

*Translated from Spanish*

## **Permanent Mission of El Salvador to the United Nations**

The scope and application of the principle of universal jurisdiction

Report of the Republic of El Salvador pursuant to General Assembly resolution 74/192

New York, 7 April 2020

The Republic of El Salvador is submitting the present report pursuant to General Assembly resolution 74/192, in which Member States are invited to submit, before 24 April 2020, information and observations on the scope and application of universal jurisdiction, including, where appropriate, information on the relevant applicable international treaties and on their national legal rules and judicial practice.

With regard to this important topic, El Salvador reiterates that universal jurisdiction plays a significant role in combating impunity for the most serious crimes of concern to the international community, including torture, genocide and crimes against humanity, and in ensuring access to justice, truth and full reparation for victims.

As mentioned in previous reports, El Salvador has a strong normative foundation for establishing the elements needed for the recognition and application of the principle of universal jurisdiction. For example, under article 10 of the Criminal Code, universal jurisdiction is regulated as an independent principle, whose application does not depend on the place where the crime was committed or on the individuals involved. Moreover, the law of El Salvador does not set out a restrictive list of crimes to which the application of universal jurisdiction is limited. Rather, it provides that the crime in question must have affected property internationally protected by specific agreements or rules of international law, or must seriously undermine universally recognized human rights.

This approach is in line with international legal instruments on the protection of human rights, such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, both of which build on the Universal Declaration of Human Rights, as well as the American Convention on Human Rights, in the regional context of the American continent. All of these instruments have been ratified by El Salvador and are a part of its law, in line with article 144 of the Constitution.

Similarly, national jurisprudence contains important elements for the effective application of universal jurisdiction. For example, in judgment No. 26-S-2016 of 24 August 2016, the Supreme Court of Justice indicated that, under the criminal law of El Salvador, the principle of universal jurisdiction is recognized as “the granting of jurisdiction to a State in order to prosecute certain international crimes, without requiring any connecting factor”. In that judgment, the Supreme Court also refers to the definition set out in the Princeton Principles on Universal Jurisdiction, according to which certain crimes are so harmful to international interests that States are authorized, and indeed required, to bring proceedings against the perpetrator, regardless of where the crime was committed or the nationality of the perpetrator or the victim. Accordingly, the Court stated that “article 28 of the Constitution leaves open the possibility of extraditing nationals for crimes not committed in the territory of the requesting State, provided that the crimes are considered to be of international significance”.

In other decisions, such as decision 24-S-2016 of 24 August 2016, the Court has stated that the criterion of subsidiarity applies to the principle of universal jurisdiction, which is to be exercised when, in the State in which the crimes occurred, there is an obstacle to, or there is no specific interest in, the prosecution of those crimes. Hence, in national practice, the application of the principle of universal jurisdiction is recognized as lawful when the State in which the crime was committed, or the State which has jurisdiction under other principles of criminal law enforcement, is unwilling or unable to investigate, prosecute and punish the crime.

Similarly, as mentioned on previous occasions, constitutional and Supreme Court jurisprudence have made relevant contributions to the application of the principle of universal jurisdiction. In particular, by judgment No. 44-2013/145-2013 of 13 July 2016, the Constitutional Chamber of the Supreme Court of Justice of El Salvador declared several articles of the General Amnesty (Peacebuilding) Act, applicable in El Salvador to crimes committed during the Salvadoran armed conflict from 1980 to 1992, to be unconstitutional. In addition, in amparo judgment No. 558-2010 of 11 November 2016, the Constitutional Chamber recognized the importance of not granting amnesty for crimes that represent serious violations of international humanitarian law, stating 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”.

Other examples of progress achieved by El Salvador concern the practices adopted by the Office of the Public Prosecutor, which, in exercising its jurisdiction under article 193 of the Constitution, and in accordance with the above-mentioned judgment No. 44-2013/145-2013, issued the policy for the criminal prosecution of war crimes and crimes against humanity committed during the armed conflict in El Salvador.

Article 7 of that policy covers principles of international criminal law as standards of national law, expressly recognizing the power of States to exercise extraterritorial criminal jurisdiction pursuant to the principle of universal jurisdiction. Accordingly, it indicates that the State in whose territory the alleged perpetrator of serious human rights violations, crimes against humanity, genocide or war crimes is present, is required to prosecute or extradite him or her.

The aforementioned policy is binding on all the staff of the Office of the Public Prosecutor and on the national civilian police and other entities that assist in the investigation of crimes, provided it is not at variance with the internal rules of those bodies. The policy therefore safeguards the duty to guarantee rights in respect of the responsibility of the State of El Salvador, namely the responsibility established in connection with the subjective element of criminal responsibility, and in respect of actions or omissions by any public authority in the exercise of its functions or actions or omissions by individuals acting with the consent of the State through its public servants.

In sum, national practice has produced major precedents for the recognition and application of the principle of universal jurisdiction. The Republic of El Salvador therefore reiterates its commitment to the continued consideration of this important topic in the Sixth Committee of the General Assembly.

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