



**Statement on
behalf of South Africa
by**

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at the

**Department of International Relations and Cooperation
of the Republic of South Africa in the Sixth Committee
of the General Assembly**

under Agenda Item

**“The Scope and Application of the Principle of
Universal Jurisdiction”**

10 October 2016

Mr Chairman

Allow me to thank you, once again, for affording us the floor. At the outset, let me associate myself with the statement delivered by the representatives of the Islamic Republic of Iran speaking on behalf of the Non-Aligned Movement and Algeria speaking on behalf of the African Group.

Mr Chairman

Universal jurisdiction evolved from eighteenth and nineteenth century doctrine and jurisprudence that perpetrators of certain crimes were enemies of all mankind, subject to capture and trial wherever they were found. The true universal jurisdiction applies only in the case of crimes under international customary law. However, in recent years, a number of international crimes have been created by multilateral treaties, which confer wide jurisdictional powers upon states parties. Here there is a type of quasi-universal jurisdiction in that states parties are required to prosecute or extradite persons who happen to be present in their countries. This is known as conditional universal jurisdiction because the exercise of jurisdiction in cases of this nature is conditional upon the presence of the accused person.

Mr Chairman

The key to determining whether a criminal prosecution or a civil case for damages can actually be brought based on universal jurisdiction will be the laws of the particular country in which the case is brought. Most states, including South Africa, will not try a person for an international crime unless the conduct has been criminalized under domestic law. As such, South Africa has enacted quite a number of pieces of legislation that provide for some form of universal jurisdiction. They are as follows: the *Implementation of the Rome Statute of the International Criminal Court Act, 2002*, the *Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004*, the *Civil Aviation Offences Act, 1972*, the *Nuclear Energy Act, 1999* and the *Implementation of the Geneva Conventions Act, 2012*. They all incorporate a wide range of international crimes created by treaties into South African domestic law, and these treaties oblige State Parties to either prosecute or extradite offenders. South Africa has also adopted legislation providing for extraterritorial jurisdiction over mercenary activities and foreign military assistance, provided that there is a jurisdictional link to South Africa (*Regulation of Foreign Military Assistance Act, 1998*). In a recent case in the Gauteng North High Court, *Southern African Litigation Centre v National Director of Public Prosecutions and Others* (case No 77150/09 (2012)), it was found that the South African authorities are, in terms of the *Implementation of the Rome Statute of the International Criminal Court Act* and the Constitution under an obligation to investigate, and if appropriate, prosecute, foreign nationals allegedly responsible for torture of their fellow citizens in their countries, on the jurisdictional basis of the alleged perpetrators' presence on South African territory, confirming that the limited universal jurisdiction principle applies in South African law.

Mr Chairman

There is a growing world conviction that impunity will no longer be tolerated. While there is general consensus that the principle of universal jurisdiction was important in the fight against impunity and that its validity was beyond doubt, there remain a number of issues that are unresolved such as the following:

- The definition of the principle of universal jurisdiction and the need to distinguish it from related concepts, such as the jurisdiction exercised by international criminal tribunals established by treaties.
- The obligation to extradite or prosecute, and the relationship between this international law principle and the jurisdiction of national courts: Which system must have primacy.
- There are also other issues that remain unresolved, such as the temporal immunity of Heads of State and the assurance of due process and fairness in the course of national proceedings based on universal jurisdiction.
- The question of which crimes are subject to universal jurisdiction is still unsettled, though there is general agreement that it includes piracy, slavery, war crimes, crimes against humanity, genocide, and by convention, torture and some international terrorism crimes.
- The possible selective and arbitrary application of the principle and its possible politicization.
- The possible referral of the topic to the International Law Commission.

In conclusion, Mr Chairman

South Africa's position therefore is that it accepts the principle of universal jurisdiction for specific international crimes of a serious nature, based on its support for the fight against impunity and the search for justice, and is not opposed to the principle as such, but is opposed to the selective application thereof.

My delegation is of the view that the controversy about the universal jurisdiction is not on the validity of the principle, but about its application and scope, in particular, the intersection between universal jurisdiction and immunities of certain high ranking officials. The judgments of the International Court of Justice showed contrasts in approaches, where one justice did not address the question of immunities, but focused on the permissibility of exercising universal jurisdiction in absentia, and another judge noted that the two legal principles were not in competition, basing his conclusion on the extent to which the law on immunities could limit the reach of universal jurisdiction. It is our submission therefore that a balance must be sought between the interest of mankind to prevent impunity, and the interest of the community of States to allow them to act freely on the inter-State level without unwarranted interference that should underlie the "endeavours to describe the contours of universal jurisdiction and its relationship to immunities".

I thank you for your attention.