



## **BRAZIL**

### **GENERAL ASSEMBLY Sixth Committee**

#### **Item 84: “The Scope and Application of the Principle of Universal Jurisdiction”**

**18 OCTOBER, 2013**

Mr. Chairman,

Brazil associates itself with the statement made by Cuba on behalf of the Community of Latin American and Caribbean States – CELAC – and takes this opportunity to make some comments on a national perspective.

We have welcomed the establishment of a Working Group within the Sixth Committee to deal with this agenda item, and reiterate Brazil’s full support to its President, the Permanent Representative of Costa Rica.

Universal jurisdiction is one way to achieve accountability and deny impunity to those accused of serious international crimes. We consider the aim of universal jurisdiction to be the prosecution of individuals allegedly responsible for extremely serious crimes defined by international law that, by their gravity, shock the conscience of the whole humanity and forcefully violate imperative norms of international law.

It constitutes an exception to the more consolidated principles of territoriality and personality (or nationality), both active and passive, to exercise jurisdiction irrespective of the link between the crime and the prosecuting State, that is, the place of perpetration of the crime or of the nationality of the suspect or the victim.

On the one hand, we uphold that the exercise of jurisdiction remains a primary responsibility of the state concerned according to the principle of sovereign equality of States at the international level. On the other, putting an end to impunity in relation to the most serious crimes is an obligation contained in numerous relevant international treaties and a fundamental tool for having a stable, peaceful and just international system.

Universal jurisdiction should only be exercised according to international law and principles and, in our view, be subsidiary in nature to domestic legal systems and limited to specific crimes. However, the exercise of universal jurisdiction cannot be arbitrary nor can it be used for the purposes of fulfilling other interests than those of justice.

Mr. Chairman,

My delegation supports an incremental approach with respect to the discussions on universal jurisdiction, meaning that the first step of the Working Group should be to continue to try and find an acceptable definition of universal jurisdiction.

A proper and acceptable definition of universal jurisdiction and a shared understanding of the scope of its application need to be agreed upon in order to prevent

any misapplication or improper resort to universal jurisdiction, and to avoid its selective application.

In our view, the Working Group should continue to advance the discussion and address other matters, including the kinds of crimes that would entail the application of universal jurisdiction, as well as its subsidiary character vis-à-vis territorial and personality jurisdictions.

There are some other aspects that also need to be duly considered in an appropriate timeframe, such as whether there is a need for formal consent on the part of the State where the crime took place and whether there is a need for the alleged criminal to be in the territory of the State wishing to exercise universal jurisdiction.

One of the most contentious issues remains to be the application of universal jurisdiction and the principle of justice while upholding the jurisdictional immunities of State officials. This is a serious issue and Member States should show flexibility to allow us to move forward and agree on core elements in that respect when the time comes. At the current stage of discussions, we deem premature to address the issue of the adoption of uniform standards at the international level on this particular subject.

Brazilian criminal legislation adopts the principle of territoriality as the basis for exercising criminal jurisdiction, but also takes into account the principles of active nationality and passive personality. Under our system, universal jurisdiction can be exerted by the national tribunals in relation to the crime of genocide and the crimes to

which Brazil has obliged itself to repress through treaties or conventions, such as torture.

Under Brazilian legal framework, it is necessary to enact national legislation to enable the exercise of universal jurisdiction or to persecute and judge an action or omission, which is considered a crime under international law. It is not possible, thus, to exercise universal jurisdiction over a crime under customary international law alone, because the lack of specific legislation would result in a violation of the principle of legality.

Mr. Chairman,

Although there is a difference between universal jurisdiction and the exercise of criminal jurisdiction by international tribunals, such as the International Criminal Court, we must acknowledge that these two institutions share a common objective. This is what we should have in mind during our debates: to deny impunity to those accused of serious international crimes.

My delegation is committed to contributing the best way it can to this very important discussion and looks forward to participating in it.

Thank you.