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The Permanent Mission of the Republic of Turkey to the United Nations presents its compliments to the Office of Legal Affairs of the Secretariat of the United Nations and, with reference to the Latter's Note no: LA/COD/59/1 dated 6 January 2020, in relation to the General Assembly resolution 74/192 of 18 December 2019, entitled "The scope and application of the principle of universal jurisdiction", has the honour to submit the following:

Provisions regarding universal jurisdiction can be found in Article 13 (titled "Other crimes") of the Turkish Penal Code, under the section concerning the scope of application of the mentioned Code. This article, while not referring directly to the concept of universal jurisdiction, stipulates that Turkish law shall apply to the crimes listed below, regardless of the nationality of the perpetrator or where the crime was committed:

1- Crimes whose prosecution depends on a request by the Minister of Justice: genocide, crimes against humanity, forming a criminal organization to commit genocide or crimes against humanity, migrant smuggling, human trafficking, torture, crimes against relations with foreign states, intentional pollution of the environment, production and trade of narcotics or psychotropic substances, facilitation of the use of narcotics or psychotropic substances, counterfeiting of money, manufacturing and trading of instruments used in the issuance of money and valuable seals, counterfeiting of seals, prostitution, seizing control or hijacking of sea, rail or air transport vehicles, and offences relating to the damaging of such vehicles;

2- Crimes that can be prosecuted proprio motu: crimes against the insignia of sovereignty of the State and against the respectability of its organs, crimes against the security of the State, crimes against the constitutional order and the functioning of that order, crimes against national defense, crimes involving State secrets and espionage.

Amongst the crimes listed above, those that are in the second category, along with crimes against relations with foreign states, concern specifically the sovereignty and reputation of the Turkish State. In this respect, they are considered to fall within the scope of the principle of protection of the state, and not the principle of universality.

Article 13 does not require the accused to be present in Turkey, in order for the alleged crimes to be investigated or prosecuted. On the other hand, Turkish Criminal Procedure Code sets out the rule, albeit with exceptions, that no trial can take place without the presence of the accused. Therefore, in practice, it may be possible that a criminal case cannot proceed due to the absence of the accused, unless one of the special circumstances stipulated in the law apply.

Furthermore, pursuant to Article 13, upon a request by the Minister of Justice, the crimes that are listed under the second category above, as well as some of the crimes in the first category (genocide, crimes against humanity, forming a criminal organization to commit genocide or crimes against humanity, migrant smuggling, human trafficking and crimes against

relations with foreign states) can be prosecuted in Turkey even if there exists a decision of conviction or acquittal given in a third country regarding the concerned crime. The remaining crimes in the first category cannot be prosecuted under the principle of universality, if there is a conviction or acquittal decision given in a third country for the relevant crime. It should also be emphasized that, in any reprosecution to be carried out in Turkey within the framework outlined in this paragraph, the relevant legal safeguards (including especially, the deduction of periods already spent in custody or detention, or periods already served in a third country) would be in place.

Apart from the foregoing, various international treaties to which Turkey is party include provisions regarding the principle of “extradite or prosecute”, which relate to the concept of universal jurisdiction. This is also highlighted in the legal commentary pertaining to Article 13 of the Turkish Penal Code mentioned above. The international agreements listed as examples in the said commentary are as follows: Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed in 1963; the Hague Convention for the Suppression of Unlawful Seizure of Aircraft, signed in 1970; Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, dated 23 September 1971; New York Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, dated 14 December 1973; Single Convention on Narcotic Drugs, dated 1961; Convention on Psychotropic Substances, signed in Vienna on 21 February 1971; and the European Convention on the Suppression of Terrorism, opened for signature by the Council of Europe on 27 January 1977.

Also, in 2003, a law was adopted in Turkey (Law No. 4912) with the purpose of granting jurisdiction to Turkish courts over the crimes that fell within the competence of the International Criminal Tribunal for the Former Yugoslavia (ICTY). The concerned law, which explicitly required the physical presence of the accused in Turkey, while giving precedence to the ICTY’s jurisdiction, could be considered as a past example of the codification of conditional universal jurisdiction.

Regarding the general principles, considerations and concerns relating to the interpretation and application of universal jurisdiction by states, as well as legal assistance and cooperation between states in this respect, Turkey would like to refer to the previous comments and observations that it has conveyed in writing, as well as during Sixth Committee meetings.

Turkey would like to use this opportunity to reiterate the importance of observing the delicate balance between ensuring the legitimacy and the reliability of universal jurisdiction on the one hand and preventing impunity for specific crimes on the other.

The Permanent Mission of the Republic of Turkey to the United Nations avails itself of this opportunity to renew to the Office of Legal Affairs of the Secretariat of the United Nations the assurances of its highest consideration.

New York, 23 April 2020

Office of Legal Affairs  
Secretariat of the United Nations  
New York