

*Translated from Spanish*

## **Permanent Mission of El Salvador to the United Nations**

### **The scope and application of the principle of universal jurisdiction**

#### **Report of the Republic of El Salvador pursuant to General Assembly resolution 75/142**

The Republic of El Salvador is submitting the present report pursuant to General Assembly resolution 75/142, in which Member States are invited to submit information and observations on the scope and application of universal jurisdiction, including, where appropriate, information on the relevant applicable international treaties and on their national legal rules and judicial practice.

With regard to this important topic, El Salvador recognizes that the application of the principle of universal jurisdiction contributes significantly to reducing impunity for the most serious crimes, which are crimes against humanity. It is in the national and international public interest to prevent and investigate such crimes, identify the perpetrators and punish them under the law, and to ensure that victims are able to have access to justice, exercise their right to truth and receive full reparation.

To that end, El Salvador has a strong normative and jurisprudential foundation in place with regard to the elements needed for the recognition and application of the principle of universal jurisdiction. Specifically, in article 10 of the Criminal Code, universal jurisdiction is established as an independent principle, whose application does not depend on the place where the crime was committed or on the individuals involved. Moreover, the law of El Salvador does not set out a restrictive list of crimes to which the application of universal jurisdiction is limited. Rather, it provides that the crime in question must have affected property internationally protected by specific agreements or rules of international law, or must seriously undermine universally recognized human rights.

This approach is in line with international legal instruments on the protection of human rights, such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, both of which build on the Universal Declaration of Human Rights, as well as the American Convention on Human Rights, in the regional context of the American continent. All of these instruments have been ratified by El Salvador and are a part of its national law, in accordance with article 144 of the Constitution. According to the records of the Supreme Court of Justice, over the past five years national courts,

including the four highest chambers, have issued a total of 4,970 decisions, judgments and rulings in which the above-mentioned international instruments, among others, were applied.

Criteria for the broad application of the principle of universal jurisdiction have also been developed through national jurisprudence. For example, in judgment No. 26-S-2016 of 24 August 2016, the Supreme Court of Justice indicated that, under the criminal law of El Salvador, the “principle of universality” is recognized as “the granting of jurisdiction to a State in order to prosecute certain international crimes, without requiring any connecting factor”. In that judgment, the Supreme Court also refers to the definition set out in the Princeton Principles on Universal Jurisdiction, according to which certain crimes are so harmful to international interests that States are authorized, and indeed required, to bring proceedings against the perpetrator, regardless of where the crime was committed or the nationality of the perpetrator or the victim. Accordingly, the Court stated that “article 28 of the Constitution leaves open the possibility of extraditing nationals for crimes not committed in the territory of the requesting State, provided that the crimes are considered to be of international significance”.

In the same judgment, the Court indicated that “although it is not stated in the specific provisions on universal jurisdiction, [it is] advisable, for reasons of territorial primacy, procedural economy and greater efficiency, that it be the respective society that prosecutes the perpetrators of serious human rights violations and other similar crimes”. In that regard, in judgment No. 24-S-2016 of 24 August 2016, the Court stated that the criterion of subsidiarity applies to the principle of universal jurisdiction, which is to be exercised when, in the State in which the crimes occurred, there is an obstacle to, or there is no specific interest in, the prosecution of those crimes. This means that the application of universal jurisdiction may be resorted to when the State in which the crime was committed, or the State which has jurisdiction under other principles of criminal law, does not act.

Thus, constitutional and Supreme Court jurisprudence have made relevant contributions to the application of the principle of universal jurisdiction. By judgment No. 44-2013/145-2013 of 13 July 2016, the Constitutional Chamber of the Supreme Court of Justice of El Salvador declared several articles of the General Amnesty (Peacebuilding) Act, applicable in El Salvador to crimes committed during the Salvadoran armed conflict from 1980 to 1992, to be unconstitutional. In addition, in amparo judgment No. 558-2010 of 11 November 2016, the Constitutional Chamber recognized the importance of not granting amnesty for crimes that represent serious violations of international humanitarian law, stating that “to do otherwise, that is, to grant amnesty for acts

provisionally characterized as crimes falling within the scope of the above-mentioned law, when it is probable that they are crimes against humanity or war crimes constituting serious violations of international humanitarian law, would hinder the investigation, prosecution, conviction and sentencing of those responsible for acts for which the granting of amnesty is prohibited under the Constitution and international law”.

Other examples of progress achieved by El Salvador concern the practices adopted by the Office of the Public Prosecutor, which, in exercising its jurisdiction under article 193 of the Constitution, and in accordance with the above-mentioned judgment No. 44-2013/145-2013, issued the policy for the criminal prosecution of war crimes and crimes against humanity committed during the armed conflict in El Salvador. In article 7 of that policy, concerning principles of international criminal law as standards of national law, the power of States to exercise extraterritorial criminal jurisdiction pursuant to the principle of universal jurisdiction is explicitly recognized.

---