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**STATEMENT**

**BY**

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**OF THE REPUBLIC OF KENYA TO THE UNITED NATIONS**

**DURING  
AGENDA ITEM 86**

**THE SCOPE AND APPLICATION OF THE PRINCIPLE OF  
UNIVERSAL JURISDICTION**

**SIXTH COMMITTEE**

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Mr. Chairman,

We are delighted to join other delegations in this topical discussion on the Scope and Application of the Principle of Universal Jurisdiction. Kenya aligns itself with the Statements delivered by the Islamic Republic of Iran on behalf of the Non Aligned Movement and by ~~Egypt~~ on behalf of the African Group.

Mr. Chairman

This discussion on the scope and application of the principle of universal jurisdiction has come at a most opportune time. At the outset I would like to take the opportunity to reaffirm Kenya' s commitment to the rule of law, the fight against impunity and the principles enshrined in the UN Charter that guarantee the sovereign equality of States.

The principle of universal jurisdiction for grave international crimes is not new. From the Secretary General' s report, it is clear that the scope and application of the universal jurisdiction principle on the basis of domestic legal rules and emerging judicial practices is controversial and a source of genuine concern to many. The divergence of views and opinion is a clear sign that, if not carefully defined and regulated within the acceptable norms and other principles of international law, the unilateral, selective and arbitrary application of universal jurisdiction by States and international institutions can be subject to abuse and may be a threat to national stability, democracy and international peace and security.

Kenya recognises and respects the primary function of national jurisdiction in all cases and holds the view that extra-territorial jurisdiction should be invoked as a secondary means in cases where national jurisdiction is unwilling or unable to exercise its jurisdiction. Caution must therefore be exercised in the application of the principle of universal jurisdiction otherwise we will end up substituting

impunity at the national level with impunity at the international level under the cloak of universal jurisdiction. It is a fact that some States are not concerned about accountability for international crimes. It is this double standard and overt politicisation of the use of universal jurisdiction that should be a concern to us here today.

Where the principle of Universal Jurisdiction should apply, my delegation wishes to emphasize that there should be fairness, uniformity and consistency in the application of this principle. Otherwise, it would be open to exploitation. Like other African States, Kenya is of the view that the abuse and selective application of the principle of universal jurisdiction endangers the good principle universal application and acceptance of long standing norms of international law and pays lip service to the fight against impunity.

States must therefore seek acceptable means of applying the universal jurisdiction principle without undermining the essential principles of international law that govern interstate relations. Lack of a common understanding on the scope and application of the universal jurisdiction principle will certainly undermine the rule of law at the international level. International Law should therefore be the sole foundation for addressing global issues. In that regard, we are convinced that the UN provides the best venue with the broadest legitimacy for addressing the divergent views on the type and range of crimes for which the doctrine could be invoked.

Mr. Chairman

The concept of universal jurisdiction should be distinguished from the work of the International Criminal Court. The State Parties to the Rome Statute established an independent permanent International Criminal Court with authority over the most serious crimes that threaten peace, security and the well being of the world.

This Court being complementary to national criminal jurisdictions, ensures that effective prosecution measures are taken at the national level with an enhanced international cooperation and where necessary capacity strengthening. The Preamble of the Rome Statute, while recognizing the primacy of the national criminal jurisdiction, ~~states that~~ it is the duty of every State to exercise its criminal jurisdiction over the perpetrators of serious crimes.

As has been correctly affirmed by one delegation here, Universal jurisdiction should be exercised in good faith and in a manner that is consistent with other principles of international Law. The rule of law must be maintained while guaranteeing trials that are impartial prompt and fair. The current superficial, and on our understanding, wrong, interpretation and implementation of the Rome Statute, in relation to Kenya, shows little or no accommodation to the concerns of an active, cooperating State Party with a rich history of local jurisprudence, and best illustrates the application of the Statute in a manner that is highly prejudicial to a member State' s national, regional and international interests. In fact we believe it is an interpretation consistent with a political agenda rather than a quest for fighting impunity or seeking lasting peace or justice. It will be disingenuous, distinguished Delegates, to pretend that there is nothing but outrage over the manner in which the ICC has handled the Kenyan cases.

Mr. Chairman

This debate we are having here today is not only about the application of the principle of universal jurisdiction and the future management of international Justice in the world. It is also about the future management of cases of impunity and violence in the world; and, it is also about the way in which States relate to each other in the context of the international justice system. This system, as much as it focuses on justice, must also ensure respect for the fundamental nexus between peace, security and justice – there cannot be justice without

peace, or security and without justice, an unreconstructive peace or a peace that does not heal is in itself an inadequate state of being.

It is in this regard that the international community has a very special obligation. We should restrain ourselves from adopting a narrow, rigid and agenda driven interpretation of the role of universal jurisdiction that seeks to exclude all other processes relevant and important for sustained international as well as national peace. Instead, we should advocate for an all-inclusive and carefully calibrated system with clear benchmarks transparency and achievable standards. We must prioritize and build on the gains of reconciliation, rather than focus on meting out raw punishment. In any event, the application of universal jurisdiction cannot be an end in itself; it must be part of a process towards lasting peace.

Mr. Chairman,

In the current discourse on the place of universal jurisdiction including the role of the International Criminal Court, the reality is that if member States of the community of Nations are not to be accused of being in denial, then we must all collectively be willing to interrogate the system, seek amendments to the system as required and adjust the system as necessary in order to respond to the complexity and circumstances of global democracies and social realities.

In conclusion, I wish to restate the words of H. E. Uhuru Kenyatta, President of the Republic of Kenya at the just concluded Extraordinary Assembly of the African Union “ We want to see the ICC as fair and even-handed throughout the world, but what can we do when everyone but Africa is exempt from accountability? We would love nothing more than to have an international forum for justice and accountability, but what choice do we have when we get only bias. Isn’ t respect part of justice? Aren’ t our sovereign institutions worthy of deference within the framework of international law? If so, what justice can be

rendered by a court which disregards our views?"

Kenya as a proud member of the community of nations which has contributed immensely with limited resources to the achievement of peace, security and multilateralism will engage actively on the Working Group established under Resolution 67/91 in order to indent the scope and limits of application of universal jurisdiction.

I Thank you for your kind attention.