



## SLOVENIA

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**Statement by Ms. Petra Langerholc**  
**Representative of the Republic of Slovenia**  
**at the 71st UNGA Sixth Committee on**  
**The scope and application of the principle of universal jurisdiction (item 85)**  
**October 2016**

Mr. Chairman,

Slovenia fully aligns with the statement delivered by the EU. In addition, we would like to add a few points that we consider as important

Slovenia recognizes universal jurisdiction as an important principle of international law that contributes towards strengthening the rule of law at both national and international level. Although discussions on universal jurisdiction still point to considerable differences in views on matters of scope and application, there is a common understanding of the principle being a fundamental tool for combating impunity and ensuring accountability for the most serious crimes.

Universal jurisdiction can offer an important alternative to impunity as recently seen in the case of the trial before the Extraordinary African Chambers in the Senegalese courts. Despite its internationalized character, the trial reaffirmed the importance of the principle of universal jurisdiction for ensuring accountability for most serious crimes.

Slovenia agrees that it is the gravity of the crime affecting the international legal order as a whole that speaks in favor of the potential of universal jurisdiction both in terms of prevention and prosecution of most serious crimes. We therefore share the view that universal criminal jurisdiction is based on the nature of crime regardless of the nexus between the crime and the prosecuting State, including the place of perpetration and the nationality of the perpetrator or the victim.

Although no criminal cases on the basis of universal jurisdiction have taken place in Slovenia, our national legal order accepts that customary international law and treaty law are the main guiding sources in defining crimes that by their nature can be tried under universal jurisdiction. We recognize that customary international law permits exercise of universal jurisdiction over the most serious crimes under international law, including genocide, crimes against humanity, war crimes, torture and piracy. In addition, numerous treaties oblige states parties to empower their criminal justice system to exercise jurisdiction over crimes defined in those treaties, although this

obligation extends only to the exercise of such jurisdiction when a suspect is subsequently present in the territory of a forum state.

The relevant provisions in Slovenian law on universal jurisdiction are found in the second and third paragraphs of Article 13 with conditions for prosecution stipulated in Article 14 of the Criminal Code. The law does not contain a list of crimes for which the principle of universal jurisdiction can be applied.

The second paragraph of Article 13 concerns the prosecution of a foreigner who commits a crime abroad, is apprehended in the territory of Slovenia and is not extradited to a foreign country. The third paragraph of Article 13, however, applies in the event that a foreigner commits a crime abroad which under international treaty or general principles of law recognized by the international community can be prosecuted in all countries, irrespective of where it is committed.

This latter category of crimes, i.e. prosecution under the third paragraph of Article 13, is, however, possible only with the approval by the Minister of Justice, whereas prosecution under the second paragraph of Article 13 is subject to the approval by the Minister of Justice in the absence of double criminality and with the proviso that, according to the general principles of law recognized by the international community, the offence in question constituted a criminal act at the time it was committed. This inclusion of the safeguard in the form of the authorization of trials under the principle of universal jurisdiction reflects the understanding of the need for a necessary degree of caution when applying the principle of universal jurisdiction against interpreting the suitability of the application of the principle too extensively.

The application of the principle of universal jurisdiction under paragraph 2 of Article 13 is further limited in the following situations:

- if the perpetrator has served the sentence imposed on him in the foreign country or if it was decided in accordance with an international agreement that the sentence imposed in the foreign country is to be served in Slovenia;
- if the perpetrator has been acquitted by a foreign court or if his sentence has been remitted or the execution of the sentence has fallen under the statute of limitations, however, under Article 96 of the Criminal Code the statute of limitations is excluded in case of a prosecution or enforcement of sentences for crimes for which the Criminal Code allows life imprisonment, for offenses from Articles 100 to 105 of the Criminal Code, which includes genocide, crimes against humanity and war crimes, or for those offenses for which the statute of limitations under international agreements is not possible;
- and lastly, if, according to foreign law, the criminal offence concerned may only be prosecuted upon the complaint of the injured party and the latter has not been filed or has been withdrawn.

Slovenian Criminal Procedure Act stipulates procedural rules that are equally applicable in the context of the principle of universal jurisdiction, ensuring recognized standards of due processes, including the rights of the accused.

In consideration of time, I will only highlight a procedural rule on trials in absentia, which in effect prohibits trials in complete absence of the defendant. The relevant rule is found in Article 307 of the Criminal Procedure Act, which allows a trial to be held when a duly summoned defendant fails to appear at the main hearing but only if his presence is not indispensable, if his defense counsel is present at the trial and if the defendant has already been heard.

The related yet separate rules on immunities are contained in Article 6 of the Criminal Code. According to the said provision, the application of the Criminal Code is prohibited for acts of persons whose criminal liability is excluded due to immunity under the provisions of the constitution or rules of international law.

It is well accepted that the application of the principle of jurisdiction entails specific challenges, including with respect to evidence collection in the context of inter-State cooperation. Argentina, Belgium, The Netherlands, and my country Slovenia, are actively engaged in efforts to improve inter-state cooperation in the context of atrocity crimes prosecution, in particular through the initiative to adopt a new international instrument on mutual legal assistance and extradition between States for genocide, crimes against humanity and war crimes, known as the MLA initiative. The initiative already counts 52 supporters and my delegation invites all States to join.

With the potential role of the principle of universal jurisdiction and challenges faced by the international community in ensuring accountability for heinous perpetrators, my delegation will continue supporting a common understanding of different issues relevant for this topic.

In this sense, we see merit in the exchange of views and practice on the topic also in other fora, which, too, can contribute to the advancement of our work. I would like to mention EU Genocide Network as a good example in this context. Allow me also to express appreciation for yearly reports prepared by the Secretary-General on the present topic, which are of help in our deliberations. Moreover, we would like to underscore the role of the Working Group and its Chairperson and express our support for a thorough dialogue on various issues identified in the Chair's informal working paper. We stand ready to contribute to further discussions on this important topic.

I thank you Mr. Chairman.