

---

*Translated from Spanish*

**Permanent Mission of the Plurinational State of Bolivia to the United Nations**

**MBNU/ONU/055/2010**

New York, 10 May 2010

The Permanent Mission of the Plurinational State of Bolivia to the United Nations presents its compliments to the Secretary-General of the United Nations and refers to note LA/COD/59 dated 8 January 2010, in which he requests information from States regarding the scope and application of the principle of universal jurisdiction.

In this connection the relevant report is attached. It contains the requested information and observations, as well as information on the relevant applicable international treaties and domestic legal rules and judicial practice.

The Permanent Mission of the Plurinational State of Bolivia to the United Nations takes this opportunity to convey to the Secretary-General the assurances of its highest consideration.

Secretary-General

United Nations

New York

---

## **Information and Observations of the Plurinational State of Bolivia**

### **on General Assembly resolution 64/117**

#### **"The scope and application of the principle of universal jurisdiction"**

##### **I. Application of the principle of universal jurisdiction in Bolivia**

The principle of universal jurisdiction is not enshrined in Bolivian law; there is a tendency to observe the principle of territorial jurisdiction, while leaving open the possibility of applying the former principle in accordance with international treaties or agreements ratified by the State. In this connection, article 1 of the current Penal Code states as follows:

"This Code shall apply to:

1. Crimes committed in the territory of Bolivia or in localities under its jurisdiction;
2. Crimes committed abroad which have produced or were intended to produce results in Bolivian territory or in localities under its jurisdiction;
3. Crimes committed abroad by a Bolivian, provided that he or she is in the national territory and has not been punished in the locality where the crime was committed;
4. Crimes committed abroad against State security, public confidence and the national economy. This provision extends to aliens if they have been extradited or are found in Bolivian territory;

- 
5. Crimes committed on board Bolivian vessels, aircraft or other means of transportation in a foreign country, if they have not been prosecuted in that country;
  6. Crimes committed abroad by Bolivian civil servants in the performance of their duties;
  7. Crimes that Bolivia is required by treaty or convention to punish, even if they were not committed in its territory."

## **II. Applicable international treaties and instruments**

As indicated above, application of the principle of universal jurisdiction in Bolivia is subject to the international treaties or agreements ratified by the State. International human rights instruments have constitutional status as established by the Political State Constitution in its article 410.II: "the international human rights treaties and agreements and norms of regional law ratified by the country have constitutional rank".

Similarly, article 256 of the current constitutional text states as follows:

- "I. International human rights treaties and instruments which have been signed, ratified or acceded to by the State and contain rights more favourable than those contained in the Constitution shall be applied in preference to the latter.
- II. The rights recognized in the Constitution shall be interpreted in accordance with international human rights treaties when the latter provide more favourable provisions."

---

In this connection, it may be noted that the principle of universal jurisdiction is implicit in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was ratified by the Bolivian State through Act No. 1930 of 10 February of 1999, the International Convention on the Suppression and Punishment of the Crime of Apartheid, ratified through Act No. 2116 of 11 September 2000, the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, ratified through Act No. 2116 of 11 September 2000 and the Inter-American Convention on Forced Disappearance of Persons, ratified through Act No. 1695 of 5 May 1999.

It is important to note that the international instruments referred to do not explicitly refer to the principle of universal jurisdiction, but the principle may be inferred in cases of systematic and widespread practice of torture, forced disappearance of persons, genocide or apartheid.

Furthermore, recognition of the principle of universal jurisdiction is particularly important in the practice of international humanitarian law, as the Geneva Conventions refer to the obligation of States to search for accused individuals, whatever their nationality, and bring them before their own courts or hand them over to another party for trial.<sup>1</sup>

The Bolivian State has ratified the main international humanitarian law conventions, as follows:

1. Convention for the Amelioration of the Condition of the Wounded in Armies in the Field and the Geneva Convention relative to the Treatment of Prisoners of War (1929) - ratified through an Act of 14 August 1935.

---

<sup>1</sup> See International Committee of the Red Cross, *Jurisdicción universal sobre crímenes de guerra*, in *Represión Nacional de las Violaciones del Derecho Internacional Humanitario: Carpeta informativa. Asesoramiento* (1999).

- 
2. Convention for the Amelioration of the Condition of the Wounded in Armies in the Field (1949) – ratified initially by Supreme Decree No. 13531, of 29 April 1976, and subsequently by Act No. 1151 of 14 May 1990.
  3. Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (1949) – ratified initially by Supreme Decree No. 13531, of 29 April 1976, and subsequently by Act No. 1151 of 14 May 1990.
  4. Convention relative to the Treatment of Prisoners of War (1949) – ratified initially by Supreme Decree No. 13531, of 29 April 1976, and subsequently by Act No. 1151 of 14 May 1990.
  5. Convention relative to the Protection of Civilian Persons in Time of War (1949) – ratified initially by Supreme Decree No. 13531, of 29 April 1976, and subsequently by Act No. 1151 of 14 May 1990.<sup>2</sup>

Nevertheless, as international humanitarian law applies in situations of external war or internal armed conflicts, this principle has not been applied in the Bolivian courts.

Lastly, attention is drawn to the relationship of the principle of universal jurisdiction with the establishment of the Rome Statute of the International Criminal Court, which was ratified by the Plurinational State of Bolivia through Act No. 2398 of 24 May 2002. The Court “shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern”.

---

<sup>2</sup> The Geneva Conventions state as follows:

"Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a prima facie case." (articles 49.I, 50.II, 129.III, 146.III).

---

As for its implementation in domestic law, article 111 of the Political State Constitution establishes that statutory limitations do not apply to genocide, crimes against humanity, treason or war crimes.

The Bolivian State has prepared a draft law on implementation of the Rome Statute of the International Criminal Court, No. 920/2008, which was submitted by the Office of the Public Ombudsman in 2008. Its article 5 recognizes universal jurisdiction for crimes specified under international law: genocide, crimes against humanity and crimes against international humanitarian law, as follows:

“Art. 5 (Jurisdictional bases) This Act shall apply (...) to genocide, crimes against humanity and violations of international humanitarian law as described in this Act, even if they were not committed in Bolivian territory or by Bolivians and did not affect Bolivian citizens or national interests or have any other relation to the Bolivian State except in so far as they are offences that affect the international community as a whole.”

Furthermore, a proposal made by the Ministry of Justice for a comprehensive reform of the Penal Code is currently under consideration. It includes a specific chapter on crimes against international law, including genocide, crimes against humanity and war crimes.