

*Translated from Arabic*

## **Kuwait**

### **Ministry of Justice**

#### **Memorandum on the scope and application of the principle of universal jurisdiction**

Having considered the note of the Secretary-General (LA/COD/59/1), General Assembly resolutions 64/117, 65/33 and 66/103, the Ministry would like to make the following observations:

#### **I. Overview of the character and application of the principle of universal jurisdiction**

1. The causes and essence of impunity are attributable to the inability or, occasionally, the reluctance of the national authorities of certain States to confront deeds and offences that are universally considered humanitarian crimes. The principle of universal jurisdiction has been justified on those grounds, the aim being to empower the judicial, civil and penal regulators in various other countries to undertake the duty of considering, investigating and taking legal action against such crimes on behalf of the international community.

2. The increase in international crime rates has been a factor in the international propagation of the principle, particularly given the fact that the risks posed by such crimes have reached alarming proportions. Those crimes include genocide, crimes against humanity, war crimes, piracy, torture, extrajudicial executions and enforced disappearance, all of which, under the provisions and principles of international law are universally considered to be illegal. It has therefore become incumbent upon all States members of the international community to extend their national judicial authority to include the investigation of such crimes, without taking into consideration their international nature, and hold perpetrators to account before their national courts.

3. From a thorough study of prevalent international practices, it is apparent that many countries make a connection between their right to exercise jurisdiction and the perpetration of certain crimes of a particular nature, including genocide, crimes against humanity and war crimes. Nevertheless, the question of the adoption of the principle of universal jurisdiction and its application outside the relevant institutions remains unclear, and lacks the pertinent parameters, bases and mechanisms necessary in order to determine its scope and application. It is therefore difficult to make generalizations about actual application while it is not regulated by international instruments that prescribe the measures and mechanisms that States are legally permitted to use. Application of the principle without specific detail as to scope and measures will lead to numerous international legal problems and divert us from the basic aim informing the attempt to adopt the principle.

4. It is therefore appropriate that the international community should take into consideration a number of matters that are indispensable in this regard, including the need to conduct an exhaustive investigation into mechanisms for applying the principle in the light of international realities. Possible sources, scope and nature must be studied and understood, as well as the circumstances under which it will be applied, and the extent to which application is possible in the absence of those mechanisms. Consideration must also be given to previous relevant laws and the possible impact of international application.

5. It should be said that there are no obvious disadvantages to adoption of the principle of universal jurisdiction per se. The major problem lies in determining a scope, manner and procedures for application that will be universally acceptable. There continue to be numerous apprehensions as to what eventual application could entail, particularly if universal jurisdiction were used selectively or arbitrarily, without due consideration being given to requirements for and standards on universality and the need for international coordination, pursuant to the principle of international justice and equality.

6. It should perhaps be noted that the crimes to which the principle of universal jurisdiction could be applied, which include genocide, crimes against humanity and war crimes, are essentially acts that are covered by the classification of crimes contained in the Rome Statute of the International Criminal Court. That prompts us to remark that there is a clear causal link and connection between the concept of universal jurisdiction and that Statute, which makes it essential to point out that it is incumbent upon States Parties to the Statute to strengthen their cooperation in activating and applying the principle of universal jurisdiction. Matters will

undoubtedly be very different with respect to those States that are not party to the above-mentioned Statute: as long as they have as yet made no attempt to ratify the Rome Statute, it will be difficult to say that the principle of universal jurisdiction is commonly accepted, particularly given that if that principle is to be implemented, one of the crimes specified in the Rome Statute must have been committed.

7. It is worth mentioning that Kuwait has only observer status with regard to the Rome Statute of the International Criminal Court, having as yet neither signed nor ratified it, and it is therefore difficult to voice an opinion on the feasibility of extending the scope of universal jurisdiction under that Statute to States which are not party thereto.

8. It is also essential that a differentiation should be made between bilateral and regional jurisdiction, which is determined when any two States or a regional group of States conclude agreements on the provision of mutual legal and judicial assistance or bilateral penal cooperation, thereby agreeing to apply particular parameters to bilateral or regional jurisdiction.

9. Matters will change if consideration is given to the nature and scope of universal jurisdiction and its application throughout the international community rather than at the regional or bilateral levels. Collective universal jurisdiction can of course only be applied by the conclusion of international agreements with universal application which restrict the scope of application of that jurisdiction to States which become parties to such agreements.

10. It is therefore advisable to attach the principle of universal jurisdiction, as a general principle, to the Rome Statute of the International Criminal Court, and not apply it to any crime other than the crimes covered by that instrument.

## **II. Overview of General Assembly resolution 67/98, “Scope and application of the principle of universal jurisdiction”, and the recommendations of the Sixth Committee of the General Assembly (A/67/472)**

In resolution 67/98, the General Assembly provides a set of international parameters with respect to the application of the principle of universal jurisdiction, including the following points:

- It reaffirms its commitment to the purposes and principles of the Charter of the United Nations, to international law and to an international order based on the rule of law, which is essential for peaceful coexistence and cooperation among States;
- It endorses the recommendations of the Sixth Committee and adopts its report on the scope and application of the principle of universal jurisdiction;
- It takes into account the comments and observations of Governments and observers and the discussions held in the Sixth Committee at the sixty-fourth, sixty-fifth, sixty-sixth and sixty-seventh sessions of the General Assembly on the scope and application of universal jurisdiction;
- It recognizes the diversity of views expressed by States and the need for further consideration towards a better understanding of the scope and application of universal jurisdiction;
- It reiterates its commitment to fighting impunity, and notes the views expressed by States that the legitimacy and credibility of the use of universal jurisdiction are best ensured by its responsible and judicious application consistent with international law;
- It takes note of the report of the Secretary-General prepared on the basis of comments and observations of Governments and relevant observers;
- It decides that the Sixth Committee shall continue its consideration of the scope and application of universal jurisdiction, without prejudice to the consideration of this topic and related issues in other forums of the United Nations, and for this purpose decides to establish, at its sixty-eighth session, a working group of the Sixth Committee to continue to undertake a thorough discussion of the scope and application of universal jurisdiction;
- It invites Member States and relevant observers, as appropriate, to submit, before 30 April 2013, information and observations on the scope and application of universal jurisdiction, including, where appropriate, information on the relevant applicable international treaties and their national legal rules and judicial practice, and requests the Secretary-General to prepare and submit to the General Assembly at its sixty-eighth session a report based on such information and observations;
- It decides that the Working Group shall be open to all Member States and that relevant observers to the General Assembly will be invited to participate in the work of the Working Group;

- It also decides to include in the provisional agenda of its sixty-eighth session the item entitled "The scope and application of the principle of universal jurisdiction".

### **III. International instruments that are consistent with universal jurisdiction standards**

1. Having considered the parameters and aspects of the possible application of universal jurisdiction, it is appropriate to review a number of international instruments to the provisions of which it may be possible to attach the bases and procedures of universal jurisdiction.

2. There are many such instruments that we believe are consistent with the proposal to apply the principle under consideration more universally and, in particular, international instruments and provisions relating to penal matters. Those instruments include, but are not restricted to, the following:

- 1982 United Nations Convention on the Law of the Sea.

- United Nations Convention against Corruption.

- United Nations Convention against Transnational Organized Crime and its three Protocols on the suppression of trafficking in persons, against the smuggling of migrants and against the illicit manufacturing of and trafficking in firearms.

- International conventions relating to the suppression of all forms of terrorism.

- Security Council resolutions.

3. In general, it should be stressed that application of the principle of universal jurisdiction makes it imperative to establish another general universal principle, the import of which limits the scope of jurisdiction in respect of the above-mentioned international instruments to States which have ratified them. The universality of jurisdiction is purely relative and difficult to apply throughout the world, given that it is logical and well-established that international instruments are applied only in States which have ratified them. The same applies to the measures and arrangements pertaining to those instruments, which include universal jurisdiction measures.

### **III. The opinion of the Ministry**

1. The Ministry is of the opinion that, in principle, there is nothing to prevent the inclusion of the principle of universal jurisdiction in the framework of the Rome Statute of the International Criminal Court or in any of the international instruments referred to above or any other similar instrument, provided that the validity of the principle and application of relevant measures is restricted to States parties to or members of such instruments. No judicial obligations should be imposed on other States that have not yet ratified all those international instruments.

2. It is also fitting that the international community, through the United Nations, should firmly establish universal jurisdiction and disseminate it through an international convention or instrument in that regard, with a view to systematizing the rules, measures, procedures and means of implementation relating to that type of jurisdiction at the international level. It would then be possible to urge and encourage States to achieve comprehensive global ratification, thereby assuring the universality of such jurisdiction. That proposal may be the most apposite and realistic for the purpose of providing the international legal and judicial guarantees necessary in order to prevent abuse of that principle or alienation from its goals, and in order to ensure the firm establishment of justice and equality and removal of any selectivity that could take place in the implementation of existing international instruments.

3. Lastly, it should be noted that if universal jurisdiction passes into law, States will have to amend their national legislation in order to allow for requirements for national implementation of that jurisdiction in the light of its universal character.