EGYPT

مصـــر

Permanent Mission of Egypt
to the United Nations
New York

بعثـة مصـر الدائـــمة
لدى الأمـم المتحدة
نيويـورك

United Nations General Assembly
Sixth Committee
(79th Session)

The Scope and Application of the Principle of Universal Jurisdiction

(Agenda Item 85)

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15 October 2024

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Mr. President,

Egypt aligns itself with the statements of the Republic of Uganda on behalf of the African Group and the Islamic Republic of Iran on behalf of the Non-Aligned Movement and would like to make the following remarks in its national capacity.

The core message that Egypt would like to underscore is that we do not believe that there is sufficient evidence of state practice or sufficient expressions of *opinio juris* to support the proposition that there is a right – under general international law; i.e., under general customary international law – to exercise universal jurisdiction.

Rather, in our view, there are certain categories of conduct in relation to which a *lex specialis* has emerged that entitles states – and at times obligates them – to exercise certain forms of prescriptive and enforcement jurisdiction of an extra-territorial nature, which can be characterized as being universal.

Illustrative examples of these categories of crimes include piracy – for which there are customary and conventional grounds permitting the exercise of extra-territorial jurisdiction. Another example is war crimes, in relation to which states may exercise extra-territorial jurisdiction pursuant to the provisions of relevant treaties. These treaty-obligations include the grave breaches provisions, which, principally, are: First Geneva Convention, Article 49; Second Geneva Convention, Article 50; Third Geneva Convention, Article 129; Fourth Geneva Convention, Article 146; and Additional Protocol I, Article 85(1).

There are also regional instruments that permit states to exercise forms of jurisdiction that bear resemblance to what is often called universal jurisdiction. One example is article 4 of the Inter-American Convention on Forced Disappearance of Persons.

Barring these categories of conduct that are governed by *lex specialis* regimes, Egypt is of the view that there is insufficient state practice and *opinio juris* to permit the exercise of prescriptive or enforcement universal jurisdiction.

Indeed, under international law, the principal form of jurisdiction that states may exercise is territorial in nature. Moreover, state practice and *opinio juris* provide support for what is called the effects doctrine, whereby a state may assert jurisdiction over conduct that is undertaken abroad, but which has effects amounting to a crime on its territory. There is also practice and *opinio juris* to support the so-called active-person jurisdiction, whereby a state asserts jurisdiction over its citizens who commit crimes abroad that are also criminalized under domestic law. There is also some evidence to support the principle of protective jurisdiction, whereby a state exercises jurisdiction over crimes occurring abroad where the victim is a national of its state.

However, beyond that, Egypt is of the view that customary international law does not permit states to exercise prescriptive and enforcement jurisdiction beyond the narrow confines of established *lex specialis* regimes.

In this regard, I would like to recall the view expressed by former President of the International Court of Justice, Judge Gilbert Guillaume in his Separate Opinion in the Arrest Warrant case of 2000, in which – after surveying state practice, including domestic law – he concluded:

> **"international law knows only one true case of universal jurisdiction: piracy. Further, a number of international conventions provide for the establishment of subsidiary universal jurisdiction for the purposes of the trial of certain offenders arrested on national territory and not extradited to a foreign country. Universal jurisdiction *in absentia* … is unknown to international law".**

Moreover, Egypt underscores that the recognition of certain principles as having attained the status of peremptory rules of international law or the

status of obligations *erga omnes* does not grant states standing to enforce such rules.

Peremptory rules of international law are non-derogable and intransgressible.

However, such rules do not automatically override the procedural requirements relating to jurisdiction and admissibility that must be satisfied to enforce such rules. In this regard Egypt recalls paragraph 93 of the judgment of the International Court of Justice in the case concerning Jurisdictional Immunities of the State of 2012 in which the Court affirmed that there is no conflict between rules of *jus cogens* and rules of state immunity, and added the following:

> **"[T]he two sets of rules address different matters. The rules of state immunity are procedural in character and are confined to determining whether or not the courts of one state may exercise jurisdiction in respect of another state. They do not bear upon the question of whether or not the conduct in respect of which the proceedings are brought was lawful or unlawful"**

The court went on to note the following

> **"[R]ecognizing the immunity of a foreign state in accordance with customary international law does not amount to recognizing as lawful a situation created by the breach of a jus cogens rule"**

In short, unless there are explicit grounds founded in conventional or customary international law that permit the exercise of so-called universal jurisdiction, the fact that certain norms has become accepted by the international community as a whole as having attained the status of *jus cogens* does not on its own permit the exercise of universal jurisdiction.

Thank you, Mr. President.