



Malaysia

Permanent Mission to the United Nations

STATEMENT BY MS. FARHANI AHMAD TAJUDDIN, REPRESENTATIVE OF MALAYSIA ON AGENDA ITEM 84: THE SCOPE AND APPLICATION OF THE PRINCIPLE OF UNIVERSAL JURISDICTION AT THE SIXTH COMMITTEE OF THE 66TH SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY, NEW YORK, 12 OCTOBER 2011

Mr. Chairman,

Malaysia aligns itself with the statement delivered by Iran on behalf of the Non-Aligned Movement (NAM). Malaysia records its appreciation to the Secretary-General for the Report on the “Scope and Application of Universal Jurisdiction” (hereinafter referred to as “the Report”), pursuant to General Assembly resolution 65/33. Malaysia’s comments on the scope and application of the principle of universal jurisdiction were submitted in April 2010 pursuant to General Assembly Resolution 64/117 of 16 December 2009.

2. With reference to the Reports of the Secretary-General of 2010 and 2011, Malaysia generally supports a more structured approach to the deliberations on this topic. In this regard, Malaysia welcomes the suggestion that the Working Group created under GA resolution 65/33 focus on, among others, the concept of universal jurisdiction; the conditions that should govern its exercise; as well as, its status within international law and the legislative and judicial practice of States. Malaysia’s comments will therefore be structured accordingly.

Concept of universal jurisdiction

3. Based on the responses of States in the abovementioned Reports, Malaysia notes that the most common definitional approach to the concept of universal jurisdiction appears to be by reference to the crimes to which it applies. Malaysia also notes that there appears to be general concurrence that the most serious crimes of international concern, namely genocide, torture, war crimes and piracy, are subject to universal jurisdiction due to their heinous nature. Beyond these well-established parameters, the justification under international law for any further extension of this group of crimes remains unclear. Further, with the exception of piracy, universal jurisdiction applies regardless whether the international crimes were committed within the territory of a State or in areas beyond the jurisdiction of any State. In the case of piracy, universal jurisdiction applies primarily because the offence is committed beyond the territory of any particular State but has serious economic and security repercussions for all States.

4. In the context of piracy, Malaysia also notes that most States that have asserted extra-territorial criminal jurisdiction against piracy have done so on the other basis of jurisdiction, namely territoriality or nationality. Indeed, certain States have elected to legislate their extra-territorial criminal jurisdiction over piracy in those terms and not on the basis of universal jurisdiction. In the case of Malaysia’s prosecution of the seven Somali pirates captured by the Malaysian Armed Forces on 20 January 2011 off the coast of Oman for attacking a Malaysian naval vessel, Malaysia asserted extra-territorial criminal jurisdiction on the basis territoriality, nationality and the protective principle according to its domestic laws although the events took place on the high seas.

5. Another aspect of this issue is whether the basis for the wider application of universal jurisdiction is already founded in existing treaties or also under customary international law. In this regard, Malaysia reiterates its’ view that except for the Geneva Conventions of 1949, the Convention

against Genocide, the Convention against Torture and the United Nations Convention on the Law of the Sea, it is misleading to assert that universal jurisdiction is established by treaty without express language thereon. A closer examination of treaties such as those on terrorism and drug trafficking reveal that the mandatory treaty obligation is to establish criminal jurisdiction on the basis of nationality and territoriality while the discretionary obligation is based on the other generally accepted basic principles, passive personality principle, protective principle or where the offence is committed by a stateless person who has habitual residence in the State.

6. Malaysia further emphasizes that the principle of universal jurisdiction should not be confused with the principle of *aut dedere aut judicare*. The principle of *aut dedere aut judicare* under the relevant international criminal treaties operates as a treaty obligation for State Parties that requires a State Party where an offender is found to prosecute or extradite him. This in turn flows from the earlier obligation in the said treaty for the State Party to criminalize the treaty offences and establish jurisdiction over it on the grounds prescribed in the said treaty. In Malaysia's view, the principle of *aut dedere aut judicare* does not in itself establish universal jurisdiction for that particular treaty-based offence anymore than the inclusion of this provision in domestic extradition legislation or bilateral extradition treaties.

Conditions that should govern its exercise

Mr. Chairman,

7. The responses of States in the abovementioned Reports also indicate a concurrence that there should be a framework of reference on the conditions that govern the exercise of universal jurisdiction. In this regard, Malaysia agrees that the exercise of universal jurisdiction by any State which asserts it must be through its domestic law, be in accordance with international law and most pertinently, not be in violation of national sovereignty.

8. Malaysia is also of the view that in establishing the conditions that govern the exercise of universal jurisdiction, States should also bear in mind the guiding principles which gave recognition to it. That noble aim was to create an effective preventive and suppressive mechanism for the most serious crimes of international concern against humanity and to provide an avenue of justice for its victims.

Status within international law and the legislative and judicial practice of States

Mr. Chairman,

9. Based on the above, it may be timely for the General Assembly to undertake a detailed study of current State practice in relation to reliance on universal jurisdiction and States interpretation of its scope and application. With regard to this, Malaysia notes the advice in the separate opinion of the International Court of Justice (ICJ) in the *Arrest Warrant of 11 April 2000 (Democratic Republic of Congo/Belgium) 2002 ICJ Reports* case that:

"it is essential that all States ask themselves, before attempting to steer public international law in a direction conflicting with certain principles which still govern contemporary international relations, what consequences would be should other States, and possibly a large number of other States, adopt such practice. ..."

10. As the way forward regarding this agenda, Malaysia advocates a cautious approach to any attempt to elaborate a new instrument on universal jurisdiction. Malaysia is also of the view that the further in-depth study required should be entrusted to the International Law Commission (ILC) as permitted under GA resolution 65/33 since the scope and application of universal jurisdiction is a legal and technical subject matter. Further it is noted that the ILC is already considering topics which are

closely related to universal jurisdiction namely the Obligation to Extradite or Prosecute and Immunity of State Officials from Foreign Criminal Jurisdiction.

Thank you.