



**United Nations General Assembly | Sixth Committee**  
**The scope and application of the principle of universal jurisdiction**  
11 October 2018

*(check against delivery)*

Mr. Chairman,

Brazil associates itself with the statement delivered by the El Salvador on behalf of the Community of Latin American and Caribbean States (CELAC) and takes this opportunity to make some comments on a national perspective.

If the universality of the Rome Statute is achieved – and this is a goal we should not spare efforts to achieve –, there would be more fertile ground for values of justice and stability and for an order based on International Law. Discussions on universal jurisdiction would probably lose relevance. Meanwhile, these debates should not deviate us from promoting the Rome Statute system and from the objective we all share: to deny impunity to the perpetrators of serious international crimes.

Mr. Chairman

Universal jurisdiction is one way to achieve accountability and deny impunity to those accused of serious international crimes. We consider the aim of universal jurisdiction to be the prosecution of individuals allegedly responsible for serious crimes defined by international law that, by their gravity, shock the conscience of the whole humanity and violate peremptory norms of international law.

The exercise of jurisdiction irrespective of the link between the crime and the prosecuting State is an exception to the more consolidated principles of territoriality and nationality. On the one hand, the principle of sovereign equality reminds us that the exercise of jurisdiction is a primary responsibility of the State concerned. On the other, to put an end to impunity in relation to the most serious crimes is an obligation contained in numerous treaties and is a crucial for ensuring a rules-based international order.

Universal jurisdiction should be exercised only in full respect to international law and is obviously subsidiary to that of states with primary jurisdiction and is limited to specific crimes. The exercise of universal jurisdiction cannot be arbitrary nor should be used for the purposes of fulfilling other interests than those of justice.

Mr. Chairman,

A proper definition of universal jurisdiction and a shared understanding of the scope of its application need to be agreed upon, so as to prevent any misapplication or improper resort to the concept, and to avoid its selective application.

Brazil reiterates the need for an incremental approach in the discussions held in the Working Group of the Sixth Committee. It should continue to try to find an acceptable definition for the concept and

could advance the discussion of other matters – such as the crimes that would allow the exercise of universal jurisdiction, as well as its subsidiary character.

Brazil echoes CELAC's appreciation for the decision of the International Law Commission to include an item entitled "universal criminal jurisdiction" in its Long-Term Programme of Work. We encourage the Commission to include it in its active agenda as early as possible. Should this happen, it would be the first time that the Sixth Committee and the International Law Commission would be discussing the same issues simultaneously.

From our vantage point, this is an opportunity to revitalize the relationship between the two bodies, enhancing the synergies between them. It would be possible, for instance, for the General Assembly to mandate the ILC to provide a legal analysis on one or a few specific questions, and to report back in the following session - rather than to replicate the multi-year approach that has been used for its other products. Among the questions that could be posed by the Assembly to the Commission is whether there is a need for consent on the part of the State where the crime took place or whether there is a need for the alleged criminal to be in the territory of the State that is wishing to exercise universal jurisdiction.

One of the most contentious issues remains the application of universal jurisdiction and the principle of justice while respecting the jurisdictional immunities of State officials. At the current stage of discussions, both here and in the International Law Commission, we deem premature to address the issue of the adoption of uniform standards at the international level on this particular subject.

Mr. Chairman,

Brazilian criminal legislation adopts territoriality as the basic principle for exercising jurisdiction, but also takes into account the principle of nationality. In our system, under certain circumstances, universal jurisdiction can be exerted by the national tribunals in relation to the crime of genocide and the crimes to which Brazil has obliged itself to repress through treaties or conventions, such as torture.

Under Brazilian legal framework, it is necessary to enact national legislation to enable the exercise of universal jurisdiction or to prosecute and judge an action or omission, which is considered a crime under international law. It is not possible, thus, to exercise universal jurisdiction over a crime under customary international law alone, because the lack of specific legislation would result in a violation of the principle of legality.

Thank you.