



Permanent Mission of the Republic of Kenya to the United Nations
866 U.N. Plaza, Rm 304, New York, NY 10017

STATEMENT

BY

H.E. MR. MACHARIA KAMAU
AMBASSADOR/PERMANENT REPRESENTATIVE
OF THE REPUBLIC OF KENYA TO THE UNITED NATIONS

TO THE

SIXTH COMMITTEE

ON

AGENDA ITEM 83:
"THE SCOPE AND APPLICATION OF THE PRINCIPLE
OF UNIVERSAL JURISDICTION"
(A/69/174)

DURING THE

69TH SESSION OF THE
UNITED NATIONS GENERAL ASSEMBLY

WEDNESDAY, OCTOBER 15, 2014
UNITED NATIONS, NEW YORK

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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 the Republic of South African on behalf of the African Group.

Mr. Chairman,

This discussion on the Scope and Application of the Principle of Universal Jurisdiction has again come at a most opportune time. At the outset, I would like to take the opportunity to re-affirm Kenya's commitment to the fight against impunity, the rule of law, 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 continued 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 recognizes 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 politicization 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. Kenya is of the view that the abuse and selective Application of the Principle of Universal Jurisdiction endangers and 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 that govern interstate relations.

Mr. Chairman,

The concept of Universal Jurisdiction should be distinguished from the work of the International Criminal Court. The States 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 jurisdiction, ensures that effective prosecution measures are taken at the national level with an enhanced international co-operation and where necessary capacity strengthening. The Preamble of the Rome Statute, while recognizing the primacy of the national criminal jurisdictions recalls 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 many delegations 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 Rome Statute, in relation to Kenya, shows little or no accommodation to the concerns of an active, co-operating 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.

As a delegation we have in many fora, consistently raised issues about this warped sense of implementation and interpretation of an international legal instrument that is disruptive to a democratically elected government and her people. An interpretation that puts a State into a constitutional crisis and thereby given no option but to perform legal gymnastics, to her detriment, so as to meet its obligations under such international instrument, is a serious misinterpretation of such an instrument, in this case the Rome Statute. This was the case with the just concluded Status conferences convened by the ICC just last week.

When faced with this dilemma and so to enable an attendance before the International Criminal Court and at the same time protecting the sovereignty of the Republic of Kenya, the President, His Excellency Uhuru Kenyatta, took an extraordinary and unprecedented step of issuing a legal instrument that delegated full presidential powers and appointed an Acting President.

In his address to a special sitting of the Senate and National Assembly of the Republic of Kenya where, President stated;

"It is for this reason that I choose not to put the sovereignty of more than forty million Kenyans on trial, since their democratic will should never be subject to another jurisdiction. Therefore, let it not be said that I am attending the Status Conference as the President of the Republic of

Kenya. Nothing in my position or my deeds as President warrants my being in court. So, to all those who are concerned that my personal attendance of the Status Conference compromises the sovereignty of our people, or sets a precedent for the attendance of presidents before the court – be reassured, this is not the case.”

It should be noted that the insistence on personal attendance at the status conference required H.E. President Kenyatta, who is the present Chair of the East African Community, to forgo the Northern Infrastructure Summit in Kampala, Uganda that was scheduled for 8th October 2014.

It should not be lost that the this insistence of the personal attendance despite extraordinary duties of a public nature and the responsibilities of State goes against the very fabric of the Rome Statute and the consensus agreed upon by States Parties during the Assembly of States Parties Meeting in November 2013 at The Hague. This state of affairs is unacceptable and no State should be ever be put in similar circumstances.

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.

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.

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.

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 in the Working Group established under Resolution 68/117 in order to indent the Scope and Limits of Application of Universal Jurisdiction.

I thank you for your kind attention.