

Translated from French

Swiss Confederation

Directorate of Public International Law

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The scope and application of the principle of universal jurisdiction

Information concerning the position of Switzerland submitted under paragraph 3 of General Assembly resolution 75/142 of 15 December 2020

In paragraph 3 of its resolution 75/142, the General Assembly “invites Member States ... to submit, before 30 April 2021, 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, and requests the Secretary-General to prepare and submit to the Assembly at its seventy-sixth session a report based on such information and observations”.

The scope of universal jurisdiction in Switzerland

The information submitted by Switzerland in 2020 under paragraph 3 of General Assembly resolution 74/192 remains valid.

Practice of the judicial authorities

Swiss courts are presently considering several cases brought against foreign nationals concerning allegations of crimes against humanity and/or war crimes committed abroad.

The Federal Criminal Court has conducted its first proceedings on the basis of universal jurisdiction. The defendant, A.K., is a Liberian national. He is accused of committing war crimes in Liberia between 1993 and 1995. The jurisdiction of the Swiss judicial authorities was established on the basis of the presence of the accused, who is a refugee in Switzerland, in Swiss territory, and the fact that he has not been extradited or handed over to a foreign authority or an international criminal tribunal whose jurisdiction is recognized by Switzerland to be tried for the same offence. It was not easy to conduct the proceedings, as the events had taken place abroad more than 20 years previously and there were certain restrictions in place owing to the coronavirus disease (COVID-19) situation. Once the judgment is issued, it may be appealed.

The proceedings in the A.K. case demonstrated once again that cooperation between States in the prosecution of the most serious international crimes is crucial. There were some challenges in arranging to hear the testimonies of the plaintiffs and witnesses under appropriate conditions. However, it was done successfully, as a result of close cooperation between various States. International legal cooperation plays a key role in the collection of evidence. Switzerland is committed to facilitating legal cooperation in relation to the prosecution of the most serious crimes and calls on all States to collaborate in order to promote the success of proceedings.

Switzerland is convinced that proceedings based on universal jurisdiction contribute to the fight against impunity. Switzerland also guarantees that such proceedings will be conducted in accordance with its international commitments. This could contribute to the prevention of future atrocities.

Position of Switzerland regarding the discussions on universal jurisdiction in the Sixth Committee of the General Assembly

Switzerland welcomes the fact that the General Assembly, in its resolution 75/142, reiterated its commitment to fighting impunity. The Assembly also noted that “the views expressed by States that the legitimacy and credibility of the use of universal jurisdiction are best ensured by its responsible and judicious application consistent with international law”.

Universal jurisdiction is one of the best ways to fight impunity. It enables the judicial authorities to bring persons accused of the most serious crimes to trial.

Switzerland therefore regrets that no universal consensus on the definition and scope of universal jurisdiction has been reached. Given the highly legal and technical nature of the topic, Switzerland continues to propose that the International Law Commission examine the topic. The first step would be for experts in international law to examine the topic, free from the political considerations that inevitably surround the issue. States could then use that work as a solid basis for discussion in order to move towards an agreement in the context of the Sixth Committee and the working group on the topic.
