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*Translated from French*

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

### **I. Definition**

Switzerland understands universal jurisdiction as the customary principle whereby **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 the perpetrator or victim or infringement of the fundamental interests of the State. This principle is based on the idea that some **crimes are so serious that they affect the international community as a whole** 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 exercised 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, in principle, a *right*, **it can also be an obligation by virtue of an international convention.**

### **II. A closely related principle — *aut dedere aut judicare***

The rule that 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. Thus, depending on the case, if the State is not in a position to extradite an individual, the right to exercise universal jurisdiction may become an *obligation* as a result of the *aut dedere aut judicare* rule contained in a treaty to which the State is a party.

### **III. Examples of international instruments containing one or other form of universal jurisdiction**

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The **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** of 1984 provides for the possibility of States exercising universal jurisdiction and imposes on States the obligation to prosecute or extradite a person suspected of committing acts of torture who is in their territory.

**The Geneva Conventions of 1949** also provide for the possibility of States exercising universal jurisdiction and impose on States the obligation to prosecute or extradite persons suspected of having committed a serious breach of the Conventions.

Many terrorism-related conventions, for example, the **International Convention for the Suppression of Terrorist Bombings of 1997**, also provide for the exercise of universal jurisdiction if the suspect is not extradited.

#### **IV. Universal jurisdiction in the Swiss legal system**

Switzerland **recognizes and applies the principle of universal jurisdiction** in its legal system and has done so for a number of years. Certain acts are therefore prosecuted despite the absence of the traditional jurisdictional links, namely, territoriality (article 3 of the Penal Code), nationality of the perpetrator (article 7, paragraph 1, of the Penal Code), nationality of the victim (article 7, paragraph 1, of the Penal Code) and protection of the fundamental interests of the State (article 4 of the Penal Code). These acts are: crimes or offences against minors (article 5 of the Penal Code), crimes or offences prosecuted under an international agreement (article 6 of the Penal Code) and particularly serious crimes prohibited by the international community (article 7, paragraph 2, and article 264*m* of the Penal Code).

Some countries adhere to an absolute or unlimited interpretation of universal jurisdiction, meaning that it applies even when the accused is not in the territory of the forum State. Switzerland subscribes to the **“conditional” or “limited” interpretation** of universal jurisdiction, in which **the exercise of universal jurisdiction is subject to two conditions:**

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

In the Swiss legal system, universal jurisdiction is therefore a jurisdiction exercised **subsidiarily**, when no other jurisdiction with a stronger jurisdictional link (territoriality or nationality, for example) can prosecute the perpetrator of the crimes in question. Moreover, 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 (territoriality or nationality, for example).

Following the legislative amendments made 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 of a "close tie" to Switzerland for prosecuting war crimes was dropped**. The compatibility of this requirement with international law (Geneva Conventions of 1949) was called into question. The legislative amendments **entered into force on 1 January 2011**.

Furthermore, it should be noted that these crimes fall under federal jurisdiction (article 23g of the Code of Penal Procedure) and are prosecuted automatically. This means that the competent authorities may open an investigation as soon as they are notified of the crime.

***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 27/04/2001).<sup>1</sup> 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.*

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<sup>1</sup> Judgments published on the website of the Office of the Chief Auditor: <http://www.vbs.admin.ch/internet/vbs/fr/home/documentation/oa009.html>

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

Switzerland has noted the decision taken by the General Assembly in its resolution 65/33, which mentions "the need for further consideration towards a better understanding of the scope and application of universal jurisdiction". Switzerland would therefore like to take this opportunity to recall its position that **consideration of the issue of the scope and application of universal jurisdiction should be entrusted to the International Law Commission**. This would provide States with a better basis for discussion. Moreover, this option is possible under resolution 65/33, which states that consideration of the issue by the Sixth Committee is "without prejudice to the consideration of this topic and related issues in other forums of the United Nations".

Switzerland believes that this is a topic which, given 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 issue. Furthermore, the Commission is considering another topic 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 International Law Commission is the most appropriate body to consider the scope and application of the principle of universal jurisdiction.