

Translated from Spanish

Information and observations on the scope and application of universal jurisdiction

(a) General considerations

(i) States have the primary obligation to investigate, prosecute and punish the perpetrators of the most serious crimes, over which they have both personal and territorial jurisdiction. When States are unable or unwilling to exercise their jurisdiction, other States can try to fill the void by invoking universal jurisdiction, which is an additional and exceptional tool, in order to prevent impunity.

(ii) Universal jurisdiction is therefore a critical component of the international criminal justice system. However, its unchecked use could create conflicts of jurisdiction between States, subject individuals to procedural abuses or give rise to politically motivated prosecutions. Therefore, Argentina is of the view that there must be clear rules governing the application of universal jurisdiction.

(b) Applicable international treaties

(i) In Argentina, the conventional basis for the exercise of some form of universal jurisdiction is captured explicitly in such instruments as the 1949 Geneva Conventions (articles 49, 50, 129 and 146); the Convention for the Protection of Cultural Property in the Event of Armed Conflict (article 28); the United Nations Convention on the Law of the Sea (article 105); and the International Convention on the Suppression and Punishment of the Crime of Apartheid of 1973 (article 5).

(ii) In some cases, the possibility of invoking universal jurisdiction is partially or implicitly captured in treaties, including those containing stipulations such as the prohibition against excluding any criminal jurisdiction exercised in accordance with national law, as found in the Convention on Offences and Certain Other Acts Committed on Board Aircraft of 1963; the Convention for the Suppression of Unlawful Seizure of Aircraft of 1970; the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation of 1971; the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf of 1988; the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents of 1973; the International Convention against the Taking of Hostages of 1979; the Convention on the Safety of United Nations and Associated Personnel of 1994; the International Convention against the Recruitment, Use, Financing and Training of Mercenaries of 1989; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984; the International Convention for the Protection of All Persons from Enforced Disappearance of 2006; among others.

(iii) The above considerations are in addition to the customary character that may be attributed to the concept of universal jurisdiction.

(c) Judicial practice and applicable laws

(i) Argentine courts have exercised universal jurisdiction on a number of occasions in view of the gravity of the crimes (genocide, war crimes, violations of fundamental rights recognized under international human rights law and international humanitarian law, and crimes against humanity, including torture, enforced disappearances, child abduction, forced displacement and mass killings), when such crimes are deemed to violate people's rights under article 118 of the Constitution and international human rights obligations relating to the right to legal protection, which in some cases have the status of constitutional norms. To date, there have been no cases where universal jurisdiction has been exercised in respect of crimes committed in places that are outside the exclusive authority of a State (traditionally, piracy).

A number of cases involving serious violations of human rights perpetrated on the territory of Argentina have been brought before foreign courts.

(ii) In practice, the judicial authorities exercise universal jurisdiction as a complement and an exception to the territoriality, active and/or passive personality, and protective principles, after determining that the crimes were not prosecuted or could not be prosecuted by the States in whose territories they were committed or by the States of nationality of the perpetrator or of the victims.

(iii) Again, in practice, before invoking universal jurisdiction and opening an investigation, the Argentine judicial authorities first ensure that there are no ongoing investigations in the affected country or countries and that the International Criminal Court is not investigating the events.
