



**INDIA**  
**भारत**

**STATEMENT BY**

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**ON**

**AGENDA ITEM 78**

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

**AT THE**

**SIXTH COMMITTEE OF THE 77th SESSION OF THE**

**UNITED NATIONS GENERAL ASSEMBLY**

**NEW YORK**

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We thank the Secretary-General for his report A/77/186 on 'The scope and application of the principle of universal jurisdiction'. The report provides information about the laws and practice of some 17 States concerning the exercise of universal jurisdiction in their domestic legal systems and their understanding of the concept of universal jurisdiction.

2. On this topic, we align with the statement made by the Islamic Republic of Iran on behalf of the Non-Aligned Movement. However, the following observations and comments are being made in our national capacity.

3. We hold the firm view that those who commit crimes and indulge in criminal activities must be brought to justice and punished. A criminal should not go scot-free because of procedural technicalities, including lack of jurisdiction.

4. However, the fact cannot be over sighted that the exercise of jurisdiction is a unique legal subject in itself. Several attempts have been made by the experts to identify the nature and content of the principle of universal jurisdiction In practical terms, however, the gap between the States on the understanding of the principle remains quite wide.

**Mr. Chairman,**

5. The widely recognized basis for exercise of criminal jurisdiction are: 'territoriality', which is based on the place of the commission of offence; 'nationality', based on the nationality of the accused. In addition, some States recognise nationality of victim, as basis for exercising jurisdiction and also the protective principle, which is based on the national interests affected.

6.. Common thread in these jurisdictional theories or basis is the requirement of some connection or legal linkage between the state asserting jurisdiction and the offence or offender.

7. Universal jurisdiction is an exception to the above. Under the universal jurisdiction, a State can claim jurisdiction over an offence irrespective of the place of its commission or nationality of the offender or victim, and thus without any link whatsoever between that State and the offence or the offender. The rationale for such jurisdiction is the nature of certain offences that affect the interests of all States, i.e., international community, even when they are unrelated to the State assuming jurisdiction.

**Mr. Chairman,**

9. Under general international law, piracy on the high seas is the only one such crime, over which claims of universal jurisdiction is undisputed. Because, a pirate is considered as a *hosti humani generis*—an enemy of all mankind. The principle of universal jurisdiction in relation to piracy was codified in the UN Convention on the Law of the Sea, 1982. We may inform that we are in the process of enacting a law specifically to deal with the maritime piracy.

10. In respect of certain serious crimes like genocide, war crimes, crimes against humanity, apartheid, torture, etc., international conventions have provided basis for the exercise of a sort of universal jurisdiction, which is applicable between the States parties to those treaties.

11. The question is whether this conventional based jurisdiction to prosecute certain serious international crimes could be converted into a customary rule applicable to all the States whether or not they are party to those conventions. We do not think so.

12. In this context we may recall the observation of the President of the International Court of Justice, Judge Gilbert Guillaume in the “Arrest Warrant” case of 2000 between the Democratic Republic of Congo and Belgium. Though the issue of universal jurisdiction was not specifically before the Court in the case, - Judge Gilbert Guillaume noted in his separate opinion (para 16) and I quote;

“...international law does not accept universal jurisdiction; still less does it accept universal jurisdiction *in absentia*.”

**Mr. Chairman,**

15. We note that this topic is going to be deliberated upon in the Working Group this time also, mainly as an attempt to identify the elements to be taken into consideration for understanding the concept of universal jurisdiction and that which crimes should be covered there under. We also note an informal working paper put out by the Chairperson of the Working Group on the topic. We look forward to meaningful deliberations in the Working Group.

16. Finally, we stress the need of ensuring avoidance of misuse of the principle of universal jurisdiction in respect of acts that do not legally enjoy such jurisdiction, as much needed conceptual and legal clarify on crimes having universal jurisdiction is yet to emerge.

**I thank you Mr. Chairman.**