

Translated from Arabic

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The scope and application of the principle of universal jurisdiction

I. Definition of the principle of universal jurisdiction

The principle of State sovereignty, which is based on equality among all States, is the cornerstone of international law and international relations. It grants States the authority to adopt their own laws and regulate their internal affairs without interference from other States. The law of jurisdiction has long been based on the assumption that sovereignty is territorial, i.e. that States have exclusive sovereignty over their own territory and have no sovereignty over the territory of other States.

The principle of territoriality means that the State, and its judiciary and criminal laws, have absolute jurisdiction over punishable acts committed on State territory. However, grave human rights violations, breaches of international humanitarian law and the development of cross-border criminal activity have all led to the emergence of universal jurisdiction, particularly in view of developments in treaty-related practice in the area of human rights. Universal jurisdiction matters because it gives States a means to prosecute perpetrators of grave human rights violations and an effective tool to combat impunity regardless of where a crime was committed or the nationality of the perpetrator or victim.

The principle of universal jurisdiction has thus gained prominence in the light of the trend towards inter-State cooperation, which in turn is a response to increasing globalization and cross-border criminal activity. International criminal law has progressively opened the door to the exercise of criminal jurisdiction beyond territorial borders. The judgment of the Permanent Court of International Justice in the *S.S. "Lotus"* case¹ is most often described as

¹ The judgment in *SS. "Lotus"* was a key court ruling on the territoriality principle. In 1926, a French vessel collided with a Turkish vessel, causing the death of several Turkish nationals. The Permanent Court of International Justice ruled that Turkey had jurisdiction to try the French naval lieutenant for criminal negligence, even though the incident happened beyond Turkey's boundaries. The case extended the territoriality principle to cover cases that happen outside a State's boundaries, but have a substantial effect on the State's interests or involve its citizens.

the moment when criminal jurisdiction beyond the territorial borders of the State became accepted at the international level.

States are increasingly resorting to the principle in order to tackle cross-border international crimes that poses a threat to international peace and security. Examples include terrorism, crimes against humanity, genocide and war crimes.

Although there is no internationally agreed definition of universal jurisdiction, it is generally understood to mean “a legal principle allowing or requiring a state to bring criminal proceedings in respect of certain crimes irrespective of the location of the crime and the nationality of the perpetrator or the victim”.

According to the 2009 European Union - African Union report on the principle of universal jurisdiction, universal criminal jurisdiction is the assertion by one State of its jurisdiction over crimes allegedly committed in the territory of another State by nationals of another State against nationals of another State where the crime alleged poses no direct threat to the vital interests of the State asserting jurisdiction. In other words, universal jurisdiction amounts to the claim by a state to prosecute crimes in circumstances where none of the traditional links of territoriality, nationality, passive personality or the protective principle exists at the time of the commission of the alleged offence.

II. Treaties and conventions on the application of the principle of universal jurisdiction

The principle of universal jurisdiction, as one mechanism for combating international crimes and addressing human rights violations, is asserted in numerous international conventions. When States accede to those conventions, they are required to give priority to that principle when determining the jurisdiction of courts over violations of international law.

The 1949 Geneva Conventions, which Morocco ratified in 1956, are the most important international provisions that enshrine the principle of universal jurisdiction with a view to preventing violations of international humanitarian law. The Conventions include a joint provision stipulating that the principle of universal jurisdiction shall apply in the event of violations of the rules of international law. Paragraph 2 of that article provides that each High Contracting Party shall be under the obligation to bring persons alleged to have committed, or to have ordered to be committed, such grave breaches, regardless of their nationality, before its own courts. It further provides that each High Contracting Party may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a ‘prima facie’ case. Paragraph 1 of the joint provision spells out the need for States to

adopt laws and take every measure to prevent violations of international law as set forth in the four Conventions:

The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention.

That provision shows that there is an option to prosecute, without the nationality of the defendant or the location of the violation occurred being an obstacle to the exercise of criminal jurisdiction, meaning that such jurisdiction is fundamentally the prerogative of national courts.


The 1977 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), which Morocco ratified in 2011, provides for the option of extradition alongside that of prosecution. Article 88 of the Protocol, entitled “Mutual assistance in criminal matters”, provides that the High Contracting Parties shall cooperate in the matter of extradition, when circumstances permit, and subject to the rights and obligations established in the Conventions, and that they shall give due consideration to the request of the State in whose territory the alleged offence has occurred.

In 1976, Morocco ratified the 1970 Convention for the Suppression of Unlawful Seizure of Aircraft (the Hague Convention), article 4 of which provides that each Contracting State shall take such measures as may be necessary to establish its jurisdiction over the offence in cases where the alleged offender is present in its territory. Similarly, the 1971 Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (the Montreal convention), which was ratified by Morocco in 1975, provides in article 5, paragraph 2, that each Contracting State shall take such measures as may be necessary to establish its jurisdiction in the case where the alleged offender is present in its territory and it does not extradite him. The 1963 Convention on Offences and Certain Other Acts Committed on Board Aircraft (the Tokyo Convention), which was ratified by Morocco in 1975, extends the State’s jurisdiction to all illegal acts committed on board aircraft. In article 3, paragraph 1, it provides that the State of registration is competent to exercise jurisdiction over acts committed on board. Paragraph 2 of the same article provides that each Contracting State shall take such measures as may be necessary to establish its jurisdiction as the State of registration over offences committed on board aircraft registered in such State.


Morocco is currently considering draft law No. 49-23, which would approve the 2014 Protocol to Amend the Convention on Offences and Certain Other Acts Committed on Board


Aircraft (the Montreal Protocol). The Montreal Protocol extends the prerogative to exercise jurisdiction over illegal acts to include the State of landing as well as the State of registration. it also entitles Contracting Parties to take such measures as may be necessary to establish jurisdiction in certain cases.

The treaty-related practice of Morocco has kept pace with the relevant international provisions and instruments. Morocco has ratified the following:


 The Universal Declaration of Human Rights, which was proclaimed in General Assembly resolution 217 (III) adopted on 10 December 1948:

Although the Universal Declaration of Human Rights does not have binding force from a legal standpoint, it is the first international instrument providing guidance on rights and freedoms, and it reflects customary international human rights law. Moreover, the Declaration continues to be a source of inspiration for the international community as it adopts legally binding conventions and instruments. Many domestic constitutions provide for compliance with the Declaration, and many international and domestic legal systems are aligned on its content. As a result, the Declaration has, over the years, taken on a value that transcends its rhetorical and moral force. Article 5 of the Declaration, for instance, provides as follows: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”.

 The International Covenant on Civil and Political Rights: along with the International Covenant on Economic, Social and Cultural Rights, it was adopted in New York on 16 December 1966 and published in Royal Decree 1-79-186 of 17 Dhu'l-Hijjah A.H. 1399 (8 November 1979); *Official Gazette* No. 3525, p. 631.

 Article 7 of the International Covenant on Civil and Political Rights reads as follows:


No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

 The four Geneva Conventions of 1949, which Morocco ratified on 26 July 1956:

- The First Geneva Convention protects the wounded and sick in armed forces in the field
- The Second Geneva Convention protects wounded, sick and shipwrecked members of armed forces at sea

- The Fourth Geneva Convention applies to prisoners of war
- The Fourth Geneva Convention protects civilians, including in occupied territories.

Under those Conventions, States parties are required either to prosecute grave violations by invoking universal jurisdiction, or to extradite the suspects to other States. The four Geneva Conventions and Additional Protocol I enshrine what is perhaps the broadest scope of criminal jurisdiction, in that they do not require that the suspect be present in the territory of the State concerned.

 The two Protocols Additional to the Geneva Conventions of 12 August 1949, which Morocco ratified by virtue of Royal Decree No. 1-97-141 of 1 Ramadan A.H. 1432 (2 August 2011); *Official Gazette* No. 6001, p. 5708.

- Additional Protocol I relating to the Protection of Victims of International Armed Conflicts;
- Additional Protocol II relating to the Protection of Victims of Non-International Armed Conflicts;


 The Rome Statute of the International Criminal Court

Morocco contributed to the negotiations that led to the drafting of the Rome Statute of the International Criminal Court, and signed the Statute on 20 September 2000.

The competence of the International Criminal Court is defined as extending to crimes of:

 Genocide (article 6 of the Statute):

Genocide is defined as any of certain acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.

 Crimes against humanity (article 7 of the Statute):

“Crime against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: murder; extermination; enslavement; deportation or forcible transfer of population; torture; rape, sexual slavery, enforced prostitution; enforced disappearance.


 War crimes (article 8 of the Statute):

Article 8 of the Statute provides that the Court shall have jurisdiction over a series of war crimes, including the following:


- Grave breaches of the Geneva Conventions of 12 August 1949;
- Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law;

- In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949.

The Court is complementary to national criminal jurisdictions. The Court intervenes only when the competent national court fails to investigate or prosecute the aforementioned grave crimes (article 1 of the Statute).

 The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which Morocco ratified by virtue of Royal Decree No. 1-93-362 of 9 Rajab A.H. 1417 (21 November 1996) - *Official Gazette* No. 4440, p. 2841²:

Each State Party undertakes to take such measures as may be necessary to establish its jurisdiction over the crime of torture when committed on its territory, when the alleged offender is one of its nationals, or when the victim is one of its nationals, or when the alleged offender is present on its territory and it does not extradite him, in which case it must refer the case to its own authorities for prosecution. (Article 5 of the Convention)

 The International Convention for the Protection of All Persons from Enforced Disappearance:


Approved by virtue of Royal Decree No. 1-12-23 of 13 Ramadan A.H. 1433 (2 August A.D. 2012) promulgating Act No. 20-12 (*Official Gazette* No. 6229 of 10 February 2014, p.

² With the following reservations:


- 1- In accordance with article 28, paragraph 1, the Government of the Kingdom of Morocco does not recognize the competence of the Committee provided for in article 20:
 - (i) Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not recognize the competence of the Committee provided for in article 20.
 - (ii) Any State Party having made a reservation in accordance with paragraph 1 of this article may, at any time, withdraw this reservation by notification to the Secretary-General of the United Nations.
- 2- In accordance with article 30, paragraph 2, the Government of the Kingdom of Morocco does not consider itself bound by paragraph 1 of the same article:
 - (i) Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
 - (ii) Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by paragraph 1 of this article. 3. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party having made such a reservation. 3. Any State Party having made a reservation in accordance with paragraph 2 of this article may at any time withdraw this reservation by notification to the Secretary-General of the United Nations.

2512).

Each State Party undertakes to take the necessary measures to establish its competence to exercise jurisdiction over the offence of enforced disappearance when the offence is committed on its territory; when the alleged offender is one of its nationals, regardless of the location; when the victim is one of its nationals, regardless of the location; or when the alleged offender is present on its territory under its jurisdiction, unless it extradites him or her to another State in accordance with its international obligations or surrenders him or her to an international criminal tribunal whose jurisdiction it has recognized. (Article 9 of the Convention)


 1948 Convention on the Prevention and Punishment of the Crime of Genocide (ratified on 24 January 1958):

The Convention requires States parties to prevent and punish genocide. Criminal jurisdiction is limited to the tribunals of the State on whose territory the crime was committed or an international penal tribunal (article 6).


 The International Convention on the Suppression and Punishment of the Crime of Apartheid, which was adopted by the General Assembly on 30 November 1973 and has not yet been ratified by Morocco.

Similarly to the other conventions requiring States parties to establish universal jurisdiction over the international crimes in question, the Convention requires States parties to adopt any legislative or other measures necessary to suppress as well as to prevent any encouragement of the crime of apartheid and similar segregationist policies or their manifestations and to punish persons guilty of that crime, and to adopt legislative, judicial and administrative measures to prosecute, bring to trial and punish persons responsible for, or accused of, the acts, whether such persons are nationals of that State or of some other State or are stateless persons.

Persons charged with the acts enumerated may be tried by a competent tribunal of any State Party to the Convention which may acquire jurisdiction over the person of the accused or by an international penal tribunal having jurisdiction with respect to those States Parties which shall have accepted its jurisdiction. (Articles 4 and 5 of the Convention)


 The 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity:

The application to war crimes and crimes against humanity of the rules of municipal law relating to the period of limitation for ordinary crimes is a matter of serious concern to world public opinion, since it prevents the prosecution and punishment of persons responsible for those crimes. The seriousness of such crimes led the United Nations to enshrine in international law, by means of the Convention, the principle that war crimes and crimes against humanity, whether committed in time of war or in time of peace, are not subject to any statute of limitations. The principle thus applies universally and comprehensively. (Article 1 of the Convention)

 Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, signed in The Hague on 26 March 1999 and published in Royal Decree No. 1-09-141 adopted on 4 Jumada I, A.H. 1435 (6 March A.D. 2014) (*Official Gazette* No. 6296 of 19 September 2014, p. 6962):


Certain crimes are subject to universal jurisdiction under article 16 of the Protocol, namely:

- Making cultural property under enhanced protection the object of attack;
- Using cultural property under enhanced protection or its immediate surroundings in support of military action;
- Extensive destruction or appropriation of cultural property protected under the Convention and the Protocol.

 The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, published in Royal Decree No. 1-01-254 of 9 Shawwal A.H. 1424 (4 December A.D. 2003) (*Official Gazette* No. 5191 of 1 March 2004):

Under the Optional Protocol, certain crimes are subject to universal jurisdiction when the alleged offender is present in its territory and it does not extradite him or her (article 4 of the Optional Protocol). Those crimes are set forth in article 3, paragraph 1:

- 1- Offering, delivering or accepting, by whatever means, a child for the purpose of:
 - Sexual exploitation of the child;
 - Transfer of organs of the child for profit;
 - Engagement of the child in forced labour.


 The International Convention for the Suppression of the Financing of Terrorism, which was opened for signature in New York on 10 January 2000 and was published in Royal


Decree No. 1-02-131 of 7 Shawwal A.H. 1423 (12 December A.D. 2002) (*Official Gazette* No. 5104, p. 1490).


Under the Convention, certain offences can be subject to universal jurisdiction in cases where the alleged offender is present in its territory and it does not extradite that person to any of the States Parties that have established their jurisdiction (article 7). The offences are those set out in article 2:


Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:


- (a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex;
- (b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.


 The Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, which was signed in 1973 and ratified on 21 January 2002.

 The International Convention against the Taking of Hostages, which was signed in 1979 and ratified on 9 May 2007.

 The Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, signed in Rome in 1988.

 The International Convention on the Suppression of Acts of Nuclear Terrorism, which was signed in 2005 and was ratified in March 2010.

 The International Convention for the Suppression of Terrorist Bombings, which was signed in 1997 and ratified on 9 May 2007.

 The Convention for the Suppression of the Financing of Terrorism, signed in 1999 and ratified on 19 November 2002.

Separately, the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment enshrines what might be called a subsidiary principle of universal jurisdiction. Article 5 provides that State Party shall take such measures as may be necessary to establish its jurisdiction over the relevant offences in cases where the alleged offender is present on its any territory under its jurisdiction and it does not extradite him. That provision does not mark a departure from the formulations given above.

III. Application of the principle of universal jurisdiction in national law

Morocco has endeavoured to harmonize its internal laws with the aforementioned commitments and international agreements which it has ratified or to which it has acceded, and which are published in its *Official Gazette*, particularly those related to the advancement of human rights and international humanitarian law.

The progress that has been made and is being planned is set out below.

❖ Progress made with regard to the application of the principle of universal jurisdiction

1) Constitution of Morocco

In the preamble of the Constitution, it is stated that Morocco is committed to protecting and promoting human rights and international humanitarian law and contributing to their development, while taking into consideration the universal character of such rights. For that purpose, the Constitution provides that international conventions ratified by Morocco in accordance with the Constitution, the laws of Morocco and its deeply rooted national identity, take precedence over national laws immediately on publication, and that action should be taken to harmonize those laws with the requirements that stem from the act of ratification.

In the preamble, which is an integral part of the Moroccan Constitution, it is stated that Morocco is committed “to protect and promote human rights and international humanitarian law and contribute to their development, while taking into consideration their universal character and their indivisibility” (fourth paragraph, item 7). It is further stated that international conventions duly ratified by Morocco, in accordance with the provisions of the Constitution, the laws of the Kingdom and its deeply rooted national identity shall, immediately upon publication, take precedence over national laws, and that action shall be taken to harmonize those laws with the requirements that stem from the act of ratification (fourth paragraph, item 9). Article 22 (last paragraph) provides as follows: “The practice of torture in any form and by anyone shall be a crime punishable by law”. Article 23 (last

paragraph) provides as follows: “Genocide and all other crimes against humanity, war crimes and all grave and systematic human rights violations shall be punishable by law”³.

In article 23 of the Constitution, it is stated that arbitrary or secret detention and enforced disappearance are among the most serious offences, that the perpetrators thereof risk the most severe penalties, and that genocide and all other crimes against humanity, war crimes and all grave and systematic human rights violations shall be punishable by law. The same article prohibits all incitement to racism, hatred or violence.

Those national terms of reference make it possible to criminalize and prosecute the aforementioned crimes and grant jurisdiction to national courts. Article 10 of the Criminal Code provides that Moroccan criminal law shall apply to persons present in Moroccan territory⁴. Article 704 of the Code of Criminal Procedure provides that Moroccan courts have jurisdiction over “any crime committed in Moroccan territory, regardless of the nationality of the perpetrator”⁵. Such jurisdiction extends to any offence if one constituent element thereof was committed in Morocco; the offence as a whole is considered as though it had occurred in Moroccan territory. The jurisdiction of Moroccan courts includes the principal act and all acts of participation or concealment, even if such acts were committed outside Morocco and by foreigners.

The jurisdiction of national courts over violations or crimes committed outside Morocco is governed by the measures set forth in book 7, parts 1 and 2 of the Code of Criminal Procedure⁶.

Those measures can be summarized as follows, with reference to articles 705 and 706:

Moroccan courts are competent:

³ Torture is prohibited under articles 231(1) to 231(8) of the Moroccan Criminal Code, and human trafficking is prohibited under articles 448(1) to 448(8).

⁴ Article 10 of the Criminal Code provides as follows: “All persons, whether nationals, foreigners or stateless persons, who are in the territory of the Kingdom shall be subject to Moroccan criminal law, barring the exceptions established in domestic and international public law”.

⁵ Article 704 of the Code of Criminal Procedure provides as follows:

The courts of the Kingdom of Morocco have jurisdiction over any crime committed in Moroccan territory, regardless of the nationality of the perpetrator.

Any offence one constituent element of which was committed in Morocco shall be considered as though it had been committed in the territory of the Kingdom.

The jurisdiction of Moroccan courts over the principal act extends to all acts of participation or concealment, even if such acts were committed outside the Kingdom and by foreigners.

⁶ Book 7: Jurisdiction over certain offences committed outside the Kingdom and relations with foreign judicial authorities.

- To consider major and minor offences committed on Moroccan-flagged ships on the high seas, whatever the nationality of the perpetrators
- To consider major or minor offences committed in Moroccan sea ports on board a foreign commercial vessel; under article 706, Moroccan courts are competent
- To consider crimes and misdemeanours committed on board Moroccan aircraft, whatever the nationality of the perpetrator
- To consider major or minor offences committed on board Moroccan aircraft, if the perpetrator or the victim is a Moroccan national
- To consider crimes or misdemeanours committed on board foreign aircraft
- To consider any offence that was committed outside the Kingdom of Morocco by a Moroccan and that can be prosecuted in Morocco. However, suspects can be put on trial only if they return to Morocco, and only if it has not been shown that a definitive judgment has been handed down abroad and that, if the perpetrator was convicted, the sentence has been served or fallen under the statute of limitations or an amnesty has been granted. (Articles 707 and 708)
- To prosecute any foreigner who has committed, outside the territory of the Kingdom of Morocco, either as a crime that is punishable under Moroccan law, whether as a perpetrator, accomplice or accessory. However, suspects cannot be prosecuted if it has been shown that a definitive judgment has been handed down abroad and that, if the perpetrator was convicted, the sentence has been served or fallen under the statute of limitations. (Article 710).

Moroccan courts are also competent, under Moroccan law, to prosecute any foreigner outside Morocco, or any Moroccan outside Morocco, who has committed, been an accessory to, or colluded in any crime (articles 711 and 711(1) of the Criminal Code if:

- It was an act against State security
- Its purpose was to counterfeit a state seal or national currency legally circulating in Morocco
- It was a crime against diplomatic or consular staff or premises or Moroccan public offices
- It was connected with a terrorist offence, whether or not that offence was intended to harm the Kingdom of Morocco or its interests.

2) Criminal Code

The draft code of criminal procedure grants the Moroccan judiciary comprehensive competence in respect of those offences. With regard to paragraph 4 of General Assembly resolution 78/113, our country has ratified several treaties on combating crime, including, in particular, the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Corruption, which contain provisions on universal jurisdiction – in articles 15 and 42 respectively – that are consistent with Moroccan domestic law.

■ Chapter 10

As is the case with comparable legal systems, Moroccan criminal law adopts the general principle of territoriality and personality with regard to the application of criminal law. Article 10 of the Criminal Code provides as follows: “Moroccan criminal law shall apply to any citizen, foreign national or stateless person in Moroccan territory, barring the exceptions provided for under domestic and international law”.

It also enshrines the general principle of universal jurisdiction by providing as follows: “Moroccan criminal law shall apply to offences committed outside the Kingdom, if they fall within the jurisdiction of Moroccan criminal courts”.

■ Chapters 231(1) to 231(8): Criminalization of torture

Moroccan law defines torture (Chapter 231(1) of the Criminal Code) in a manner consistent with article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment:

For the purposes of this section, “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of or with the consent or acquiescence of a public official a person for the purposes of intimidating him or coercing him or a third person to disclose information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or for any reason based on discrimination of any kind.

It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

■ Chapters 231(1) to 231(9): Criminalization of terrorism

■ Chapters 448(1) to 448(14): Criminalization of human trafficking

■ Chapters 436 to 440: Criminalization of Enforced Disappearance

Although Moroccan criminal law does not define enforced disappearance in accordance with the definition in the relevant Convention, chapters 436 through 440 set forth a series of legal requirements aimed at protecting individuals from acts of abduction, detention and imprisonment.

3) Code of Criminal Procedure

The Code provides that there shall be no statute of limitations on public prosecutions arising from offences for which the law or an international treaty ratified by the Kingdom of Morocco and published in the *Official Gazette* stipulates that there is to be no statute of limitations (article 5).

It provides that no confession obtained through violence or coercion can be relied upon (article 239).

Moroccan law adopts the principle of conditional universal jurisdiction for terrorist offences. Article 711 (1) of the Code of Criminal Procedure stipulates that “notwithstanding any legal provision to the contrary, any Moroccan or foreign national who, outside the territory of the Kingdom, commits or is an accomplice or accessory to a terrorist offence, whether or not intended to cause harm to the Kingdom of Morocco or its interests, shall be prosecuted and tried by the competent Moroccan courts.”

However, if such acts are not intended to cause harm to the Kingdom of Morocco or its interests and were committed outside Morocco by a foreigner, whether as the main perpetrator, the accomplice or accessory, he may be prosecuted only if he is present in Moroccan territory.

There can be no prosecution or judgment if the defendant shows that he was tried for the same offence, that a definitive judgment has been handed down and that, if he was convicted, the sentence has been served or has fallen under the statute of limitations.

The article distinguishes between two situations with regard to the application of the principle of jurisdiction, namely, whether the terrorist offence is or is not intended to harm Moroccan interests:

- If the terrorist offence is intended to harm Moroccan interests, Moroccan courts have jurisdiction to prosecute anyone who perpetrated it in any capacity, whether they are Moroccan or foreign.

- If the terrorist offence was committed by a foreigner outside Morocco, in any capacity, and was not intended to harm Moroccan interests, Moroccan courts have jurisdiction to prosecute only if the perpetrator is present in Moroccan territory.

In order for the Moroccan judiciary to establish jurisdiction under that principle, the following conditions must be met:

- The defendant must not have been put on trial abroad for the same act, a definitive judgment having been handed down;
- The defendant shows that the sentence has been served or has fallen under the statute of limitations.

Article 713 of the Code of Criminal Procedure enshrines the principle that international treaties take precedence over national laws in the context of judicial cooperation with foreign States.

As is mentioned above, the Moroccan judiciary is deemed to be the entity competent for prosecuting any individual of any nationality who has committed an offence on Moroccan soil. That is because, under chapter 10 of the Criminal Code, criminal legislation continues to be an aspect of State sovereignty. The Criminal Code provides that national Moroccan legislation applies to anyone in Moroccan territory, including nationals, foreigners and stateless persons, barring the exceptions set forth in domestic and international public law.

Accordingly, Moroccan law takes a particular approach to the jurisdiction of Moroccan courts over offences committed abroad and relations with foreign judicial authorities. The relevant provisions are set out in book 7 of the Code of Criminal Procedure. Paragraph 1 of article 704 provides that Moroccan criminal law governs offences committed in Moroccan territory. Paragraph 2, however, enables the Moroccan judiciary to exercise competence in respect of any offence if one component thereof was committed in Morocco. In such instances, the offence as a whole is treated as though it had occurred in Moroccan territory. In paragraph 3, the jurisdiction of Moroccan courts to consider the principal act is extended to all associated acts of complicity or concealment, even if they were committed outside the country and by foreigners.

Similarly, in accordance with the territorial principle in criminal law, Moroccan criminal law applies to Moroccan ships and aircraft wherever they are located, except for cases that are subject to foreign law by virtue of international law. That provision is enshrined in article 705

of the Code of Criminal Procedure, which provides that Moroccan courts are competent to consider offences committed on Moroccan-flagged ships on the high seas. The same approach is taken in paragraph 1 of article 706 of the Code of Criminal Procedure, which recognizes a jurisdictional link in order for the Moroccan judiciary to consider offences committed on Moroccan aircraft, regardless of the perpetrator's nationality.

With a view to strengthening jurisdiction over Moroccan citizens wherever they may be, Moroccan law gives Moroccan courts the option of prosecuting any Moroccan who has committed, outside Morocco, a major or minor offence (articles 707 and 708 of the Code of Criminal Procedure).

Similarly, Moroccan courts have been given competence when a major offence is committed against a Moroccan citizen outside the territory of Morocco (article 710 of the Code of Criminal Procedure). For the purposes of the competence of Moroccan courts, such acts are downgraded to a minor offence in the case of an act against State security, the counterfeiting of a State seal, the counterfeiting or forging of national cash or banknotes circulating legally in Morocco, or a major offence against staff or diplomatic or consular missions or public offices of Morocco.

As regards efforts to combat terrorism and prevent impunity, Moroccan law adopted the principle of comprehensive universal jurisdiction in respect of terrorism in 2015. Specialized Moroccan courts were thus given the power to prosecute and put on trial any Moroccan or foreign national who has committed a terrorist offence outside Morocco, whether as main perpetrator, accomplice or accessory, and whether or not that offence was intended to harm Morocco or its interests (article 711(1) of the Code of Criminal Procedure; chapter 218(1)(1) of the Criminal Code).

In view of the country's international obligation to protect human rights and ensure compliance on the part of the Moroccan judiciary, a legislative policy has been adopted to update domestic law and harmonize it with human rights and international humanitarian law standards. The offences of genocide, crimes against humanity and war crimes are transposed into domestic law by virtue of the draft law amending the Criminal Code. The draft law includes provisions criminalizing those offences and specifying penalties. The offences are defined in accordance with the Rome Statute.

❖ **Drafts under consideration with regard to the application of the principle**

The Ministry of Justice is reviewing the Criminal Code and the Code of Criminal Procedure with a view to harmonizing them with the international agreements ratified by Morocco and published in the *Official Gazette*. Some relevant new provisions are as follows:

1) Draft review of the Criminal Code

The draft review of the Criminal Code includes provisions criminalizing and setting out penalties for enforced disappearance, war crimes, crimes against humanity and genocide.

2) Draft review of the Code of Criminal Procedure

In an endeavour to harmonize national legislation with international agreements, Morocco is introducing into the Code of Criminal Procedure explicit provisions extending the jurisdiction of the national judiciary to cover acts criminalized under international agreements that have been ratified by Morocco and published in the *Official Gazette*. Article 711(2) of the draft provides as follows:

Anyone who, outside Morocco, has committed the crime of genocide, crimes against humanity, war crimes or any of the acts criminalized under the international instruments which Morocco has ratified or to which it has acceded, and that have been published in the *Official Gazette*, can be prosecuted and tried by Moroccan courts, if the person is present in Moroccan territory.

Competence to prosecute the aforementioned crimes is granted to the Crown Prosecutor at the Court of Appeals of Rabat, based on a written order addressed to him by the Head of the Office of the Public Prosecutor.

The principle of universal jurisdiction is applied in Morocco with due regard for any international or bilateral extradition agreements that have been ratified and published in the *Official Gazette*; such agreements take precedence.

As regards civil law, Morocco is including in its new draft code of civil procedure laws regulating the international jurisdiction of the courts based on the rules of private international law and case law in that area. The draft provides that Moroccan courts are competent to consider cases filed against a Moroccan, even if that person is not domiciled and does not have a place of residence in Morocco. It can also consider cases filed against a foreigner who is not domiciled and does not have a place of residence in Moroccan territory. The draft expands the international jurisdiction of the courts and enables them to consider cases that do not fall under their jurisdiction, if the defendant accepts their jurisdiction explicitly or implicitly.

IV. Application of the principle of universal jurisdiction in the practice of national courts

Under the substantive and procedural law currently in force, Morocco has adopted the principle of conditional universal jurisdiction, the condition being that the suspect must be in Moroccan territory. The Moroccan judiciary can thus invoke the principle only for terrorist offences, in accordance with article 711(1) of the Code of Criminal Procedure set out above.

V. Established position of Morocco on issues related to the scope and application of universal jurisdiction

An analysis of the statements made by our country concerning the issue of universal jurisdiction, particularly the documents issued by our Permanent Mission to the United Nations, shows that a series of legal and factual arguments have been made in support of our country's position on the issue. Those arguments can be summarized as follows:

1. Morocco has consistently called for the principle of universal jurisdiction to be invoked wisely and judiciously, in accordance with international law. Both in its own capacity and on behalf of the Group of African States, Morocco has regularly expressed concern at the risk that universal jurisdiction could be misused in a manner that would undermine the respect accorded under international law to the principle of State sovereignty and the national jurisdiction that derives from that principle. One particularly objectionable practice is the attempt by certain national judiciaries to prosecute individuals who enjoy immunity under international law.
2. On several occasions, Morocco has emphasized the exceptional nature of universal jurisdiction and its purpose, which is to combat impunity. The principle must not be exploited, misapplied or invoked to interfere in the internal affairs of States or encroach on their natural sovereignty.
3. Morocco has consistently drawn attention to the uncertainty regarding the application of the principle. It has called for the Sixth Committee to engage in further reflection aimed at better identifying the purposes and rules of the principle with a view to safeguarding sovereignty of States and the inviolability of their judicial systems.

Accordingly, the consistent position and practice of Morocco regarding the principle and its implications for extraterritorial jurisdiction is as follows:

- A. It is a selective principle: it can be invoked only if the competent national judiciary expressly declines to prosecute crimes connected with grave human rights violations;

B. It is an optional principle: its application depends on the sovereign choice of States in relation to criminal policy, treaty-based practice and mutual legal assistance;

C. It is a preventive principle: its purpose is to make up for shortcomings in certain national judicial systems with regard to the prosecution of individuals involved in crimes which the international community deems to be serious.