



**PERMANENT MISSION OF THE REPUBLIC OF
SIERRA LEONE TO THE UNITED NATIONS**

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STATEMENT

by

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to the Sixth Committee of the United Nations General Assembly

Agenda Item 84:
“Scope and Application of the
Principle of Universal Jurisdiction”

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[Please *Check Against Delivery*]

**Chair,
Distinguished delegates,**

The Republic of Sierra Leone associates this statement with the statements delivered by the Islamic Republic of Iran and Zambia on behalf of NAM and the African Group respectively. My delegation welcomes the Secretary-General's Report on the Scope and Application of the Principle of Universal Jurisdiction (A/74/144). The report, which was requested by paragraph 3 of General Assembly resolution A/73/208 (20 December 2018), provides useful information and observations received from States on the relevant international instruments and national legal rules and judicial practice on universal jurisdiction.

Sierra Leone was pleased to submit some information and observations for the first time. As we explained in our contribution included in the Secretary-General's 2019 report, and in our statement to this committee last year, Sierra Leone embraces a form of universal jurisdiction for grave breaches of the 1949 Geneva Conventions and their 1977 Additional Protocols through the Geneva Conventions Act, 3 December 2012. The Act also provides for offences and penalties for other violations of the Geneva Conventions and their Additional Protocols.

In this vein, concerning grave breaches, the Act covers not only offences committed by citizens of Sierra Leone or criminal conduct carried out on our territory; it also extends to persons of "*whatever nationality*" committing those enumerated offences whether "*within or outside [of] Sierra Leone.*" Furthermore, section 2(5) of the Act permits our national courts to prosecute violations of international humanitarian law by providing for such "[w]here a person commits an offence under this section outside Sierra Leone that person may be tried and punished as if the offence was committed in Sierra Leone."

Chair,

The Sixth Committee has been discussing the topic "scope and application of the principle of universal jurisdiction" for ten years. Last year, Sierra Leone noted that, after a decade of discussions without substantial progress towards a legal outcome, the decision of the International Law Commission to place this topic on its Long-term Programme of Work during its 70th (2018) session was a timely one. We commended the Commission for its responsiveness to the invitation of many States from all regions, which have called on it to assist the Sixth Committee deliberations, by independently taking up a study of this important legal topic.

Chair,

Our support for the Commission as the best way forward on the legal aspects of this topic remains steadfast. It is for this reason that, in May 2019, Sierra Leone co-sponsored a side event to promote a dialogue on this issue between State delegates and Commission members on the margins of the latter's 71st session in Geneva. We are grateful to the States that partnered with us to organise that informal dialogue, in particular, Austria, the Czech Republic, Costa Rica, The Gambia as well as the Geneva Academy of International Humanitarian Law and Human Rights. We are also equally grateful to most of those same States, also now joined by Finland, for also co-sponsoring a similar dialogue on 28 October 2019 coinciding with the beginning of the Law Week this year. We would be honored for all delegations here to accept our invitation to this second informal dialogue.

Our Geneva and New York dialogues are consistent with General Assembly Resolution A/73/208 on this agenda item, last adopted on 20 December 2018, deciding at paragraph 2 that consideration of this topic in the Sixth Committee "is without prejudice to the consideration of this topic and related issues in other forums of the United Nations". Sierra Leone appreciates that the plain intent of the General Assembly is to enable us to benefit from the work of other UN bodies, including expert bodies such as the Commission. The dialogues also reflect General Assembly Resolution A/73/265, adopted on 14 January 2019, which stressed at paragraph 19 the desirability of further enhancing the dialogue between the Commission and the Sixth Committee, and in that context encouraged, inter alia, the continued practice of informal consultations in the form of discussions between members of the Sixth Committee and the members of the Commission throughout the year.

Chair,

Sierra Leone continues to remain concerned about the inertia that the Sixth Committee currently faces on this topic. We are not alone. Here, we may recall that the African Union Assembly of Heads of State and Government adopted in January 2018 and February 2019 two separate decisions expressing similar concerns about the "apparent impasse" in the General Assembly. Sierra Leone, consistent with the AU position, also accepts the universality principle. Even if we, like other African States, remain concerned about the potential risk of its abuse and manipulation. Sierra Leone underscores the AU's clarification that the concern of African States is not about the universality principle as such; rather, the concern is about ensuring respect for immunity of State officials from foreign criminal jurisdiction in circumstances where States purport to assert any form of criminal jurisdiction over

senior African government officials. We believe that we must distinguish between issues of immunity from universality. We otherwise risk that the former could swallow the latter. If that occurred, immunity could inhibit the vital role that the universality principle can play in the ongoing global fight against impunity for serious crimes under international law.

Chair,

In an ideal world, the General Assembly would itself refer all or aspects of this legal issue to the Commission for a rigorous study, as it has done in the past. That prospect appears remote under current conditions. Perhaps, in recognition of our difficulties, the Commission has been proactive and indicated its willingness to assist us. Yet, although most individual States that have spoken on the issue have been in favor of the Commission taking the topic into its active programme of work, States seem to be sending mixed messages, with some States supporting, others opposing, but most of all, the overwhelming majority being silent. Sierra Leone holds the firm view, for the same reasons we gave last year, that the Commission option is an opportunity; it is an opportunity which we should seize as it does not interfere with our continued political discussions within the Sixth Committee.

Sierra Leone will not repeat what we already said last year. But we do want to recall the **three** main reasons why we believed the Commission is our best option. **First**, Sierra Leone remains convinced that the Commission is better placed to address this admittedly complex legal question since, as some delegations noted last year, it has more time, its working methods are sound and well tested, and perhaps most of all, its membership is comprised of independent experts who appear well placed to elucidate the key issues of the scope, and limits, of universal jurisdiction. Ultimately, in our view, whatever one might think of universal jurisdiction, the question of jurisdiction of which it is a fundamental part is an issue of general international law; one for which a non-political expert body like the Commission seems best suited.

Second, as demonstrated by the compilation of ten rich reports from the Secretary-General, the Secretariat has collected unprecedented materials on universal jurisdiction. The compilation of national legislation, judicial decisions and other forms of State practice needs to now be thoroughly analysed. We believe that these materials should now offer a sound basis for the Commission, and the Sixth Committee, to reach firm conclusions on the legal questions under consideration. The repository should assuage doubts about whether there is sufficient State practice to study this issue from the perspective of the Commission's mandate to assist the

General Assembly with the promotion of the progressive development of international law and its codification.

Third, as like-minded delegations noted last year, the pending study of this topic offers us a unique opportunity to revitalise and enrich the relationship between the Sixth Committee and the Commission. We must be frank that the relationship has lagged as of late. This then is an opportunity for us to do something to improve it. We urge other delegations to support our taking advantage of this opportunity, as was emphasised by several States during the 70th anniversary celebrations of the Commission in 2018. To Sierra Leone, the seemingly diverging views on the universal jurisdiction principle invites a thorough legal analysis of the principle of the kind that the Commission can provide. It is certainly not a reason for the Commission to avoid examining the topic altogether.

For when rules of international law on a given issue are **ambiguous or unclear**, there will be room for loopholes and abusive manipulation. The likelihood of applying the principle in a manner not in conformity with international law will thus increase. This could undermine peaceful inter-State relations. Conversely, when there are **unambiguous and clear** rules and the main potential loopholes are closed, it becomes that much harder to misuse the rules for political gain. Clarity in the law should also help improve mutual legal assistance and collaboration to properly apply universal jurisdiction. This results in greater predictability and greater stability in inter-State relations.

Chair,

A question will arise whether the Commission has space to take up another new topic into its current work programme. The short answer is yes. The evidence is found in the Commission's own reports and by considering the status of its current topics. Sierra Leone notes that, in 2018, the Commission successfully completed its work on two major topics, namely, "identification of customary international law" and "subsequent agreement and subsequent practice in relation to the interpretation of treaties." The General Assembly took note of those outcomes last year. This year, the Commission also concluded, upon second reading, a draft convention on the prevention and punishment of crimes against humanity. The latter is now before the General Assembly with a final recommendation. This means that **three** topics that were on the current programme of work have been completed in the past two years.

Moreover, **two** additional topics, namely, "protection of the atmosphere", and "provisional application of treaties," accomplished first reading in 2018. The two

topics will be concluded next year, meaning that the Commission will have completed a total of **five topics** by August 2020. Furthermore, two more topics, that is “peremptory norms of general international law (*jus cogens*)” and “protection of the environment in relation to armed conflicts”, are slated to conclude in 2021 since they also reached the penultimate first reading stage in this year’s session. In short, all told, by 2021, the Commission would have successfully worked on **seven** of its current topics; basically, a well over two thirds turnover of the items on its current programme of work.

In other words, **Chair**, there should be no question regarding whether there is space on the Commission’s programme of work. Even if the Commission decides to reduce the number of topics that it currently has, it has scope to add new topics on to its programme of work, as it in fact did last year when it added “general principles of law” and this year when it took “sea level rise in relation to international law” into the current work programme. Of the topics remaining on the long-term programme of work, there is no other topic that has generated as much enthusiasm from States from all regions as has the topic universal criminal jurisdiction. Thus, even as we request the Commission to take up the topic as soon as possible, we also urge all States to support the Commission using the space apparently created on its work programme to advance the global legal discussion of the universality principle.

Chair,

Last year, Sierra Leone was convinced that the legal nature of the universality topic continues to make the Commission a more suitable forum for its thorough consideration. We remain of the same view today. It is our hope that, with our political discussions here in the Sixth Committee, and the legal work pending from the Commission, the substantive issues in this agenda item will thereafter substantially progress forward.

To conclude, we look forward to the Commission’s decision on the topic next year. Should it decide to move the item forward, we call on all Sixth Committee delegations to continue their strong support for the Commission. The Commission, which has historically played an important role assisting the General Assembly in the promotion of the codification and progressive development of international law, would no doubt make a useful contribution in clarifying the scope and limits of the universality principle and its vital role in the global fight against impunity for the most serious crimes of concern to the international community as a whole.

I thank you all for your kind attention.