



**Statement**  
**on behalf of the Republic of South Africa**  
**by**

**Thabo Molefe, Legal Counselor**  
**Before the Sixth Committee of the**  
**76<sup>th</sup> Session of the United Nations General Assembly**

**Under Agenda Item 86**

**“The scope and application of the principle of universal  
jurisdiction”**

**22<sup>nd</sup> October 2021**

**Madam Chairperson,**

Allow me to thank you for affording us the floor on this important and complex topic. South Africa, as a strong proponent of a rules-based international society, has in previous statements expressed its support for the principle of universal jurisdiction for the most serious international crimes, as an instrument to combat impunity and to achieve justice. Like a number of other delegations, we have also noted the necessity to define clear rules for its definition and application in order to prevent it from being applied in a selective and political manner.

We therefore welcome the considerable progress that has been made in defining the concept and its scope, the conditions for application and the criteria for exercising jurisdiction, procedural aspects, the role of national judicial systems, and the important aspect of international assistance and cooperation, as reflected in the Informal Working Paper emanating from the discussion in the Working Group. The Paper furthermore provides clear lines for further discussion when it again takes up its work at the seventy-seventh session of the General Assembly, forming a solid foundation to build on. The reports by the Secretary-General are equally valuable in reflecting the positions of States and relevant international organisations.

**Madam Chair,**

We especially welcome the broad consensus reflected in the Informal Working Paper around the criteria for exercising jurisdiction: that the principle should not be applied in a politically-motivated, arbitrary or selective way. Such politicisation may well spell the death in the pot for this important legal principle.

We should always bear in mind that the primary responsibility for the investigation and prosecution of international crimes lies with the state where such crime was commissioned or with the state of nationality, and that only when the State which would ordinarily have jurisdiction is unable or unwilling to prosecute, the principle of universal jurisdiction becomes applicable. But more often than not, international crimes live up to their name by presenting cross-border challenges, like difficult access to witnesses and evidence, matters on which successful investigations and prosecutions depend. Hence the need for frameworks to enable States to render mutual legal assistance to each other in the investigation and prosecution of these crimes.

With this important practical consideration in mind, South Africa has supported the initiative on the negotiation and adoption of the draft *Convention on International Cooperation and Prosecution of the Crime of Genocide, Crimes against Humanity and War Crimes*, which will hopefully proceed next year after Covid-19 interruption.

**Madam Chair,**

We have in previous statements noted that South African domestic legislation provides for extra-territorial jurisdiction over the crime of genocide, war crimes, crimes against humanity, terrorist activities, piracy, civil aviation offences, nuclear-related offences and mercenary activities. It is recalled that some conduct violates not only the domestic legal order of a State, but also the international order, with the result that broad agreement exists about the customary law crimes which are the core crimes to which universal jurisdiction applies: piracy, slave-trading, war crimes, crimes against humanity, genocide and torture (as recently confirmed in a decision of the South African Supreme Court of Appeal in an extradition case\*). The identification of other crimes which may be subject to universal jurisdiction will therefore form a substantial and important part of the deliberations of the Working Group.

**In conclusion, Chair,**

South Africa looks forward to participating in the deliberations of the Working Group. This work, as well as related initiatives to ensure international cooperation, are essential in closing the jurisdictional gaps which often allow the perpetrators of the most serious crimes to evade justice.

I thank you for your attention.