
Translated from Spanish

Scope and application of the principle of universal jurisdiction

Report of the Republic of El Salvador in response to General Assembly resolution 72/120

The Republic of El Salvador is transmitting the present report in response to resolution 72/120, in which Member States are invited to submit, before 27 April 2018, 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.

El Salvador reiterates that universal jurisdiction plays an essential role as a key rule of law instrument for combating and ending impunity and ensuring justice, truth and full reparation for the victims of serious international crimes against humanity.

As mentioned on previous occasions, recent national jurisprudence includes judgment No. 44-2013/145-2013, of 13 July 2016, in which the Constitutional Chamber of the Supreme Court of Justice of El Salvador declared unconstitutional several articles of the General Amnesty (Peacebuilding) Act, applicable in the country for crimes committed during the Salvadoran armed conflict of 1980 to 1992.

That judgment has formed the basis for important criteria in the jurisprudence of the Salvadoran legal order. For instance, it recognizes that crimes against humanity deeply shock the conscience of humanity and undermine human dignity on a universal scale and so, since they are particularly serious cruel and inhuman acts, they constitute imprescriptible national and international crimes. Consequently, national legal measures, whether legislative or of any other kind, cannot be used to prevent investigation, establishment of the truth or the application of independent justice to provide full reparation for victims in relation to these crimes.

In that connection, the Constitutional Chamber clarified that the adoption of such legislative measures as absolute, unrestricted and unconditional amnesties, or ones likely to deny justice and reparations for victims, hide the truth and encourage impunity, is incompatible with obligations arising from the Constitution and international fundamental rights law, since these crimes and violations concern non-derogable fundamental rights.

This important precedent has enabled the Supreme Court of Justice to undertake work to establish a more precise conceptual frame of reference with regard to the scope of the principle of

universal jurisdiction. In judgment No. 24-S-2016, of 24 August 2016, the Supreme Court refers to the assertion in the Princeton Principles on Universal Jurisdiction, of 4 December 2001, that “certain crimes are so harmful to international interests that states are entitled – and even obliged – to bring proceedings against the perpetrator, regardless of the location of the crime or the nationality of the perpetrator or the victim.”

In line with that obligation, the Constitutional Chamber of El Salvador recognized in its recent *amparo* judgment No. 558-2010, of 11 November 2016, the importance of not granting amnesty for crimes that represent serious violations of international humanitarian law. It stated that:

“... to do otherwise, that is, to grant amnesty for acts provisionally characterized as crimes falling within the scope of the above-mentioned law, when it is probable that they are crimes against humanity or war crimes constituting serious violations of international humanitarian law, would hinder the investigation, prosecution, conviction and sentencing of those responsible for acts for which the granting of amnesty is prohibited under the Constitution and international law.”

In conclusion, it is clear that national courts and tribunals have been progressively developing important precedents concerning the recognition and application of the principle of universal jurisdiction, because it is recognized expressly as a legal concept applicable to serious international crimes and as a means to ensure justice, truth and full reparations for victims. Such considerations reflect the nature of universal jurisdiction as a principle that does not require national or territorial links but simply the existence of crimes that, as a result of their seriousness to the international community, should not be exempt from prosecution.

The Republic of El Salvador will maintain its commitment to contribute to the study of the topic in the Sixth Committee of the General Assembly.