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The Permanent Mission of the Philippines to the United Nations presents its compliments to the Secretary-General of the United Nations (Attn: Codification Division, Office of the Legal Affairs) and with reference to Note NoLA/COD/59/1 dated 01 February 2011, has the honor to enclose the requested information and observations of the Philippines on the scope and application of the Principle of Universal Jurisdiction pursuant to United Nations General Assembly Resolution 65/33.

This Mission also sent a soft copy of the said submission to the Codification Division through kosalvitr@un.org.

The Permanent Mission of the Philippines 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, 16 May 2011



PHILIPPINES

Information and Observation on the scope of Principle of Universal Jurisdiction (UNGA Resolution 65/33)

Universal jurisdiction allows any State to assert criminal jurisdiction over certain offenses, even if the act occurred outside its territory or was committed by a person not its national, or inflicted no injury to its nationals. The general rule is that jurisdiction is territorial, and therefore universal jurisdiction is an exception. The exception is grounded on the imperative need to preserve international order.

1987 Philippine Constitution

The 1987 Constitution provides that the Philippines renounces as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation and amity with all nations. Thus, this international law concept of universal jurisdiction is considered as part of Philippine laws.

Revised Penal Code

The rule with respect to jurisdiction over criminal offense in the Philippines is governed by Article 2 of the Revised Penal Code, which provides that:

"Art. 2. Application of its Provisions. Except as provided in the treaties and laws of preferential application, the provisions of the Code shall be enforced not only within the Philippine Archipelago, including its atmosphere, its interior waters and maritime zone, but also outside its jurisdiction, against those who:

1. Should commit an offense while on Philippine ship or airship;
2. Should forge or counterfeit any coin or currency note of the Philippine islands or obligations and securities issued by the government of the Philippines Islands;
3. Should be liable for acts connected with the introduction into these islands of the obligations and securities mentioned in the preceding number;
4. While being public officers and employees, should commit an offense in the exercise of their functions; or
5. Should commit any of the crimes against national security and the law of the nations, defined in Title One, Book Two of the Code."

Republic Act No. 9851

The universal jurisdiction concept in international law was incorporated in our local laws with the enactment of Republic Act No. 9851 or the Philippine Act on Crimes Against International Humanitarian Law, Genocide and Other Crimes Against Humanity which was signed into law on December 11, 2009. It is anchored on the principle that the "most serious crimes of concern to the international community as a whole must not go unpunished and their effective prosecution must be ensured by taking measures at the national level, in order to put an end to impunity for the perpetrators of these crimes and this contribute to the prevention of such crimes, it being the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes. The law (1) defines and establishes the crimes against international humanitarian law, genocide and other crime against humanity; (2) provides penal sanctions and criminal liability for their commission; and (3) establishes special courts for the prosecution of these crimes and for the States to exercise primary criminal jurisdiction. Chapter VIII on Jurisdiction provides:

"Sec. 17. Jurisdiction. – The State shall exercise jurisdiction over persons whether military or civilian suspected or accused of a crime defined and penalized in this Act, regardless of where the crime is committed, provided, any one of the following conditions is met:

- (a) The accused is a Filipino citizen;
- (b) The accused, regardless of citizenship or residence, is present in the Philippines; or
- (c) The accused has committed the said crime against a Filipino citizen.

In the interest of justice, the relevant Philippine authorities may dispense with the investigation or prosecution of a crime punishable under the Act. If another court or international tribunal is already conducting the investigation or undertaking the prosecution of such crime. Instead, the authorities may surrender or extradite suspected or accused persons in the Philippines to the appropriate international court, if any, or to another State pursuant to the applicable extradition laws and treaties.

No criminal proceedings shall be initiated against foreign nationals suspected or accused of having committed the crime defined and penalized in this Act, if they have been tried by a competent court outside the Philippines in respect of the same offense and acquitted or having been convicted, already served their sentence."

Jurisprudence

In *Bayan Muna vs Romulo*, although the main issue involved in this case is the RP-US Non-Surrender Agreement, the Supreme Court has the opportunity to state that genocide, war crimes and crimes against humanity have attained the status of customary international law. Some even go as far as to state that these crimes have attained the status of *jus cogens* which relate to the principle of universal jurisdiction. Under this principle, any state may exercise jurisdiction over an individual who commits certain heinous and widely condemned offenses even when no other recognized basis for jurisdiction exists. The rationale behind this principle is that the crime committed is so egregious that it is considered to be committed against all members of the international community and thus granting every State jurisdiction over the crime.

RA No. 9851 enumerated several treaties to be applied in its interpretation, thus:

"Sec. 15. Applicability of international Law and Other Law.- in the application and interpretation of this Act, Philippine courts shall be guided by the following sources:

- (a) **The 1948 Genocide Convention;**
- (b) **The 1949 Geneva Conventions I-IV, their 1997 Additional Protocols I and II and their 2005 Additional Protocol III;**
- (c) **The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, its First Protocol and its 1999 Second Protocol;**
- (d) **The 1989 Convention on the Rights of the child and 2000 Optional Protocol on the involvement of Children in Armed Conflict;**
- (e) **The rules and principles of customary international law;**
- (f) **The judicial decisions of international courts and tribunals;**

International Treaties

The Philippines is a Party to the following UN Conventions on Terrorism which likewise recognize universal jurisdiction for offenses defined under said conventions.

- **ASEAN Convention on Counter-Terrorism;**
- **Convention for the Suppression of Unlawful Seizure of Aircraft;**
- **Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation;**
- **Convention of the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents;**
- **International Convention against the Taking of Hostages;**
- **Convention on the Physical Protection of Nuclear Material;**

- **Protocol for the Suppression of Unlawful Acts Against the Safety of Civilian Aviation, Supplemental to the Convention for the Suppression of Unlawful Acts against the Safety of Civilian Aviation done at Montreal on 23 September 1971;**
- **Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation;**
- **Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation;**
- **Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf;**
- **International Convention for the Suppression of Terrorist Bombings;**
- **International Convention for the Suppression of Financing of Terrorism; and**
- **International Convention for the Suppression of Acts of Nuclear Terrorism.**

Hence, the concept of universal jurisdiction has been incorporated into our local laws not only by adoption of generally accepted principles of international law, but likewise by the enactment of RA 9851.