



REPUBLIC OF POLAND
PERMANENT MISSION TO THE UNITED NATIONS

750 THIRD AVENUE, NEW YORK, NY 10017

TEL. (212) 744-2506

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Sixty-Eight Session of the General Assembly
The scope and application of the principle of universal jurisdiction

Agenda item 86

S T A T E M E N T

BY

PROFESSOR ZDZISŁAW GALICKI

***ADVISER TO THE MINISTRY OF FOREIGN
AFFAIRS OF THE REPUBLIC OF POLAND***

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Mr Chairman,

On behalf of the Polish delegation, I would like to present the position concerning the issue of the scope and application of the principle of universal jurisdiction.

The topic of universal jurisdiction has been appearing in the United Nations already from many years, in various organs and in many substantial contexts. Since 2009 it has been included into the agenda of subsequent sessions of the General Assembly and allocated to the Sixth Committee. Also since then the name of the topic was established as "the scope and application of the principle of universal jurisdiction". But we should not forget that parallelly the question of universal jurisdiction was considered within the United Nations by other organs in connection with topics included into their programs of work. For instance, the International Law Commission working for many years on the principle "aut dedere aut iudicare", from the very beginning did it in close relations with principle of universal jurisdiction. What closely connects these two topics it is a necessity of careful and exhaustive analysis of practice of States which can confirm or reject to confirm the existence of both principles in customary international law : "universal jurisdiction" as well as "aut dedere aut iudicare".

It can be stressed – on the basis of comments made by States for International Law Commission – that there is a link between those two principles since it was noted that the principle of universal jurisdiction was instrumental to the full operation of the obligation to extradite or prosecute.

A close relationship and interdependence between above-mentioned principles was supported by some states in their opinions for International Law Commission that extending universal jurisdiction could be an effective way to implement the obligation to extradite or prosecute.

It seems that the current work exercised by the Legal Committee on the scope and application of the principle of universal jurisdiction is correctly concentrating on the practice of States applying this principle. As in the case of "aut dedere aut iudicare" principle it is not an easy task, since the said practice is not unified one. And only unified and general practice could create a basis for general recognition of the principle of universal jurisdiction as a generally binding rule of customary international law. Having such a rule international community would gain a powerful and effective tool for combating the most serious crimes, threatening all humanity.

Since 2010 we may notice a growing number of positive replies of States to appeals addressed to States and relevant observers by the General Assembly for information and comments on the scope and application of the principle of universal jurisdiction.

My delegation would like to express our deep appreciation to the Secretary General of the United Nations for a great work performed by the Secretariat in the form of annual

reports prepared since 2010, putting together in a systematic way all information obtained in response to General Assembly's resolutions. These reports show in the best way that the positive practice of States in the field of unification of their approach to the principle of universal jurisdiction develops in a visible way.

Let me also stressed that Poland generally applies the principle of territorial jurisdiction (to offences committed in the territory of the Republic of Poland) or personal jurisdiction (to offences committed by Polish citizens abroad).

However, Poland also applies the principle of universal jurisdiction in limited cases: the Article 113 of the Polish Penal Code states firmly that, regardless of the law operating at the site of the committed offence, Polish penal law shall apply to the Polish citizen and to any foreigner facing extradition when they committed an offence abroad, in circumstances where Poland is obliged to prosecute the crime under international conventions. In practice this is usually restricted to the most serious crimes (like war crimes, crimes against humanity, genocide etc).

In accordance with article 110 paragraph 1 of the Polish Penal Code: "The Polish penal law shall apply to the foreigner who committed abroad an offence against the interests of the Republic of Poland, the Polish citizen, Polish legal person or Polish organizational unit that is not a legal entity, and to the foreigner who committed abroad a terrorist offence".

Finally, in accordance with paragraph 2 of the same Article: "The Polish penal law shall apply in case of committing by a foreigner abroad an offence other than set forth in paragraph 1, if the offence is penalized by Polish penal law with a penalty exceeding 2 years of imprisonment, and the perpetrator is staying in the territory of the Republic of Poland and was not decided to be extradited."

It has to be added that apart from criminal jurisdiction exercised on the basis of above-mentioned provisions of the Penal Code, civil claims can be filled as an adjunct to criminal prosecution in Poland. It is possible in such situations to bring civil claims in a criminal proceeding.

Thank you, Mr Chairman.