

Comments from the Institute of State, Law and Democracy of Turkmenistan in connection with resolution 74/192 on the scope and application of the principle of universal jurisdiction, adopted by the General Assembly on 18 December 2019

1. Following the adoption by the General Assembly of resolution 74/192 on the scope and application of the principle of universal jurisdiction, a careful study of the topic is in order. Terrorist acts, trafficking in persons, smuggling, and trafficking in narcotic drugs and psychotropic substances in the context of transnational crime require States to work together and develop new preventive methods to counter them. According to the principle of universal jurisdiction, States have a right and an obligation to exercise jurisdiction based solely on the nature of the crime, without regard to where the crime was committed, the nationality of the perpetrator, the nationality of the victim, or any other factors.¹

2. Universal jurisdiction is one of several types of extraterritorial criminal jurisdiction under which States can prosecute and punish individuals without regard to where the crime was committed, the nationality of the accused person or the nationality of the victim. It is based mainly on the nature of those crimes, the prosecution of which is in the “universal” interest of the international community as a whole. The application of universal jurisdiction is provided for in several international conventions (mainly the Geneva Conventions relating to humanitarian law). Turkmenistan is a party to those international instruments and has implemented their basic principles and provisions in its national legislation in keeping with its obligations.

3. Most crimes that are subject to universal jurisdiction violate norms of international law, or international public order (*ordre public*). They include genocide, crimes against humanity, war crimes, torture and acts of international terrorism. Universal jurisdiction is provided for in international treaties (in particular the Geneva Conventions of 1949) and in national law as a possible legal basis for the prosecution of persons who have committed serious international crimes.

4. Universal jurisdiction should be regarded as a complement to the action taken under the national jurisdictions of each State. Thus, it cannot be applied where the accused person is being investigated or prosecuted in a national court. Moreover, universal jurisdiction should apply only in exceptional circumstances, when no other means to avoid impunity are available. It should be seen as existing in parallel to national law and national courts. Its application must not encroach on the sovereignty of States or the immunity granted under international law to Heads of State or Government, diplomatic personnel and other officials. Bringing charges and issuing arrest warrants against such individuals not only violates established international rules, but also undermines the principle of the sovereign equality and independence of States.

5. Turkmenistan has established a robust legal framework in which the main principles of universally recognized international norms have been embedded. For example, in 2010, Turkmenistan adopted its Criminal Code, into which the principle of universal jurisdiction has been incorporated. A working group has been created to draft a new version of the Criminal Code, guided by the humane policies the country pursues, particularly in the area of criminal law. The working group is also considering and studying questions of universal jurisdiction and its further transposition into national law.

6. In the Criminal Code, a series of crimes against peace and the security of

¹ The Princeton Principles on Universal Jurisdiction of 23 July 2001, p. 2. Available at <http://hrlibrary.urmn.edu/instree/princeton.html> (accessed on 23 March 2019).

humankind are provided for in chapter 21, in particular planning, preparing, unleashing or conducting a war of aggression (art. 167-1); the use of prohibited means and methods of warfare (art. 167-4); violations of the laws and customs of war (art. 167-5); criminal breaches of international humanitarian law during an armed conflict (art. 167-6); failure to act or the issuance of a criminal order during an armed conflict (art. 167-7); genocide (art. 168); participation in armed conflicts or hostilities in foreign States (art. 169-2); and attacks against internationally protected persons (art. 170);

No statute of limitations applies to crimes against peace and the security of humankind (art. 74, para. 5) to ensure that no crime against humanity goes unpunished.

The following are offences for which universal jurisdiction has been established in the Criminal Code (including other grounds for jurisdiction): trafficking in persons (art. 129-1); torture (art. 182-1); crimes against the foundations of the constitutional system and the security of the State (chap. 22, arts. 171–180); crimes against public security and public order (chap. 29, arts. 271–291); and crimes against public health (chap. 30, arts. 292–310).

7. International criminal jurisdiction can currently be exercised through the national application of the principle of universal jurisdiction. In its national legislation, Turkmenistan has provided for universal jurisdiction with respect to a range of international criminal offences, such as terrorism, the financing of terrorism and attacks on persons enjoying diplomatic protection. On 10 December 2019, Turkmenistan adopted a number of policy documents, in particular the National Strategy for Preventing Violent Extremism and Countering Terrorism 2020–2024 and the National Action Plan to Counter Trafficking in Persons 2020–2022, with a view to ensuring the people's welfare, peace, security, a humane society and sustainable development.

Under the Criminal Code of Turkmenistan, all the above-mentioned offences are classified as serious or particularly serious crimes. Serious crimes are wilful or negligent acts for which the maximum penalty provided for under criminal law is imprisonment for a term of up to 15 years (art. 11, para. 4). Particularly serious crimes are wilful criminal acts for which the penalty provided for under criminal law is imprisonment for a term of up to 25 years (art. 11, para. 5).

8. The question of universal jurisdiction with regard to human rights is a timely one. Human rights violations which are subject to universal jurisdiction include genocide, crimes against humanity, war crimes and torture.

Under article 4 of the Constitution of Turkmenistan, people are the most valuable asset of society and the State. The main task of the authorities is to protect, support and serve people. Turkmenistan recognizes and respects the basic democratic rights and freedoms of persons and citizens as adopted by the international community and laid down in international law. Under article 32 of the Constitution of Turkmenistan, all persons have the right to life and the freedom to lead their lives. No one may be deprived of the right to life. The right of all persons to live in freedom is protected by the State on the basis of the law. Turkmenistan has abolished the death penalty.

Following the accession of Turkmenistan to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, in 1999, and the issuance on 6 January 1999 by the President of Turkmenistan of a decree imposing a moratorium on the application of the death penalty as a form of criminal punishment, the courts in Turkmenistan ceased to pronounce death sentences in criminal cases as from 1 January 1999.

9. The Criminal Code sets out various categories of punishment for genocide, terrorism, trafficking in persons, torture, crimes against humanity, war crimes and other crimes. For example:

- Wilful acts committed with intent to destroy, in whole or in part, any national, ethnic, racial or religious group by killing members of that group, causing serious harm to their health, forcibly relocating them, forcibly preventing births, forcibly transferring children, or inflicting other conditions of life calculated to bring about the physical destruction in whole or in part of members of that group, are punishable by imprisonment for a term of 15 to 20 years. If they are committed in times of war, the same acts are punishable by imprisonment for a term of 15 to 25 years (art. 168, on genocide).

- An attempt on the life of a person committed with the intent to undermine public safety, intimidate the population or influence decisions made by the authorities of Turkmenistan, a foreign State or an international organization, or an attempt on the life of a notable statesperson or public figure committed with the same intent or with the intent to end that person's political role as a statesperson or in another capacity, or to take revenge for that person's political actions, or an attempt on the life of a person in conjunction with an attack on persons, organizations, buildings or built structures that are under international protection, or in conjunction with hostage taking, the occupation of buildings, built structures or means of transport or communication, or in conjunction with the hijacking or seizure of an aircraft, waterborne vessel or railway rolling stock is punishable by imprisonment for a term of 15 to 25 years with or without confiscation of property (art. 271, on terrorism).

- Acts that, owing to negligence, lead to the death of the victim, result in serious harm to the victim's health or inflict other serious harm; or if committed in such a way as to endanger the life and health of several people; or if committed by a criminal grouping or a criminal society, are punishable by imprisonment for a term of 15 to 25 years (art. 271-1, on trafficking in persons).

- Acts that, owing to negligence, result in the death of the victim or in other serious harm are punishable by imprisonment for a term of 8 to 15 years and the loss of the right to serve in a particular function or act in a particular capacity for a period of up to 3 years (art. 182-1, on torture).

10. Under the laws of Turkmenistan, amnesties and pardons do not apply to the gravest violations of human rights or norms of international humanitarian law. In other words, amnesties and pardons may not be granted for the following international crimes: genocide, crimes against humanity, war crimes and other violations of international humanitarian law.

11. Given the content of General Assembly resolution 74/192 on the scope and application of the principle of universal jurisdiction, as well as the complications related to the definition and other aspects of the principle of universal jurisdiction, we feel that a comprehensive comparative study of national and international norms in this area is in order. This could facilitate the further harmonization of international norms and national law. This position is based on the following arguments.

First, States have not yet developed a uniform approach to questions of universal jurisdiction.

Second, the concept of universal jurisdiction has not yet been defined, nor has it been differentiated from other concepts.

Third, the scope of universal jurisdiction, which includes a range of crimes under international law, and how wide or narrow that range ought to be.

Fourth, the need to explore the parameters within which universal jurisdiction is to be

applied, including the conditions for its application; the criteria for the exercise of that jurisdiction; the procedural and practical aspects, including whether the suspect's presence is required for an investigation to be launched or other measures to be taken; the role of national judicial systems; the relationship with other concepts in international law; international support and cooperation, including with regard to mutual legal assistance and technical and other forms of wide-ranging cooperation in the field of criminal law; the issue of whether the State that has territorial jurisdiction should be given some type of priority to act in advance of other States that may be connected to the alleged prohibited conduct in some other way; the right to a fair trial and double jeopardy rules; the relationship between universal jurisdiction and the obligation, usually set out in an agreement, to deport or to prosecute the alleged perpetrator for certain criminal offences.

12. Universal jurisdiction and its responsible application by national courts can facilitate the strengthening of justice to the benefit of the victims of serious crimes under international law. Universal jurisdiction has a role to play in strengthening the liability of those perpetrators.

In sum, while acknowledging that the principle of universal jurisdiction is useful as a legal tool in combating impunity, Turkmenistan considers it necessary to study more thoroughly whether the principle of universal jurisdiction is compatible with Turkmenistan's constitutional principles of sovereignty, independence and permanent neutrality.
