



Statement
on behalf of the
Republic of South Africa

by

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before the Sixth Committee of the General Assembly

under Agenda Item 87

**“The scope and application of the principle of universal
jurisdiction”**

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Chair

Allow me to thank you, once again, for affording us the floor. At the outset, South Africa wishes to associate itself with the statement delivered by the representatives of the Islamic Republic of Iran speaking on behalf of the Non-Aligned Movement and The Gambia speaking on behalf of the African Group.

South Africa takes note of the Secretary-General's report, which provides valuable insight into the manner in which universal jurisdiction is applied in various countries.

Chair

South Africa has expressed itself on this topic on previous occasions and once again wishes to state that it does not contest the lawfulness of the principle of universal jurisdiction in international law for certain crimes. Universal jurisdiction is an important tool through which impunity can be curbed and those responsible for the most atrocious of crimes brought to account.

However, South Africa is not oblivious to the challenges and complications presented by universal jurisdiction, and it recognises that there is not uniformity in the application of universal jurisdiction in all countries.

Chair

South Africa has previously indicated that it has enacted legislation that provides for universal jurisdiction over certain crimes *inter alia* war crimes, crimes against humanity and genocide. Our laws allow for conditional universal jurisdiction and provide that an accused must be present in the territory of South Africa in order to be prosecuted.

However, in relation to the investigation of crimes, our Constitutional Court has ruled that presence is not a requirement for investigation and that anticipatory investigation does not violate fair trial rights of the suspect or accused person.

Whilst universal jurisdiction can play an instrumental role in combatting impunity, it also brings with it certain practical challenges.

In relation to anticipatory investigations, one faces the challenge that a state may become inundated with requests to investigate a host of offences with no indication that the accused may ever enter the territory of that state. This places an immense burden on criminal justice systems where resources are oftentimes already constrained.

Furthermore, in order to successfully prosecute an accused, it is imperative that appropriate cooperation and support is provided.

If universal jurisdiction is only to be invoked as a last resort, when another state, which would ordinarily have jurisdiction, is unwilling or unable to prosecute, the

question arises, to what extent would such a state that is unwilling or unable to prosecute be in a position to provide assistance, for instance by collecting and sharing evidence?

In this regard, South Africa is one of several states that are actively involved in the international initiative to develop a multilateral convention focused on mutual legal assistance and extradition for serious international crimes. Such a convention would prove to be particularly beneficial in securing mutual legal assistance from states when carrying out prosecutions as it will at least place an international obligation upon parties to cooperate with the state exercising universal jurisdiction.

Chair

Universal jurisdiction presents a challenge to state sovereignty and territorial integrity and should thus be approached with the necessary political sensitivity, particularly to avoid allegations of selective application, which could bring into question the credibility of an essential component in international criminal justice.

The question of immunities from criminal jurisdiction remains a heavily debated topic; it is under discussion at the ILC and an item has been placed on the agenda of the General Assembly for the consideration of a "Request for an advisory opinion from the International Court of Justice on the consequences of legal obligations of States under different sources of international law with respect to immunities of Heads of State and Government and other senior officials". Consequently, the impact of universal jurisdiction on immunities is an aspect which must be approached with caution. The implications of carrying out an arrest in violation of international law may have far reaching consequences for a state, both legally and politically.

In conclusion, South Africa's position is that it accepts the principle of universal jurisdiction for specific international crimes of a serious nature, based on its support for the fight against impunity and the search for justice. However, in order for universal jurisdiction to fulfil its potential as a means through which accountability truly is achieved, it must be practically possible and not subject to selective application or politicisation.

I thank you.