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STATEMENT

BY

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TO THE

SIXTH COMMITTEE

ON

AGENDA ITEM 84:

**"THE SCOPE AND APPLICATION OF THE PRINCIPLE OF
UNIVERSAL JURISDICTION"**

DURING THE

74th SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY

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KENYA

AU ENDORSED CANDIDATE FOR
UN SECURITY COUNCIL

2021 - 2022

Mr. Chairman,

My delegation aligns itself with the Statements delivered by the distinguished representative of the Islamic Republic of Iran on behalf of the Non-Aligned Movement and by the distinguished representative of The Gambia on behalf of the African Group. We appreciate the report of the Secretary General contained in document A/74/144 which provides useful insights on state practice and shall enrich these deliberations.

At the outset allow me to reaffirm Kenya's commitment to the rule of law, fight against impunity and the principles enshrined in the United Nations Charter that guarantee the sovereign equality of States. We believe that the challenges posed by heinous crimes must be addressed at both national and international levels and that universal jurisdiction must be considered together with other deterrent mechanisms. This is also in line with the African Union's commitment to the importance of the universality principle to the international criminal justice that is critical to ending impunity and ensuring that heinous crimes that affect the international community do not go unpunished.

Mr. Chairman,

Kenya enacted the International Crimes Act Number 16 of 2008 to make provision for the punishment of certain international crimes, namely genocide, crimes against humanity and war crimes. It was also to enable Kenya to co-operate with the International Criminal Court. It is worthy of note however that the presence of the accused is a strict requirement for commencement of prosecution proceedings for offences committed by a foreigner abroad.

Confronted by increased incidents of piracy in the Indian Ocean, Kenya also amended its Merchants Shipping Act in 2012 to grant national courts extra territorial jurisdiction in the fight against piracy and to also facilitate implementation of Article 86 of the United Nations Convention on the Law of the Sea (UNCLOS) and the Convention on the Suppression of Unlawful Acts against Maritime Navigation among others.

Mr. Chairman,

The Scope and Application of the principle of universal jurisdiction for grave international crimes has been discussed in this committee for ten years. This for my delegation signifies that there is a meeting of minds united in the understanding that some crimes, for example torture and genocide, constitute an affront to humanity and the international community as a whole and therefore must not go unpunished. It is on the question concerning the potential for selective and arbitrary application of universal jurisdiction including abuse and misuse of the principle where we have divergence.

Mr. Chairman,

The divergence of views and opinion are a clear sign that if not carefully defined and regulated within the acceptable norms and other principles of international law, the

unilateral application of universal jurisdiction by States can become subject to abuse and may become a threat to international peace and security.

It is my delegation's view that where the principle of Universal Jurisdiction should apply, the basic concepts, definitional and foundational aspects relating to universal jurisdiction must be clearly set out and the conceptual framework comprehensively outlined for a full and proper understanding of the principle and its application.

Mr. Chairman,

We reiterate that the UN provides the best venue with the broadest legitimacy for addressing the divergent views on the type and range of crimes for which the doctrine could be invoked. We are hopeful that this committee can inject fresh impetus into our deliberations by being open to discussing the principle's exact parameters, its scope and limitations. We must also be willing to make adjustments as necessary in order to respond to the complexities and circumstances of global democracies and social realities.

It is our hope that the International Law Commission can provide the much needed clarity on areas where Member States have divergent views by clarifying the scope and proposing guidelines that can guide the proper application of the universality principle.

Mr. Chairman,

Kenya as a proud member of the community of nations which has contributed immensely with limited resources to the achievement of peace, security and multilateralism. We shall continue to engage actively in the Working Group established under Resolution 69/124 in order to indent the scope and limits of application of universal jurisdiction. We look forward to deliberations that are aimed towards some forward progress this Session.

I thank you for your kind attention.