



PERMANENT MISSION OF SOUTH AFRICA
TO THE UNITED NATIONS
333 EAST 38TH STREET 9TH FLOOR
NEW YORK, NY 10016
Tel: (212) 213-5583 Fax: (212) 692-2498
E-mail: pmun@southafrica-newyork.net

**STATEMENT
BY**

**MR. THEMBILE JOYINI
LEGAL ADVISER OF THE PERMANENT MISSION OF THE
REPUBLIC OF SOUTH AFRICA TO THE
UNITED NATIONS**

**IN THE SIXTH COMMITTEE OF GENERAL ASSEMBLY
UNDER AGENDA ITEM "THE SCOPE AND APPLICATION
OF THE PRINCIPLE OF UNIVERSAL JURISDICTION"**

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Mr Chairman

Allow me to thank you, once again, for affording us the floor. At the outset, let me associate myself with the statements delivered by the representative of the Islamic Republic of Iran speaking on behalf of the Non-Aligned Movement and the representative of Egypt speaking on behalf the African Group respectively.

Mr Chairman

Universal jurisdiction evolved from eighteenth and nineteenth century doctrine and jurisprudence that perpetrators of certain crimes were enemies of all mankind, subject to capture and trial wherever they were found. The true universal jurisdiction applies only in the case of crimes under international customary law. However, in recent years, a number of international crimes have been created by multilateral treaties, which confer wide jurisdictional powers upon states parties. Here there is a type of quasi-universal jurisdiction in that states parties are required to prosecute or extradite persons who happen to be present in their countries. This is known as conditional universal jurisdiction because the exercise of jurisdiction in cases of this nature is conditional upon the presence of the accused person. Thus it is largely left to the national courts of states to enforce international criminal law, either by trying offenders themselves or by extraditing them to countries that will do so. The principle of *aut dedere aut judicare* is the basis for the enforcement of international criminal law. When a national court exercises jurisdiction in this way over an international crime with which it has no jurisdictional link, it is said that it exercises universal jurisdiction. Here the national court acts as the agent of the international community in the prosecution of an enemy of all mankind in whose punishment all states have an equal interest.

Mr Chairman

The key to determining whether a criminal prosecution or a civil case for damages can actually be brought based on universal jurisdiction will be the laws of the particular country in which the case is brought. Most states, including South Africa, will not try a person for an international crime unless the conduct has been criminalized under domestic law. As such, South Africa has enacted quite a number of pieces of legislation that provide for some form of universal jurisdiction. They are as follows: the *Implementation of the Rome Statute of the International Criminal Court Act, 2002*, the *Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004*, the *Civil Aviation Offences Act, 1972*, the *Nuclear Energy Act, 1999* and the *Implementation of the Geneva Conventions Act, 2012*. They all incorporate a wide range of international crimes created by treaties into South African domestic law, and these treaties oblige State Parties to either prosecute or extradite offenders. South Africa has also adopted legislation providing for extraterritorial jurisdiction over mercenary activities and foreign military assistance, provided that there is a jurisdictional link to South Africa (*Regulation of Foreign Military Assistance Act, 1998*). In a recent case in the Gauteng North High Court, *Southern African Litigation Centre v National Director of Public Prosecutions and Others* (case No 77150/09 (2012)), it was found that the South African authorities, in terms of the *Implementation of the Rome Statute of the International*

Criminal Court Act and the Constitution, are under an obligation to investigate, and if appropriate, prosecute, nationals of another country allegedly responsible for torture of their fellow citizens in their country, on the jurisdictional basis of the alleged perpetrators' presence on South African territory. This confirms that the limited universal jurisdiction principle applies in South African law. This finding is presently under appeal to the Supreme Court of Appeal.

Mr Chairman

There is a growing world conviction that impunity will no longer be tolerated. While there is general consensus that the principle of universal jurisdiction was important in the fight against impunity and that its validity was beyond doubt, there remains a number of issues that are unresolved such as the following:

- The definition of the principle of universal jurisdiction and the need to distinguish it from related concepts, such as the jurisdiction exercised by international criminal tribunals established by treaties.
- the obligation to extradite or prosecute, and the relationship between this international law principle and the jurisdiction of national courts. The question is which system must have primacy.
- There are also other issues that remain unresolved, such as the temporal immunity of Heads of State and the assurance of due process and fairness in the course of national proceedings based on universal jurisdiction.
- The question of which crimes are subject to universal jurisdiction is still unsettled, though there is general agreement that it includes piracy, slavery, war crimes, crimes against humanity, genocide, and by convention, torture and some international terrorism crimes.
- The possible selective and arbitrary application of the principle and its possible politicization.
- The possible referral of the topic to the International Law Commission since its work or study is among the sources that might be useful in our discussions in the Sixth Committee. As you may recall, Mr Chairman, at the 66th session, some states proposed that instead of the Sixth Committee dealing with this matter, it might well be helpful for the International Law Commission to consider certain aspects of the principle of universal jurisdiction, in order to assist the Sixth Committee.

In conclusion, Mr Chairman

While there is a growing world conviction that impunity will no longer be tolerated, a balance must be struck between the need to respect human rights and fight impunity, whilst ensuring the respect for the sovereignty of states.

I thank you for your attention.