

Permanent Mission of India to the UN

New York

**6th Committee of the 78th Session of the UNGA
(Agenda Item 84)**

“The Scope and application of the principles of Universal Jurisdiction”

India Statement

My delegation thanks the Secretary-General for his report A/78/130 on this agenda item. The report provides information and observations received from Member States and relevant observers, on the scope and application of universal jurisdiction, including information on the relevant applicable international treaties on their national legal rules and judicial practice.

2. While aligning with the statement of the Islamic Republic of Iran made on behalf of NAM on this topic, we offer the following observations and comments in our national capacity.

3. 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 owing to procedural technicalities, including lack of jurisdiction.

4. However, the fact cannot be over sighted that exercise of jurisdiction is a unique legal subject in itself. Assuming and exercising jurisdiction are altogether distinct subjects.

5. In legal parlance the term “jurisdiction” refers to two aspects: first, the rule-making and second, the rule enforcing. The widely recognized theories of jurisdiction include Territorial, which is based on the place where the offence was committed; Nationality, which is based on the nationality of the accused or the nationality of the victim; and protective, which is based on the national interests affected.

6. These jurisdictional theories require a connection between the State asserting jurisdiction and the offence, including nationality of the offender or of the victim or the place of commission of the offence.

7. We, under the present agenda item, are however deliberating upon a different type of jurisdictional theory, which lacks proper legal backing at both the national and international levels.

Mr. Chairman

8. A State invoking universal jurisdiction claims to exercise jurisdiction over any offender, irrespective of the question of nationality or the place of commission of the offence, or of any link between that State and the offender. It assumes that each state has an interest in exercising jurisdiction to prosecute offences which all nations have condemned.

9. The rationale for such jurisdiction is the nature of certain offences, which affect the interests of all states, even when they are unrelated to State(s) assuming jurisdiction. The question that arises is whether the jurisdiction provided for specific serious international crimes in certain treaties could be converted into a commonly exercisable jurisdiction in respect of a wider range of offences.

10. Several treaties oblige States parties either to try an accused (criminal) or hand over him or her for trial to a State party willing to do so. This is the obligatory principle of "aut dedere, aut judicare" which means either extradite or prosecute. However, this principle should not be confused with the universal jurisdiction.

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

Mr. Chairman

12. Piracy on the high seas is the only crime over which claims of universal jurisdiction is undisputed under general international law. We consider that the principle of universal jurisdiction in relation to piracy has been codified in the 1982 UN Convention on the Law of the Sea.

13. In respect of certain other crimes like genocide, war crimes, crimes against humanity torture, etc., international treaties have provided basis for exercise of universal jurisdiction. They include among others the Four Geneva Conventions and the Apartheid Convention. This is treaty based, that is conventional jurisdiction, rather than customary law binding on all states

14. We are of the view that universal jurisdiction should be understood as the jurisdiction of States to prosecute their nationals wherever they are located, and that nationality, in the context of universal jurisdiction, is the justification for a State to protect and to prosecute individuals.

15. Be that as it may, we are eagerly looking forward to a thorough and meaningful discussion on the relevant elements of a working concept of universal jurisdiction, to be undertaken in the working group scheduled to be established at the seventy-ninth session.

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

I thank you Mr. Chairman