

Sixty-ninth

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Group. This informal working paper merged the previously distributed informal papers developed in the course of the work of the Working Group from 2011 to 2014. As is set out in the informal working paper, I emhnsn2ETBT1 0 0 1 400./t.69 693.c2

recognised that the various elements that have been identified are interlinked.

I first turn to section A, Definition of the concept of universal jurisdiction.

A. Definition of the concept of universal jurisdiction

7. The Working Group last discussed this aspect of the Roadmap at the sixty-seventh session

captures a spectrum of views, but remains subject to further elaboration and clarification.

9. The Working Group devoted some time on the fourth of the essential elements as initially set out. It attempts to weld together the two definitional components of universal jurisdiction that delegations have pointed to as the core of the concept: namely, the nature of certain crimes under international law warranting the exercise of such jurisdiction, and universal jurisdiction's distinctive form with respect to the other classical grounds of jurisdiction. On the basis of some delegations seeking further clarification on the wording used in this element, the text now embodies these components in the following way, utilizing the common nomenclature of jurisdiction recognized under international law: "Based on the nature of certain crimes under international law, and not on any other jurisdictional connection to the State exercising universal jurisdiction (including territoriality, nationality, passive personality or protective principles, as recognized under international law)." A similar concern for definitional clarity led to the substitution, within sub-section 1(c) of the Roadmap – entitled "Distinction from other related concepts" – of "Other forms of extra-territorial jurisdiction" for "Other forms of jurisdiction (including, territoriality, nationality, passive personality or the protective principles, as recognized under international law)."

Let me now turn to the section on the scope of universal jurisdiction.

B. Scope of universal jurisdiction: crimes under universal jurisdiction

I now turn to the application of the principle of universal jurisdiction.

C. Application of the principle of universal jurisdiction

12. During the Working Group's session at the sixty-eighth session of the General Assembly last year, Ambassador Ulibarri, at the request of the Working Group, prepared and distributed an informal paper on the question of the "Application of the principle of universal jurisdiction". Given the limited time available to discuss that informal paper

further development and elaboration in order to appreciate their intended import and normative scope.

14. During the discussions, delegations presented several suggestions and engaged in a meaningful dialogue. In sub-section (a), entitled “Conditions for application”, the elements of good faith and judiciousness were moved to sub-section (b) entitled “Criteria for exercising jurisdiction”. The question over the discretionary or obligatory nature of universal jurisdiction, a question that will have different answers depending on the applicable surrounding factors, was introduced to sub-section (a). Sub-section (b) remained unchanged with the exception of the addition of the two elements just mentioned.

15. Within sub-section (c), on “Procedural aspects”, modifications to the Informal Working Paper were primarily intended to seek enhanced clarity. On the suggestion of some delegations, examples of what was encapsulated within “inv nv

16. In sub-section (e), entitled “Interaction with other concepts of international law”, some delegations urged the inclusion here, as well as in other sub-sections, of the question of the interaction of universal jurisdiction with questions of immunity, which were viewed as critical to such delegations, while others stressed the importance of recognizing that jurisdiction and immunity were different, even though interrelated, concepts. With respect to the principle of *aut dedere aut judicare*, the view was expressed that the core of the discussion with respect to its interaction with the principle of universal jurisdiction focused on the distinction between these two concepts. These suggestions led to appropriate modifications of the Informal Working Paper. Finally, delegations presented differing views on alterations to what had been set out as ‘State responsibility for abuse’. Some delegations recalled the importance of the role of abuse of universal jurisdiction to the introduction of this topic into the agenda of the Sixth Committee and emphasized that it was a continuous concern, whilst other delegations highlighted that “abuse” of the principle, left undefined, may not necessarily lead to nor be synonymous with State responsibility under international law. Attempting to accommodate these viewpoints, the Informal Working Paper incorporates this element as “Questions of State responsibility for wrongful acts in the

matters”, as well as further elaborating the listing within each set of parentheses.

18. Delegations also raised points concerning the meaning of footnote 5, which relates to the element of “immunity” as set out in sub-section (a) on “Conditions for application”, and which states “It is recognized that there are multiple dimensions to this tier.” It is to be recalled that the origins of this footnote lie in their suggestion that while “immunity” had been included in sub-section (a), it would be possible to include and discuss this element in a number of the sub-sections. Some delegations stressed concern that the wording of the footnote suggested a particular substantive interpretation of the content of the immunity of State officials from foreign criminal jurisdiction, one that

questions in that spirit and in the hope that in the days to come we can together seek to find answers to them in order to contribute to the progressive development of international law and its codification. I say all this, with optimism, because I was encouraged by the substantive nature of our discussion at this session.

Thank you.