



AUSTRALIA



AUSTRALIAN MISSION TO THE UNITED NATIONS

E-mail australia@un.int

150 East 42nd Street, New York NY 10017-5612 Ph 212 - 351 6600 Fax 212 - 351 6610 www.AustraliaUN.org

The Scope and Application of the Principle of Universal Jurisdiction (Agenda Item 85)

Sixth Committee: Statement on behalf of Canada, Australia and New Zealand (CANZ)

10 October 2017

Statement by Dr Carrie McDougall, Legal Adviser

(Check against delivery)

I have the honour to speak today on behalf of Canada, New Zealand and my own country, Australia on this important topic.

Chair,

CANZ countries are acutely aware that impunity lies behind much of the barbarity that we continue to witness around the world. Serious international crimes are committed when perpetrators calculate that they can get away with these crimes. Sometimes impunity is able to reign because the criminal justice system has been shattered or the rule of law is not respected. Other times, power is used to shield perpetrators from the justice they deserve.

We recognise that ending impunity is critical to promoting the rule of law, helping victims and their loved ones heal, and to deter would-be perpetrators. Accountability is key to breaking cycles of violence, post-conflict reconciliation, and sustaining peace: unless the perpetrators of these crimes are held to account, a lasting and inclusive peace will inevitably be more difficult to achieve.

Chair,

In our view, the State in which any alleged serious international crime occurred has the primary responsibility to investigate and prosecute such crimes. Indeed, the exercise of jurisdiction by the territorial State is most likely to best serve the interests of justice, given it will usually be the territorial State that is best placed to obtain evidence, secure

witnesses, enforce sentences and deliver the 'justice message' to perpetrators, victims and affected communities.

We acknowledge, however, that the territorial State is not always willing or able to investigate or prosecute serious international crimes. We also acknowledge that the State of nationality of the perpetrator, or the victim, may equally be unable to exercise jurisdiction. In these circumstances, international or mixed criminal courts or tribunals, including the International Criminal Court, can have a role to play. Universal jurisdiction is an alternative means by which the international community can ensure that crimes of exceptional gravity do not go unpunished.

Universal jurisdiction is a well-established principle of international law. It was first developed under customary international law in relation to piracy to prevent pirates enjoying any safe haven on the basis that they were 'hosti humanis generis', or enemies of all mankind. We accept that universal jurisdiction has since been extended under customary international law to the crimes of genocide, war crimes, crimes against humanity, slavery and torture. It is the exceptional gravity of these crimes that makes their prevention, prosecution and punishment a joint concern of all members of the international community.

All Member States have a responsibility to help ensure that these crimes do not go unpunished. We have done our part. The domestic legislation of Australia, Canada and New Zealand respectively establishes universal jurisdiction in our domestic courts over the most serious international crimes.

In each of our countries, crimes over which universal jurisdiction has been extended can be prosecuted irrespective of the nationality of the perpetrator, the location of the alleged conduct, or of any other jurisdictional links between the alleged crime and our States.

We encourage those Member States that have not already done so to amend their domestic legislation to apply universal jurisdiction to the most serious international crimes.

In calling for Member States to establish, and where appropriate exercise, universal jurisdiction, we are aware of the sensitivities that attach to one State exercising criminal jurisdiction over the national of another State where the conduct took place outside the territory of the prosecuting State. In this context, we underline that CANZ countries have long held the view that universal jurisdiction must be exercised in good faith, in conformity with the UN Charter and other applicable rules of international law.

In particular, in our view, the exercise of universal jurisdiction is subject to international law obligations concerning immunities. As such, the exercise of universal jurisdiction is entirely consistent with State sovereignty. Universal jurisdiction must also be exercised consistent with international fair trial rights, and the prohibition of *nullum crimen sine lege* and *ne bis in idem*. At all times, the exercise of universal jurisdiction must be free from political motivation, discrimination, and arbitrary application.

Chair,

For several years now, this Committee has been making slow but steady progress in narrowing differences of views in relation to the scope and application of the principle of universal jurisdiction through our Working Group. While we recognise that those discussions are ongoing, and we look forward to continuing this valuable work this Session, we consider that the time is ripe for us to start reflecting the progress we have made in the resolution on universal jurisdiction that will be considered this year. While we have not yet reached agreement on all elements, we consider that we are agreed on some key points. Reflecting this agreement in this year's resolution would demonstrate that our hard work over the years has borne fruit, and that we are all committed to making progress in our consideration of this agenda item. More importantly, it would send a unified and unequivocal message to perpetrators and would-be perpetrators of serious international crimes that we are determined to ensure that they cannot run from justice. We owe at least this much to the victims of these crimes.