

## Universal Jurisdiction in the Republic of Korea

### **1. The Concept of Universal Jurisdiction**

Upon providing the United Nations with information on the domestic application of the Principle of Universal Jurisdiction, the Republic of Korea first and foremost makes clear the premise that the concept of universal jurisdiction discussed herein is confined to criminal, not civil, jurisdiction; and that universal jurisdiction shall mean the power wielded by a state to punish certain crimes, which by themselves fall outside its territory, nationality or special state interest, on behalf of the entire international community.

### **2. The Foundation of Universal Jurisdiction in Korean Domestic Law**

The jurisdiction of domestic courts is defined mainly by internal law. Therefore, it is necessary to lay out how judicial jurisdiction is determined in Korean law.

The Korean Constitution states, in Article 6, paragraph 1, that duly concluded and promulgated treaties and generally recognized rules of international law shall have the same effect as the domestic laws of the Republic of Korea. Meanwhile, Korea's Criminal Code establishes its jurisdiction on the basis of the principles of territoriality, nationality and specially protected interests, rather than that of universality. However, the fact that the Criminal Code does not overtly stipulate the principle of universality should not prevent the Korean courts from exercising universal jurisdiction, since, in the eyes of the Constitution, treaties and customary international law incorporating universal jurisdiction have the same standing within Korea as Korean domestic law.

It is hard to discern any international consensus, from the viewpoint of customary international law, on what kind of crimes universal jurisdiction should apply to. However, there is no denying that piracy has long been considered a serious crime for which any state can claim universal jurisdiction.

The principle of *aut dedere aut judicare* is neither equal to nor synonymous with universal jurisdiction. However, by being a signatory to treaties incorporating the principle of *aut dedere aut judicare*, Korea may exercise jurisdiction as appropriate

even if it is entirely unconnected to the crime itself. Attached is a list of treaties incorporating the *aut dedere aut judicare* principle, which Korea has acceded to and ratified. As we shall see below, one among them, previously, has enabled the Korean Supreme Court to invoke universal jurisdiction as defined in the above-mentioned concept.

### **3. Universal Jurisdiction in Judicial Practice**

The Korean judiciary has rarely exercised universal jurisdiction but there is one prominent case which is said to be relevant with universal jurisdiction. In 1983, a group of Chinese hijacked a Chinese domestic aircraft in flight; after inflicting gunshot wounds on several flight attendants, they forced the plane to land at a regional Korean airport. The Korean Supreme Court ruled that, while jurisdiction primarily belongs to the state of the aircraft's registration, namely China, considering Articles 1, 3, 4 and 7 of the Convention for the Suppression of the Unlawful Seizure of Aircraft, concluded in 1970, Korea could also claim concurrent jurisdiction since the hijacked aircraft landed on its territory. Therefore a domestic Special Criminal Law, the Aircraft Navigation Safety Act, was deemed applicable to foreign hijackers who had committed their crime abroad.

This incident occurred outside Korean territory, and involved no Korean offenders or victims; Korea was unconcerned save for the fact that the hijacked plane happened to land on its territory. The defending lawyers argued that the Korean judiciary had no jurisdiction in this case since the crime did not invoke any of the jurisdictional principles stipulated in the Criminal Code, such as territoriality, nationality, or specially protected interest. However, the court maintained that Korea could indeed exercise jurisdiction, based on the Convention, and jailed the hijackers. Even though the court's ruling made no explicit mention of universal jurisdiction, it is obvious that this was the guiding principle which led the court to claim jurisdiction in this case.

### **4. Provisions within Korean Domestic Law Regarding the Exercise of Universal Jurisdiction**

The Korean Constitution does not require additional domestic laws to be made in order

to implement any treaties to which Korea is a party and which incorporate the *aut dedere aut judicare* principle. However, laws designed to facilitate its implementation were legislated for some of the treaties, and they make clear the legal grounds on which the Korean government can prosecute and punish crimes committed by alien nationals outside its territory. The Act on Special Cases concerning the Prevention of Illegal Trafficking in Narcotics, the Act on Punishment for Damaging Ships and Sea Structures, and the Act on Prevention of Procuring Money for the Purpose of Threatening the Public are such examples. The latter two Acts stipulate that the foreign national(s) concerned be physically present in Korean territory for universal jurisdiction to be applicable.<sup>1</sup>

Korea is a party to the Rome Statute, and has legislated domestic laws to implement it. The domestic laws state that the Korean government may prosecute foreign nationals accused of genocide, crimes against humanity and war crimes committed outside Korea, should such persons be present in Korean territory.<sup>2</sup>

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<sup>1</sup> **Act on Special Cases concerning the Prevention of Illegal Trafficking in Narcotics, etc.**

Article 12(Overseas Offenses)

The crimes in Articles 6 through 8, and 10 shall apply to foreigners who commits such crimes beyond the territory of Korea following the examples in Article 5 of the Criminal Act.

**Act on Punishment for Damaging Ships and Sea Structures**

Article 3 (Scope of Application to Foreigners)

This Act shall also apply foreigners falling under any of the following subparagraphs:

3. A foreigner who commits an offense specified in any provision of Articles 5 through 13 outside the territory of the Republic of Korea and stays within the territory of the Republic of Korea.

**Act on Prevention of Procuring Money for the Purpose of Threatening the Public, etc.**

Article 3 (Foreign exchange and application to foreigner)

This Act shall also apply foreigners falling under any of the following subparagraphs:

3. A foreigner who commits an offense specified in Article 6 Paragraph1 outside the territory of the republic of Korea and stays in the territory of the Republic of Korea.

<sup>2</sup> **Act on Punishment, etc of Crimes under Jurisdiction of the International Criminal Court**

Article 3 (Scope of Application)

5. This Act shall apply to any foreigner who commits the crime of genocide, etc. outside the territory of the Republic of Korea and stays in the territory of the Republic of Korea.

## Appendix

### Treaties incorporating the principle of *aut dedere aut judicare* which Korea has ratified

1. The 1949 Geneva Conventions (Entry into force: 1966.8.16)
  - a) Geneva Convention for the Amelioration of Condition of the Wounded and Sick Armed Forces in the Field of August 12, 1949 (The First Geneva Convention)
  - b) Geneva Convention for the Amelioration of Condition of Sick, Wounded and Shipwrecked Members of Armed Forces at Sea of August 12, 1949 (The Second Geneva Convention)
  - c) Geneva Convention Relating to the Treatment of the Prisoners of War of August 12, 1949 (The Third Geneva Convention)
  - d) Geneva Convention Relating to the Protection of Civilian Persons in Time of War of August 12, 1949 (The Fourth Geneva Convention)
2. Protocol Additional to the Geneva Convention of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol) (Entry into force: 1982.7.15)
3. Single Convention on Narcotic Drugs, 1961 (Entry into force: 1964.12.13)
4. Convention for the Suppression of Unlawful Seizure of Aircraft (Entry into force: 1973.2.17)
5. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Entry into force: 1973.9.1)
6. Convention on the Psychotropic Substances (Entry into force: 1978.4.12)
7. Protocol Amending the Single Convention on Narcotic Drugs, 1961 (Entry into force: 1975.8.8)
8. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (Entry into force: 1983.6.24)

9. International Convention against the Taking of Hostages (Entry into force: 1983.6.3)
10. Convention on the Physical Protection of Nuclear Material (Entry into force: 1987.2.8)
11. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment (Entry into force: 1995.2.8)
12. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (Entry into force: 2003.8.12)
13. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (Entry into force: 2003.9.8)
14. United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Entry into force: 1999.3.28)
15. Convention on the Safety of the United Nations and Associated Personnel (Entry into force: 1999.1.15)
16. International Convention for the Suppression of Terrorist Bombings (Entry into force: 2004.3.18)
17. International Convention for the Suppression of the Financing Terrorism (Entry into force: 2004.3.18)
18. United Nations Convention against Corruption (Entry into force: 2008.4.26)