

Translated from Spanish

Permanent Mission of El Salvador to the United Nations

Comments of the Republic of El Salvador on the scope and application of the principle of universal jurisdiction

Report pursuant to General Assembly resolution 76/118

25 April 2022

The present report is submitted pursuant to General Assembly resolution 76/118 entitled “The scope and application of the principle of universal jurisdiction”, in which the Assembly invited States to submit information and observations on the scope and application of universal jurisdiction, including, where appropriate, information on the relevant applicable international treaties and their national legal rules and judicial practice.

Universal jurisdiction is a legal institution of international law that plays a role in combating impunity for serious violations of human rights and crimes against humanity. It is therefore in the interest of national and international actors alike, and their obligation, to thwart, investigate and identify those responsible for such crimes and to punish them in accordance with the law, and to ensure access to justice, truth and full reparation for victims.

El Salvador has a strong normative foundation and case law to enable the recognition and application of the principle of universal jurisdiction at the national level.

For example, under article 10 of the Criminal Code in force since 1998, national criminal law may be applied regardless of the place where the crime was committed or the individuals involved, provided that the crime affects internationally protected property or seriously undermines universally recognized human rights.

At the international level, El Salvador has signed and ratified a number of treaties and other legal instruments related to the protection of human rights. These include the International Covenant on Civil and Political Rights, the Universal Declaration of Human Rights, the American Convention on Human Rights and, more recently, the Rome Statute of the International Criminal Court, ratified by the legislature on 26 November 2015.

It is stated in the preamble to the Rome Statute “that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation”. The Statute also reaffirms that such crimes are not subject to a statute of limitations, reminds States of their duty to exercise their criminal jurisdiction over those responsible for international crimes, and establishes an international penal typology of war crimes and crimes against humanity.

The ratification of the Rome Statute and its contents is in line with recent national case law, including amparo decision No. 414-2021 of 5 January 2022 of the Constitutional Chamber of the Supreme Court of Justice of El Salvador, in which it stated that: “The non-applicability of any statute of limitations to these crimes, recognized under international law, enables the application of universal jurisdiction in order to combat and end impunity and ensure justice, truth and full reparation for victims.”

In the decision, the Constitutional Chamber recognized that acts constituting crimes against humanity are of extreme gravity and that the violent patterns, behaviour and practices involved are utterly reprehensible with regard to their effect on victims, society and the international community.

In addition to this decision, there have been other significant advances in the development of relevant case law by the Supreme Court of Justice. In particular, in judgment No. 24-S-2016 of 24 August 2016, the Court clearly stated that the principle of universal jurisdiction is subsidiary in nature and 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 the crimes.

Similarly, by judgment No. 44-2013/145-2013 of 13 July 2016, the Constitutional Chamber 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, the Constitutional Chamber recognized in its judgment No. 558-2010 of 11 November 2016, the importance of not granting amnesty for crimes that represent serious violations of international humanitarian law.

Based on the foregoing, El Salvador concludes that the national and international legal framework, as well as its own national case law, support the application of universal jurisdiction, with the objective of preventing impunity, combating and preventing the above-mentioned crimes,

and protecting human rights. El Salvador reaffirms its readiness to continue the discussions within the working group of the Sixth Committee to consider what the role and purpose of universal jurisdiction should be.

El Salvador believes that, for the purposes of consideration of this topic, the scope of application of the principle should be determined based on the case law and legislative practice of States in order to determine the extent to which it is attributed a subsidiary character.
