



# SRI LANKA

Statement

by

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**Permanent Representative of Sri Lanka  
To the United Nations**

during the

**Sixth Committee**

of the

**67<sup>th</sup> Session of the United Nations General Assembly**

On

**Agenda Item : (84)**

**“The Scope and Application of the Principle of  
Universal Jurisdiction**

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My delegation aligns itself with the statement made on behalf of the Non-Aligned Movement by Iran. We thank the Secretary-General for the report A/67/116 on this agenda item.

Universal jurisdiction is a unique and still evolving segment of international justice which enables the exercise of criminal jurisdiction to fight impunity. The principle and application of universal jurisdiction, a commendable development in the law, involve complex issues of a legal, political and diplomatic nature which are still to be fully defined. In addition, significant differences in views on the scope of universal jurisdiction and its application exist. With growing frequency, some national courts have begun to exercise what is broadly referred to as universal jurisdiction, causing some countries to enact legislation, in an effort to rein in such developments

As the law in this area evolves, it is important to listen to all views. Precipitate, selective and arbitrary application of this concept will not assist in its consolidation. We take the view that in the application of this principle, it is important to have regard to other established international law norms, including the sovereign equality of States, territorial jurisdiction and immunity of officials. A norm being developed in response to contemporary sentiment must also be sensitive to the reasons behind existing rules. Developments in the concept of universal jurisdiction, especially its practical application, must be guided by international consensus and not through advocacy action of parties

with short term and narrow objectives. It is a matter that the International Law Commission could usefully begin to examine.

The imprudent exercise of the principle could create disharmony among States, as it could be perceived as a tool for interfering in the internal affairs of other States. The sovereign right of States to address incidents of impunity through their own mechanisms must be respected. The eager use of this principle in a selective manner to realize political goals may have the effect of undermining the principle of sovereign equality of States and erode the immunity of state officials and diplomatic agents. Such immunities were recognized historically for good reason. Several such cases in the past have purposefully targeted high officials and have hindered diplomatic dialogue. It is likely that situations which may have been resolved differently, were compromised as a result. The targeting of diplomatic agents, who enjoy full immunity in bilateral and multi-lateral fora in an attempt to test the scope of diplomatic privileges and immunities is disturbing. Universal jurisdiction should not be used as a tool to erode the legitimacy that is the foundation of democratically elected governments as they seek to establish domestic mechanisms to address infringements of the law or formulate reconciliation processes. Many confusing situations in history need the calming balm of patience to heal rather than the messianic pursuit of retributive justice.

The principle of universal jurisdiction should not be exercised in another jurisdiction when the judicial mechanisms of the country are in the process of addressing an infraction. The primary responsibility in carrying out investigations and prosecutions lie

with the States where the crimes were committed. In addition, the best entity suited to prosecute such crimes would be the country where the alleged infringements occurred, due to the ease of access to the evidence and the proximity to the aggrieved. It is disturbing that the principal of universal jurisdiction is sought to be advanced in a small number of jurisdictions and certain judges without significant input from the vast majority of the countries of the international community. It is disheartening that in certain instances, judicial officers of countries investigating such cases have proceeded on a unilateral basis without opting for cooperation with the State concerned, and have ignored determinations of national courts. When a state chooses to exercise universal jurisdiction *in absentia*, it must also ensure that certain safeguards are in place to prevent the abuse of the principle.

As Henry Kissinger wrote in *Foreign Affairs* (July/August 2001), "the unprecedented and sweeping interpretation of international law would arm any magistrate anywhere in the world with the power to demand extradition, substituting the magistrate's own judgment for the reconciliation procedures of even incontestably democratic societies where alleged violations of human rights may have occurred. It would also subject the accused to the criminal procedures of the magistrate's country, with a legal system that many be unfamiliar to the defendant and that would force the defendant to bring evidence and witnesses from long distances. Such a system goes far beyond the explicit and limited mandates established by the U.N. Security Council for the tribunals covering war crimes".

To ensure that universal jurisdiction remains available to States as a tool in the fight against impunity for the most serious international crimes, checks and balances must be put in place. Responsible application of the principle is a must. We were pleased that several countries have tightened their legislation on arrest warrants, and official consent has to be obtained before an arrest warrant could be issued in cases where a private prosecutor is seeking a warrant in relation to crimes coming under universal jurisdiction. We welcome these developments.

The universal jurisdiction principle, due to certain inherent disadvantages, should only be invoked when all other options have been exhausted. Used to achieve the wrong goals, it has the potential to cause more harm than good.

Thank You, Mr. Chairman.