STATEMENT BY MR. DEREK OBRIEN, MEMBER OF PARLIAMENT AND MEMBER OF THE INDIAN DELEGATION, ON AGENDA ITEM 84 "THE SCOPE AND APPLICATION OF UNIVERSAL JURISDICTION" AT THE SIXTH COMMITTEE OF THE 67TH SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY ON OCTOBER 17, 2012

Mr. Chairman,

I thank the Secretary-General for his report A/67/116 on this agenda item, which provides information about the law and practice of certain states concerning universal jurisdiction.

My delegation aligns with the statement made by the representative of the Islamic Republic of Iran on behalf of the NAM.

We hold the firm view that those who commit crimes must be brought to justice and punished. A criminal should not go scot free because of procedural technicalities including the lack of jurisdiction.

Mr. Chairman,

Assuming and exercising jurisdiction is however, a distinct subject in itself. The term "jurisdiction", in legal parlance, refers to two aspects: first, the rule-making and second, 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.

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

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

Mr. Chairman,

A State invoking the 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. 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.

Mr. Chairman,

Piracy on the high seas is the only one such 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 UN Convention on the Law of the Sea, 1982.

In respect of certain other crimes like genocide, war crimes, crimes against humanity and torture etc., international treaties have provided universal jurisdiction. They include among others the Four Geneva Conventions of 1949 and; the Apartheid Convention.

Mr. Chairman,

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.

Several issues remained 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.

Several treaties oblige the states parties either to try a criminal or handover for trial to a party willing to do so. This is the obligation of *aut dedere, aut judicare* ("either extradite or prosecute"). This obligatory principle should not be confused with the universal jurisdiction.

Mr. Chairman,

We thank the delegation of Chile for submitting a non-paper on this agenda item at the last session. The non-paper has raised the issues related to the universal jurisdiction in a comprehensive manner. We are of the view that consideration of the non-paper in the working group of the Sixth Committee would be of use in giving a direction to our discussion.

I thank you Mr. Chairman.

BACK TO TABLE OF CONTENTS