



Statement by H.E. Archbishop Gabriele Caccia
Permanent Observer of the Holy See to the United Nations
UNGA 75 – Sixth Committee

Agenda item 87 – The scope and application of the principle of universal jurisdiction

Mr. Chair,

The annual resolution of the UNGA on the principle of universal jurisdiction opens with naming the three foundations on which we carry out our discussions: “the purposes and principles of the Charter of the United Nations, ... international law and ... an international order based on the rule of law.”¹

Recalling these foundations is important for the scope and complex application of the principle of universal jurisdiction. On the one hand, we all share the duty to ensure that those responsible for the most serious crimes are held accountable. On the other, we must safeguard core principles of international relations, such as the sovereign equality among States, the principle of non-interference and the immunity of State officials. This tension between principles requires careful consideration.

The Holy See believes that the only way forward consists of delineating clear rules for the exercise of this jurisdiction, based on just process, subsidiarity and respect for the jurisdictional privileges of States.

The application of universal jurisdiction should be limited to crimes of the gravest concern—genocide, crimes against humanity and war crimes. As an international norm, impunity for these crimes should be unacceptable, and no safe haven should be given for those who perpetrate them.

The application of universal jurisdiction should also acknowledge the rule of law, for just as the rule of law requires holding perpetrators accountable, it also dictates that we do so respecting the principle of legality. Therefore, any guidance this body may develop on universal jurisdiction must be

¹ UNGA resolution 74/192 – *The scope and application of the principle of universal jurisdiction* – adopted on 18 December 2019.

consistent with the fundamental principles of criminal justice (inter alia *nullum crimen, nulla poena sine lege*, the right to due process and the presumption of innocence).

Subsidiarity requires that a State with national or territorial jurisdiction be given the first opportunity to investigate and, if appropriate, to prosecute such crimes. Indeed, this principle lessens the controversy around universal jurisdiction, which should only apply as a mechanism of last resort when States with the primary connection to the crimes or perpetrators are either unwilling or unable to prosecute the crimes of gravest concern. Moreover, even then, States seeking to exercise universal jurisdiction must possess a clear connection to the facts or to the parties concerned in the case, such as the presence in its territory of the accused or the victims. Universal jurisdiction should not justify prosecutions *in absentia*, “forum shopping” or the unwarranted interference in the internal affairs of other States.

Traditional defenses based on the functional immunity of public officials should not apply for crimes of the most serious concern. Such crimes involve acts that can never be construed as “acts of State” and thus should not enjoy immunity. On the other hand, from a policy point of view, we must preserve the immunity *ratione personae* of the highest official of the State while in office. Respecting that immunity is in fact a precondition for the orderly conducting of international affairs and for any mediation or peacebuilding efforts. It has to be acknowledged – perhaps with some regret but realistically – that, on the short term, efforts to find a negotiated solution to a crisis must often take precedence over the needs of justice.

My Delegation encourages the Working Group’s efforts to find common ground on these issues through continuing its inquiry into Member States’ national practices regarding universal jurisdiction, and thanks the Secretary-General for his report (A/75/151) and the Member States who provided information to it. Such a report, to assist the Working Group, should in particular identify: those crimes where Member States’ laws already permit them to prosecute on the basis of universal jurisdiction; the conditions, if any, that must be present to make universal jurisdiction applicable to such crimes under a Member State’s national laws; and the instances, if any, in which universal jurisdiction has been used as a basis for prosecution of crimes in each Member State’s country.

There can be no rule of law when crimes are rewarded with impunity. Consequently, we must persevere in the delicate and difficult task of

finding a balance between sovereign concerns and the need to hold accountable the perpetrators of the most heinous crimes. With unified and resolute action, we can deter future atrocities and ensure justice for the victims.

Thank you, Mr. Chair.