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The scope and application of the principle of universal jurisdiction

Position of Switzerland under paragraph 3 of General Assembly
resolution 72/120 of 7 December 2017

In paragraph 3 of its resolution 72/120, the General Assembly “[i]nvites Member States and relevant observers, as appropriate, 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, and requests the Secretary-General to prepare and submit to the General Assembly at its seventy-third session a report based on such information and observations”.

The scope and application of universal jurisdiction in Switzerland

For Switzerland, universal jurisdiction is a customary principle whereby a court can exercise its jurisdiction even in the absence of ties between the accused and the forum State (territory, nationality of the offender or the victim, attack against the fundamental interests of the State).

In the Swiss legal order, universal jurisdiction is a secondary jurisdiction exercised when no other court with stronger jurisdictional ties (territoriality, nationality, for example) can try the offender for the crimes in question.

Switzerland subscribes to the “conditional” or “limited” conception of universal jurisdiction, the exercise of which is subject to two conditions:

- (a) The presumed offender is on Swiss territory;

- (b) The presumed offender has not been extradited to another competent jurisdiction.

The requirement of “close ties” with Switzerland, which existed for war crimes, was abandoned following the amendment of its civilian and military criminal legislation with a view to implementing the Rome Statute (amendments that entered into force on 1 January 2011).

The scope of universal jurisdiction is defined in the general provisions of the Swiss Criminal Code (CP; Recueil systématique 311.0, http://www.admin.ch/ch/f/rs/c311_0.html). Switzerland recognizes and applies the principle of universal jurisdiction for offences against minors (art. 5 CP), crimes or offences prosecuted under the terms of an international agreement (art. 6 CP), and particularly serious crimes proscribed by the international community (art. 7, para. 2 and art. 264m CP), such as genocide (art. 264 CP), crimes against humanity (art. 264a CP) and war crimes (arts. 264b to 264j CP).

Practice of the courts

Swiss courts are presently considering several cases brought against foreign nationals for allegations of crimes against humanity, war crimes or acts of torture committed abroad. One case had been concluded based on universal jurisdiction by a Swiss military court, when it was still competent to hear cases on the crimes concerned. F. N., a Rwandan national, had been convicted of war crimes committed in Rwanda (decision of the Military Court of Cassation of 27 April 2001).

Position of Switzerland regarding the discussions on universal jurisdiction in the Sixth Committee of the General Assembly

Switzerland welcomes the fact that the General Assembly, in its resolution 72/120, reiterates its commitment to fighting impunity, while noting the view 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.

Switzerland is convinced that universal jurisdiction is an effective tool for fighting impunity, since it ensures that those guilty of the most serious crimes are brought to justice in cases where no court has been seized pursuant to other rules of jurisdiction.

Nonetheless, since the international community has not been able to reach a consensus on the definition and scope of universal jurisdiction, the issue should be examined by experts. It is for that reason that Switzerland proposes that the possibility of involving the International Law Commission be considered.

The Commission's involvement is desirable owing to the highly legal and technical nature of the topic, which should first be examined in detail by legal experts, without the political considerations that inevitably surround the issue. A comprehensive legal study analysing the practical application of the principle would provide a solid basis for future constructive discussions. A mandate to the Commission would not take away the substance of the topic that is being dealt with by the Sixth Committee and the working group on the topic. The Commission's study would only provide a basis for more informed discussions, and States would maintain the freedom to decide how the topic should be treated in the Sixth Committee.