



General Assembly
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Agenda Item 84: The scope and application of the principle of
universal jurisdiction

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Mr Chairman,

Norway continues to attach great importance to this agenda item. Three clusters of issues for discussion under this topic have been identified: the definition of the concept of universal jurisdiction; the scope of the crimes subject to universal jurisdiction; and the application of universal jurisdiction. In the following, we will briefly address these three issues.

Norway understands universal jurisdiction as the ability of a State to bring persons to trial for alleged crimes, regardless of where the crime was committed, or of the nationality or residence of the author or the victim of the crime, and regardless of whether vital interests of the State have been threatened by the crime.

The primary responsibility for the investigation and prosecution of crimes lies with the territorial State or with the State or States with personal jurisdiction. The territorial State is usually best placed to gather evidence, secure witnesses and ensure that justice is seen to be done by the persons most affected by the crime. Universal jurisdiction should, in principle, only come into play as a safety net when States with other types of criminal jurisdiction are unable or unwilling to act.

The rationale for universal jurisdiction is that certain crimes are of such a serious nature that they can be considered to be directed against the international community as a whole. One of the major achievements in international relations and in international law in recent decades is the

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common understanding that the most serious crimes of concern to us all must not go unpunished. There is growing consensus that there must be no escape or safe haven for those who commit such crimes. International cooperation is constantly being strengthened and new institutions and measures introduced to ensure that perpetrators of the most serious crimes are brought to justice. The principle of universal jurisdiction is an important tool in this respect, and should fully be recognised as such by this Committee.

One question that will be discussed in the working group is the concept of universal jurisdiction as distinct from other related legal concepts, and the way universal jurisdiction relates with these other concepts. In this context, we reiterate our position concerning criminal immunity: While we fully recognise that issues of immunity may be relevant for a discussion on the instigation of criminal proceedings against officials of other states, we believe that the Committee should refrain from pursuing a discussion on immunity under this agenda item. There are at least three reasons for this.

First, the issue of immunity as an obstacle to a court considering a case on its merits will only arise after the court has established its jurisdiction. Any discussion relating to immunity will therefore be qualitatively different from a discussion about the principle of universal jurisdiction, and it could derail or confuse the discussion of the latter.

Second, questions of immunity can arise in relation to any type of jurisdiction, not only universal jurisdiction.

Third, we should refrain from discussing immunity for State officials as this could prejudice the ongoing consideration of this topic by the International Law Commission.

Mr Chairman,

As to the second issue for discussion, the scope of the principle of universal jurisdiction, we reiterate our view regarding the need to adopt a cautious approach to our deliberations. As demonstrated by the Secretary-General's annual reports on the topic, there are divergent views as to which crimes the principle of universal jurisdiction applies. This is also reflected in differing State practice. Furthermore, the scope of the principle of universal jurisdiction is constantly evolving. New treaties, State practice, and international tribunals and scholars are shedding more light on the principle and giving it more substance. For these reasons, we believe it would be unwise to seek to reach consensus on a list of crimes to which universal jurisdiction can be applied. Our suggestion would rather be to identify important core crimes over which universal jurisdiction has already been established by a number of States.

Mr Chairman,

Concerning the last issue for discussion, the application of the principle, we agree of course that universal jurisdiction, like any other legal principle, should only be applied in the interest of justice. Universal jurisdiction must not be abused or misused, and any attempt to assert jurisdiction for political reasons must be prevented. However, we should also bear in mind that

prosecution based on universal jurisdiction seldom occurs in practice. An equally important problem is therefore that the relevant national authorities often are reluctant to investigate and prosecute crimes committed by foreigners abroad due to the complexity and costs of such proceedings.

In order to avoid situations of misuse of universal jurisdiction, we see merit in addressing certain national procedural issues. We would encourage a discussion on the existence or development of procedural or organisational best practices for the application of the principle of universal jurisdiction that could be compiled and sent to Member States for their consideration. We would also be willing to discuss measures to strengthen international assistance in relation to the application of universal jurisdiction.

Mr Chairman,

We look forward to the continued discussions under this agenda item, and trust that the work of this Committee will be guided by our common goal to fight impunity.

Thank you.