

Statement by
Mr. Ali Garshasbi
Representative of the Islamic Republic of Iran

Before
The Sixth Committee of the
71st Session of the United Nations General Assembly

On:
"The scope and application of the principle of universal jurisdiction"
(Agenda Item 85)

New York, 11 October 2016

The delegation of the Islamic Republic of Iran aligns itself with the Statement delivered earlier on behalf of the Non-Aligned Movement and would like to make the following points in its national capacity. We also take note of the report of the Secretary General on this item in pursuance of General Assembly resolution 70/119 contained in document A/71/111 dated 28 June 2016. We observed the general and specific comments made by Member States and Observers and have the issue under further consideration.

The rationale underlying universal jurisdiction seems to be that the gravity of certain crimes is such that they cannot be considered as being committed against a specific State, rather against the community of nations as a whole. Thus, regardless of *locus delicti* (the place of commission of the offence), the accused is prosecuted in the country of arrest. Therefore, the main purpose of the concept is to avoid impunity. Yet, in any scheme to implement universal jurisdiction from criminalization up to trial, laws should be in place so that the principle of State sovereignty, as the hallmark of international relations, is duly respected and the principle of immunity of State officials, a significant manifestation thereof, is observed accordingly.

Member States do not seem to have a common understanding about universal jurisdiction and its contours. Even crimes for which universal jurisdiction is incorporated in national legislations are varied and as such should any interpretation thereof remain subject to the discretion of national judiciaries, limits and conditions of implementation of universal jurisdiction will be even more fragmented, diversified and further risks politicization; a concern expressed in the past by one of the judges of the International Court of Justice in the "Arrest Warrant" which I quote; "International criminal courts have been created. But at no

time has it been envisaged that jurisdiction should be conferred upon the courts of every State in the world to prosecute such crimes, whoever their authors and victims and irrespective of the place where the offender is to be found. To do this would, moreover, risk creating total judicial chaos. It would also be to encourage the arbitrary, for the benefit of the powerful, purportedly acting as agent for an ill-defined "international community"

Furthermore, whatever the source of universal jurisdiction, what remains to be of concern is its selective application which can prejudice such cardinal principles of international law as equal sovereignty of States and immunity of State officials from foreign criminal jurisdiction. The Islamic Republic of Iran is of the view that prejudiced application of universal jurisdiction not only contravenes equal sovereignty of States, but it may also lead to a wide gap in State practice due to its inconsistent application.

With regard to the Iranian legislation, article 9 of the new Iranian Penal Code permits the trial and punishment of those perpetrators of international crimes whose prosecution is envisaged by a special law or international treaties. Under this provision, it is necessary that the crime is, first and foremost, recognized as an international crime by a special law or an international treaty. "A special law" under the said article refers to a domestic statute which applies to one or more laws that provide for prosecution of the perpetrators of the said crimes regardless of the offender's nationality or that of the victim, or place of commission of crimes.

Moreover, under article 9 of the Iranian civil code, treaties concluded between Iran and other States in accordance with the Constitution shall have the force of domestic law. Thus, any stipulation in treaties concerning grant of the right to implement universal jurisdiction is considered part of the Iranian law once adopted and incorporated within the national legal corpus. As an example, under article 5 of the 1973 International Convention on the Suppression and Punishment of the Crime of Apartheid to which Iran is a party "Persons charged with the acts enumerated in article II of the present Convention (i.e. those pertaining to the commission of apartheid) may be tried by a competent tribunal of any State Party to the Convention which may acquire jurisdiction over the person of the accused [...]." All other treaties containing similar clauses on universal jurisdiction accepted by Iran constitute part of Iranian national law and may be applied accordingly.

All that said and to conclude, the Islamic Republic of Iran views universal jurisdiction as a treaty-based exception in exercising national criminal jurisdiction. In other words, the prevailing principle remains to be the principle of territorial jurisdiction, as the key to sovereign equality of States.

Thanks.