

Translated from Spanish

Permanent Mission of Peru to the United Nations

18 April 2024

Information on international treaties containing provisions on universal jurisdiction

1. With regard to General Assembly resolution 78/113 of 7 December 2023, entitled “The scope and application of the principle of universal jurisdiction”, in which the Office of Legal Affairs invited Member States of the United Nations to submit information and observations on the scope and application of universal jurisdiction, the following should be noted:

2. As part of its response to that request, the Directorate-General for Treaties, before proceeding to identify treaties that dealt with universal jurisdiction, conducted research with the aim of establishing a concept of universal jurisdiction that would serve as a reference. To that end, it reviewed the document entitled "Scope and application of the principle of universal jurisdiction" that had been adopted by Peru pursuant to General Assembly resolution 64/117 and submitted for the 2nd plenary meeting of the Sixth Committee¹ of the General Assembly, held on 17 September 2010 [1], as well as other related documents.

3. It should be noted that there is no single globally-accepted definition of universal jurisdiction [2]. The definition adopted by Peru, arrived at by excluding the other bases for establishing jurisdiction, is shared by other authorities [3]. However, the said definition provides that "States may prosecute certain international crimes without having to prove a normal link, either to the territory where the crime was committed, the nationality of the perpetrator or the nationality of the victims". In that regard, the Directorate-General for Treaties suggests adding the phrase: "or any other" [4], given that, based on the current wording, the definition would capture bases that have not been mentioned previously but that are established in Peruvian law, in accordance with international law, and do not necessarily refer to universal jurisdiction [5].

4. Thus, the key point in relation to universal jurisdiction seems to be that it can be described as "criminal jurisdiction based solely on the nature of the crime", that is, in relation to the fight against impunity for the most heinous international crimes. On the basis of the foregoing, Peru considered for inclusion in the list of treaties those treaties that, according to the 2010 report of the Secretary-General (A/65/181), are likely to be the most widely accepted by States, namely, those on slavery, genocide, war crimes, crimes against humanity, crimes against peace, torture and apartheid [6].

5. As indicated in the report submitted by Peru, universal jurisdiction may be applied pursuant to article 2, subparagraph 5, of the Penal Code, which establishes that “Peru is under an obligation to

¹ Translator’s note. This is a literal translation of the Spanish. I believe the intended reference is to the 2nd plenary meeting of the sixty-fifth session of the General Assembly, which was indeed held on 17 September 2010.

punish the offence pursuant to an international treaty". By virtue of the aforementioned provision, the law in Peru allows for the exercise of universal jurisdiction in respect of crimes referred to in current treaties to which Peru is a party and which mention universal jurisdiction as a basis for establishing jurisdiction, always taking into account the nature of the crimes.

6. For example, in accordance with the approach taken by Peru, the Convention on Offences and Certain Other Acts Committed on Board Aircraft (registered under No. M-0445-A in the Ambassador Miguel Bákula Patiño National Archive of Treaties), currently in force, should, *prima facie*, be included in the list, since the traditional bases for establishing jurisdiction, such as the commission of the act within the territory, the nationality of the victim or the nationality of the perpetrator, do not apply. However, none of the illegal acts referred to therein constitutes one of the aforementioned international crimes, and for that reason it was not included in the list.

7. The said list contains only current treaties to which Peru is a party, given that it is those treaties that are part of the Peruvian legal system (art. 55 of the Constitution). The distinction between universal jurisdiction and the *aut dedere aut judicare* principle was also taken into account, as Peru considers these to be different institutions; consequently, treaties relating to extradition were not included. Nor were treaties relating to international criminal jurisdiction, where jurisdiction falls to international courts and tribunals.

8. Lastly, the Directorate-General for Treaties, in accordance with the information set out above, hereby provides the following list of multilateral treaties (both universal and regional), in which it has identified precisely which provisions concern universal jurisdiction.

9. The texts of the treaties included in the attached table can be found at the following link to the Juan Miguel Bákula Patiño National Archive of Treaties: <https://apps.rree.gob.pe/portal/webtratados.nsf>.

[1] See the following link:

https://www.un.org/en/ga/sixth/65/ScopeAppUniJuri_StatesComments/Peru.pdf

[2] See Jalloh, Charles Chernor (2018). "Annex I. Universal criminal jurisdiction". Report of the International Law Commission on the work of its seventieth session (30 April–1 June and 2 July–10 August 2018), (A/73/10), p. 227, para. 1. https://legal.un.org/ilc/reports/2018/english/annex_a.pdf

[3] *Idem*.

[4] Or as the author Mr. Jalloh states: "any other connection to the State exercising such jurisdiction", *idem*.

[5] For example, in the case of crimes committed on vessels or aircraft registered in Peru (not an act committed in Peruvian territory *per se*, nor an act where the victim or the perpetrator is a national), based on the definition previously drafted by Peru (which envisages no other type of nexus as a basis for establishing jurisdiction), universal jurisdiction would be involved; however, the illegal act in question might not necessarily be one of the international crimes covered by the principle of universal jurisdiction.

[6] See the report of the Secretary-General prepared on the basis of comments and observations of Governments on the scope and application of the principle of universal jurisdiction (A/65/181, para. 28, at the following link:

<https://documents.un.org/doc/undoc/gen/n10/467/52/pdf/n1046752.pdf?token=aYD7QuigDpJfoJvBWO&fe=true>

Lima, 22 March 2024
