



Stalna Misija Bosne  
i Hercegovine pri UN  
NJUJORK

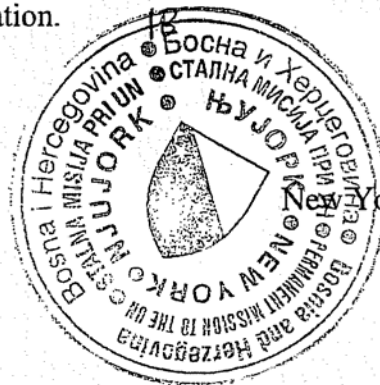
Permanent Mission of Bosnia  
and Herzegovina to the UN  
NEW YORK

Стална мисија Босне  
и Херцеговине при  
УН ЊУЈОРК

No. 201-32-370/11

The Permanent Mission of Bosnia and Herzegovina to the United Nations presents its compliments to the Secretary-General of the United Nations and, referring to your note Ref.: LA/COD/59/1 dated January 20<sup>th</sup> 2011, has the honor to forward information provided by the Ministry of Justice of Bosnia and Herzegovina in relation to General Assembly resolution 65/33 of December 6<sup>th</sup> 2010 entitled "The scope and application of the principle of universal jurisdiction".

The Permanent Mission of Bosnia and Herzegovina to the United Nations avails itself of this opportunity to renew to the Secretary-General of the United Nations the assurances of its highest consideration.



New York, March 11<sup>th</sup> 2011

**The Secretary-General  
of the United Nations  
New York**

Number: 07-14-9-1251/11  
Sarajevo, 21 February 2011

**MINISTRY OF FOREIGN AFFAIRS**

**SARAJEVO**

**Subject:** *Information on the Resolution 65/33 of the UN General Assembly relative to the principle of universal jurisdiction*

**Reference:** *Your document number 07/1-21-05-4-1005/11 dated 02 February 2011*

*With the above-referenced document you have transmitted to the Ministry of Justice of Bosnia and Herzegovina a copy of the UN Secretary-General's Note number LA/COD/59/1 dated 20 January 2011 that refers to the Resolution of the UN General Assembly No. 65/33 dated 06 December 2010 entitled: "The Scope and Application of the Principle of Universal Jurisdiction". Specifically, Paragraph 3 of this Resolution states the following: "[The General Assembly] Invites Member States ...to submit, before 30 April 2011, information and observations on the scope and application of universal jurisdiction, including, where appropriate, information on the relevant applicable international treaties, their domestic legal rules and judicial practice, and requests the [UN] Secretary-General to prepare and submit to the General Assembly, at its sixty-sixth session, a report based on such information and observations". With regard to the aforementioned, you have requested the Ministry of Justice of Bosnia and Herzegovina to provide you with relevant information; accordingly, we inform you of the following:*

*The principle of universal jurisdiction allows a state to exercise its criminal and legal jurisdiction, and thus to apply its substantive and criminal law, on a factual situation that has not occurred in the territory of that state, that does not touch upon the state's direct interests and does not involve the state's citizens, neither as victims nor as perpetrators.*

*Chapter Three of the Criminal Code of Bosnia and Herzegovina ("Official Gazette of Bosnia and Herzegovina, issues 3/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07 and 8/10) regulates the application of criminal legislation of Bosnia and Herzegovina with respect to the offenses committed outside the territory of Bosnia and Herzegovina, thus covering the issue of application of universal jurisdiction as well.*

*In this regard, Article 9 of the Criminal Code of Bosnia and Herzegovina prescribes conditions for application of domestic legislation on offenses committed abroad. With respect to the aforesaid, Article 9 of the Criminal Code of Bosnia and Herzegovina stipulates the following:*

*"(1) The criminal legislation of Bosnia and Herzegovina shall apply to anyone who, outside of its territory, perpetrates:*

(a) Any criminal offence against the integrity of Bosnia and Herzegovina prescribed in Chapter Sixteen of this Code (Criminal Offences against the Integrity of Bosnia and Herzegovina);

(b) The criminal offence of Counterfeiting Money or of Counterfeiting Securities of Bosnia and Herzegovina, the criminal offence of Counterfeiting Instruments of Value or of Forgery of Trademarks, Measures and Weights issued on the basis of regulations of the institutions of Bosnia and Herzegovina, as defined in Articles 205 through 208 of this Code;

(c) A criminal offence which Bosnia and Herzegovina is bound to punish according to the provisions of international law and international treaties or intergovernmental agreements;

(d) A criminal offence against an official or responsible person in the institutions of Bosnia and Herzegovina, in relation to his office.

(2) The criminal legislation of Bosnia and Herzegovina shall apply to a citizen of Bosnia and Herzegovina who, outside the territory of Bosnia and Herzegovina, perpetrates any criminal offence.

(3) The criminal legislation of Bosnia and Herzegovina shall apply to an alien who, outside the territory of Bosnia and Herzegovina, perpetrates a criminal offence not included in paragraph 1 of this Article against Bosnia and Herzegovina or its national.

(4) The criminal legislation of Bosnia and Herzegovina shall apply to an alien who, outside the territory of Bosnia and Herzegovina, perpetrates a criminal offence against a foreign state or a foreign national which under this legislation carries a punishment of imprisonment for a term of five years or a more severe punishment.

(5) In the cases referred to in paragraphs 2 and 3 of this Article, the criminal legislation of Bosnia and Herzegovina shall apply only if the perpetrator of the criminal offence is found in or extradited to Bosnia and Herzegovina, while in the case referred to in paragraph 4 of this Article, only if the perpetrator is found in the territory of Bosnia and Herzegovina and is not extradited to another country."

Such a wording of Paragraphs 4 and 5 of the aforementioned Article expresses international solidarity in crime prevention. In fact, it may be asserted that all states have interest in preventing international criminal offenses irrespective of where those offenses were committed or by and against whom they were perpetrated. However, it would be unjustifiable if each state would provide for the application of its own law every time an alien commits a criminal offense abroad against a foreign state or a foreign national. That could have collision of criminal legislations of respective states as its adverse result, which would further lead to a disruption of political relations between these states, due to which all the underlying aspirations of the universal principle would turn into its opposite. For that very reason, it is necessary that every state requests additional conditions for the application of its own law.

The most important condition in that respect is the presence of a perpetrator of an offense in the territory of the state which applies its law pursuant to the universal principle (forum deprehensionis). Such a condition is prescribed by Article 9, Paragraph 5 of the Criminal Code of Bosnia and Herzegovina, which provides that the criminal legislation of Bosnia and Herzegovina shall be applied only if an alien is found in the territory of Bosnia and Herzegovina and is not extradited to a foreign state. Therefore, pursuant to the universal principle, the laws of our state shall be applied when no other state requests the extradition of the respective alien, or when such extradition is refused.

In practice, extradition is usually carried out if all the conditions have been met for its execution, whereby it might be concluded that such a fact, together with numerous conditions for the application of universal principle, virtually diminishes the significance of this principle. That is not the case, however, as it is this very principle that allows for a

*criminal sanction to be applied on a perpetrator of a criminal offense at all times. Namely, there is both the need for, and the justification of, the application of domestic law, especially in a case when a foreign state's request for extradition has been refused. This may be viewed even as an obligation of a state that has refused the extradition, which is explicitly provided for in some international treaties (the principle of aut dedere aut judicare).*

*The obligation on a state to conduct a trial against an alien when a foreign state's request for extradition has been refused would not be possible to implement without the universal principle which allows for the application of domestic law in such cases.*

*Due to the inexistence of a direct link between the state which undertakes prosecution and the perpetrated criminal offense, the principle of universal jurisdiction in international criminal law is necessarily limited to serious criminal offenses, or protection of important objects, which are of interest to all the states. In this respect, and in accordance with Article 9 of the Criminal Code of Bosnia and Herzegovina, the application of the domestic legislation on a foreign national requires that the relevant offense is also punishable by the legislation of the state in which the crime was committed, and that such an offense carries a punishment of imprisonment for a term of five years or a more severe punishment under the laws of the respective state.*

*Universal jurisdiction gains in its importance with the development of the international criminal law and an increasing awareness of the fact that the most severe criminal offenses, the ones over which the entire mankind is concerned, should not be left unpunished. Although the essence of the principle of universal jurisdiction lies in the non-existence of a direct link between the perpetrator and the state which undertakes criminal prosecution, the Criminal Code of Bosnia and Herzegovina institutes this principle in a manner that creates a direct link between Bosnia and Herzegovina and the perpetrated criminal offence. That link is reflected in the presence of the perpetrator in the territory of Bosnia and Herzegovina, whereas the interest for conducting criminal prosecution is manifested in the preservation of international legal order to which Bosnia and Herzegovina also belongs.*

*In practice, states rarely resort to this form of jurisdiction in fight against crime. First of all, states are not inclined to interfere in internal affairs of other states because they do not want to jeopardize their diplomatic and economic relations, nor do they want to be objects of similar interference. The infrequency of application of universal jurisdiction is conduced by a fairly undefined position of universal jurisdiction in international law and by different legislative and theoretical solutions that largely diminish its practical value, as means of avoiding impunity and reducing crime. It is because of the difference in domestic solutions regarding this issue that the unification of this area by a comprehensive international convention remains necessary.*

*The principle of universal jurisdiction is an expression of solidarity of states and one of the instruments in the international fight against crime; as such, it has an important place in international criminal law, as well as in criminal laws of individual states.*

*Respectfully,*

**MINISTER**

**Bariša Čolak**