

## **Statement on behalf of the African Group**

### **“The Scope and Application of the Principle of Universal Jurisdiction”**

#### **Agenda Item 85**

**13 October 2022**

**Mr. Chair,**

I have the honour to deliver this statement on behalf of the African Group.

The African Group associates itself with the statement delivered on behalf of the Non-Aligned Movement.

We thank the Secretary-General for this year's report on this agenda item.

I have the honour to reiterate the great importance the African Group, composed of 54 Member States of the United Nations, attaches to this agenda Item entitled “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 63<sup>rd</sup> 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. Chair,**

Debates on this topic have been long and intense, however no significant steps have been reached in addressing the “misuse” and “abuse” of the universality principle, which should be of concern for all Member States of the United Nations, including the African Member States. The real concerns which led to the inscription of the item on the Agenda of our Committee still remain to be resolved, hence the scope of universal jurisdiction remains uncertain.

We welcome the adoption of General Assembly resolution A/76/118, in particular operative paragraph 3, which “Invites the working group of the Sixth Committee, to be established at its seventy-seventh session, to consider and comment on the question ‘what should be the role and purpose of universal jurisdiction’.” We look forward to a further constructive debate on the question, as part of the process for the Sixth Committee to make progress on the topic.

The African Group reiterates its concern “regarding the applicability of the principle of universal jurisdiction does not pertain to what is being done collectively through multilateral processes or the global 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 African Union Commission’s comments and observations in A/66/93.

Africa through the Member States and the African Union Commission have engaged constructively and has been cooperative, including by submitting information and observations on applicable international treaties, national legal rules and judicial practices made by the Secretary-General. Given the number of reports the Secretary-General has prepared and submitted on the requests of the General Assembly, the African Group supports the call for the Secretary General to be requested to review his previous reports on the topic and on the basis of that review, submit a report to the Assembly at a reasonable time, preferably at its seventy-ninth session, identifying convergences and gaps in the practice of States for the consideration of the Sixth Committee.

**Mr. Chair,**

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”. A significant first step will be for the Sixth Committee to include language reflecting the diversity of views expressed by States in the Sixth Committee, as well as in the context of its working group, including concerns, expressed in relation to the abuse or misuse of the principle of universal jurisdiction as an operative paragraph.

The Sixth Committee can and must take steps to address the inclination of non-African States to apply the principle of Universal Jurisdiction 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.

In conclusion, Universal jurisdiction should be exercised in good faith and with due regard to other principles of international law, in order to avoid its misuse and abuse. In this context, agreed norms must be established regarding the scope and application of Universal Jurisdiction.

**I thank you for your kind attention.**