

Permanent Mission of Tunisia to the United Nations

New York, 16 June 2010

The Permanent Mission of Tunisia to the United Nations presents its compliments to the Secretariat of the United Nations, Office of Legal Affairs and, with reference to its note verbale LA/COD/59 of 8 January 2010, has the honour to transmit the attached information concerning the provisions of domestic law with regard to the application of principle of universal jurisdiction. The information, which was provided by the competent authorities in Tunisia, is intended as a contribution to the report to be submitted by the Secretary General at its sixty-fifth session in accordance with General Assembly resolution 64/117, paragraph

I.

Comment [ETSU1]:
OK; attached

The Permanent Mission of Tunisia takes the opportunity to convey to the Secretariat of the United Nations the renewed assurances of its highest consideration.

Translated from Arabic

The principle of universal jurisdiction and its application in Tunisian criminal law

Universal jurisdiction accords to the national judicial authorities of a given country the right to take legal action against foreigners who have perpetrated crimes outside the territory of that State, even when those crimes do not constitute a threat to its existential interests and were not committed by and did not affect its own citizens.

On that basis, it is possible to say that universal jurisdiction empowers a State to take criminal proceedings in its own courts even when there is no legally acknowledged link with regards to the place where the crime was committed, the existential threat it poses to national interests, or the nationality of the persons who perpetrated or were affected by the crime.

Numerous international instruments encourage States parties to incorporate into their penal systems the principle of universal jurisdiction with regard to the crimes covered by

those instruments and, in particular, such serious crimes as terrorist crimes, crimes against humanity, war crimes, genocide, torture and piracy.

1. Universal jurisdiction, Tunisian law and international instruments

Numerous international instruments urge States parties to incorporate into their legal systems the principle of universal jurisdiction, with a view to ensuring that the perpetrators of the crimes provided for in those instruments are pursued and brought before national courts, regardless of the measures traditionally adopted in order to determine international responsibility for such prosecutions.

The international humanitarian laws known as the 1949 Geneva Conventions and the additional Protocol thereto provided for the principle of universal jurisdiction insofar as they required each State to pursue perpetrators of the serious crimes specified in the Conventions, whatever their nationality, and bring them before their national courts or hand them over to another State party for prosecution.

The principle of universal jurisdiction is also provided for in the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the 1994 Convention on the Safety of United Nations and Associated Personnel; and the 2006 International Convention for the Protection of All Persons from Enforced Disappearance; and the Convention on the High Seas that was done at Geneva in 1958, in article 19, and the 1982 United Nations Convention on the Law of the Sea, in article 105, provide very clearly for the principle of universal jurisdiction in respect of acts of piracy: both articles state that on the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and arrest the persons and seize the property on board.

Tunisia is a party to all the abovementioned instruments, and considers their provisions to be of a national legislative nature, in that, in accordance with the Tunisian Constitution, article 32, they may be directly applied by the national judicial authorities.

That article provides that any agreements approved or ratified by the President of the State have greater authority than national laws. Consequently, the authority of such agreements is second only to that of the Constitution, and the judiciary undertakes to apply laws promulgated by the legislative authorities and agreements to which the country is a party in accordance with the provisions of the Constitution.

2. The provisions of Tunisian law governing the pursuit of foreign perpetrators of serious crimes committed in foreign countries.

The Code of Criminal Procedure, article 305, paragraph 1, states that Tunisian citizens may be pursued and prosecuted by the Tunisian courts if they have committed outside the country a crime or misdemeanour punishable under Tunisian law, unless it is clear that the crime is not punishable under the law of the country in which it was committed, or the suspect proves that he has already served the relevant sentence abroad by

producing the judgement, showing that he has served the sentence, or is able to demonstrate

that the penalty has lapsed with the passage of time or that he was fully pardoned.

The Code of Criminal Procedure, article 307, provides that any foreign national who, either as a principal actor or an associate, has committed outside Tunisia a crime or misdemeanour that threatens State security, forged the State seal or counterfeited the State currency may be pursued and prosecuted under Tunisian law if arrested within Tunisia or if the State obtains his extradition.

A further provision in the same Code, article 307 bis, paragraph 1, states that anyone who, either as a principal actor or an associate, has committed a crime or misdemeanour outside Tunisia may be pursued and prosecuted by the Tunisian courts if the person affected by that crime or misdemeanour is Tunisian.

On the basis of the foregoing, if any public prosecutions are to be brought of crimes

and misdemeanours committed in a foreign country, certain conditions must be satisfied, of

which the most important are the following:

- The laws of the country in which the crime took place must criminalize such acts;
- The victim must be a Tunisian national.

Under those circumstances, it is permissible under Tunisian law to pursue the perpetrators of crimes committed outside Tunisian territory, provided that there is a strong connection to Tunisia.

Given the limited capacity of normal laws to assimilate the principle of universal jurisdiction with regard to serious crimes committed outside Tunisia, the Tunisian legislator has made progress in extending powers to prosecute anyone on Tunisian soil who has perpetrated terrorist crimes or been engaged in money-laundering. Similar progress has been made in respect of crimes committed against maritime and air targets.

3. The establishment of the principle of universal jurisdiction in its amended sense.

The Tunisian legislator believes that society has the right to live in peace and security, without threats to its stability, and rejects all forms of deviation, violence, extremism, racism and terrorism. The legislator believes that it is essential to support international efforts to suppress all manifestations of terrorism and funding for the same, and to prevent money-laundering. Those efforts take the form of bilateral, regional and international agreements that have been ratified by Tunisia. The Tunisian legislator therefore promulgated law No. 75 of 2003, dated 10 December 2003, concerning support for international efforts to counter terrorism and money-laundering. That law was revised and supplemented by law No. 65 of 2009, dated 12 August 2009.

In that law, part X, article 55, which refers to terrorist crimes committed outside Tunisia, the following provisions are made:

The Tunisian courts shall be responsible for considering terrorist crimes committed

outside Tunisia under the following circumstances:

- If the act was committed by a Tunisian national.

- If the act was committed against Tunisian parties or interests.

- If the act was committed against foreign parties or interests by a foreign national or

stateless person whose usual place of residence is in Tunisia or by a foreign national or

stateless person who is found to be on Tunisian soil, and in respect of whom the relevant

foreign authorities have not sought extradition before the Tunisian courts pass a final

judgement.

Article 56 of the same law provides that the bringing of a prosecution in the cases

covered by article 55 does not depend on whether the acts concerned have been criminalized

by the country where the crime was committed, thereby obviating the need for dual

criminality.

It should be noted that the same requirements are applicable to those who commit the crimes of financing terrorism and all forms of money-laundering.

Under law No. 85 of 2005, dated 15 February 2005, which amended article 129 of the Code of Criminal Procedure, the Tunisian courts were given greater authority to suppress crimes against maritime and air traffic. Paragraphs 2 and 3 of that article provide that when a crime is committed on board or against a ship or aircraft registered in Tunisia or leased without a crew for the use of a person or entity whose headquarters or place of permanent residence are in Tunisia, the court responsible will be the court where the plane landed or the ship docked, even when the conditions set forth in the previous article are not met, if that place is on Tunisian soil and suspects are on board.

In the light of the foregoing, it is clear that Tunisian law has to some extent adopted, with respect to serious crimes, the principle of universal jurisdiction in the amended sense, which is to say that it does not take into consideration the place where the crime was

committed, the nationality of the perpetrator or victim, or national existential interests. It has

become possible to pursue foreign nationals or stateless persons who have committed

terrorist crimes, provided financing for terrorism, laundered money and committed crimes

against the safety of maritime and air traffic, even when those crimes were committed

outside Tunisia, provided it can be established that the perpetrator's place of permanent

residence is in Tunisia or that they are on Tunisian soil.

It may be said that Tunisian law has adopted the principle of universal jurisdiction

only in the amended rather than the absolute sense, in that it requires a minimum connection

to Tunisian judicial authority, including the presence of the criminal on Tunisian soil. The

basic aim is to ensure that Tunisian soil is not used as a haven or in order to avoid penalties

and that criminals are either prosecuted or extradited, thus responding to the purpose of the

principle of international jurisdiction.

4. Extension of the extradition mechanism in respect of those responsible for serious crimes.

The extradition mechanism is an effective tool for ensuring criminal justice and is not affected by borders. It ensures that no criminal can escape being penalized by leaving the country in which the crime was committed.

The Code of Criminal Procedure devoted a whole chapter, chapter 8, to the extradition of foreign criminals. That chapter includes articles 308-335.

Furthermore, extradition is bound by bilateral agreements and by the principle of reciprocity if there are no agreements between Tunisia and another State.

Additionally, the law of 10 December 2003, chapter 1, part 11, articles 59 and 60, covers extradition.

It should be mentioned that the above law keeps the traditional conditions for extradition, foremost among which is the requirement that the person whose extradition is

sought should be on Tunisian soil. That is only reasonable, given that no request for extradition may be entertained if the relevant person is not in the country. It also keeps the second condition, namely, that the person in question should not be a Tunisian national, given that a Tunisian national would not be extradited and would be tried in Tunisia.

However, in contrast to the Code of Criminal Procedure, article 309, which provides that extradition may be approved when the crime for which extradition is sought was committed in the State seeking extradition, the law of 10 December 2003, in article 60, extended the grounds for extradition in respect of terrorist crimes, financing of terrorism and money-laundering, and makes extradition possible whether or not the crime was committed on the territory of the State seeking extradition.

Furthermore, the same law, in article 59, provides that in no case may a terrorist crime be considered a political crime, and that extradition is therefore permissible.

It is clear from the foregoing that the Tunisian legislator has extended the grounds for extradition and has updated them with regard to serious crimes, thereby increasing opportunities for international cooperation over the extradition of criminals responsible for terrorist crimes, the financing of terrorism and money-laundering, in line with international trends aimed at supporting international efforts to suppress serious crime.

Tunis, 12 May 2010.
