

Translated from Spanish

**General Directorate for Foreign Policy
Ministry of Foreign Affairs and Worship**

Input of Costa Rica in connection with General Assembly resolution 76/118 of 9 December 2021, entitled “The scope and application of the principle of universal jurisdiction”

Input of the Third Criminal Appeals Chamber of the Supreme Court of Costa Rica

There is no single definition of the concept of universal jurisdiction (the principle of universality or of global justice). The concept has traditionally been understood as an exception in international law, since by rule, States exercise national jurisdiction as part of their sovereignty, and therefore have the power or authority to prosecute (institute criminal proceedings against) persons under investigation for defined acts established by law as illicit.

A further difference between universal jurisdiction and national jurisdiction is that double criminality does not need to be considered when exercising universal jurisdiction. This means that the act does not need to be punishable at the place of its commission, that the accused be in national territory and is not to be extradited. Universal jurisdiction is thus an important instrument in the fight against impunity.

At the normative level, Costa Rica has made significant progress with regard to the concept of universal jurisdiction, given that, almost 20 years ago, it specifically prohibited prosecution for criminal acts committed outside the country, when it stipulated in article 7 of its Penal Code of 1973 that “no national or foreigner may be prosecuted in Costa Rica, in accordance with the provisions of the preceding articles, for offences or quasi-offences committed outside the country...”.

In 2001, Costa Rica introduced a significant amendment that allowed for the application of universal jurisdiction through Act No. 8272, the law on criminal sanctions as punishment for war crimes and crimes against humanity, which amended the aforementioned article 7 to read as follows: “Irrespective of the provisions in force in the place where the offence was committed and the nationality of the perpetrator, any person who commits acts of piracy or acts of genocide;

forges coins, securities, banknotes and other bearer instruments; participates in the trafficking of slaves, women or children; or engages in trafficking of narcotics or obscene publications, shall be prosecuted under Costa Rican law. Any person who commits any other offence against human rights and international humanitarian law, as established in the treaties signed by Costa Rica or in this Code, shall also be prosecuted.”

Article 7 was later amended in 2009, through Act No. 8719, the law on the strengthening of counter-terrorism laws, with the addition of the offences of terrorism, the financing of terrorism and such related offences as trafficking in weapons or explosive materials.

In 2011, Costa Rica once again amended article 7, which now read: “Irrespective of the provisions in force in the place where the offence was committed and the nationality of the perpetrator, any person who commits acts of piracy, acts of terrorism or its financing, or acts of genocide; forges coins, securities, banknotes and other bearer instruments; smuggles weapons, ammunition, explosives or related materials; participates in the trafficking of slaves, women or children; commits sexual offences against minors; or engages in trafficking of narcotics or obscene publications, shall be prosecuted under Costa Rican law. Any person who commits any other offence against human rights and international humanitarian law, as established in the treaties signed by Costa Rica or in this Code, shall also be prosecuted.”

In 2019, the Costa Rican legislator broadened the scope of the said jurisdiction by no longer restricting its application to such serious offences as genocide, crimes against humanity, war crimes, offences against the security of the State, forgery of the State seal or national currency, acts of terrorism, attacks, plots and other crimes against the authority of the State or the integrity of the national territory, offences that might disrupt public order, and acts of torture, as set out in most laws around the world. Instead, the legislator introduced an amendment, through the law on the responsibility of legal persons for domestic bribery, transnational bribery and other offences (Act No. 9699 of 10 June 2019), to include other illegal acts not covered in existing laws. It stipulated that, “irrespective of the provisions in force in the place where the offence was committed and the nationality of the perpetrator, any person who commits acts of piracy, acts of terrorism or funds terrorist activities, or acts of genocide; forges coins, securities, banknotes and other bearer instruments; smuggles weapons, ammunition, explosives or related materials; participates in the trafficking of slaves, women or children; commits sexual offences

against minors; or engages in trafficking of narcotics or obscene publications, shall be prosecuted under Costa Rican law. Any person who commits the offences of illicit enrichment; criminal receipt, legalization or concealment of goods; legislation or administration for personal gain; irregular overpricing; misrepresentation of the receipt of goods and services contracted; irregular payment of administrative contracts; influence peddling; transnational bribery and influence against the Treasury, offences covered by Act No. 8422 of 6 October 2004 against corruption and illicit enrichment in the public service, as well as the offences of bribery in which the person being bribed commits acts not prohibited by law; bribery in which the person being bribed commits acts constituting a criminal offence; aggravated corruption; acceptance of gifts for an accomplished act; corruption of judges; active bribery; inappropriate business dealings; embezzlement; misappropriation; and embezzlement and misappropriation of private funds under this Code. Any person who commits any other offence against human rights and international humanitarian law, as established in the treaties signed by Costa Rica, in this Code or in other special laws, shall also be prosecuted”.

This new version, which is currently in force, is novel in that it classifies most offences against the Treasury, as well as administrative and transnational bribery, as acts or conduct for which persons can be prosecuted on the basis of universal jurisdiction.

Information on applicable international treaties and their legal provisions

Article 7 of the Constitution of Costa Rica stipulates that “public treaties, international agreements and concordats duly approved by the Legislative Assembly shall have a higher authority than laws, upon their adoption or from the date they stipulate. Public treaties and international agreements concerning the territorial integrity or political organization of the country shall require the approval of the Legislative Assembly, by a vote of no less than three-quarters of its membership, and that of two thirds of the members of a constituent assembly convened for that purpose” (as amended by the sole article of Act No. 4123 of 31 May 1968).

The rule in question reflects a supra-constitutional observance of treaties and international agreements, since with regard to human rights, article 48 of the Constitution does indeed provide that “everyone has the right to bring habeas corpus proceedings to protect his or her personal freedom and integrity, and to bring *amparo* proceedings to maintain or restore his or her enjoyment of the other rights embodied in this Constitution and of the fundamental rights

recognized in the international human rights instruments in force in the Republic. Both these remedies shall be within the jurisdiction of the Chamber mentioned in article 10” (as amended by article 1 of Act No. 7128 of 18 August 1989).

The Supreme Court has used these two constitutional provisions as justification to interpret the scope of articles 7 and 48 broadly, ruling that, when it comes to human rights, the application of international human rights conventions and treaties in the country is not limited to those that have been ratified, but may also extend to those that have not been ratified. Thus, despite the fact that there is abundant case law on the subject, it is worth highlighting judgment No. 2019-012242, issued at 9:45 a.m. on 5 July 2019, which stipulated that “in accordance with article 48 of the Basic Law, the protection afforded by human rights instruments is not limited to conventions and treaties formally ratified by Costa Rica, or to conventions, treaties or agreements formally signed and approved in accordance with constitutional procedure. Rather, that protection extends to any other instrument that provides for the protection of human rights, even if it has not been formally signed or approved in accordance with constitutional procedure.” (On this topic, refer to judgments Nos. 2007-001682 issued at 10.34 p.m. on 9 February 2007, 2007-03043 issued at 2.54 p.m. on 7 March 2007 and 2007-004276 issued at 2.49 p.m. on 27 March 2007).

The special protection of human rights explicitly enshrined in our Constitution is relevant to the topic of universal jurisdiction insofar as the latter applies to grave offences against international law; consequently, even if the Legislative Assembly has not ratified the treaty or convention in question, it may be applied in the country’s courts if the offence in question concerns human rights.

Good domestic judicial practices regarding the application of universal jurisdiction

In terms of training on the application of universal jurisdiction, Costa Rica has established a professional arrangement whereby the judiciary, in coordination with officials of the International Court of Justice in the Hague, will update the relevant technical knowledge required of officials who may be called upon to address matters related to universal jurisdiction.

To that end, the judiciary’s knowledge management unit, known as the Judicial Training College, is designing a course on the International Criminal Court. The course will feature

written and digital teaching aids, the latter in the form of Spanish-language materials donated by the Court to the country.

As a result of the agreement concluded with the United States of America to suppress illicit traffic in narcotic drugs, Costa Rica has been able to effectively process and prosecute universal jurisdiction cases involving organized crime and direct links to drug trafficking. In response to the significant and ongoing increase in drug trafficking, the agreement has made it possible to carry out numerous seizures on the high seas and outside our borders with the assistance of United States frigates on patrol, which alert the coasts as soon as they spot speedboats, fishing vessels (under the flags of different countries), semi-submersibles and taxi boats beyond the territorial sea. The frigates bring the vessels and crew members into Costa Rican ports, where the local authorities await them to make seizures and arrests and later prosecute cases.

Systematically incorporate a gender perspective by including gender-sensitive analyses when preparing their contributions; importance of reflecting a gender perspective in their contributions

According to the website, <https://secretariagenero.poder-judicial.go.cr/index.php/comisiondegenero>, which can be accessed via the site of the judiciary of Costa Rica, the Commission on Gender was established in 2000 as a result of the first Congress of Women Judges of Latin America and the Caribbean, held under the theme “For gender justice”. The Declaration of the first Congress of Women Judges of the Supreme Courts and Constitutional Courts of Latin America and the Caribbean was adopted as an outcome of the Congress. The aim of the Declaration is “to promote the institutional mainstreaming of gender and its integration into the administration of justice, as well as to request that a gender perspective be incorporated into programmes aimed at modernizing and reforming the judiciary, as an integral part of the implementation of this Declaration”. In response to the recommendations made at that congress, the full Court (all the justices that comprise the Costa Rican judicial branch) formed the Commission on Gender at session 12-2001, held on 2 April 2001, article VII. Later, in 2002, the Technical Secretariat for Gender Issues and Access to Justice was established. According to the 2020 report on its activities, the Technical Secretariat

aims to “identify obstacles faced by women in gaining access to justice and in the formulation of measures to...overcome those obstacles. It is clear that such measures remain inadequate and that a planned effort sustained over time will be required, along with assessments of the progress achieved in order to gauge the impact of those measures”. The Commission on Gender formulates public policy guidelines for the implementation of the judiciary’s gender equality policy, and the Technical Secretariat for Gender Issues and Access to Justice implements those guidelines.

Annex**List of treaties duly ratified by Costa Rica:**

- American Convention on Human Rights, or Pact of San José. Act No. 4534 of 23 February 1970, published on 14 March 1970
- International Covenant on Civil and Political Rights and its Optional Protocol. Act No. 4229 of 11 December 1968, published on 17 December 1968
- International Covenant on Economic, Social and Cultural Rights. Act No. 4229 of 11 December 1968, published on 17 December 1968
- First Geneva Convention (art. 49), ratified on 15 October 1969
- Second Geneva Convention (art. 50), ratified on 15 October 1969
- Third Geneva Convention (art. 129), ratified on 15 October 1969
- Fourth Geneva Convention (art. 146), ratified on 15 October 1969
- Rome Statute, ratified on 7 June 2001
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: approved by Act No. 7351 of 21 July 1993
- Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: ratified by Act No. 33134, published in Official Gazette No. 228 of 25 November 2005
- United Nations Convention against Transnational Organized Crime (2000 Palermo Convention). Act No. 8302 of 12 September 2002, published in Official Gazette No. 123 of 27 June 2003
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. Act No. 8315 of 26 September 2002, published in Official Gazette No. 212 of 4 November 2002
- International Slavery Convention and Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery
- Convention on the Elimination of All Forms of Racial Discrimination. Act No. 3844 of 16 December 1966, published in the Official Gazette of 7 January 1967

- Convention on the Elimination of All Forms of Discrimination against Women and Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. Act No. 8089 of 6 March 2001, published in the Official Gazette of 1 August 2001
- Convention on the Rights of the Child and Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. Act No. 8172 of 7 December 2001, published on 11 February 2002
- Protocol to the Convention relating to the Status of Refugees. Act No. 6079 of 29 August 1977, published on 5 October 1977
- Statute of the International Criminal Court. Act No. 8083 of 7 February 2001, published on 20 March 2001
- Charter of the Organization of American States
- Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, Convention of Belém do Pará. Act No. 7499 of 2 May 1994, published on 28 June 1995
- Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities. Act No. 7948 of 22 November 1999, published on 8 December 1999
- Convention on the Rights of Persons with Disabilities. Act No. 8661 of 19 August 2008, published on 29 September 2008
- Inter-American Convention on International Traffic in Minors Act No. 8071 of 14 February 2001, published on 21 May 2001
- Inter-American Convention on the International Return of Children. Act No. 8032 of 19 October 2000, published on 10 November 2000
- Convention on the Law of the Sea (art. 105), ratified on 21 September 1992
- 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict (art. 28), ratified on 13 June 1998
- 1999 Second Protocol to the Hague Convention of 1954 for Protection of Cultural Property in the Event of Armed Conflict (art. 16), acceded to on 9 December 2003
- 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (art. 7), ratified on 11 November 1993

- 1970 International Convention for the Suppression of Unlawful Seizure of Aircraft (art. 4.2), ratified on 9 July 1971
- 1973 Convention on the Suppression and Punishment of the Crime of Apartheid (art. 5), acceded to on 15 October 1986
- International Convention for the Suppression of Acts of Nuclear Terrorism (arts. 9-11), ratified on 21 February 2013
- 1979 International Convention against the Taking of Hostages (art. 5.2), acceded to on 24 January 2003
- 1997 International Convention for the Suppression of Terrorist Bombings
- 1973 United Nations Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons (art. 7), acceded to on 2 November 1977
- United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (art. 4.2.b), ratified on 8 February 1991
- United Nations Convention against Corruption, (art. 42.4), ratified on 21 March 2007
- Inter-American Convention to Prevent and Punish Torture, arts. 12 and 14), ratified on 8 February 2000
- 1994 Inter-American Convention on Forced Disappearance of Persons (arts. 4 and 5), ratified on 2 June 1996

Constitution and laws

- 1949 Constitution of Costa Rica
- Penal Code of 15 November 1970. Act No. 4573
- Act No. 8083 of 7 February 2001, law on harmonization for the approval of the Rome Statute
- Act No. 8272 of 2 May 2002. Criminal sanctions as punishment for war crimes and crimes against humanity
- Act No. 9095 of 26 October 2012, or the Prohibiting of Trafficking in Persons Act, and establishment of the National Coalition against Smuggling of Migrants and Trafficking in Persons

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- Agreement with the United States of America to suppress illicit trafficking in narcotic drugs