

Translated from Spanish

Permanent Mission of Cuba to the United Nations

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The Permanent Mission of Cuba to the United Nations presents its compliments to the Office of the Secretary-General of the United Nations and, with reference to General Assembly resolution 69/124 of 10 December 2014, entitled “The scope and application of the principle of universal jurisdiction”, has the honour to submit the views of the Republic of Cuba.

The Permanent Mission of the Republic of Cuba takes this opportunity to convey to the Office of the Secretary-General the renewed assurances of its highest consideration.

New York, 17 April 2015

H.E. Mr. Ban Ki-moon
Secretary-General
United Nations
New York

Response of the Republic of Cuba pursuant to United Nations General Assembly resolution 69/124 entitled “The scope and application of the principle of universal jurisdiction”

Efforts to define the scope and application of the principle of universal jurisdiction must be carried out within the framework of the United Nations General Assembly, with the participation of all interested Member States. Cuba supports the efforts of the open-ended working group established by the Sixth Committee of the General Assembly to examine the topic in a transparent and inclusive manner.

The primary objective of the work of the United Nations General Assembly relating to universal jurisdiction should be to establish, through consensus, an international norm, or failing that, international guidelines to safeguard international peace and security and prevent the selective and manipulative use of the principle of universal jurisdiction.

The norm or international guidelines should be in line with the principles of the Charter of the United Nations and should clearly establish under what conditions or within which limits the principle of universal jurisdiction may be invoked, as well as the offences to which the principle would be applied. Such offences should be restricted to crimes against humanity. The principle should be invoked with the consent of the State in which the act was committed, or of the States of which the accused is a national, and only when it has been determined that there is no other way to bring criminal proceedings against the perpetrators.

The utmost respect for the principles enshrined in the Charter of the United Nations, in particular the principles of sovereign equality, political independence and non-interference in the internal affairs of States, is of vital importance in the application of the principle of universal jurisdiction.

The application of the principle of universal jurisdiction should be duly limited by absolute respect for the sovereignty, national jurisdiction and legal systems of States. The application of universal jurisdiction should be supplementary to the actions and national jurisdiction of each State. Under no circumstances should preference be given to universal jurisdiction over national jurisdiction. The application of universal jurisdiction should be limited to exceptional situations and to circumstances in which there is no other way to prevent impunity.

The scope of the principle of universal jurisdiction cannot be so far-reaching as to undermine the immunity granted under international law to Heads of State and/or Government, diplomatic personnel and other high-ranking officials. The immunity attached to those offices must not be called into question.

The General part of the Cuban Penal Code sets out various articles that underscore the importance of prosecuting or imposing the heaviest sentence for all acts against humanity and human dignity. The conceptual definition of the term “against humanity” and the existence of an individual legal right that is to be protected may be inferred from the criminalization of such acts; the offences are defined in the Special part of the Penal Code.

The above-mentioned legal text refers to various offences included in the list of crimes against humanity, although there is no explicit reference to “crimes against humanity”.

Article 5, paragraph 3, of the Penal Code articulates the will to prosecute and try, at the request of the Ministry of Justice, offences against humanity and human dignity, regardless of where the act took place or by whom it was committed. Such considerations have no effect on the application of Cuban criminal law, since, given the nature of such crimes, the principle of global justice overrides the principle of territoriality and the principle of personality or citizenship.

The aforementioned article 5.3 states, “Cuban criminal law is applicable to non-resident aliens and stateless persons who do not reside in Cuba who commit an offence abroad, if they are in Cuba and are not extradited, whether they reside in the territory of the State in which they perpetrate the offence or in any other State, provided that the offence is also punishable where it was committed. **The last-mentioned requisite does not apply if the act is an offence against the fundamental, political or economic interests of the Republic, or against humanity, human dignity or public health, or is indictable under the terms of international treaties.**”

Similarly, article 18, paragraph 4, of the Penal Code sets out a broad understanding of responsibility, stating that all those involved in offences that violate humanity or human dignity shall be considered perpetrators, and consequently receive a heavier sentence, whatever the nature of their involvement. Cuban lawmakers have thus moved away from a restrictive approach, which is the most modern way of determining responsibility and involvement, and have returned to a broad approach that takes into account indirect involvement and its serious consequences. This paragraph states, “**In the case of offences against humanity, human dignity or public health, and offences**

specified in international treaties, all criminally responsible persons shall be considered perpetrators, whatever the nature of their involvement”.

Universal jurisdiction cannot be used as a pretext to disparage and discredit the integrity, values and legality of different legal systems. The principle of universal jurisdiction should not be applied in order to diminish respect for a country’s national jurisdiction or distort its legal system.

Cuba reiterates its concern at the unwarranted use of this principle and denounces the unilateral, selective and politically motivated exercise of jurisdiction by the courts of certain developed countries against natural or juridical persons from developing countries, which has no basis in any international norm or treaty.

Cuba condemns the adoption at the national level of politically motivated extraterritorial laws targeting other States. This interventionist application and scope of the principle of universal jurisdiction is detrimental to the norms and principles of international law.

Cuba reiterates its previously submitted views, which are set out in documents A/65/181, A/66/93/Add.1, A/67/116, A/68/113 and A/69/174.
