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Permanent Mission of Paraguay to the United Nations
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Report

From: Office of International Affairs and Foreign Legal Assistance, Public Prosecution
Service, Republic of Paraguay

Subject: The scope and application of the principle of universal jurisdiction

Concerning the request to submit information on the scope and application of the principle of universal jurisdiction, including information on the relevant international treaties, domestic legal rules and judicial practice, it is important to mention the need first to consider what is meant by "universal jurisdiction".

In that connection, it should be noted that under the principle of territoriality established in article 6 of the Code of Criminal Procedure, our country applies Paraguayan criminal law to all offences committed in Paraguay or aboard Paraguayan ships or aircraft. Application of the principle of universal jurisdiction is a clear break with traditional application of the principle of territoriality.

Specifically, application of the principle of universal jurisdiction makes it possible to prosecute the perpetrators of war crimes or crimes against humanity before the courts of any country, regardless of when or where the offences were committed and of the nationality of the victims or the accused.

This principle has been embodied in a series of international treaties. For example, the Republic of Paraguay is a signatory to the Rome Statute establishing the International Criminal Court, approved through Act No. 1.663/0.

Article 1 of this international instrument reads:

The Court

An International Criminal Court ("the Court") is hereby established. It shall be a permanent institution and shall have the power to exercise its jurisdiction over persons for the most serious offences of international concern, as referred to in this Statute, and shall be complementary to national criminal jurisdictions. The jurisdiction and functioning of the Court shall be governed by the provisions of this Statute.

In light of the provisions of this article, it is important to mention that the Rome Statute is complemented by States' domestic law. Thus, under the "principle of complementarity", recourse to the International Criminal Court generally requires the exhaustion of domestic remedies. While there are exceptions to the rule of the exhaustion of domestic remedies, set out in article 17 of the Rome Statute, the general rule is that domestic remedies must be exhausted; a prior conviction or acquittal is therefore presumed.

Thus, in order for the Court to deal with any offence, the country or State in which it occurred must exhaust all domestic remedies until it concludes that it cannot prosecute the perpetrators of the offences; only then would the Criminal Court have competence to consider whether it can help that country by prosecuting the perpetrators of the war crimes or crimes against humanity in question.

Furthermore, the Republic of Paraguay, in its efforts to combat international crime, has signed international extradition treaties with virtually all the countries of the Americas and with many European and Asian countries.

The *aut dedere aut judicare* (extradite or prosecute) principle is established in the aforementioned international legal instruments. Its purpose is to require a State that has rejected an extradition request because the person in question holds its nationality, or because it considers itself competent to prosecute the offences for which extradition has been

requested, to open a criminal investigation so that the offences for which the requesting State sought extradition do not go unpunished.

The principle of universal jurisdiction has also been incorporated into our country's domestic law. Article 8 of the Penal Code reads:

Offences committed abroad against legal assets enjoying universal protection

1. Paraguayan criminal law shall also apply to the following offences committed abroad:

- (a) Offences involving explosives, covered by article 203, paragraph 1 (2);
- (b) Attacks on civilian air and sea traffic as defined in article 213;
- (c) Trafficking in persons, covered by article 129;
- (d) Illicit trafficking in narcotics and hazardous drugs, covered by Act No. 1.350/88, articles 37 to 45;
- (e) Counterfeiting of currency or shares as defined in articles 264 to 268;
- (f) Genocide, covered by article 319; and
- (g) Offences that the Republic is required to prosecute under an international treaty currently in force, even where committed abroad.

2. Paraguayan criminal law shall apply only where the perpetrator has entered the national territory.

3. Prosecution under Paraguayan criminal law is prohibited where a foreign court:

- (a) Has acquitted the person in question; or
- (b) Has sentenced the person in question to a term of imprisonment and the sentence has been served or suspended or the person has been pardoned.

In addition, article 9 of the Penal Code reads:

Other offences committed abroad

1. Paraguayan criminal law shall only apply to other offences committed abroad where:

(a) The offence is criminalized in the place of commission; and

(b) At the time of commission, the perpetrator:

(i) Held Paraguayan nationality or acquired it after the offence was committed; or

(ii) Is not a Paraguayan national but is present in Paraguay and extradition has been refused even though the nature of the offence would have made it legally permissible.

This shall also apply where there is no provision for punishment in the place of commission.

2. The provisions of article 5, paragraph 2, shall also apply in such cases.

3. The sentence may not be more severe than that envisaged under the legislation in force in the place of commission.

It is clear from the above that in such cases, Paraguayan criminal law applies to offences described in the aforementioned article and committed outside of Paraguay, provided that the perpetrator has entered Paraguay and has not been convicted or acquitted by a court of the State in which the offence was committed.

Furthermore, with regard to judicial practice, the Paraguayan courts have authorized the extradition of several Paraguayan citizens at the request of Argentine courts for the alleged commission of crimes against humanity under the Argentine military dictatorship during the period 1976 to 1983, including an extradition request from an Argentine court (letter rogatory: request from an Argentine court with a view to the trial and potential conviction of Samuel Miara").