

Translated from Spanish

Comments of the Government of Peru concerning the scope and application of the principle of universal jurisdiction

1. The comments of the Government of the Republic of Peru with regard to the scope and application of the principle of universal jurisdiction, as requested in LA/COD/59/1, are as follows:

Applicable international treaties

2. Peru has ratified the main human rights treaties, as outlined below, which in some cases contain provisions that implicitly contemplate the application of universal jurisdiction by States.

3. The Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, of 12 August 1949; the Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, of 12 August 1949; the Geneva Convention (III) relative to the Treatment of Prisoners of War, of 12 August 1949; and the Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, of 12 August 1949 entered into force for Peru in August 1956. These four 1949 Geneva Conventions have the following provision in common:

Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a prima facie case.

4. In this context, the States parties to the said Conventions are under the obligation to take the relevant judicial action in respect of any subject who commits “grave breaches”, without being constrained by the fact that the breach was not committed in its territory, or that the perpetrator or the victim of the grave breaches is not a national or has no other connection to the State.

5. With regard to cases where universal jurisdiction applies, the four 1949 Geneva Conventions establish that it will apply only when “grave breaches” are committed. The grave breaches to which the preceding article relates shall be those involving any of the following acts, if committed against persons or property protected by the Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

6. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by Peru in 1988, stipulates in its article 5.2 that:

Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph I of this article.

The Convention also provides in its article 6.1 that:

Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in article 4 is present shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

7. As these articles attest, the Convention establishes the application of universal jurisdiction and reaffirms, in the universal system for the protection of human rights, that torture is one of the offences to which States have the power to apply universal jurisdiction.

8. The International Convention for the Protection of All Persons from Enforced Disappearance, to which Peru acceded in September 2012, establishes the application of universal jurisdiction in its article 10:

Upon being satisfied, after an examination of the information available to it, that the circumstances so warrant, any State Party in whose territory a person suspected of having committed an offence of enforced disappearance is present shall take him or her into custody or take such other legal measures as are necessary to ensure his or her presence. The custody and other legal measures shall be as provided for in the law of that State Party but may be maintained only for such time as is necessary to ensure the person's presence at criminal, surrender or extradition proceedings.

9. The Inter-American Convention on Forced Disappearance of Persons, which was ratified by Peru in February 2002, establishes in its article IV the possibility of States Parties applying universal jurisdiction:

The acts constituting the forced disappearance of persons shall be considered offences in every State Party. Consequently, each State Party shall take measures to establish its jurisdiction over such cases in the following instances:

- (a) When the forced disappearance of persons or any act constituting such offense was committed within its jurisdiction;
- (b) When the accused is a national of that State;
- (c) When the victim is a national of that State and that State sees fit to do so.

Every State Party shall, moreover, take the necessary measures to establish its jurisdiction over the crime described in this Convention when the alleged criminal is within its territory and it does not proceed to extradite him.

10. This Convention does not authorize any State Party to undertake, in the territory of another State Party, the exercise of jurisdiction or the performance of functions that are placed within the exclusive purview of the authorities of that other Party by its domestic law.

Domestic legal provisions

11. The Peruvian Criminal Code, approved through Legislative Decree No. 635, contemplates the possibility of applying universal jurisdiction, pursuant to its article 2, paragraph 5, which states as follows:

Article 2. – Principle of extraterritoriality; protective principle; active and passive personality principle

Peruvian criminal law shall apply to any offence committed abroad when:

5. Peru is required by international treaties to suppress such offence.

12. In Peru, pursuant to article 55 of the Political Constitution, treaties in general are part of domestic law. Article 200 of the Constitution also states that, in principle, treaties have the rank of a statute.

Article 200 – Constitutional guarantees:

(...) A constitutional challenge brought in respect of norms that have the rank of a statute – statutes, legislative decrees, emergency decrees, treaties, regulations issued by Congress, regional norms of a general nature and municipal ordinances – that violate the Constitution in form or in substance.

13. Nonetheless, with regard to the hierarchy of human rights treaties, the Peruvian Constitutional Court, which is the autonomous and independent body that reviews constitutional challenges, in its judgement 047-2004-AI/TC, of 24 April 2006, issued by the full Court, stated as follows:

It should also be noted that while article 55 of the Constitution is a general rule for all treaties, it also establishes a special rule for human rights treaties within the system of sources. The fourth

final and transitional provision of the Constitution establishes [...] As can be seen, our system of normative sources recognizes that human rights treaties are used to interpret the rights and freedoms recognized under the Constitution. Such treaties therefore constitute a parameter of constitutionality with regard to rights and freedoms. These treaties are not only incorporated into our domestic law, in accordance with article 55 of the Constitution, but are also incorporated therein by way of integration or interpretive reception, pursuant to the Constitution.

14. In addition, in its judgement 0025-2005-PI, of 25 April 2006, issued by the full Court, the Constitutional Court specified that “international human rights treaties not only conform to our legal order, but also have constitutional rank”.

15. In this regard, human rights treaties in Peru have constitutional rank and are part of the domestic legal order; the treaties contemplated in article 2, paragraph 5, are included in this set of treaties.

Domestic judicial practices

16. To date, Peruvian courts have not had to hear any case concerning the application of universal jurisdiction, nor have the relevant Peruvian authorities received any extradition requests (passive or active) involving the application of universal jurisdiction.

Other comments

17. Peru has a norm that makes reference to universal jurisdiction: article 2.5 of the Peruvian Criminal Code, which states that Peruvian law shall be applied to suppress offences committed abroad, is in conformity with the international treaties to which Peru is a State Party. This brings up the question whether or not States need to have a specific norm that authorizes the application of universal jurisdiction.

18. The application of universal jurisdiction by States still depends on the types of national criminal procedures involved. It is therefore important to reiterate whether the goal is to have each State follow its own criminal procedures or to establish a single procedure for the mandatory application of universal jurisdiction by all States.

19. Peru is a State party to international treaties that make reference to international crimes to which universal jurisdiction may be applied. It follows, therefore, that the list of crimes that can trigger the application of universal jurisdiction is, in practice, not a closed one; it could depend on the will of States as expressed in a treaty. In that connection, the debate on the international crimes to which universal jurisdiction will apply should continue. Likewise, even if the crimes to which universal jurisdiction will apply are determined, efforts should continue to be made to come up with consensual definitions of those crimes.

20. Given the possibility that various States might be requesting the application of universal jurisdiction all at once, it would be useful to establish the criteria for addressing that challenge.