



**PERMANENT MISSION OF THE REPUBLIC OF CROATIA TO THE UNITED NATIONS**

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The Permanent Mission of the Republic of Croatia to the United Nations presents its compliments to the Office of Legal Affairs of the United Nations and with regard to the latter's Note No. LA/COD/59/1 of 21 January 2015 and the General Assembly resolution 69/124 of 10 December 2014, entitled "The scope and application of the principle of universal jurisdiction", has the honour to enclose to the current Note Croatia's information and observations on the scope and application of universal jurisdiction.

The Permanent Mission of the Republic of Croatia to the United Nations avails itself of this opportunity to renew to the Office of Legal Affairs of the United Nations the assurances of its highest consideration,

New York, 30 April 2015

**Office of Legal Affairs  
United Nations**

**New York**

## **Response to the call to provide information and opinion on the scope and application of universal jurisdiction**

UN General Assembly resolution 69/124 of 10 December 2014

1. **General.** Croatia understands universal jurisdiction to be a criminal jurisdiction based solely on the nature of crime, regardless of the fact where the crime were committed, as well as of the nationality of the perpetrator or the victim. Its main purpose is to bridge the impunity gap that may still exist between domestic and international criminal justice after the application of standard principles and rules of criminal prosecution (primarily the principle of territoriality). It is aimed at full and exhaustive prosecution of perpetrators of the most serious international crimes and protection of the most important values of international community. Universal jurisdiction is to be implemented according to a number of principles and preconditions, such as its universality, respect for international due process norms, respect for the principle *non bis in idem*; non application of the statute of limitations; respect for the principle of subsidiarity (generally meaning primacy of the State whose citizens have committed crimes, against whose citizens crimes have been committed, or on whose territory crimes have been committed, to prosecute the aforementioned crimes); prevention of the abuse or unwarranted use of universal jurisdiction in an unilateral, selective and politically motivated manner resulting in serious negative consequences for the rule of law at the international level as well as for international relations; reasonable, responsible, judiciously and predictable implementation of universal jurisdiction in accordance with the relevant rules and guiding principles of various branches of international law and international comity.
  
2. **Legal framework for application of the principle of universal jurisdiction**

Croatian constitution does not contain any provision relating to the exercise of universal jurisdiction and its exercise is based on domestic legislation, i.e. Croatian Criminal Code.

- a) **Territorial principle.** The basic principle on which the application of Croatian criminal law is based is the principle of territoriality. In this regard, Article 10 of the Criminal Code (Official Gazette of the Republic of Croatia 125/11, 144/12 - hereinafter: CC) provides that criminal law is applicable to anyone who commits a criminal offense on the territory of the Republic of Croatia. The adoption of the territorial principle is in line with contemporary notion of State sovereignty, which includes the right and duty of any State to apply its law in prosecuting all crimes committed in its territory, as well as with the generally accepted understanding on the interests of any State to protect law and order on its territory. Finally, there are also a number of practical reasons, but also reasons of process economics speaking for the implementation of this principle (visibility of justice for victims, the facts

of the case can usually be best established at the very place where the crime has been committed because of availability of evidence and witnesses).

- b) In order to ensure the application of Croatian legislation with regard to criminal offences committed outside the territory of Croatia, Croatian CC recognizes several principles of the general international law character (active and passive personal principle, real or protective principle), including the principle of universal jurisdiction.

## **2.1. The principle of universal jurisdiction in the Croatian Criminal Code**

Croatian CC is based on the assumption that:

- a) the universal principle gives each State criminal jurisdiction solely on the nature of criminal offence, even when the crime was not committed on its territory and its citizens are neither perpetrators nor victims;

- b) the universal principle is an expression of international solidarity according to which some States pledge to punish perpetrators of crimes in which they have no direct interest,

- c) in the regulation of the universal principle a number of preconditions should be taken into account that ensure the implementation of this principle in good faith and in accordance with international law rights and obligations.

In Croatian CC the principle of universal jurisdiction comes in two forms.

- 1.1. The first form (Article 16 CC), introducing the principle of global criminal law, regulates the implementation of Croatian CC to anyone who, outside the territory of the Republic of Croatia, commits the crime of genocide, crimes against humanity, war crimes, terrorism, torture and other cruel, inhuman or degrading treatment or punishment, slavery and trafficking in human beings, as well as any offence which the Republic of Croatia is obliged to punish under an international treaty. The provision of Article 16 of the CC however limits the obligation of the Republic of Croatia as regards implementation of universal jurisdiction to the situation when it has the perpetrator "under its authority", which means that the perpetrator cannot be tried in absentia (Article 18, paragraph 4 of the CC). Also, a process cannot be started: 1) if it is running before the International Criminal Court or a court of another State, 2) if a fair trial can be expected before a court of the State where the crime was committed, of the State whose national the offender is, or another court competent to hear the case, or 3) if the criminal proceedings have been conducted in another State, unless they have been conducted contrary to internationally recognized standards of fair trial, in which case, criminal proceedings may be instituted only with the approval of the Attorney General.

- 1.2. The second form of universal jurisdiction, or a special extraterritorial competence, regulates the application of Croatian CC to aliens who, outside the territory of the Republic of Croatia, commit a crime against a foreign country or a foreign national which is, according to the laws of the Republic of Croatia, punishable by a prison sentence of five years or more and is not covered by other principles, under the condition that the offense is at the same time punishable under the law of the State in which it was committed (double criminality) and if the extradition of the defendant is permissible by law or a treaty, but did not take place (Article 17 CC). The described principle provides for the punishment of the offenders who have fled to Croatia and did not commit a crime which Croatia is required to punish under international law, but some other, "ordinary" crime (e.g. murder, robbery, traffic violations etc.).
- 1.3. Croatia is a State Party to a number of relevant treaties in this field, including Convention on the Prevention and Punishment of the Crime of Genocide of 1948; Geneva Conventions of 1949 and the Additional Protocols thereto of 1977; Rome Statute of the International Criminal Court of 1998; Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment of 1984; Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954 and its Protocols of 1954 and 1999; Convention on Offences and Certain Other Acts Committed on Board Aircraft of 1963; Convention for the Suppression of Unlawful Seizure of Aircraft of 1970; Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation of 1971; Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation of 1988; Convention for Suppression of Unlawful Acts Against the Safety of Maritime Navigation of 1988; Protocol for Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf of 1988; Convention on the Physical Protection of Nuclear Material of 1980; Convention on the Marking of Plastic Explosives for the Purpose of Detection of 1991; Convention on the Protection and Punishment of Crimes against Internationally Protected Persons, including Diplomats of 1973; International Convention against the taking of Hostages of 1979; International Convention for the Suppression of Terrorist Bombings of 1997, International Convention for the Suppression of the Financing of Terrorism of 1999; International Convention for the Suppression of Acts of Nuclear Terrorism of 2005.
- 1.4. No Croatian court has ever examined any criminal case initiated in the implementation of universal jurisdiction in its first form described above (1.1) and no domestic practice in that regard exists.
- 1.5. Consequently, Croatian criminal law, in its normative regulation of the principle of universal jurisdiction, ensures the application of criminal jurisdiction of the Republic of Croatia to the most serious violations of international law, regardless of the location of the crime and the nationality of the perpetrator or the victim,

while setting some limitations aimed at ensuring the implementation of this principle in good faith and in accordance with international law. Accordingly, Croatia strongly believes that universal jurisdiction and its implementation should be based on well established principles and norms, including those related to international cooperation in criminal matters. At the same time, universal jurisdiction should be exercised responsibly and as an exceptional last resort measure, in order to prevent its unwarranted or politically motivated use. Furthermore, universal jurisdiction must be clearly distinguished from the jurisdiction of international tribunals (international criminal jurisdiction), while the issue of competing jurisdictions should be further thoroughly discussed. Finally, Croatia is of the view that discussion on comparison between the principle of complementarity (the basis for intervention by the ICC) and subsidiarity would further contribute to clarification of this important subject.

**Main Source:**

Croatian Criminal Code (Official Gazette of the Republic of Croatia 125/11, 144/12) – Articles 9 to 19.