

MINISTRY OF FOREIGN AFFAIRS OF DENMARK

The Scope and Application of the Principle of Universal Jurisdiction

In response to the invitation made by the Secretary-General following the adoption of General Assembly resolution 64/117 of 16 December 2009 entitled "The Scope and Application of the Principle of Universal Jurisdiction", the Kingdom of Denmark is pleased to provide the following information regarding universal jurisdiction in Danish law.

1. Introduction

The following provides a general summary of the Danish rules on universal jurisdiction. For the purpose of this summary, universal jurisdiction is understood to encompass jurisdiction irrespective of where the act in question was committed, and the nationality of the perpetrator and the victim. It should be noted, that under existing Danish law, universal jurisdiction may, as a general rule, only be exercised when the perpetrator is present in Denmark at the time when formal legal proceedings are initiated.

2. The Danish Criminal Code,

Under section 8, § 1, no. 5, of the Danish Criminal Code, cf. (consolidation) Act no. 1034 of 29 October 2009, Denmark has jurisdiction where an act is covered by an international provision under which Denmark is obliged to have criminal jurisdiction. This provision aims at implementing Denmark's treaty obligations regarding *inter alia* war crimes and other serious crimes under international law. In addition, the provision establishes Danish jurisdiction where Denmark may be obliged to have criminal jurisdiction under UN Security Council resolutions and decisions or directives adopted by the Council of the European Union.

Section 8, § 1, no. 6, of the Criminal Code establishes Danish jurisdiction where extradition of a person for prosecution in another country is rejected, and the act, provided it has been committed within the territory of a foreign state, is punishable according to the law of the state in which it was committed (dual criminality), and the act is punishable under Danish law and may be sanctioned with a sentence longer than imprisonment for one year.

Section 8a of the Danish Criminal Code provides that an act committed outside the territory of the Danish state is subject to Danish criminal jurisdiction where the act is covered by the Statute of the International Criminal Court, provided that the act has been committed by a person who is a Danish national or has his abode or residence in Denmark, or by a person who is present in Denmark at the time when charges are raised.

Under section 8b of the Danish Criminal Code, an act covered by section 183a of the Act (the unlawful takeover of an aircraft or a ship), when committed outside the territory of the Danish state, is subject to Danish criminal jurisdiction, provided that the act has been committed by a person who is a Danish national or has his abode or residence in Denmark, or by a person who is present in Denmark at the time when formal legal proceedings are initiated.

Under section 12 of the Danish Criminal Code, the exercise of jurisdiction with reference to the above-mentioned provisions is limited by applicable international law. This provision refers to all relevant rules of international law, including immunity of state officials and diplomatic immunity. Thereby, customary rules on immunity, as well as treaties on immunity, to which Denmark is a party, may exclude the exercise of Danish jurisdiction where the Danish Criminal Code would otherwise provide for such jurisdiction. Furthermore, in cases of concurrent jurisdiction, the legitimate interest of Denmark in exercising jurisdiction may be balanced against the interest of other states in retaining (exclusive) jurisdiction. The drafting of section 12 provides for the consideration of all relevant facts of the case as well as evidence of the state of international law at the time the specific jurisdictional issue arises.

3. Danish Administration of Justice Act

Sections 721-722 of the Danish Administration of Justice Act, cf. (consolidation) Act no. 1053 of 29 October 2009, refer to the prosecutorial discretion of the Danish Public Prosecutor to assess whether an indictment should or should not be initiated. Such an assessment includes consideration of whether a successful prosecution will entail disproportionate difficulties, costs, or time constraints. Moreover, indictment may not be initiated if mitigating circumstances would make the indictment unreasonable. These principles also apply to situations where an indictment has been initiated but the evidence and circumstances prove to cause disproportionate difficulties as described above. In these situations the Public Prosecutor may choose to discontinue the case at his discretion.

4. Judicial practice

The following Supreme Court case from 1995 may be mentioned as an example of a case where Denmark has exercised jurisdiction under section 8, § 1, no. 5, of the Danish Criminal Code (cf. case No. U1995.838H):

The defendant, who was present in Denmark when the charges against him were raised, was accused of having committed serious violence against fellow inmates in a Croatian camp for war prisoners, in which the defendant was exercising limited authority. The acts were held to be punishable under the third as well as the fourth of the Geneva Conventions. Thus, the violations were subject to Danish jurisdiction under section 8 (5) of the Criminal Code (as Denmark was obliged under the relevant conventions to have criminal jurisdiction). The defendant was sentenced to 8 years imprisonment and expelled from Denmark permanently.

In another case from 1998, the Prosecutor General considered the scope of the above-mentioned section 8 (5) of the Danish Criminal Code. A group of Chilean citizens, who were resident in Denmark, had reported former president of Chile, Augusto Pinochet, to the Danish police accusing him of having ordered, designed, or upheld a regime, in which the applicants had been exposed to arrest, torture and degrading treatment in Chile during the years 1973-88. At the time of the police notification, Augusto Pinochet was a British resident.

After thorough consideration of, *inter alia*, the preparatory works of the Danish Criminal Code's section 8 (5) the Prosecutor General concluded that Denmark lacked criminal jurisdiction in the specific case, due to the fact that the alleged perpetrator was not present in Denmark at the time when formal legal proceedings would otherwise be initiated against him. This understanding of section 8 (5) was later upheld by the Danish Ministry of Justice.

5. Applicable treaties

Denmark is a party to numerous treaties which embody the principle of universal jurisdiction. A list of those treaties is very extensive and will be provided at a later stage.