



OBSERVATIONS OF THE AFRICAN UNION ON THE SCOPE AND APPLICATION OF THE PRINCIPLE OF UNIVERSAL JURISDICTION


I. INTRODUCTION

1. The African Union (“AU”) has long recognized the principle of universal jurisdiction as an important legal tool available to States in the ongoing fight against impunity for atrocity crimes such as war crimes, crimes against humanity and genocide, and which is in alignment with Article 4(h) of the Constitutive Act of the African Union, - reserves the right of the African Union to intervene in a Member States in respect of grave circumstances.
2. The AU’s commitment to the principle is further illustrated in its decisions over the years, including the numerous Decisions¹ by the AU Assembly of Heads of State and Government on the application of universal jurisdiction, the adoption of the African Model National Law on Universal Jurisdiction over International Crimes (“AU Model Law”),² 3. A practical application of Universal Jurisdiction
the Hissene Habre Case

4. The trial which the African Union mandated the Republic of Senegal “to prosecute and ensure that Hissène Habré is tried, on behalf of Africa, by a competent Senegalese court with guarantees for fair trial”⁵. The Application of Universal Jurisdiction, to crimes to which the AU, “observe[s] that, according to the terms of Articles 3 (h), 4 (h) and 4 (o) of the

¹ AU Assembly Decisions: Assembly/Dec.199(XI); Assembly/Dec.213(XII); Assembly/Dec.233(XIII); Assembly/Dec.292(XV); and Assembly/Dec.335(XVI)

² “



Constitutive Act of the African Union [...] fall within the competence of the African Union”⁶. In view of the application of Universal Jurisdiction, the decision does not in any way take away from the State where the crime was committed to prosecute the crime.


4. However, whilst affirming universal jurisdiction, the AU has also taken cognizance of the political use and abuse of the principle by some States against African leaders in particular. Essentially, African States have consistently echoed concerns with the selective and political manner in which universal jurisdiction is exercised by non-African foreign States against African State Officials, and which has the potential to undermine the peace efforts and stability on the Continent⁷ as well as other existing international law principles such as the principle of sovereign equality of State.
5. The AU notes that the issue of universal jurisdiction is complex and multidimensional and as such, it is premised on functionality and therefore requires a holistic approach in attempting to define its scope and application or in developing a sound legal framework on the issue to guide States in its exercise.

II. ISSUES OF CONCERN TO THE AFRICAN UNION

6. While individual AU Member States may express diverse views on the existence and applicability of universal jurisdiction in their respective national laws, for the AU as an organisation, the considerations in defining the scope and application of universal jurisdiction are as elaborated in its Model Law, noting in particular the following core aspects:
 - i. Priority of the territorial State and complementarity; and
 - ii. Immunity of sitting heads of states and state officials.

III. PRIORITY OF THE TERRITORIAL STATE AND COMPLEMENTARITY





11. Although discussions on universal jurisdiction within the Sixth Committee have yielded little results over the past several years, the recent Decision of the of the African Union Heads of States emphasised the African Position for discussions on universal jurisdiction, within the UN, to be retained in the Sixth Committee rather than to refer it to the International Law Commission.⁸ While the topic is to some extent undoubtedly technical, it is more so political and any such theoretical exercise must be premised on the outcomes of a political discourse between States that is properly concluded to provide a basis for subsequent legal and systematic discussions.

VI. CONCLUSION

12. Certainly, the premise for determining the scope and application of universal jurisdiction should remain the protection of fundamental rights by ensuring justice and accountability for the most heinous crimes through the adoption of collective State measures, however, the determination of the scope and application of the principle should be done in equal consideration of all other legal obligations which form the basis for international relations, such as the customary international law obligation to respect the immunity of sitting Heads of State and Government and other senior State officials.