



*PERMANENT MISSION OF THE KINGDOM  
OF LESOTHO TO THE UNITED NATIONS  
KHOTSONG  
204 East 39th Street  
New York, NY 10016*

**STATEMENT**

**BY**

**MR. MAFIROANE MOTANYANE  
CHARGÉ D'AFFAIRES a.i.  
OF THE KINGDOM OF LESOTHO TO THE UNITED NATIONS**

**IN THE  
SIXTH COMMITTEE**

**ON AGENDA ITEM 84:  
"THE SCOPE AND APPLICATION OF THE  
PRINCIPLE OF UNIVERSAL JURISDICTION"**

**DURING THE SIXTY-SEVENTH SESSION  
OF THE UNITED NATIONS GENERAL ASSEMBLY**

**17 OCTOBER 2012  
NEW YORK**

**Please check against delivery**

**Mr. Chairman,**

I congratulate you and other members of the Bureau on your election. We believe that you will provide wise and effective leadership to the Sixth Committee. I assure you of my delegation's full support and cooperation.

I associate myself with the statements delivered by the Representatives of Iran and Egypt on behalf of the Non-Aligned Movement and the African Group respectively.

Lesotho welcomes the fact that the Sixth Committee is once again tasked with the issue of scope and application of the principle of universal jurisdiction, as it is a principle of public international law that demands legal rigor. In this regard, we welcome the decision to establish a Working Group to continue to undertake a thorough discussion on this issue. We also welcome the report by the Secretary General contained in document A/67/116, reflecting the comments and observations made by Governments on this topic.

**Mr. Chairman,**

The principle of universal jurisdiction does not enjoy any common and precise definition. There are difficulties as to when it should be invoked, and which crimes it exactly applies to. Perceptions that it is selectively applied are many and so are concerns about its abuse and misuse. The importance of a precise universally agreed definition of this concept cannot be overemphasized. This will prevent potential misuse, bias and politicization of the application of the principle of universal jurisdiction under the guise of administering justice.

The unwarranted use of the principle has the potential to give rise to a new tyranny – a tyranny of judges. Due caution must always be exercised every time this principle is to be invoked. Moreover, the unjustified use of this concept may have negative effects on the rule of law at the international level, as well as on international relations. In this regard, it is important to ensure that the well-established principles of respect for the sovereignty and national integrity of other States are always observed in the application of this concept. These are the principles enshrined in the Charter of the United Nations – which indeed underpin the very foundation of the United Nations. Equally important is the need to ensure that the application of universal jurisdiction does not violate the immunity granted to certain office bearers under international law.

**Mr. Chairman,**

Our understanding of this principle is that it authorizes States to take measures to prosecute perpetrators of the gravest crimes of universal concern, regardless of the location of the commission or the nationality of the offender or that of the victim. Furthermore, no State may exercise its criminal jurisdiction over crimes committed in the territory of another State unless; there is a *nexus* with either the offender or victim, or if the crime is universally recognized or is established under a treaty, and the territorial State is unwilling or unable to carry out the prosecution. This principle is an accepted legal basis envisaged in a number of international treaties and also crystalized into customary law. Therefore, the scope of the principle of universal jurisdiction as well as the conditions for its application should be identified in accordance with the relevant provisions of each treaty.

We find it very productive that, as a result of the discussions within the Sixth Committee and the information provided by Member States in their reports, several delegations have expressed that universal jurisdiction should not be confused with the “obligation to prosecute or extradite (*aut dedere aut judicare*)”. In our view, although the aim of both concepts is to combat impunity for certain types of crimes established in international legal instruments, a clear distinction must be made between them. In this regard we welcome efforts made by the International Law Commission regarding the viability of the relationship between universal jurisdiction and the obligation to prosecute or extradite. And we therefore hope that the Commission will continue to pave the way for a common understanding of the concept.

**Mr. Chairman,**

We are currently at a stage that requires more dialogue within the framework of the Working Group. We should be able to identify issues on which there is common understanding, and agree on those on which we should deepen our study. We are confident that our commitment to this process will bear fruition in not so distant a future.

In conclusion, I wish to point out that we remain convinced that universal jurisdiction is an important tool for States to ensure that the most serious crimes do not go unpunished. The principle of universal jurisdiction is under constant development. Emergence of new treaties, State practice, judicial

decisions and juristic writings will gradually provide more clarity and more substance on the principle.

Lesotho favours the continuation of this debate in the Sixth Committee with a view to reaching a common understanding on different aspects of the principle of universal jurisdiction, in particular the conditions for the application and nature of crimes which could be so prosecuted.

**I thank you.**