

*Translated from Spanish*

## **The principle of universal jurisdiction**

Chile wishes to make the following comments with regard to the principle of universal jurisdiction.

The principle of universal jurisdiction gives a State jurisdiction to try and punish the perpetrator of a crime, wherever the crime was committed and whatever the nationality of the perpetrator or the victim. An exception to the principle of territoriality, which is the general rule, universal jurisdiction is applicable only in criminal matters, in relation to serious crimes under international law, in particular crimes against humanity, war crimes and genocide, in order to prevent impunity for such crimes.

Given the importance of the principle of universal jurisdiction, Chile considers that the following criteria should be taken into account when considering its scope and application:

- First, it is worth noting the valuable role of universal jurisdiction as a tool of last resort in preventing impunity as a result of inaction by national entities that should exercise jurisdiction. When exercising universal jurisdiction, the forum States must act in accordance with a normative framework that guarantees the utmost and absolute observance of the procedural guarantees for the defendant, due process and respect for human rights. The State's power to establish its jurisdiction and prosecute an individual must derive from an appropriate means of international law, usually a treaty.
- This necessarily implies that universal jurisdiction cannot be exercised in the absence of the alleged perpetrator of the crime to be investigated. Universal jurisdiction must be exercised in full observance of the highest procedural standards, which means that the perpetrator of the crime must be present in the territory of the State seeking to exercise universal jurisdiction when the legal proceedings against the perpetrator are initiated. Consequently, universal jurisdiction is not absolute.
- It is also important to bear in mind the explicit recognition that the principle of territoriality should be respected in matters of criminal jurisdiction, meaning that the courts of the State in whose territory the crime was committed have preferential jurisdiction. The general rule is that it is the courts of that State that have primary jurisdiction to investigate and punish crimes of this kind.

- It is important to bear in mind that the jurisdiction of a State other than the one in which the crime was committed should always be secondary, meaning that it should be exercised only if the State in which the crime was committed is unwilling or unable genuinely to carry out the investigation or prosecution. Thus, as noted above, universal jurisdiction must be a last resort.
  - Universal jurisdiction must be exercised in the context of general international law, in good faith and with respect for the principles of the legal equality of States, sovereignty, non-intervention and cooperation. In this regard, it should be borne in mind that the State in which the crime was committed and the State exercising universal jurisdiction must work in coordination to achieve the goal of preventing impunity for the crime in question. Thus, cooperation between States is a crucial element.
  - Furthermore, a clear distinction must be drawn between extraterritorial jurisdiction and universal jurisdiction. While universal jurisdiction is always extraterritorial, extraterritorial jurisdiction is not always universal.
  - Lastly, it should be noted that universal jurisdiction is a complex and sensitive issue. In order for it to be exercised, the State invoking it must engage in a careful consideration and justification exercise in relation to the fulfilment of all the above-mentioned criteria, to ensure that it does not undermine the principle of legal equality among States, which is a fundamental pillar of healthy international coexistence.
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