
Permanent Mission of Panama to the United Nations
New York

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The Permanent Mission of the Republic of Panama to the United Nations presents its compliments to the Secretary-General of the United and, with regard to Note No. LA/COD/59/1 of 28 December 2011, in which information on the implementation of General Assembly resolution 66/103 ("The scope and application of the principle of universal jurisdiction") was requested, has the honour to transmit the following reply from the Government of Panama:

"The 1949 Geneva Conventions establish compulsory universal jurisdiction for the serious crimes identified in these instruments, such as war crimes. In that connection, States Parties have the obligation to look for suspected perpetrators, regardless of their nationality and of the place in which the alleged crime was committed, in order to bring them before their own courts or hand them over to another State party for prosecution.

Other international instruments, such as the Second Protocol to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and the 2006 International Convention for the Protection of All Persons from Enforced Disappearance, establish a similar obligation whereby States parties must grant their courts some form of extraterritorial jurisdiction over the acts criminalized in those treaties, particularly where they are committed during an armed conflict.

States must investigate war crimes allegedly committed in their territory or by their citizens and, where appropriate, they must prosecute the alleged perpetrators. Only in the event that other States fail to take action do universal jurisdiction and recourse to international criminal courts become valid ways to ensure that war crimes do not go unpunished and to prevent impunity.

Universal jurisdiction is an institution of international law of an exceptional nature that makes it possible to exercise criminal jurisdiction for the purpose of combating impunity and strengthening justice. Therefore, because universal jurisdiction is an international legal institution, it is international law that establishes the implementation framework for its exercise by States.

The principle of universal jurisdiction has, in fact, been applied by various courts. In Spain, its application has given rise to legal proceedings for crimes of genocide, terrorism and torture committed in Argentina, Chile, Guatemala and El Salvador.

One example of this is the 11 June 1996 judgment of the International Court of Justice in The Hague (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*), which expressly recognized the right of States to exercise universal jurisdiction in cases of genocide.

In Panama, the principle of universal jurisdiction has been applied in respect of crimes with implications for the international community, including, in particular, drug trafficking, money-laundering, trafficking in persons and terrorism. We have no legal

precedents concerning crimes against humanity, but there are such precedents for the other crimes.

Our criminal law includes Act No. 13 of 27 July 1994, which regulates matters related to international cooperation in the investigation of drug-trafficking crimes. Articles 33 and 34 read:

'Article 33: Investigations into the offences set out in article 261 of the Penal Code may also be launched in cooperation with, or at the request of, the State in which the said crimes were committed.

Article 34: The Panamanian courts shall have jurisdiction over the crimes covered by the present special Act even where the crime that gave rise to the legal proceedings was committed abroad, provided that the crime or any of the elements thereof was committed, or produced all or some of its effects, in Panamanian territory, and in other cases to which article 9 of the Penal Code applies'.

Panamanian law expressly criminalizes money-laundering in article 389 of the Penal Code, as amended by article 11 of Act No. 1 (2004):

' Anyone who receives, deposits, trades in, converts or transfers money, securities, property or other financial resources in the knowledge that they are derived from activities related to drug trafficking, fraud, illicit arms trafficking, trafficking in persons, kidnapping, extortion, embezzlement, corruption of public servants, terrorist acts, theft or international trafficking in vehicles, as provided for under Panamanian criminal law, with the aim of hiding or concealing their illicit origin or of helping to evade the legal consequences of such crimes shall be sentenced to 5 to 12 years' imprisonment and a fine of 100 to 200 days.'

Article 3 (a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, approved in Panama through Act No. 23 of 7 July 2004, contains the following definition of "trafficking in persons":

'...the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs'."

The Permanent Mission of Panama to the United Nations takes this opportunity to convey to the Secretary-General of the United Nations the renewed assurances of its highest consideration.

New York, 8 June 2012

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