



77th Session of the United Nations General Assembly

Sixth Committee

The scope and application of the principle of universal jurisdiction

Statement by Mr. Sugeeshwara Gunaratna, Deputy Permanent Representative of Sri Lanka

Wednesday, 12 October 2022

Mr Chairman

My delegation associates itself with the statement delivered by Iran on behalf of the NAM and wishes to state the following in our national capacity.

During the last century millions of human beings perished as a result of genocide, crimes against humanity, war crimes, and other serious crimes under international law. Perpetrators deserving of prosecution have only rarely been held accountable. To stop this cycle of violence and to promote justice, impunity for the commission of serious crimes must yield to accountability. But how can this be done, and what will be the respective roles of national courts and international tribunals?

Traditionally in domestic law criminal prosecutions have been regarded as a tool capable of contributing to peaceful governance. Under international law, however recourse to criminal prosecutions as a safeguard for maintaining international peace and security is very recent and still limited and in many respects disputed. This is the case both in international rules intended

to be applied by international jurisdictions and when they are directed at soliciting the exercise of criminal prosecutions by domestic courts. However, the Rome statute of the international criminal court expressly provides that the jurisdiction of the court shall be limited to the most serious crimes of concern to the international community as a whole and identifies these crimes as the crimes of genocide, crimes against humanity, war crimes and crime of aggression. It must be noted that a catalog of the categories of crimes regarded as international by nature would not be complete without a reference to the statutes of other criminal courts and tribunals established with international participation such as the ICTY and the ICTR. Such tribunals have the jurisdiction to prosecute individuals for violations of national as well as international law. The scope of the jurisdiction is not uniform and may vary according to the exigencies of each situation.

While all these objectives contribute to the establishment of peace and security, the question however is whether these goals fall within the competence of the international tribunals in the exercise of its judicial functions .

Mr. Chairman there is no yes or no answer to these questions with regard to the role and competence of an international criminal jurisdiction.

Mr. Chairman

National courts administer systems of criminal law designed to provide justice for victims and due process for accused persons. A nation's courts exercise jurisdiction over crimes committed in its territory and proceed against those crimes committed abroad by its nationals or against

its nationals, or against its national interests. When these and other connections are absent, national courts may nevertheless exercise jurisdiction under international law over crimes of such exceptional gravity that they affect the fundamental interests of the international community as a whole. This is universal jurisdiction: it is jurisdiction based solely on the nature of the crime. National courts can exercise universal jurisdiction to prosecute and punish, and thereby deter, heinous acts recognized as serious crimes under international law. When national courts exercise universal jurisdiction appropriately, in accordance with internationally recognized standards of due process, they act to vindicate not merely their own interests and values but the basic interests and values common to the international community. Universal jurisdiction holds out the promise of greater justice, but the jurisprudence of universal jurisdiction is essentially different in kind, disjointed, and poorly understood. So long as that is so, this weapon against impunity is potentially beset by incoherence, confusion, and, at times, uneven justice.

Enhancing the proper exercise of universal jurisdiction by national courts will help close the gap in law enforcement that has favored perpetrators of serious crimes under international law. Fashioning clearer and sounder principles to guide the exercise of universal jurisdiction by national courts should help to punish, and thereby to deter and prevent, the commission of these heinous crimes. Nevertheless, the aim of sound principles cannot be simply to facilitate the speediest exercise of criminal jurisdiction, always and everywhere, and irrespective of circumstances. Improper exercises of criminal jurisdiction, including universal jurisdiction, may be used merely to harass political opponents, or for aims extraneous to criminal justice.

Mr Chairman I must also hasten to strike a note of warning that the imprudent or untimely exercise of universal jurisdiction could disrupt the quest for peace and national reconciliation in nations struggling to recover from violent conflict or political oppression. Prudence and good judgment are required here, as elsewhere in politics and law.

What is needed are principles to guide, as well as to give greater coherence and legitimacy to, the exercise of universal jurisdiction. These principles should promote greater accountability for perpetrators of serious crimes under international law, in ways consistent with a prudent concern for the abuse of power and a reasonable solicitude for the quest for peace.

Mr. Chairman in the final prognosis the question of the impact of universal jurisdiction as a deterrent to the commission of grave breaches of international humanitarian law and human rights law still cannot receive a clear answer.

However, the recent African Union-European Union joint report on universal jurisdiction stresses that "Temporal, geographical, personal and subject-matter limitations on the jurisdiction of international criminal courts and tribunals mean that universal jurisdiction remains a vital element in the fight against impunity". Universal jurisdiction is an important means of reducing the unevenness in the landscape of international justice, where officials from more powerful states-or those protected by powerful states-are less vulnerable to justice than those from weaker governments. This is an unfortunate reality that the responsible use of universal jurisdiction can, over time, help to mitigate.

Thank you Mr Chairman