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STATEMENT

BY

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TO THE UNITED NATIONS

TO THE

SIXTH COMMITTEE

ON

**AGENDA ITEM 85:
"THE SCOPE AND APPLICATION
OF THE PRINCIPLE OF UNIVERSAL JURISDICTION "**

DURING THE

72ND SESSION OF THE
UNITED NATIONS GENERAL ASSEMBLY

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Mr. Chairman,

My delegation aligns itself with the Statements delivered by the Islamic Republic of Iran on behalf of the Non-Aligned Movement and by Algeria on behalf of the African Group. We appreciate the report of the Secretary General contained in document A/72/112 which provides useful insights on state practice and shall enrich these deliberations.

Mr. Chairman,

This discussion on the scope and application of the principle of universal jurisdiction could not have been held at a better time. At the outset I would like to take the opportunity to reaffirm Kenya's commitment to rule of law, fight against impunity and the principles enshrined in the Charter that guarantee the sovereign equality of States.

The principle of universal jurisdiction for grave international crimes is not new. It is clear that the scope and application of the universal jurisdiction principle on the basis of domestic legal rules and emerging judicial practices is controversial and a source of genuine concern to many. The divergence of views and opinion is a clear sign that if not carefully defined and regulated within the acceptable norms and other principles of international law, the unilateral application of universal jurisdiction by States can be subject to abuse and may be a threat to international peace and security. Extra-territorial jurisdiction should be invoked only as a secondary means in cases where national jurisdiction is unwilling or unable to address a matter.

Caution must therefore be exercised in the application of the principle of universal jurisdiction otherwise we can end up substituting impunity at the national level with impunity at the international level under the cloak of universal jurisdiction. It is true that some States don't have to worry about accountability for international crimes. It is this double standard and overt politicization of the use of universal jurisdiction that should be a concern to us here today.

Where the principle of Universal Jurisdiction should apply, my delegation wishes to emphasize that there should be fairness, uniformity and consistency in the application of this principle. Otherwise, it would be open to exploitation. Like other African States, Kenya's concern lies in the abuse of the principle of universal jurisdiction which development endangers the universal application and acceptance of long standing norms of international law and pays lip service to the fight against impunity.

We must therefore seek acceptable means of applying the universal jurisdiction principle without undermining the essential principles of international law that govern interstate relations. Lack of a common understanding on the scope and application of the universal jurisdiction principle will certainly undermine the rule

of law at the international level.

In any event, the application of universal jurisdiction cannot be an end to itself; it must be part of a process towards an end and the end is lasting peace. This system, as much as it focuses on justice, it must also ensure respect of the fundamental nexus between peace, security and justice – there cannot be justice without peace as without justice is in itself an inadequate state of being.

Mr. Chairman,

We are convinced that the UN provides the best venue with the broadest legitimacy for addressing the divergence views on the type and range of crimes for which the doctrine could be invoked. The deliberations in this Committee have reached a lull in forward progress as what we now see is States repeating positions that are now well known. It is therefore the right time to inject fresh impetus into our deliberations.

This can be achieved in various ways such as using other UN institutions whose input may be useful in augmenting our discussions or ensuring that more member States report on their practices so as to better inform the Secretary General's report for the next Session. At this point in time we see the latter as a quick way to jump-start our deliberations in earnest.

Mr. Chairman,

In the current discourse of the place of universal jurisdiction the reality is that if member States of the community of Nations are not to be accused of being in denial, then we must all collectively be willing to interrogate the system, seek amendments to the system as required, adjust the system as necessary in order to respond to the complexity and circumstances of global democracies and social realities.

Kenya as a proud member of the community of nations which has contributed immensely with limited resources to the achievement of peace, security and multilateralism will engage actively in the Working Group established under Resolution 69/124 in order to indent the scope and limits of application of universal jurisdiction. We look forward to deliberations that are aimed towards some forward progress this Session.

I thank you for your kind attention.