



# Malaysia

Permanent Mission to the United Nations

*(Please check against delivery)*

**STATEMENT BY MR. MOHD. DUSUKI MOKHTAR,  
REPRESENTATIVE OF MALAYSIA,  
ON AGENDA ITEM 84 ENTITLED  
“THE SCOPE AND APPLICATION OF UNIVERSAL JURISDICTION”  
AT THE SIXTH COMMITTEE OF THE SIXTY-SEVENTH SESSION OF  
THE UNITED NATIONS GENERAL ASSEMBLY  
NEW YORK, 18 OCTOBER 2012**

Mr. Chairman,

1. Malaysia aligns itself with the statement delivered by Iran on behalf of the Non-aligned Movement. Malaysia records its appreciation to the Secretary-General for preparing the Report on the “Scope and Application of Universal Jurisdiction” (hereinafter referred to as “the Report”), which is a follow-up to the General Assembly resolution 66/93, by which the Secretary-General is requested to prepare a report on the basis of information and observations received from Member States on the scope and application of the principle of universal jurisdiction. In this regard, Malaysia has submitted its report in April 2010 – pursuant to earlier General Assembly Resolution 64/117 on 16 December 2009.

2. Malaysia recognizes that the question of the exercise of universal jurisdiction is a sensitive one as it inevitably touches on the issue of sovereignty and required an utmost balancing act. On the one hand, regulating may be seen as curbing the exercise of sovereignty by States as the exercise of universal jurisdiction mainly arise from domestic legislation which is squarely within a State’s sovereignty. Malaysia, though aware of some State’s call for regulation of the exercise of universal jurisdiction finds itself unable to support such a notion.

3. On the other hand, the exercise of universal jurisdiction may involve one State in exercising its jurisdiction extraterritorially i.e. when capturing criminals in another State or for criminal acts done in other States. The exercise of universal jurisdiction may thus encroach on another State’s territorial sovereignty which may subject the State exercising the jurisdiction to reciprocal acts of the offended State and international community.

4. Although Malaysia is not in favour of an international regulation on the exercise of universal jurisdiction, Malaysia is of the view that States' should exercise care and caution when exercising or legislating universal jurisdiction.

Thus, Malaysia is mindful of the potential dangers of the abuse or vexation exercise of universal jurisdiction,. Without proper understanding and legal and judicial safeguard, the principle of universal jurisdiction may be a form of encroaching the sovereignty of other States and, could be seen as a neo-colonial intervention. Further, at all times, international due process norms to protect the persons accused must not be disregarded.

Mr. Chairman,

6. Malaysia is of the view that it is misleading to assert that universal jurisdiction is established by treaty in all instances, in particular for offences such as terrorism and drug trafficking. A closer examination of those treaties reveals that as a treaty obligation, State parties to those treaties are under a mandatory duty to establish criminal jurisdiction on the basis of nationality and territoriality. Even where State Parties are given a discretion to establish extra-territorial criminal jurisdiction on the other grounds, it is noted that those other grounds are still based on those basic principles for examples the victim is a national of that State (passive personality principle), the offence is against a state/government facilities abroad (protective principle) or the offences is committed by a stateless person who has habitual residence in the State.

7. The principle of universal jurisdiction should further not be confused with the principle of *aut dedere aut judicare*, which under the relevant international criminal treaties (and hence operates as a treaty obligation for State Parties) 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 specified grounds. In Malaysia's view, the principle of *aut dedere aut judicare* does not on itself establish universal jurisdiction for that particular treaty-based offence.

8. Malaysia further wishes to reaffirm its understanding that treaty obligations does not automatically establish universal jurisdiction in all instances. For Malaysia to give effect to a treaty obligation including those which establish universal jurisdiction or customary international law, it must first enact its domestic legislation. The domestic legislation will then empower Malaysia on claim extra-territorial criminal jurisdiction over offences stipulated under the treaty which Malaysia is a party to or offences under customary international law.

9. Furthermore, Malaysia observes that one of the areas that are closely related to the exercise of universal jurisdictions the application of sovereignty immunity. In this regard, Malaysia notes that in certain cases immunity prevails as long as the Minister is in office and continues to shield him or her after that time only for "official" acts. However, at the same time, it is now increasingly claimed in other cases and literature that serious international crimes cannot be regarded as official acts because they are

neither normal State functions nor functions that a State alone can perform. Hence, it is proposed that the study of universal jurisdiction to also consider such issue of immunity.

Mr. Chairman,

10. It must be highlighted that universal jurisdiction is not the only avenue for fighting immunity. The classic grounds of criminal jurisdiction, i.e. territorial and personal jurisdiction, should remain the main consideration. For instance, States must investigate and prosecute war crimes allegedly committed on their territory or by their own nationals. Only in the event of their inaction, the universal jurisdiction or recourse to international criminal tribunals becomes the relevant options to make sure that war crimes do not go unpunished and to avoid an impunity gap.

11. Malaysia also believed that the proper national legal framework must be first in place and to provide for the necessary resources for its full application. We also note that enacted necessary national legislation must be thoroughly reviewed with all obligations under international humanitarian law.

Mr. Chairman,

12. Malaysia reiterates its position to approach the issue of universal jurisdiction cautiously consistent with the Report by the Secretary-General thus far which proved that Member States understanding and recognition of the principle of universal jurisdiction, in particular its scope and application, remain divided and a matter of much debat, both legally and politically. In addition, its implementation varies in those States which claimed the jurisdiction. This is evident too from the decided cases of the international tribunals as well as that of various national courts and from academic writings.

13. Lastly, Malaysia proposes that clear criteria which define the concept of universal jurisdiction must be first agreed by the member States before this matter could be progressed further. Nevertheless, Malaysia remains committed to engage further with all Member States in the decision on this matter and looks forward to receiving valuable views, proposals and directions from this Committee.

I thank you.