

Translated from French

Republic of Senegal

Ministry of Justice

Information and comments by Senegal on General Assembly resolution 74/192 of 18 December 2019, entitled "The scope and application of the principle of universal jurisdiction"

The criminal jurisdiction of Senegalese courts has long been based on the criteria of nationality and territoriality. Articles 664 et seq. of the Code of Criminal Procedure, which regulate criminal jurisdiction, also require that the principle of dual criminality be satisfied when the offence committed abroad is classified as an ordinary offence, unless the victim is of Senegalese nationality. In the first case, an official complaint by the country where the offence was committed is still necessary.

The principle of universal jurisdiction was introduced into Senegalese criminal law pursuant to Act No. 2007-05 of 12 February 2007, by which the Code of Criminal Procedure was amended and which concerned the implementation of the Rome Statute of the International Criminal Court. This text confers jurisdiction on Senegalese courts over the crimes of genocide, crimes against humanity and war crimes referred to in articles 431-1 to 431-5, as well as the terrorist acts referred to in articles 279-1 to 279-3 and 279-5. Along with the establishment of the Extraordinary African Chambers, the Act made it possible to try Hussein Habré, whose case was previously considered to be outside the jurisdiction of the Senegalese courts.

Near universal jurisdiction is established under article 130 of Act No. 2018-03 of 23 February 2018 on combating money-laundering and the financing of terrorism. The Act enables the Senegalese courts to try any natural or legal person who is being sought for the offences it covers, when the place of commission of an offence is located in the territory of a member State* or in a third State, provided that, in the latter case, jurisdiction is conferred on the Senegalese courts under an international convention.

Senegal is also a signatory to several international legal instruments that encourage each State party to establish its competence to exercise criminal jurisdiction over a certain number of

* *Translator's note:* in article 25 of the Act, "member State" is defined as a State party to the Treaty on the West African Monetary Union or the Treaty on the West African Economic and Monetary Union.

offences when the perpetrator is present in its territory and it does not extradite him or her. Examples are the International Convention for the Protection of All Persons from Enforced Disappearance (art. 9.2), the International Convention for the Suppression of the Financing of Terrorism (art. 7.4), the United Nations Convention against Transnational Organized Crime (art. 15.4) and the Protocols thereto, and the United Nations Convention against Corruption (art. 42.4).

There is thus a legal framework for the adoption by the State of Senegal of legislative measures that would confer on the criminal courts jurisdiction over offences committed abroad, regardless of the nationality of the perpetrators, provided that they reside in its territory and it has decided not to extradite them.

While it is true that, in Senegalese criminal law, universal jurisdiction remains confined to international crimes and acts of terrorism, such jurisdiction could have the merit – given the development of transnational organized crime – of combating impunity and acting as a deterrent to offenders and criminals who might otherwise be tempted, after their crimes, to exile themselves in other countries in order to escape prosecution.

The fact that some countries have chosen to enshrine the principle in their national laws and others to retain the classic criteria for jurisdiction could be a source of significant disparities between the different criminal systems. To rectify that situation, it would be useful for the international community to take a more global approach to the issue, in particular by means of a specific text that could lead to harmonization of, or at least greater convergence between, national laws.
