

Statement on behalf of the African Group by Ambassador Kingsley Mamabolo, Permanent Representative 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”

20 October 2015

Mr Chairman

My delegation has, once again, the honour to speak on behalf of the African Group. The African Group associates itself with the statement delivered by the distinguished representative of the Islamic Republic of Iran on behalf of the Non-Aligned Movement. The African Group attaches great importance to this agenda Item “The Scope and Application of the Principle of Universal Jurisdiction”. As you may recall, the abuse in the resort to universal jurisdiction, particularly over African officials, caused the African Group to request in February 2009 the inclusion of an additional item on the abuse of the principle of universal jurisdiction in the agenda of the 63rd session of the United Nations General Assembly. The African Group stated, in a memorandum annexed to the request for the inclusion of universal jurisdiction in the agenda of the 63rd session of the United Nations General Assembly, that “The principle of universal jurisdiction is well established in international law”, that “The African Union respects this principle, which is enshrined in article 4(h) of the Constitutive Act”, but that it was concerned about the uncertain scope and application of the principle and the abuse of it. As a result of the aforementioned request, this item was included in the agenda of the sixty-fourth session of the General Assembly in 2009, at the request of the United Republic of Tanzania on behalf of the African Group and was allocated to the Sixth Committee. At the 25th meeting, on 12 November 2009, the representative of Rwanda, on behalf of the Bureau, introduced a draft resolution entitled “The scope and application of the principle of universal jurisdiction” A/C.6/64/L.18. Universal jurisdiction has since been a subject of heated discussion in the United Nations General Assembly.

Mr Chairman

As stated in decisions of many African Union Summits, African States recognize that universal jurisdiction is a principle of international law whose purpose is to ensure that individuals who commit grave offences, such as war crimes and crimes against humanity, do not enjoy impunity and are brought to justice. In that respect, the African Union Constitutive Act provides for the right of the Union to intervene, at the request of any Member State, in situations of genocide, war crimes and crimes against

humanity. Furthermore, African States have adopted progressive human rights instruments including optional protocols that permit individual complaints or grievance procedures against their own governments in addition to reporting obligations honoured by the African States under various United Nations human rights treaties. However, the African Group wishes to stress the importance of respecting other international law norms in the application of universal jurisdiction, including the sovereign equality of states, the territorial jurisdiction and immunity of officials existing under customary international law. The African Group recalls the view expressed by the International Court of Justice that the cardinal principle of immunity of heads of states should not be put to question, or be re-examined.

Mr Chairman

The concern of the African group lies in the abuse of the principle of universal jurisdiction by the courts of non-African states, which is a development that could endanger international law and the fight against impunity. The African Group is aware that some non-African States and their domestic courts have sought to justify their arbitrary or unilateral application or interpretation of the principle of universal jurisdiction on customary international law. We wish to remind those States that it is trite law recognized in all principal legal systems, and reflected in the jurisprudence and decisions of the International Court of Justice, that a State which relies on a purported international custom practiced by States must, generally speaking, demonstrate to the satisfaction of the Court that the alleged custom has become so established as to be legally-binding on the other party.

Mr Chairman

What African countries and other like-minded States around the world are demanding is to call on the international community to adopt measures to put an end to the abuse of and political manipulation of the principle of universal jurisdiction by judges and politicians from States outside Africa, including by violating the principle of the immunity of heads of state under international law. Most specifically, the African Group reiterates the request by the African Heads of State and Government that the warrants of arrest issued on the basis of the abuse of universal jurisdiction shall not be executed in any Member State. It is also to be noted that the African Union has urged its member states to use the principle of reciprocity to defend themselves against the abuse of universal jurisdiction.

I thank you for your attention.