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Sixth Committee, The scope and application of the principle of universal jurisdiction
Statement by the Permanent Representative of Sri Lanka,
H.E. Ambassador Mohan Pieris
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Chairman,

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, we know that 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, identifying these crimes as genocide, crimes against humanity, war crimes, and crimes of aggression. The ICC statute ends at the complete codification of the crimes that deserve to be submitted to an international jurisdiction. The scope of jurisdiction, Mr. Chairman, is not uniform and may vary according to the exigencies of each situation.

You will appreciate that states have traditionally been inclined to protect their sovereign prerogatives for reasons of public policy and security, leading to a consequent reluctance to accept international investigations for the purposes of prosecution, especially regarding events that have occurred on their territory during a domestic conflict or in peacetime. This simply means that only those international crimes that have occurred in connection with international armed conflict have been considered international.

Mr. Chairman, there is no doubt that the United Nations Security Council resolutions imply that the exercise of the judicial function to fight impunity for crimes of concern to the international community contributes to security and stability in international relations and prevents the recurrent commission of such crimes. All these objectives contribute to the establishment of peace and security.

The question, however, is whether these goals fall within the competence of international tribunals in the exercise of their judicial functions. There is no clear answer to these questions with regard to the rules and competence of an international criminal jurisdiction. 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 their national interests.

When these or 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 a 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.

Mr. Chairman, international criminal tribunals also have a vital role to play in combating impunity as a complement to national courts in the wake of mass atrocities and oppressive rule. National judicial systems have often been unable or unwilling to prosecute serious crimes under international law. Consequently, international criminal tribunals have been established. Treaties entered into in the aftermath of World War II have strengthened international institutions and have given greater clarity and force to international criminal law.

A signal achievement of this long historic process occurred at the United Nations conference in July '98 when the Rome Statute of the International Criminal Court was adopted. When this permanent court became effective, the international community acquired an unprecedented opportunity to hold accountable some of those accused of serious crimes under international law, and that is what we see today. The jurisdiction of the International Criminal Court will, however, be available only if justice cannot be done at the national level. The primary burden of prosecuting the alleged perpetrators of these crimes will continue to reside with national legal systems.

Mr. Chairman, I must also strike a note of warning that the imprudent and 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 therefore 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, we have seen in the joint reports on universal jurisdiction where it is stressed 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, Mr. Chairman, 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.

I thank you, Mr. Chairman.