

The scope and application of the principle of universal jurisdiction		
Informal Working Paper prepared by the Chairperson for discussion in the Working Group¹		
<i>I. Definition of the concept of universal jurisdiction:</i>		<i>Points for further discussion: definition</i>
(a) The role and purpose of universal jurisdiction;	<ul style="list-style-type: none"> - To combat impunity - To protect the rights of victims - Achieving international justice/promoting justice - To address the most serious crimes of concern to the international community as a whole <p style="text-align: right;">a commitment to promote justice.</p>	
(b) Relevant components;	<p>Essential elements of a crime are limited to universal jurisdiction of criminal matters; they are without prejudice to universal jurisdiction in respect of civil matters.²</p> <p>-Exercised by national courts/tribunals.</p> <p>Universal jurisdiction is exceptional, yet complementary to <i>aut dedere aut judicare</i>, the obligation to extradite or prosecute (<i>aut dedere aut judicare</i>), the jurisdiction of international</p>	

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	<ul style="list-style-type: none"> f. Genocide g. Piracy h. Slavery i. Terrorism j. Torture k. Transnational organized crime l. War crimes 	<p>Each State should, when applying the principle of universal jurisdiction, take into account the core legal principles of <i>nulla poena sine lege</i> and <i>nullum crimen sine lege</i>.</p> <p>For purposes of the present points, the most serious crimes of concern to the international community as a whole, and in respect of which universal jurisdiction is exercisable, <u>may</u> include:</p> <ul style="list-style-type: none"> (a) Crimes against humanity, (b) Genocide, (c) Piracy, (d) Slavery, (e) Torture, (f) War crimes. <p>The application of universal jurisdiction to the crimes listed above is without prejudice to the potential application of universal jurisdiction with respect to other crimes under international law.</p> <p>Nothing in the present points should be interpreted as limiting or prejudicing in any way existing or developing rules of international law with respect to crimes under international law.</p>
<p>3. Application:</p>		<p>Points for further discussion: application⁴</p>

⁴ These proposed points take into account the various sources set out in the “Agreements on methodology” section of the Informal Paper of the Working Group (A/C.6/66/WG.3/DP.1). In particular, they bear in mind the informal papers prepared by the Chairman of the Working Group for discussion and considered in the

- (a) Conditions for application
- International law, including the Charter of the United Nations
 - *Nulla poena sine lege/nullum crimen sine lege*
 - International human rights/IHL obligations
 - Immunity⁵
 - Discretionary/obligatory nature of the principle

States should⁶ undertake to ensure that any action taken in their application of universal jurisdiction is in conformity with the principles and purposes of the Charter of the United Nations and guided by the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.⁷

States should undertake to ensure that any action taken in their application of universal jurisdiction is in accordance with their rights and obligations under international law⁸ and with the principle of good faith.

States should undertake to ensure that any action taken in their application of universal jurisdiction is not politically motivated, arbitrary or discriminatory; and the misuse or abuse of universal jurisdiction should be prevented at all times.

In their application of universal jurisdiction, States should abide by applicable international law obligations concerning the immunity of State officials from foreign criminal jurisdiction, in particular with respect to Heads of

<p>(c) Procedural aspects</p>	<ul style="list-style-type: none"> - Presence/absence of alleged offender - <i>Ne bis in idem</i>/double jeopardy - Statute of limitations - International due process guarantees (including, <i>inter alia</i>, the presumption of innocence, the right to a fair trial, the right to minimum trial guarantees in full equality, the right to an adequate and effective appeals process) - Establishment of a prima-facie case before proceeding - Judicial independence - Prosecutorial independence - Prosecutorial discretion - International comity - Challenges of evidence gathering/preservation in the exercise of universal jurisdiction 	<p>Unless a specific treaty obligation provides otherwise, a State possessing primary jurisdictional ties for prosecuting crimes that could be subject to the exercise of universal jurisdiction would include the State in whose territory the alleged crime has been committed or the State of nationality of the alleged perpetrator.</p> <p>Universal jurisdiction should be exercised exceptionally, when a State possessing primary jurisdictional ties is unable or unwilling to bring criminal proceedings against an alleged perpetrator. A State seeking to exercise universal jurisdiction is encouraged to inform and consult such other States with primary jurisdictional ties, in the process of initiation of any proceedings against any alleged perpetrator.⁹</p> <p>States may promulgate national legislation with respect to their exercise of universal jurisdiction.</p>
<p>(d) Role of national judicial systems</p>	<ul style="list-style-type: none"> - Exercisable by national judicial systems - Primacy of national justice systems/complementary/role of 	<p>National judicial systems acting in the exercise of universal jurisdiction should pay due regard to international law.</p> <p>Where national authorities have prosecutorial discretion over a crime in the exercise of universal jurisdiction, the exercise of such discretion may take into account considerations and factors, including, but not limited to: (a) the obligations of the State under international law, including any action taken or being taken in any other jurisdictional fora; (b) an examination of the practical difficulties of proceeding, including witness access and availability and evidence gathering; (c) the public interests at stake; (d) international comity; and, (e) the interests of</p>

	<ul style="list-style-type: none"> - Complementary to jurisdiction of international criminal tribunals - Role of the settlement of disputes - Questions of State responsibility for wrongful acts in the exercise of universal jurisdiction, including, as appropriate, its abuse 	<p>justice.</p> <p>A State may, under its national law, condition its exercise of universal jurisdiction to the presence of an alleged perpetrator in its territory.</p> <p>A State may, under its national law, also condition its exercise of universal jurisdiction to the consent of a competent high authority, such as an Attorney-General or the Public Prosecutor or their equivalent.</p> <p>A State may, under its national law, condition its exercise of universal jurisdiction to ensure that statutes of limitations are not applicable to certain crimes.</p> <p>States should take the necessary steps to ensure that, in the exercise of universal jurisdiction, an alleged perpetrator is not to be exposed to multiple prosecutions for the same conduct (<i>ne bis in idem</i>), provided that any previous proceedings were conducted in good faith, in accordance with international norms and standards.</p> <p>States should take the necessary steps to ensure that, in the exercise of universal jurisdiction, any trial of an alleged perpetrator: (a) complies with due process standards, including the presumption of innocence, the right to a fair trial, and the right to an adequate and effective appeals process; (b) guarantees judicial and prosecutorial impartiality and independence; and (c) accords respect for the rights of victims and the protection of witnesses.</p> <p>States should take the necessary steps to render mutual judicial assistance and cooperation to each other in the investigation and prosecution of crimes in the exercise of universal jurisdiction, including, <i>inter alia</i>, with respect to the specific challenges in the gathering of evidence and preserving its integrity and, as appropriate, to provide</p>
<p>(f) International assistance and cooperation.</p>	<ul style="list-style-type: none"> - Mutual assistance and cooperation in 	

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technical assistance to one another, consistent with their obligations under international law.

States should take the necessary steps to render assistance to each other in relation to requests for the extradition of an alleged perpetrator of crimes subject to universal jurisdiction, consistent with their obligations under international law.