

Translated from French

Permanent Mission of France to the United Nations

Ref: AT/sec No. 214

The Permanent Mission of France to the United Nations presents its compliments to the Secretariat of the United Nations — Office of Legal Affairs, Codification Division — and, with reference to General Assembly resolution 64/117, dated 16 December 2009, transmits its comments on the scope and application of the principle of universal jurisdiction.

The Permanent Mission of France to the United Nations takes this opportunity to convey to the Secretariat — Office of Legal Affairs, Codification Division — the renewed assurances of its highest consideration.

New York, 27 April 2010

Secretariat of the United Nations
Office of Legal Affairs
Codification Division
380 Madison Avenue
Room M-13065
New York, NY

The scope and application of the principle of universal jurisdiction

Permanent Mission of France to the United Nations

In accordance with General Assembly resolution 64/117, dated 16 December 2009, Member States are invited to submit, before 30 April 2010, information and observations on the scope and application of the principle of universal jurisdiction, including information on the relevant applicable international treaties, their domestic legal rules and judicial practice.

In response to the invitation contained in the aforementioned resolution, the Permanent Mission of France to the United Nations submits the following information to the Secretary-General.

Universal jurisdiction is an essential instrument in the fight against impunity and France would like to reaffirm its interest in opening discussions to enable Member States to better define the scope of this concept in international law. Although it has never been defined in a convention, universal jurisdiction is understood to be the ability of a national judge to bring proceedings and rule on certain crimes committed on foreign soil, by foreign nationals and against foreign nationals.

1. The rule in French domestic law: presence on French territory

French law has accepted a specific definition of universal jurisdiction. This is laid out in article 689-1 of the Code of Criminal Procedure, as follows:

“In accordance the international agreements referred to in the following articles, any person who has committed one of the crimes listed in these articles outside the territory of the French Republic may be prosecuted and convicted by the French courts if s/he is in France. The provisions of the present article apply also to any attempt to commit these crimes, whenever such is punishable by law.”

Thus, exercise of universal jurisdiction in France requires the presence of the suspect within national territory at the time proceedings are initiated in France, and precludes the initiation of proceedings in the absence of that person.

In practice, therefore, the jurisdiction of the courts is “quasi-universal”. It is also limited by the need to incorporate international agreements giving jurisdiction to the national judges into French law.

2. International agreements incorporated into French law

According to the terms of articles 689 and 689-1 of the Code of Criminal Procedure (CCP), French law requires that an international agreement be incorporated into French domestic law. The provisions of the agreement must give national courts the jurisdiction to prosecute and sentence the person suspected of committing the offences addressed in the agreement.

Articles 689-2 to 689-10 of the CCP list the international agreements that can give rise to proceedings before French judges:

- Article 689-2 of the CCP: the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, adopted in New York on 10 December 1984;
- Article 689-3 of the CCP: the *European Convention on the Suppression of Terrorism*, signed in Strasbourg on 27 January 1977, and the *Agreement concerning the application of the European Convention on the Suppression of Terrorism among the member States of the European Communities*, done at Dublin on 4 December 1979;
- Article 689-4 of the CCP: the *Convention on the Physical Protection of Nuclear Material*, opened for signature in Vienna and New York on 3 March 1980;
- Article 689-5 of the CCP: the *Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation* and the *Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf*, done at Rome on 10 March 1988;
- Article 689-6 of the CCP: the *Convention for the Suppression of Unlawful Seizure of Aircraft*, signed in The Hague on 16 December 1970, and the *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation*, signed in Montreal on 23 September 1971;
- Article 689-7 of the CCP: the *Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation*, done at Montreal on 24 February 1988;
- Article 689-8 of the CCP: the *Protocol to the Convention on the protection of the European Communities' financial interests*, done at Dublin on 27 September 1996, and the *Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union*, done at Brussels on 26 May 1997;
- Article 689-9 of the CCP: the *International Convention for the Suppression of Terrorist Bombings*, opened for signature in New York on 12 January 1998;
- Article 689-10 of the CCP: the *International Convention for the Suppression of the Financing of Terrorism*, opened for signature in New York on 10 January 2000.

France has signed and ratified the *International Convention for the Protection of All Persons from Enforced Disappearance*. This international convention requires States parties to take “such measures as may be necessary to establish [their] competence to exercise jurisdiction over the offence of enforced disappearance when the alleged offender is present in any territory under its jurisdiction”. Provisions amending French legislation will shortly be submitted to Parliament.

Lastly, *Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport* led to the introduction in France, through article 689-12 of the CCP, of a “quasi-universal” jurisdiction provision for certain road offences.

3. The specific case of the Security Council resolutions establishing ad hoc international criminal courts

In addition to the international agreements incorporated into French law, there are also the two resolutions adopted by the Security Council, acting under Chapter VII of the Charter of the United Nations, which created the International Criminal Tribunals for the former Yugoslavia and Rwanda. French law has recognized the ad hoc universal jurisdiction of the French courts to judge offences specific to those two tribunals.

This jurisdiction was introduced by two laws adapting French legislation to the provisions of the Statutes of the two International Criminal Tribunals:

- Act No. 95-1 of 2 January 1995: United Nations Security Council resolution 827 of 25 May 1993 establishing an international tribunal for the purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia after 1 January 1991;
- Act No. 96-432 of 22 May 1996: United Nations Security Council resolution 955 of 8 November 1994 establishing an international tribunal for the purpose of prosecuting persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994.

The universal jurisdiction of the French courts is therefore limited *ratione materiae*, *temporis* and *loci* by the provisions of these two resolutions.

These two laws demonstrate France's willingness to cooperate as effectively as possible in the suppression of crimes that fall within the jurisdiction of the two International Criminal Tribunals. With regard to the universal jurisdiction of French judges, these two laws give them, on the one hand, the ability to prosecute perpetrators of or accomplices to the offences defined within the Statutes if they are found in France. On the other hand, they also allow the Tribunals to transfer cases to French courts.

4. The practice of French courts

At the present time, two people have been convicted in France, in absentia, on the basis of the "quasi-universal" jurisdiction of the French courts according to article 689-2 of the CCP.

- In a ruling dated 1 July 2005, the Gard court of assizes sentenced Mr. Ely Ould Dah, a Mauritanian citizen, to 10 years imprisonment and €15,000 in damages and interest for each of his victims, for acts of torture committed in Mauritania between 1990 and 1991. That conviction, the first of its kind in France, has led to a dispute before the European Court of Human Rights (ECHR). The complainant has indicated the existence of a Mauritanian amnesty law making his conviction in France unforeseeable. The ECHR nonetheless concluded, in a decision dated 17 March 2009, that France had not misinterpreted the legality principle guaranteed in article 7 of the European Convention on Human Rights.

- In a ruling dated 15 December 2008, the Bas-Rhin court of assizes convicted Khaled Ben Said, a Tunisian citizen, to eight years in prison for having ordered the torture of a Tunisian woman at the police station in Jendouba, while he was Police Commissioner, in October 1996. The public prosecutor's office, which had requested acquittal, has appealed the decision and the appeal will be heard by the Meurthe-et-Moselle court of assizes.

To date, there are three cases ongoing in France for acts of torture committed in the Republic of the Congo, Algeria and Cambodia. With regard to Cambodia, the Investigation Chamber of the Paris Court of Appeal handed down a ruling on 26 January 2010 approving the pursuit of investigations for a case concerning acts of kidnapping followed by acts of torture and disappearance, committed in Cambodia between 1975 and 1979.

Fifteen cases are also ongoing within the framework of the laws adapting French legislation to the provisions of the Statutes of the two International Criminal Tribunals. These concern acts committed in Rwanda (fourteen are before the Paris High Court and one is before the Paris Army Tribunal, since members of the French military are implicated).
