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Statement by
Mr. Bhartruhari Mahtab,
Hon'ble Member of Parliament
on
Agenda Item 86
"the Scope and Application of the Principle of Universal Jurisdiction"

at the
Sixth Committee of the
United Nations General Assembly

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Permanent Mission of India to the United Nations
235 East 43rd Street, New York, NY 10017 • Tel: (212) 490-9660 • Fax: (212) 490-9656
E-Mail: india@un.int • indiaun@prodigy.net

Mr. Chairman,

We align ourselves with the statement made by the Islamic Republic of Iran on behalf of the Non-Aligned Movement.

We thank the Secretary-General for his report A/70/125 on "The scope and application of the principle of universal jurisdiction" dated 1 July 2015. It provides information about the laws and practice of certain States concerning the exercise of universal jurisdiction in their domestic legal systems and their understanding of the concept of universal jurisdiction.

Mr. Chairman,

India has its principled position and a firm view that those who commit crimes must be brought to justice and punished. A criminal should not go scot free because of procedural technicalities, including lack of jurisdiction.

However, the fact cannot be over sighted that the exercise of jurisdiction is a unique legal subject in itself.

The widely recognized bases for the exercise of criminal jurisdiction include: 'territoriality', which is based on the place of the commission of offence; 'nationality', which is based on the nationality of the accused. States also recognise nationality of victim, as basis for exercising jurisdiction and protective principle, which is based on the national interests affected.

The common feature of these jurisdictional theories is the connection between the State asserting jurisdiction and the crime committed.

However, under the theory of universal jurisdiction, a State claims jurisdiction over an offence irrespective of the place of its commission or nationality of the offender or victim, and thus without any link whatsoever between that State and the offence/ offender. The rationale for such jurisdiction is the nature of certain offences that affect the interests of all States even when they are unrelated to the State assuming jurisdiction.

Mr. Chairman,

Under general international law, piracy on the high seas is the only one such crime, over which claims of universal jurisdiction is undisputed. The principle of universal jurisdiction in relation to piracy has been codified in the UN Convention on the Law of the Sea, 1982.

In respect of certain serious crimes like genocide, war crimes, crimes against humanity and torture, etc., international treaties have provided basis for the exercise of universal jurisdiction, which is applicable between the States parties to those treaties. They include, among others, the Four Geneva Conventions of 1949 and the Apartheid Convention.

The question that arises is whether the jurisdiction provided for specific serious international crimes under certain treaties could be converted into a commonly exercisable jurisdiction, irrespective of the fact whether or not the other State or States are a party to those treaties.

Several issues remain unanswered, including those related to the basis of extending such jurisdiction, the relationship with the laws relating to immunity, pardoning and amnesty, and harmonization with the domestic laws.

Several treaties oblige the States parties either to try a criminal or handover for trial to a party willing to do so. This is the obligation of *aut dedere, aut judicare* ('either extradite or prosecute'). This widely recognised principle, including by the International Court of Justice in its decision of 20 July 2012 in the *Questions relating to the Obligation to Prosecute or Extradite* case between Belgium and Senegal should not be confused with or short circuited by the universal jurisdiction.

Finally, **Mr. Chairman**,

we stress the need of ensuring avoidance of the misuse of the principle of universal jurisdiction in the criminal and also in civil matters by some States, the concept and definition of which is not yet clear.

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