

Draft
Statement
On behalf of the African Group

by

NAME THABO MOLEFE
Permanent Mission of South Africa

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Under Agenda Item 87
“The Scope and Application of the Principle of Universal Jurisdiction”

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Mr. Chairman,

Once again, my delegation has the honour to speak on behalf of the African Group. The African Group associates itself with the statement delivered by the distinguished representative of **the Islamic Republic of Iran** speaking on behalf of the Non-Aligned Movement. We take note of this year's report of the Secretary-General on the item.

I have the singular honour to reiterate the great importance the African Group, composed of 54 Member States of the United Nations, attaches to this agenda item "**The Scope and Application of the Principle of Universal Jurisdiction**". As you may recall, the abuse in the resort to universal jurisdiction, particularly in relations to African officials, caused the African Group to request in February 2009 the inclusion of an additional item on the abuse of the principle of universal jurisdiction on the agenda of the 63rd session of the United Nations General Assembly.

It would be recalled as stated in a memorandum annexed to the request for the inclusion of universal jurisdiction on the agenda of the 63rd session of the United Nations General Assembly, that "The principle of universal jurisdiction is well established in international law", that "The African Union respects this principle, which is enshrined in article 4(h) of the Constitutive Act" of the AU, but that it was concerned about the uncertain scope and application of the principle and the abuse of it.

As a result of the aforementioned request, this item was included in the agenda of the sixty-fourth session of the General Assembly in 2009, at the request of the United Republic of Tanzania on behalf of the African Group and was allocated to the Sixth Committee. At the 25th meeting, on 12 November 2009, the representative of Rwanda, on behalf of the Bureau, introduced a draft resolution entitled "The scope and application of the principle of universal jurisdiction" A/C.6/64/L.18. Universal jurisdiction has since been a subject of challenging discussions in the Sixth Committee.

Mr. Chairman,

The length of time we have intensely debated this topic, and the tiny steps we have collectively taken over ten years undermines the importance of addressing the “misuse” and “abuse” of the universality principle, which should be of concern not only for the African Member States but rather all Member States of the United Nations. For over 10 years the Sixth Committee has failed to address the real concerns that necessitated the addition of the topic in our agenda, and for over 10 years, the scope of universal jurisdiction remains uncertain.

The concern we must reemphasize “regarding the applicability of the principle of universal jurisdiction does not pertain to what is being done collectively through multilateral processes or the world community but rather to the indictments by individual judges in non-African States, which focus [...on sitting] Heads of State and Government, Foreign Ministers and Other Senior Officials] who are entitled to immunity under international law” as noted in the AU’s comments and observations in A/66/93.

Africa through the Member States and the African Union Commission have been very cooperative, through constructive engagements, including submissions on the basis of request for information and observations on applicable international treaties, national legal rules and judicial practices made by the Secretary-General, and active participation in the Working Group of the Sixth Committee on universal jurisdiction notwithstanding its limited mandate.

Mr. Chairman,

As evident in the adoption of resolution A/72/120, where in the preambular part the General Assembly noted “*the constructive dialogue in the Sixth Committee, [...] recognizing the diversity of views expressed by States, including concerns expressed in relation to the abuse or misuse of the principle of universal jurisdiction*”, Member States can make progress and agree on how to address the germane issues of “misuse” and “abuse”.

The Sixth Committee can and must take steps to address the inclination of non-African States to apply the principle on Africans outside of the multilateral processes without the consent of African States, and outside the safeguards of cooperation within the international system. We have evidence of the use of the universality principle in Africa with the consent and cooperation of the concerned African States, and in line with the commitment of African States to end impunity for atrocity crimes. Consent and cooperation when regulated within the multilateral system can limit the “abuse” and “misuse” of universal jurisdiction. Furthermore, universal jurisdiction shall be complementary to national jurisdiction of the country concerned, and shall not be applied in a manner inconsistent with the principles of international law or customary international law, including sovereignty, non-intervention in the internal affairs of states, sovereign immunity and diplomatic immunity.

We thank you.