



## **Information by Portugal concerning the topic**

### **“The Scope and Application of the Principle of Universal Jurisdiction”**

#### **UNGA Resolution A/RES/74/192**

Following the General Assembly Resolution A/RES/74/192, of 30 December 2019, the Secretary-General has requested Members States to provide information and observations concerning the scope and application of the principle of universal jurisdiction.

As a general principle, the Portuguese criminal legislation is applicable to all facts committed in the Portuguese territory<sup>1</sup>.

The Portuguese criminal legislation is also applicable to facts perpetrated outside the Portuguese territory when committed<sup>2</sup>:

- i. By Portuguese citizens against other Portuguese citizens that reside in Portugal;
- ii. By Portuguese citizens or by foreigners against Portuguese citizens, if the offender is to be found in Portugal and if the facts are punishable in the territory where they took place unless if the punitive power is not carried out in that place, and the extradition cannot be performed or if it is decided not to surrender the offender as result of an European arrest warrant or of other international agreement binding Portugal;
- iii. By foreigners, irrespective of the nationality of the victim, if the offender is to be found in Portugal and the extradition cannot be performed or if it is decided to not surrender in result of a European arrest warrant or of other international agreement binding Portugal;

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<sup>1</sup> Article 4 of the Criminal Code.

<sup>2</sup> Article 5 (1) of the Criminal Code.



iv. By any person, regarding the crimes of "computer and communications fraud"<sup>3</sup>, the categories of crimes of "counterfeiting of money, credit certificate and sealed value" and of "faking of dies, weights and equivalent objects"<sup>4</sup>, the category of "crimes against national independency and integrity"<sup>5</sup>, the category of "crimes against the course of the Rule of law" and "electoral crimes"<sup>6</sup>, the crime of terrorism<sup>7</sup>, as well as certain crimes committed by terrorist organisations<sup>8</sup>.

The crimes listed in § iv) above relate to crimes for which the Portuguese law establishes absolute universal jurisdiction, that is to say, when the judicial authorities may pursue any individual, regardless of their nationality, place of residence or location. However, it must be noted that the Portuguese law establishes for a substantial number of crimes a conditional universal jurisdiction, that is, when the agent is found in Portugal and cannot be or it was decided not to extradited or to hand over. Examples of this last category include genocide, crimes against humanity, war crimes, incitement to war, recruitment of mercenaries and the crime of aggression<sup>9</sup>.

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<sup>3</sup> Article 221 of the Criminal Code.

<sup>4</sup> Articles 262 to 271 of the Criminal Code.

<sup>5</sup> Articles 308 to 321 of the Criminal Code.

<sup>6</sup> Articles 325 to 345 of the Criminal Code.

<sup>7</sup> Article 2 of the Law 52/2003 of 22 August 2003.

<sup>8</sup> Article 4 of the Law 52/2003 of 22 August 2003.

<sup>9</sup> Law 31/2004 of 22 July 2004.