



INDIA
भारत

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STATEMENT

BY

**MR. M. KOTESWARA RAO, COUNSELLOR (LEGAL ADVISER)
PERMANENT MISSION OF INDIA TO THE UNITED NATIONS**

ON

AGENDA ITEM 83

**“THE SCOPE AND APPLICATION OF THE PRINCIPLE OF UNIVERSAL
JURISDICTION”**

AT THE

**SIXTH COMMITTEE OF THE 69TH SESSION OF THE
UNITED NATIONS GENERAL ASSEMBLY**

NEW YORK

OCTOBER 15, 2014

Mr. Chairman,

We thank the Secretary-General for his report A/69/174 on “The scope and application of the principle of universal jurisdiction”. It provides information about the laws and practice of certain States concerning the exercise of universal jurisdiction in their domestic legal systems and their understanding of the concept of universal jurisdiction.

The Indian delegation, while aligning with the statement of the NAM on this topic, offers the following observations and comments in the national capacity.

Mr. Chairman,

India has its principled position and a firm view that those who commit crimes must be brought to justice and punished. A criminal should not go scot free because of procedural technicalities including the lack of jurisdiction.

However, the fact cannot be over sighted that exercise of jurisdiction is a unique legal subject in itself.

The widely recognized bases for the exercise of criminal jurisdiction include: Territoriality, which is based on the place of the commission of offence; Nationality, which is based on the nationality of the accused. Some States recognise the nationality of victim also, as basis for exercising jurisdiction; and Protective principle, which is based on the national interests affected.

Mr. Chairman,

The common feature of these jurisdictional theories is the connection between the State asserting jurisdiction and the crime committed.

However, in the universality theory of exercising criminal jurisdiction a State claims to exercise jurisdiction over an offender, irrespective of his or her nationality or the place of commission of the offence, and so without any link between that State and the offender. The rationale for such jurisdiction is given the nature of certain offences, which affect the interests of all States, even when they are unrelated to the State assuming jurisdiction.

Mr. Chairman,

Under general international law, piracy on the high seas is the only one such crime, over which claims of universal jurisdiction is undisputed. The principle of universal jurisdiction in relation to piracy has been codified in the UN Convention on the Law of the Sea, 1982 also.

In respect of certain serious crimes like genocide, war crimes, crimes against humanity and torture, etc., international treaties have provided basis for the exercise of universal jurisdiction, which is applicable between the States parties to those treaties. They include, among others, the Four Geneva Conventions of 1949 and the Apartheid Convention.

Mr. Chairman,

The question that arises is whether the jurisdiction provided for specific serious international crimes under certain treaties could be converted into a commonly exercisable jurisdiction, irrespective of the fact whether or not the other State or States are a party to those treaties.

Several issues remained unanswered, including those related to the basis of extending such jurisdiction, the relationship with the laws relating to immunity, pardoning and amnesty, and harmonization with the domestic laws.

Mr. Chairman,

Several treaties oblige the States parties either to try a criminal or handover for trial to a party willing to do so. This is the obligation of *aut dedere, aut judicare* (“either extradite or prosecute”). This widely recognised principle, including by the International Court of Justice in its decision of 20 July 2012 in the Belgium Vs Senegal case, should not be confused with or short circuited by the universal jurisdiction.

Mr. Chairman,

Like previous sessions, this topic is going to be deliberated upon in the working group forum this time also, mainly with the attempt to identify the elements to be taken into consideration for understanding the concept of universal jurisdiction and that which crimes should be covered there under. Like before, the Indian delegation would be participating in the working group deliberations.

Finally, Mr. Chairman, we stress for the need of ensuring avoidance of the misuse of the principle of universal jurisdiction in both the criminal and civil matters, the concept and definition of which is not yet clear.

I thank you Mr. Chairman.