

*Translated from Spanish*

**Permanent Mission of Cuba to the United Nations**

NV-244

New York, 9 April 2012

The Permanent Mission of the Republic of Cuba to the United Nations presents its compliments to the Office of the Secretary-General of the United Nations and has the honour to transmit the following comments with reference to paragraph 3 of General Assembly resolution 66/103 entitled "The scope and application of the principle of universal jurisdiction".

Office of the Secretary-General

of the United Nations

New York

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Cuba attaches great importance to this issue and believes that it should be discussed by all Member States within the framework of the General Assembly, primarily to prevent inappropriate recourse to that principle.

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 States. The principle of universal jurisdiction should not be applied in order to diminish respect for a country's national jurisdiction, disparage the integrity and values of its legal system or pursue political objectives in violation of the norms and principles of international law.

The principles enshrined in the Charter of the United Nations, in particular the sovereign equality and political independence of States and non-interference in their internal affairs, must be scrupulously respected during judicial proceedings.

Cuba shares the concern expressed by the Movement of Non-Aligned Countries regarding the unilateral and selective exercise of extraterritorial criminal and civil jurisdiction by national courts with no basis in any international norm or treaty or in international law. The practice is of particular concern in view of the potential political and legal implications of indiscriminate and selective use of the principle against persons who enjoy immunity under international law.

Application of this principle should not violate the immunity granted under international law to Heads of State, diplomatic personnel and other incumbent high-ranking officials. The filing of charges and issuance of arrest warrants against such officials not only constitutes a violation of the international regulations in force, but also undermines the principle of the sovereign equality and independence of States.

Cuba is of the view that the application of universal jurisdiction should be regulated at the international level. Such regulation should envisage the possibility that, when a country applies the principle of universal jurisdiction, it should obtain the prior consent of the State in which the crime was committed or of the country or countries of which the accused is a national. Regulation at the international level should also establish the criteria for application of this principle and for its compatibility with the Charter of the United Nations, and should define it as exceptional and supplementary in nature.

Universal jurisdiction must be supplementary to the actions and national jurisdiction of each State; thus, the principle may not be applied where the accused person is being investigated and prosecuted by the national courts. In addition, universal jurisdiction should be applied only under

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exceptional circumstances in which there is no other way to prevent impunity, and it should be seen as existing alongside domestic law and the jurisprudence of national courts.

Member States still need to resolve these and other controversial issues, including identification of the crimes that are subject to universal jurisdiction and the circumstances under which it may be invoked. It is our view that the list of such crimes should be restricted to crimes against humanity and that universal jurisdiction should be invoked only when it has been established that there is no other way to bring criminal proceedings against the perpetrators.

Cuba considers that the principle in question cannot be analysed without also considering the "obligation to extradite or prosecute" (*aut dedere aut judicare*). Although the aim of both concepts is to combat impunity for certain types of crimes established in international legal instruments, a clear distinction must be made between them.

The international community has been establishing a list of crimes for which each concept may be invoked, but it has yet to determine whether all of these crimes or only some of them should be subject to both universal jurisdiction and the obligation to extradite or prosecute.

Universal jurisdiction must not be confused with international criminal jurisdiction, which is exercised by international criminal tribunals established through treaties, such as the International Criminal Court, or by the Security Council, such as the International Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda.

With regard to international treaties, the Geneva Conventions of 1949 introduced the application of universal jurisdiction to violations characterized as "grave breaches".

Under the relevant article of each Convention, States have the obligation to search for persons alleged to have committed such breaches "regardless of their nationality" and to bring them before their own courts or hand them over for trial to another High Contracting Party.

Although the Conventions do not expressly stipulate that jurisdiction must be exercised regardless of where the crime was committed, States have the legally established power to prosecute such crimes universally.

Cuba welcomes the decision to establish, during the sixty-seventh session of the General Assembly, a working group to continue to undertake a thorough discussion of the issue. Furthermore, it reiterates its willingness to cooperate with this working group in a constructive manner in order to facilitate a more productive and efficient analysis of the scope and application of universal jurisdiction.

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