

Translated from Russian

Information from the Republic of Belarus on the scope and application of the principle of universal jurisdiction

Unlike territorial jurisdiction, which is implemented within the boundaries of a particular territory, universal jurisdiction presupposes, first and foremost, the extension of a State's jurisdiction beyond its territorial borders.

The concept of universal jurisdiction is mentioned neither in the law of the Republic of Belarus nor in the international treaties to which it is a party. The substance of the concept is expounded in legal doctrine, according to which the principle of universal jurisdiction means the possibility of criminal prosecution for the commission of a serious crime, regardless of where it was committed, the nationality of the accused or the victim, or any other link between the crime and the State where prosecution takes place.

In the most general sense, universal jurisdiction is defined as a type of jurisdiction over persons whose actions took place outside the territory of the State that is exercising universal jurisdiction.

In a narrower sense, universal jurisdiction means prescriptive jurisdiction over crimes committed abroad by persons who were neither residents nor citizens of the prescribing State when the crimes were committed and whose crimes do not constitute a threat to the fundamental interests of the State exercising this type of jurisdiction.

Unlike other types of jurisdiction, which involve some sort of link between the State and the crime (the territory where the crime was committed, the nationality of the accused or the victim, etc.), universal jurisdiction is based on the fact that the crime itself is universally condemned.

Thus, the State exercising universal jurisdiction may not have a direct connection with the international crime and its consequences, but, because of the serious and dangerous nature of the crime, it has a legal interest in punishing the perpetrators. Consequently, implementation of the principle of universality is based on the nature of international crimes which threaten the interests of the international community as a whole.

Universal jurisdiction may be exercised not only by States but also by international criminal tribunals and other criminal justice bodies.

International treaties and the domestic criminal laws of States attest to the international community's desire to ensure that persons who have committed crimes against humanity or other serious crimes do not go unpunished.

In addition to piracy, the category of acts to which the principle of universal jurisdiction can be applied includes crimes against peace, war crimes and crimes against humanity.

The possibility of criminal prosecution of persons who have committed such crimes is provided for in the Criminal Code of the Republic of Belarus, the Code of

Criminal Procedure of the Republic of Belarus and the international treaties to which Belarus is a party.

Thus, article 6, paragraph 3, of the Criminal Code sets out the universal principle of the spatial applicability of criminal law, in accordance with which, for the following offences, the Criminal Code of Belarus is applied independently of the criminal law of the place in which the act was committed: genocide (art. 127 of the Criminal Code); crimes against the security of humankind (art. 128); production, stockpiling or distribution of prohibited instruments of war (art. 129); ecocide (art. 131); use of a weapon of mass destruction (art. 134); violation of the laws and customs of war (art. 135); criminal violations of the norms of international humanitarian law in time of armed conflict (art. 136); inaction or issuance of a criminal order in time of armed conflict (art. 137); human trafficking (art. 181); and other offences committed outside Belarus which are prosecutable on the basis of an international treaty by which Belarus is bound.

Persons who have committed the aforementioned crimes are liable under the Belarusian Criminal Code if they have not been convicted in a foreign State of the crime committed and are prosecuted in the Republic of Belarus (art. 6, para. 4, of the Criminal Code).

Furthermore, in application of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity of 26 November 1968, article 85 of the Criminal Code prohibits the release from criminal responsibility, in connection with the expiration of statutory limitations, of persons who have committed these acts.

A foreign national or stateless person who has committed crimes outside Belarus and who is on Belarusian territory may be extradited to a foreign State for criminal prosecution or to serve a prison term under an international treaty to which Belarus is a party (art. 7, para. 2, of the Criminal Code). The specific details of extradition of a perpetrator are determined by his or her nationality and the existence of relevant international treaties, such as the Commonwealth of Independent States Conventions on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of 22 January 1993 and 7 October 2002, as well as a number of bilateral international treaties on legal assistance to which Belarus is a party.

In the absence of an international treaty, under article 7, paragraph 3, of the Criminal Code, a foreign national or stateless person may be extradited to a foreign State on the basis of the principle of reciprocity, in accordance with the procedure set out in section XV of the Code of Criminal Procedure.

Belarus exercises extraterritorial jurisdiction, but only with regard to crimes covered by the relevant international treaties to which Belarus is a party. In order for the principle of universal jurisdiction to be established in its legislation, the relevant provisions of the international treaties to which Belarus is a party must be incorporated into Belarus's legal system, and legislation regulating the procedural conditions for implementation of the principle must be adopted.

Belarus attaches great importance to the principles of equal rights and sovereign equality of nations large and small and non-interference in the internal affairs of other States enshrined in the Charter of the United Nations. A reasonable balance must be struck between the desire to advance the development of the

concept of universal jurisdiction and the readiness of States to do so. At the present time, an approach to developing the concept that takes into account the treaty-based nature of universal jurisdiction and is founded on respect for the rule of law would be more acceptable.

Those guilty of international crimes should be prosecuted in accordance with the international obligations of States and the requirements of their national laws or the applicable statutes of international judicial bodies, operating on the basis of complementarity.
