

Permanent Mission of Cuba to the United Nations

New York

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The Permanent Mission of Cuba to the United Nations presents its compliments to the Secretary-General of the United Nations and has the honour, with regard to the Secretary-General's Note LA/COD/59 dated 8 January 2010 referring to paragraph 1 of General Assembly resolution 64/117 dated 16 December 2009 entitled "The scope and application of the principle of universal jurisdiction", to transmit the following observations on the part of the Republic of Cuba:

The Secretary-General of the United Nations

New York

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Cuba attaches great importance to the subject of the scope and application of the principle of universal jurisdiction, since that principle involves issues that need to be discussed by all Member States in the framework of the General Assembly of the United Nations, so that those issues can be identified and inappropriate recourse to the principle can be avoided. Unwarranted use of the principle of universal jurisdiction can have negative consequences on the rule of law at the international level, as well as on international relations.

The principles enshrined in the Charter of the United Nations, in particular the sovereign equality and political independence of States and non-interference in the internal affairs of States, must be scrupulously respected in judicial proceedings; similarly, measures adopted in respect of high-level officials in office must respect immunities granted under international law. The issuance of accusations and detention orders against such officials, without taking into account their functional immunity, undermines the principle of the sovereign equality and independence of States.

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Cuba expresses its concern at the unilateral exercise of extraterritorial criminal and civil jurisdiction by national courts that is not based on international treaties or other obligations arising from international law, including international humanitarian law. In that connection, Cuba condemns the adoption of laws at the national level that are based on political considerations and target other States.

With regard to international treaties, the 1949 Geneva Conventions introduced the application of universal jurisdiction for violations that can be characterized as grave breaches. Under the relevant article of each Convention, States are under the obligation to search for accused persons "regardless of their nationality", and should bring them before its own courts or hand them over for trial to another Contracting Party. Although the Conventions do not stipulate expressly that the jurisdiction should be exercised regardless of the country in which the violation was committed, it is generally understood that the Conventions establish universal jurisdiction. The Conventions provide, therefore, one of the earliest examples of universal jurisdiction in the law of treaties.

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Cuba is of the view that the application of universal jurisdiction must be regulated so as to prevent abuses, respect the sovereign equality of States and safeguard international peace and security. In that context, we believe that the application of universal jurisdiction should serve as an extension of the domestic jurisdiction of each State. A declaration by a particular State that its domestic courts assume responsibility for trying and judging the perpetrator should prevent any application of universal jurisdiction.

Similarly, the possibility should be considered that, when a State wishes to claim the application of universal jurisdiction, it should first obtain the consent of the State in which the violation took place and of the country or countries of which the accused is a national.

Furthermore, it should be specified what crimes are serving as the basis for applying universal jurisdiction and the facts justifying its application. It is our view that such crimes should be restricted to crimes against humanity and that the application of universal jurisdiction should be invoked only under exceptional circumstances and when it has been recognized that no other means of bring a criminal action against the perpetrators exists.

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The Permanent Mission of Cuba takes this opportunity to convey to the Secretary-

General the assurances of its highest consideration.

New York, 30 April 2010