

*Stála misia Slovenskej republiky  
pri Organizácii Spojených národov  
New York*



*Permanent Mission of the Slovak Republic  
to the United Nations  
New York*

No. VN.15.153/USSM-ES

*The Permanent Mission of the Slovak Republic to the United Nations presents its compliments to the Secretary-General of the United Nations and with regard to the note No. LA/COD/59/1 of January 20<sup>th</sup>, 2011 has the honour to attach herewith information concerning the UN General Assembly resolution No. 65/33 on "The scope and application of the universal jurisdiction".*

*The Permanent Mission of the Slovak Republic to the United Nations avails itself of this opportunity to renew to the Secretary-General of the United Nations the assurances of its highest consideration.*

*New York, May 17<sup>th</sup>, 2011*



*H.E. Mr. Ban Ki-moon  
Secretary-General  
of the United Nations  
New York*

*Attn.: Codification Division, Office of Legal Affairs  
Fax: 1212-963-1963*

**The scope and application of the principle of  
Universal jurisdiction  
(Slovak Republic observations)**

A. General observations

In its resolution A/RES/65/33 the General Assembly invited Member States to submit information and observations on the scope and application of universal jurisdiction, including where appropriate, information on the relevant international treaties, their domestic legal rules and judicial practice. The Slovak Republic welcomes the on going expert discussion concerning the scope and application of universal jurisdiction and submits the following general observations:

1. Since 1st January 2010 the Slovak Republic domestic legal rules contain a formal legal instrument based upon the principle of universal jurisdiction. The Criminal Code (Law No. 300/2005 Coll.) was amended in 2009 by Law No. 576/2009 Coll. which introduced the principle of universal jurisdiction into § 5a of the Criminal Code. The amendment has entered into force as of 1st January 2010. The existing provisions on extraterritorial jurisdiction of national courts contained in section § 6a and on relationship to international treaties (section 7) were introduced into the Criminal Code from 2006.

Moreover, the Slovak Republic is the party to both the bilateral treaties and international legal instruments in force which contain or mention elements of "*aut dedere aut judicare*" principle or that of universal jurisdiction, e.g. the European Convention on the Transfer of Proceedings in Criminal Matters (CETS No.: 073). The Explanatory report to the Convention (para 11) recalls the existing doctrines of jurisdiction which mention among others also the universal jurisdiction.

2. The universal jurisdiction is a complex and multidimensional legal issue which is to be analyzed not only in the light of variety of different procedural and *rationae materiae* elements but also in the light of strategic developments which have been occurring both in the international law and international relations. Namely, the process of globalization, new urgent risks and challenges, increasing necessity to fight the acts of international terrorism and so on generate new ideas within the principle of universal jurisdiction. The international community of states enhances its efforts aimed at implementing the principal goals and purposes of the United Nations Charter. Nevertheless, at the time being any *de lege lata* considerations do not allow us to come to a single conclusion with respect to the very meaning or definition, contents and range of the principle of universal jurisdiction. On the other hand, considerations *de lege ferenda* do give legal experts a broad margin of appreciation in analyzing particular legal aspects of the issue under discussion.

The multidimensional essence of the issue means that due focus is to be made both with regard to procedural and *rationae materiae* elements of the principle of universal jurisdiction.

3. As far as the Public International Law is concerned, due consideration should be given to the role of Article 103 of the UN Charter which stipulates that „in the event of a conflict between the obligations of the Members of the United Nations under the present Charter and

their obligations under any other international agreement, their obligations under the present Charter shall prevail”.

Taking this into consideration, any draft codification of the principle of universal jurisdiction should be realized in conformity with the purposes of the UN Charter, included UN Member states commitments to adopt effective collective measures aimed at protecting and enhancing peace, preventing war, promoting international cooperation, respect for human rights and fundamental freedoms.

The codification of universal jurisdiction should also be realized in conformity with the principles of the UN Charter, namely with the principle of sovereign equality of all its Members, the principle *pacta sunt servanda*, the principle of settlement of their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered, the principle of refraining from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations, the principle of giving the United Nations every assistance in any action it takes in accordance with the UN Charter, and refraining from giving assistance to any state against which the United Nations is taking preventive or enforcement action, and as well as the principle that nothing contained in the Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the UN Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

Taking this into account, it would be strongly preferable if *all* members of the international community accepted the principle of universal jurisdiction. Doing so, they would effectively respect any eventual impacts of the principle on the above principles, namely the principle of sovereign equality and non-intervention. In another words, the universal acceptance and approach do form a precondition for effective implementing of the principle of universal jurisdiction in practice of states.

The normative quality of the legal rules related to the principle of universal jurisdiction will also be an important element which should be taken into consideration. Clear ranking of all related legal rules (both national and international) would assist to preventing eventual disputes with regard to priority of different categories of legal rules e.g. the legal rules governing obligation of a State to protect its citizens through provisions of the diplomatic and consular law on one hand and the legal right of another State to prosecute the citizens of the former State by implementing the principle of universal jurisdiction on the other hand.

The draft legal rules on the principle of universal jurisdiction should not impair a State of the inherent right of individual or collective self-defense in terms of Article 51 of the UN Charter as well as the right to resort to other circumstances precluding State responsibility for an internationally wrongful act, e.g. consent given by a State which suffered a damage in consequence of an internationally wrongful act of another State, or “state of necessity” or other reasons included in Articles on State Responsibility which had been prepared by the International Law Commission.

By and large, the draft legal rules on the principle of universal jurisdiction, should (only theoretically), respect the UN Member States legal right contained in Chapter XVII of the UN Charter, namely in the Article 107 which stipulates that „Nothing in the present Charter

shall invalidate or preclude action, in relation to any state which during the Second World War has been an enemy of any signatory to the present Charter, taken or authorized as a result of that war by the Governments having responsibility for such action.”.

4. The universal jurisdiction comprises both international law and national law elements and relates both to procedural law and positive material law. In this respect, the universal jurisdiction acts not only as a set of procedural rights of the national and international courts to prosecute and punish but also as a material legal obligation to prosecute and punish actors of the *erga omnes* crimes. A State which does not fulfill its obligation to prosecute and punish offenders will bear the responsibility for an international wrongful act.

There exist many other partial questions related to the issue of the principle of universal jurisdiction. To prevent eventual disputes concerning the competence to act in the matter, the draft legal provisions might answer e.g. a question of precedence of States with regard to use of the right to prosecute and punish the offender.

Definitely, many partial problems relate to detailed regulation of procedural and *materiae rationae* aspects of the principle of universal jurisdiction, included details on act of accusation, taking the evidence, different stages in the court proceedings, appeal or revision of judgment proceedings, execution of a judgment, eventual Pardon or Amnesty proceedings, precise defining of a subjective and objective elements of crimes *erga omnes*, compensation of damage proceedings and so on. This all requires not only accepting „universality“ in the area of jurisdiction but also reaching sufficient „universality“ in the area of related legal norms regulating material (*rationae materiae*) aspects of the issue.

5. The criminal courts in the Slovak Republic may invite victims who sustained damage from crimes to seek for compensation and redress regarding the damage not in a criminal proceeding but in separate civil courts proceedings. Thus, the principle of universal jurisdiction might also effect not only criminal courts proceedings but also to civil law and civil procedural legal rules.

6. The International Private Law does not recognize the principle of universal jurisdiction. The principle of *forum necessitates* has been applied in the domain of the International Private Law to reach effects comparable to the effects of application of the principle of universal jurisdiction.

7. The draft regulation of the principle of universal jurisdiction should take into consideration a complex of issues related to legal cooperation among national and international courts. In cases where a national court of an acting State will be prosecuting and punishing offenders who committed their crimes in the territory of another State, the former State authorities will fully depend on broad international cooperation with regard to taking evidence and so on.

8. The main purpose of codification should be the adoption of a balanced legal instrument which creates conditions for effective implementation and use of universal jurisdiction within the international community. This precludes adoption of mutually acceptable rules regulating issues such as immunity, amnesty or general pardon aspects, negative prescription, statute-barred cases or expiration of rights or time limits. On the other hand, the universal legal instrument should ensure and give sufficient guarantees with regard to accused persons. To this extent, a more detailed answering questions of procedural guaranties is very important, e.g. in proceedings where the accused person is not present, in cases where the principle of

“*neb is in idem*” might be applied. Right to appeal as well as guarantees related to transfer of persons, preventing death sentences or inhuman treatment are also very important in this respect.

9. Universal jurisdiction should serve as a subsidiary means, *i.e.* it should be applied only in case of failure of the national systems to prosecute and punish the offender.

10. The relation between the principle of universal jurisdiction and the International Criminal Court position should also be taken into consideration, *e.g.* it might be instructive to examine the subject from the point of view of subsidiary position of national proceedings.

11. The Slovak Republic fully supports international efforts aimed at unification of the definition of universal jurisdiction as well as unification of rules related to application of the universal juridical instrument based on universal jurisdiction. The Slovak Republic expresses its preparedness to actively contribute to further expert discussion within the framework of the Sixth Committee (Legal) activities.

#### B. The principle of universal jurisdiction in the legal order of the Slovak Republic

Criminal Code (Law No. 300/2005 Coll. as amended)

##### **Section 5a**

This Law shall apply when determining the liability to punishment of Illicit Manufacturing and Possession of Narcotic and Psychotropic Substances, Poisons or Precursors and Trafficking in them (Section 171 and 172), Forgery, Fraudulent Alteration and Illicit Manufacturing of Money and Securities (Section 270), Uttering Counterfeit, Fraudulently Altered and Illicitly Manufactured Money and Securities (Section 271), Manufacturing and Possession of Instruments for Counterfeiting and Forgery (Section 272), Forgery, Fraudulent Alteration and Illicit Manufacturing of Duty Stamps, Postage Stamps, Stickers and Postmarks (Section 274), Forgery and Fraudulent Alteration of Control Technical Measures for Labeling Goods (Section 275), Establishing, Masterminding and Supporting a Terrorist Group (Section 297), Illicit Manufacturing and Possession of Nuclear Materials, Radioactive Substances, Hazardous Chemicals and Hazardous Biological Agents and Toxins (Sections 298 and 299), Plotting against the Slovak Republic (Section 312), Terror (Sections 313 and 314), Destructive Actions (Sections 315 and 316), Sabotage (Section 317), Espionage (Section 318), Assaulting a Public Authority (Section 321), Assaulting a Public Official (Section 323), Counterfeiting and Altering a Public Instrument, Official Seal, Official Seal-off, Official Emblem and Official Mark (Section 352), Jeopardizing the Safety of Confidential and Restricted Information (Section 353), Facilitation of Illegal Migration (Section 355), Endangering Peace (Section 417), Genocide (Section 418), Terrorism and curtains forms of participation in it (Section 419), Cruelty (Section 425), Using Prohibited Weapons and Unlawful Warfare (Section 426), Plundering in the War Area (Section 427), Misuse of Internationally Recognized and National Symbols (Section 428), War Atrocities (Section 431), Persecution of Civilians (Section 432), Lawlessness in the Wartime (Section 433) even if such crime has been committed abroad by a foreign national with no permanent residence permit in the Slovak Republic.

## Section 6

(1) This Act shall be applied to determine the criminal liability for an act committed outside of the territory of the Slovak Republic by a foreign national who does not have a permanent residency status in the Slovak Republic also where

- a) the act gives rise to criminal liability under the law in force on the territory where it was committed,
- b) the offender was apprehended or arrested on the territory of the Slovak Republic, and
- c) was not extradited for criminal prosecution to a foreign State.

(2) However, the offender referred to in paragraph 1 shall not be imposed a more severe punishment than that stipulated under the law of the State on whose territory the criminal offence was committed.

## Section 7

### Jurisdiction under International Treaties

(1) This Act shall be applied to determine the criminal liability also when it is prescribed by an international treaty ratified and promulgated in a manner defined by law, which is binding for the Slovak Republic.

(2) Provisions of Sections 3 to 6 shall not apply if their use is not admitted under an international treaty ratified and promulgated in a manner defined by law, which is binding for the Slovak Republic.

#### 1. International treaties

##### - *bilateral treaties:*

The Slovak Republic is a contracting party to several bilateral treaties containing the principle *aut dedere aut judicare* as an expression of subsidiary essence of the universal jurisdiction, e.g. when the transfer of criminal proceeding is refused by a requesting State, accordingly to the bilateral treaty the requested State has an obligation to prosecute.

##### - *multilateral treaties binding on the Slovak Republic containing the principle aut dedere aut judicare:*

- European Convention on extradition (1957),
- European Convention on mutual legal assistance in criminal matters (1959),
- European Convention on the Transfer of Proceeding in Criminal Matters (1972),
- Convention on the Transfer of Sentenced Persons (1983) and
- European Convention on Suppression of Terrorism (1977).

##### - *multilateral treaties binding on the Slovak Republic which are important when considering the universal jurisdiction principle*

Slavery Convention (Geneva, 1926)

Convention on the Prevention and Punishment of the Crime of Genocide (1948)

Geneva Conventions relative to the Protection of War Victims(1949)  
Convention on Apartheid (1973)  
Protocols Additional I, II to the Geneva Conventions (1977)  
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment  
(1984)  
Rome Statute of the International Criminal Court (1998)

Note: There is no exhaustive enumeration.

## 2. Internal practice

The Ministry of Justice of the Slovak Republic has no information at present concerning a direct application of the universal jurisdiction by courts of the Slovak Republic or concerning an extradition request based on the universal jurisdiction principle.

Consequently, the conclusion is that the Slovak Republic has no practical experience with an application of universal jurisdiction principle.