



United Nations General Assembly | Sixth Committee
The scope and application of the principle of universal jurisdiction
11 October 2017

(check against delivery)

Mr. Chairman,

Brazil associates itself with the statement delivered by the El Salvador on behalf of the Community of Latin American and Caribbean States (CELAC) and takes this opportunity to make some comments on a national perspective.

If the universality of the Rome Statute is achieved – and this is a goal we should not spare efforts to achieve –, there would be more fertile ground for values of justice and stability and for an order based on International Law. Discussions on universal jurisdiction would probably lose relevance. Meanwhile, these debates should not deviate us from promoting the Rome Statute system and from the objective we all share: to deny impunity to the perpetrators of serious international crimes.

Mr. Chairman

Universal jurisdiction is one way to achieve accountability and deny impunity to those accused of serious international crimes. We consider the aim of universal jurisdiction to be the prosecution of individuals allegedly responsible for serious crimes defined by international law that, by their gravity, shock the conscience of the whole humanity and violate imperative norms of international law.

The exercise of jurisdiction irrespective of the link between the crime and the prosecuting State is an exception to the more consolidated principles of territoriality and nationality. On the one hand, the principle of sovereign equality reminds us that the exercise of jurisdiction is a primary responsibility of the State concerned. On the other, to put an end to impunity in relation to the most serious crimes is an obligation contained in numerous relevant treaties and is a crucial for ensuring a rule-based international system.

Universal jurisdiction should be exercised only in full respect to international law and is obviously subsidiary to that of states with primary jurisdiction and is limited to specific crimes. The exercise of universal jurisdiction cannot be arbitrary nor should be used for the purposes of fulfilling other interests than those of justice.

Mr. Chairman,

A proper definition of universal jurisdiction and a shared understanding of the scope of its application need to be agreed upon in order to prevent any misapplication or improper resort to universal jurisdiction, and to avoid its selective application.

Brazil welcomes the activities of the Working Group and supports an incremental approach in its discussions. It should continue to try to find an acceptable definition for the concept and could

advance the discussion of other matters – such as the crimes that would allow the exercise of universal jurisdiction, as well as its subsidiary character.

There are some other aspects that also need to be duly considered in an appropriate timeframe, such as whether there is a need for formal consent on the part of the State where the crime took place and whether there is a need for the alleged criminal to be in the territory of the State wishing to exercise universal jurisdiction.

One of the most contentious issues remains the application of universal jurisdiction and the principle of justice while upholding the jurisdictional immunities of State officials. At the current stage of discussions, we deem premature to address the issue of the adoption of uniform standards at the international level on this particular subject.

As stated by CELAC, this Committee should seriously consider the possibility of requesting that the International Law Commission study some or all of the elements of this discussion.

Mr. Chairman,

Brazilian criminal legislation adopts territoriality as the basic principle for exercising jurisdiction, but also takes into account the principle of nationality. In our system, under certain circumstances, universal jurisdiction can be exerted by the national tribunals in relation to the crime of genocide and the crimes to which Brazil has obliged itself to repress through treaties or conventions, such as torture.

Under Brazilian legal framework, it is necessary to enact national legislation to enable the exercise of universal jurisdiction or to prosecute and judge an action or omission, which is considered a crime under international law. It is not possible, thus, to exercise universal jurisdiction over a crime under customary international law alone, because the lack of specific legislation would result in a violation of the principle of legality.

Thank you.