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Republic of Panama  
Office of the Attorney-General  
Department of International Affairs

Panama, 23 April 2012  
PGN-SAI-1045-12

Sir,

I am writing to you in reference to Legal Affairs Note No. 995 of 2 April 2012, in which you asked us to provide "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". Here are my comments:

The Geneva Conventions of 1949 establish compulsory universal jurisdiction in respect of the serious offences set out therein, such as war crimes. States parties are obligated 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 Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict and the International Convention for the Protection of All Persons from Enforced Disappearance of 2006 establish a similar obligation, whereby States parties must grant their national courts some form of extraterritorial jurisdiction in respect of the crimes established in those treaties, particularly where committed during an armed conflict.

States must investigate war crimes allegedly committed in their territory or by their citizens and, where appropriate, must prosecute the alleged perpetrators. Only in the event of a State's failure to act do universal jurisdiction and recourse to international criminal tribunals constitute relevant options in order to ensure that war crimes do not go unpunished and to prevent impunity.

Vladimir Franco  
General Director for Legal Affairs and Treaties  
Ministry of Foreign Affairs  
Panama City

Universal jurisdiction is an exceptional institution of international law that allows the exercise of criminal jurisdiction in order to combat impunity and strengthen justice. Therefore, because universal jurisdiction is a legal institution under international law, it is this law that establishes the application framework that allows it to be exercised by States.

The principle of universal jurisdiction has been applied in practice by various courts. In Spain, the application of this principle has led to trials for crimes of genocide, terrorism and torture committed in Argentina, Chile, Guatemala and El Salvador.

One example of this is the 11 July 1996 judgment of the International Court of Justice in *Bosnia and Herzegovina v. Yugoslavia*, in which the Court expressly recognized the right of States to exercise universal jurisdiction in respect of the crime of genocide.

In Panama, the principle of universal jurisdiction has been applied in respect of crimes with implications for the international community, including, inter alia, drug trafficking, money-laundering, trafficking in persons and terrorism; however, there have been no prosecutions for crimes against humanity (genocide).

Under Panamanian Law, Act No. 13 of 27 July 1994 regulates 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.

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

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,

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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, adopted by Panama through Act No. 23 of 7 July 2004, defines trafficking in persons as:

[...] 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.

We attach herewith statistics from the Institution in order to better illustrate the cases that have been investigated and have involved serious offences with implications for the international community.

Regards,

(Signed)

Martha I. Gómez Solís

General Secretary *ad honorem*

MIGS/clc

Attachment (see above)

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