

PERMANENT MISSION OF ISRAEL
TO THE UNITED NATIONS



המשלוח והקבועה
של ישראל לאומות המאוחדות

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The Permanent Mission of Israel to the United Nations presents its compliments to the Executive Office of the Secretary-General of the United Nations and has the honour to acknowledge the receipt of a note verbale (reference: LA/COD/59, 2010) dated 8 January 2010. Pursuant to the latter's note, the Permanent Mission of Israel has the honour to submit information and observations of the State of Israel on the scope and application of the principle of universal jurisdiction.

The Permanent Mission of Israel to the United Nations avails itself of this opportunity to renew to the Executive Office of the Secretary-General of the United Nations the assurances of its highest consideration.

3 May 2010

Executive Office of the Secretary-General
Attention: The Codification Division, Office of Legal Affairs
The United Nations
New York

Via Fax: (212) 963-1963





State of Israel

Information and Observations on the Scope and Application of the Principle of Universal Jurisdiction

Israel appreciates the opportunity to submit the following preliminary information and observations on the scope and application of the principle of universal jurisdiction.

Various Israeli domestic laws provide for the application of jurisdiction over certain grave offences which have been recognized as crimes of universal concern, even when Israel's only jurisdictional link to the crime is the presence of the alleged offender in Israel. For example: the *Crime of Genocide (Prevention and Punishment) Law (1950)* enables Israeli authorities to prosecute and try any person who has committed the crime of genocide; the *Nazi and Nazi Collaborators (Punishment) Law (1950)* permits the assertion of criminal jurisdiction with regard to war crimes committed during the Second World War and crimes against humanity committed during the period of the Nazi regime; in addition, Israel's *Penal Law (1977)*, provides for the application of Israeli penal laws to those extra-territorial offences which Israel has undertaken to punish in accordance with multilateral conventions open to accession, even if the person committing the offence is not an Israeli citizen or resident and irrespective of where the offence was committed.

Israel notes that the principle of 'extradite or prosecute' (also referred to as the principle of *aut dedere aut judicare*) is conceptually distinct from universal jurisdiction. Israel further notes that even in cases where States have the authority to assert universal jurisdiction, they have broad prosecutorial discretion in determining whether to do so in a specific case. This is increasingly reflected in State practice world-wide, where appropriate safeguards have been applied so as to ensure the careful and responsible exercise of the principle of universal jurisdiction and to prevent its abuse for political ends.

Under Israeli law, the prosecution of extra-territorial offences (including on the basis of universal jurisdiction) may only be conducted by or with the written consent of the Attorney General, upon consideration that doing so is in the public interest (see Section 9(b) of the *Israeli Penal Law (1977)*). As clearly stated in the explanatory notes attached to the legislative proposal which introduced this provision in 1994, the requirement for the Attorney General's prior consent, was specifically intended to provide a mechanism for careful filtering in matters where foreign



relations implications and special evidentiary difficulties arise, and which necessarily require special discretion and oversight in the general interest of the public and the State¹.

Israel's legislation and judicial practice, similar to that of other states in the context of universal jurisdiction cases, have also accorded respect to additional principles of international law, such as due process guarantees including the avoidance of proceedings in absentia, as well as recognizing that universal jurisdiction is a mechanism of last resort, which should, as a matter of policy, respect the priority of States with primary jurisdictional links.

Israel is of the view that the legitimacy and credibility of the principle of universal jurisdiction is best ensured by its responsible and judicious application.