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The Permanent Mission of Brazil to the United Nations presents its compliments to the Office of Legal Affairs of the United Nations and, with regard to the letter requesting information and observations pursuant to operative paragraph 4 of UNGA resolution 77/111 of December 2022, Brazil presents its comments on the scope and application of universal jurisdiction, including, information on its national legal rules and judicial practice.

Brazil exercises its jurisdiction first and foremost based on the territorial principle. According to article 5 of the Brazilian Criminal Code, a crime committed in the Brazilian territory - including its airspace and territorial sea - is subject to its domestic legal system, regardless of the nationality of the perpetrator or the victim. In this context, Brazil applies both subjective and objective territorial jurisdiction, according to article 6 of its Criminal Code, i.e., Brazil applies its laws both to an incident which is initiated within its territory but completed outside it and to an incident that is completed within its territory, even though it was initiated outside it.

In some instances, Brazil also admits the extraterritorial exercise of its jurisdiction, based on the active nationality principle. According to article 7 II of the Brazilian Criminal Code, its laws apply to crimes committed by Brazilians outside its territory. Brazil may also exercise its jurisdiction based on the passive personality, when a crime is committed by a foreigner against a Brazilian abroad. In this case, there must be no extradition request (or it must have been denied), and there must be a requisition by the Minister of Justice, according to article 7 para 3 of the Brazilian Criminal Code.

Furthermore, based on the protective principle, Brazil applies its laws to crimes committed outside its territory against the life or freedom of the President of the Republic, and against the Public Administration, according to article 7 I of the Brazilian Criminal Code.

The universal jurisdiction has never been applied by Brazilian tribunals. However, in the judgment of habeas corpus 95.595, in 2018, the Superior Court of Justice recognized that the principle of universal justice, together with the national and protective principles, may justify the extraterritorial exercise of Brazilian criminal jurisdiction. This had already been stated by the rapporteur of the Superior Court of Justice in the judgement of habeas corpus 18.307, in 2002.

In different occasions, the Brazilian Supreme Court has also recognized the importance of the universal jurisdiction, for instance, in the extradition demands Ext. 595 of

1993, Ext. 658 of 1996, Ext. 1151 of 2011, Ext. 1275 of 2012, and Ext. 1300 of 2013. In none of these cases the Supreme Court has applied the universal jurisdiction, but it has mentioned doctrinal comments and observed that the principle has been adopted in the domestic system of several countries. According to the Court, the principle is an expression of international solidarity in combating crime (Ext. 595/1993). However, the Supreme Court has also stated that the presence of the alleged criminal in the territory of the state is a previous condition for the exercise of the jurisdiction (Ext. 1300/2013).

The Brazilian Criminal Code does not accept the principle of universal jurisdiction except in exceptional circumstances and under clear and objective conditions. According to article 7 I d of the Code, Brazilian laws apply to a crime of genocide committed abroad, as long as its perpetrator is a Brazilian national or someone that resides in the Brazilian territory.

According to article 7 II b of the same Code, Brazil may also exercise its jurisdiction over crimes that it has obliged itself to repress through international treaties, such as torture, even when they are perpetrated abroad. However, six conditions need to be met in this case: i) the alleged criminal must be in the Brazilian territory; ii) the conduct must also be considered a crime according to the laws of the state where it was performed; iii) the accused must not have been acquitted abroad or have served the sentence outside Brazil; iv) the Brazilian law must allow the extradition for the crime; v) the accused must not have been pardoned abroad; and vi) and the claim must not have been filled after the statutory limitations period according to the most favorable law.

Likewise, Law 9.455 of 1997, that criminalizes torture, applies to crimes committed outside the Brazilian territory, as long as the victim is a Brazilian national or the criminal is in a place under the Brazilian jurisdiction. According to the Brazilian defense in the Herzog Case in the Inter-American Court of Human Rights, in 2016, this law against torture states the principle of "mitigated universal jurisdiction".

Therefore, under no circumstance Brazil may exercise its jurisdiction "in absentia", when the offender is not in its territory. Furthermore, Brazil could only exercise this kind of jurisdiction over serious crimes objectively recognized in international treaties.

From the Brazilian perspective, the universal jurisdiction should not be applied but in a responsible and judicious manner, based on clear and objective parameters, in order to prevent its abuse and misuse. First, Brazil believes that the exercise of state jurisdiction based on the universal principle should be limited to serious crimes, prescribed in international treaties, and only by states parties. Second, the principle should play second fiddle to more direct connecting factors, such as territoriality and nationality. Third, the alleged criminal should always be in the territory of the State wishing to exercise its jurisdiction. Last but not least, universal jurisdiction should always respect the "ne bis in idem" principle.



The Permanent Mission of Brazil avails itself of this opportunity to renew to the Office of Legal Affairs of the United Nations the assurances of its highest consideration.

New York, April 28th, 2023.