
Translated from Spanish

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The Permanent Mission of Cuba to the United Nations presents its compliments to the Secretary-General and, with regard to note LA/COD/59/1 of 20 January 2011 concerning paragraph 3 of General Assembly resolution 65/33 entitled “The scope and application of the principle of universal jurisdiction”, has the honour to transmit the following comments.

Cuba attaches great importance to the scope and application of the principle of universal jurisdiction, which should be discussed by all of the Member States in the framework of the General Assembly, primarily in order to prevent this principle from being invoked inappropriately. Unwarranted use of the principle of universal jurisdiction has negative effects on the rule of law at the international level, as well as on international relations.

The scope of application of the principle of universal jurisdiction should be limited, first and foremost, by absolute respect for the sovereignty and national jurisdiction of Member States. 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.

Application of this principle should not violate the immunity granted under international law to Heads of State, diplomatic personnel and other serving high-level officials. Issuing charges and detention orders against such officials irrespective of their functional immunity undermines the principle of the sovereign equality and independence of States. The principle of universal jurisdiction should not be invoked to diminish respect for a country’s national jurisdiction, to denigrate the integrity and values of its legal system, or for political ends, in violation of the rules and principles of international law.

Cuba expresses its concern at the unilateral and selective exercise of extraterritorial criminal and civil jurisdiction by national courts, which has no basis in international norms or treaties. In that connection, it condemns the adoption at the national level of politically motivated laws targeting other States.

With regard to international treaties, the 1949 Geneva Conventions introduced the application of universal jurisdiction to violations 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 to bring them before their 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, States have a legally established power to prosecute such crimes universally.

Cuba is of the view that the application of universal jurisdiction should be regulated internationally in order to prevent abuses and safeguard international peace and security. International regulation should consider the possibility that, when a State wishes to invoke the principle of universal jurisdiction, it should first obtain the consent of the State in which the violation took place or the country or countries of which the accused is a national. It should also establish requirements for the regulation and use of this principle, as well as its compatibility with the Charter of the United Nations, and should define it as exceptional and secondary in nature.

Universal jurisdiction must be secondary to the action and national jurisdiction of each State. Therefore, when a case is being investigated and prosecuted by the national judicial system, universal jurisdiction should not apply. Universal jurisdiction should be exercised only under exceptional circumstances warranting its use, and from the perspective of coexistence with national statutory and case law.

Universally acceptable international regulations must specify the crimes for which universal jurisdiction may be invoked and must define the bases for its application. It is our view that such crimes should be restricted to crimes against humanity and that universal jurisdiction should be invoked only when it has been recognized that no other means of bringing a criminal action against the perpetrators exists.

In the opinion of Cuba, the principle in question cannot be analysed without also considering the obligation to extradite or prosecute, since the purpose of both constructs is to combat impunity for certain types of crimes defined in international legal instruments. The international community has been identifying a body of crimes for which both concepts may be invoked, but it has yet to determine whether all or only a subset of these crimes are subject to both universal jurisdiction and the obligation to extradite or prosecute.

The Permanent Mission of Cuba to the United Nations takes this opportunity to convey to the Secretary-General the renewed assurances of its highest consideration.

New York, 27 June 2011
