

Translated from French

Permanent Mission of Switzerland to the United Nations

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The Permanent Mission of Switzerland to the United Nations presents its compliments to the Secretary-General and has the honour to transmit herewith the observations of Switzerland on the scope and application of the principle of universal jurisdiction in accordance with General Assembly resolution 64/117 dated 16 December 2009.

The Permanent Mission takes the opportunity to convey to the Secretary-General the renewed assurances of its highest consideration.

New York, 26 April 2010

To the Secretary-General of the United Nations
New York

Information and observations on the scope and application of the principle of universal jurisdiction

I. Definition

Switzerland understands universal jurisdiction to be the principle according to which **a court can exercise its jurisdiction even in the absence of a link between the case and the forum State**, such as territory, nationality of perpetrator or victim, or infringement upon the fundamental interests of the State. This principle is based on the idea that certain **crimes are so serious that they affect the whole international community** and that, as a result, every State has the *right* to exercise its jurisdiction to prosecute the perpetrators. **Examples** of crimes for which universal jurisdiction can be used are: genocide, crimes against humanity, war crimes and apartheid. Piracy was the first crime for which universal jurisdiction was recognized in international law.

While **universal jurisdiction** is a *legal* principle, it **can also be an obligation as a result of an international convention**.

II. Different interpretations

Switzerland notes that there are **two different interpretations** of universal jurisdiction:

- (i) The **“absolute” or “unlimited” interpretation**, which allows for the possibility of exercising universal jurisdiction in criminal proceedings by default (or in absentia), i.e. without the accused being in the territory of the forum State.
- (ii) The **“conditional” or “limited” interpretation**, which applies one or several conditions to the exercise of universal jurisdiction. The most common condition is the presence in the territory of the forum State of the person suspected of committing the crimes. In addition to that condition there are sometimes others specific to the national jurisdiction in question.

III. A closely related principle — *aut dedere aut judicare*

The rule according to which States are obliged to prosecute or extradite those who commit certain offences (*aut dedere aut judicare*) is inextricably linked to the principle of universal jurisdiction, particularly in its conditional interpretation. Therefore, depending on the case, if the State is not in a position to extradite an individual, the right to exercise universal jurisdiction can become an *obligation* as a result of the *aut dedere aut judicare* rule contained in a treaty to which the State is a party.

IV. Examples of international instruments containing either form of universal jurisdiction

The 1984 **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** provides for the possibility of States exercising universal jurisdiction and obliges States to prosecute or extradite a person suspected of having committed acts of torture who is within its territory.

A number of terrorism-related conventions, for example the 1997 **International Convention for the Suppression of Terrorist Bombings**, also provide for the exercise of universal jurisdiction on condition of non-extradition.

V. Universal jurisdiction in the Swiss legal regime

Switzerland **recognizes and applies the principle of universal jurisdiction** in its legal regime and has been doing so for a number of years (article 7¹ of the Swiss penal code; for war crimes, see article 10, paragraph 1 bis, of the military penal code² which still requires the condition of a “close link” with Switzerland). Switzerland therefore subscribes to the **“conditional” or “limited” interpretation** of universal jurisdiction. **The exercise of universal jurisdiction is subject to two conditions:**

- (i) The person suspected of the offence is within Swiss territory;
- (ii) The suspect has not been extradited to another competent jurisdiction.

In the Swiss legal regime, universal jurisdiction is therefore a jurisdiction exercised **subsidiarily**, when no other jurisdiction with a stronger jurisdictional link (by territory or nationality, for example) can prosecute the perpetrator of the crimes in question. In addition, the exercise of universal jurisdiction is **reserved for serious crimes**. Other crimes and offences are prosecuted on the basis of the “traditional” principles of jurisdiction (territory or nationality, for example).

At the present time, Swiss legislation requires a “close link” for war crimes (CPM article 10).³ The compatibility of the requirement for a “close link” with international law (Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) has been called into question. In the context of the adoption of legislative amendments to the Swiss penal code and the military penal code, with a view to implementing the Rome Statute of the International Criminal Court in Switzerland, the requirement for a “close link” will in all likelihood be abandoned. These legislative amendments are currently being considered by the Swiss Parliament and are expected to come into force in 2011.

*Example of a case prosecuted in Switzerland on the basis of universal jurisdiction: “the F. N. case” (ruling of military court of appeal 1A on 26/5/2000 and decision of the military court of cassation on 27/4/2001).*⁴ In this case, the accused, F. N. (a Rwandan citizen), was convicted by the Swiss military courts of war crimes committed in Rwanda against foreign nationals.

¹ Swiss penal code of 21 December 1937 (CP), *Recueil systématique du droit fédéral* (Compendium of Swiss Federal Law) 311.0.

² Military penal code of 13 June 1927 (CPM), Compendium 321.0.

³ Ibid. During the parliamentary debates on the introduction of this “strong link” into the CPM in 2003, the following examples were given to illustrate a “strong link”: persons domiciled or whose lives are centred in Switzerland, persons seeking to remain in Switzerland for other reasons (e.g. refugees or asylum-seekers), persons staying in Switzerland to undergo medical treatment in a hospital setting, persons with close relatives in Switzerland, on condition that they maintain regular contact with the family member(s) and that the person has real estate in Switzerland.

⁴ Decisions published on the official website of the Office of the Chief Auditor: <http://www.vbs.admin.ch/internet/vbs/fr/home/documentation/oa009.html>.

VI. Switzerland's position on the appropriateness of discussing universal jurisdiction in the Sixth Committee of the United Nations General Assembly

Switzerland has taken note of the decision made in General Assembly resolution 64/117. It would, however, like to take this opportunity to recall its position that, in the long term, **consideration of universal jurisdiction should be entrusted to the International Law Commission (ILC)**. Indeed, Switzerland believes this to be a subject that, due to its fundamentally legal nature and technical character, ought to be considered and discussed first and foremost by legal experts, without any of the political considerations that inevitably surround the matter. In addition, the ILC is considering another issue that is closely and inextricably linked to that of universal jurisdiction — the obligation to extradite or prosecute. For these reasons, Switzerland remains convinced that the ILC is the most appropriate body to consider the scope and application of the principle of universal jurisdiction.
