for determining which offences can be investigated and punished through the exercise of universal jurisdiction.
- Delegations might discuss the possibility of establishing an obligation of judicial cooperation with a State exercising universal jurisdiction.
- There could be discussion of whether the presence of an alleged offender in the territory of the State exercising universal jurisdiction is an essential requirement for the exercise of such jurisdiction or whether universal jurisdiction may be exercised in the absence of the alleged offender. If the offender's presence is identified as a necessary condition, there should be a discussion of whether it is appropriate to require the presence of the offender in order for the exercise of jurisdiction to be called into play.
- There could be a discussion of the possibility of applying the principles of international law to the exercise of universal jurisdiction with the aim of avoiding its unrestricted exercise.
- Delegations might discuss the need for or desirability of a responsible and sensible application of universal jurisdiction. There might also be discussion of how to ensure its reasonable exercise.

8. Possible courses of action

Delegations might discuss what course of action should be taken in dealing with the topic in future.

- Consideration might be given to whether there is a need for expert reports to complement the Working Group's consideration of the topic.
- The discussion might address the question of what outcome is being sought through consideration of the topic of the scope and application of the principle

of universal jurisdiction. Is the aim to produce a binding instrument, guidelines or principles?

- Consideration might be given to whether at some stage in the Working Group's deliberations on the topic, the International Law Commission might be asked to take up the topic or whether the Commission might produce a study to guide the work of the Sixth Committee.
-