



REPUBLIC OF POLAND
PERMANENT MISSION TO THE UNITED NATIONS

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Sixty-Ninth Session of the General Assembly

**The scope and application
of the principle of universal jurisdiction**

Agenda item 83

S T A T E M E N T

BY

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OCTOBER 15, 2014

Mr. Chairman,

As it was done last year, I would like to present on behalf of the Polish delegation our position concerning the issue of the scope and application of the principle of universal jurisdiction.

First of all, our delegation is highly satisfied that the UN General Assembly in its resolution 68/117 adopted on 16 December 2013 decided that the Sixth Committee shall continue its consideration of the scope and application of universal jurisdiction. It was done without prejudice to the consideration of this topic and related issues in other forums of the United Nations, and for this purpose the General Assembly decided to establish at its sixty-ninth session, a working group of the Sixth Committee to continue to undertake a thorough discussion on the scope and application of universal jurisdiction. Similarly, our delegation appreciates the inclusion in the agenda of the sixty-ninth session of the UN General Assembly of the item entitled “The scope and application of the principle of universal jurisdiction.”

Such approach seems to be important in the light of the fact that on 7 August 2014 the International Law Commission adopted the final report on the topic “Obligation to extradite or prosecute (*aut dedere aut judicare*)”, prepared by the Working Group, and decided to conclude its consideration of the topic.

It is worth to be reminded that from the very beginning of the work of the International Law Commission on the topic on the obligation to extradite or prosecute, the question of universal jurisdiction was always linked by the Commission with the main topic of *aut dedere aut judicare*. It was done already in the preliminary report prepared by the Special Rapporteur in 2006, as well as in the 2009 General Framework for consideration of the topic elaborated by the Working Group of the Commission. In the 2009 General Framework, among the questions/issues to be addressed by the Commission in the context of the relationship between the obligation to extradite or prosecute and other principles, the first issue was dealing with “*The obligation to extradite or prosecute and the principle of universal jurisdiction*”, and was accompanied by the question “*does one necessarily imply the other?*”

Delegation of Poland, although accepts the decision of the Commission to conclude, at least temporarily, the topic *aut dedere aut judicare*, simultaneously supports further continuation of consideration by the Legal Committee of matters

connected with universal jurisdiction, such like the scope and application of the principle of universal jurisdiction.

During last years, it has been rather positive response of the Governments and international bodies to the invitations, contained in relevant resolutions of the UN General Assembly, 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.

Last year, during the session of the Legal Committee, I had an opportunity to deliver such information on behalf of the delegation of Poland. It was showing that although Poland generally applies the principle of territorial jurisdiction or personal jurisdiction, nevertheless, Poland also applies the principle of universal jurisdiction in limited cases.

Having now this opportunity, I would like to express our gratitude to the Secretary General for preparing annual reports on the basis of information and observations received from Member States. A possibility of exchanging such information between the delegations makes also possible for many States to follow some good practices applied by other members of international community. Appropriate comments, delivered by various international bodies acting as observers, are also of immense value, comparing and summing up some general practices of States. This year, interesting responses were received, among others, from the Council of Europe and from the International Committee of the Red Cross.

The Council of Europe reiterated its previous comments, under which none of its conventions foresees the establishment of the so-called “universal” criminal jurisdiction. On the other hand, it has been admitted by the Council of Europe that ten of such conventions contain provisions calling upon States to ensure that their internal law establishes the jurisdiction of their criminal courts to judge a given conduct. As regards the case law of the European Court of Human Rights, it was stated that the Court can only verify the application of “universal jurisdiction” by the authorities of a State party to the European Convention of Human Rights in relation to the examination in a concrete case of the conformity of such an application with the rights and freedoms guaranteed by the Convention.

As it concerns the International Committee of the Red Cross, it underlined that it had identified more than 100 States that had established some form of universal jurisdiction over serious violations of international humanitarian law in their national

legal order. The International Committee of the Red Cross, while recognizing the will of States to frame the application of universal jurisdiction, believes that the conditions for opening criminal proceedings, or for justifying a refusal to do so, must be clearly and precisely defined. Furthermore, the International Committee of the Red Cross insists that such conditions should enable the principle of universal jurisdiction to gain in effectiveness and predictability rather than limit its application.

Mr. Chairman,

In the opinion of my delegation, the current work exercised by the Legal Committee on the scope and application of the principle of universal jurisdiction is correctly concentrating on the practice of States applying this principle. And only general and unified practice could create a basis for general recognition of the principle of universal jurisdiction as a generally binding rule of customary international law. Having such a rule, international community would gain a powerful and effective tool for combating the most serious crimes, threatening all humanity.

Finally, it is worth to be noticed that despite of the resignation by the International Law Commission of continuing its work on *aut dedere aut judicare* topic, which item was closely connected with the universal jurisdiction questions, there are still some topics in the agenda of the Commission which have close links to the matters of universal jurisdiction. In 2007 the Commission decided to include the topic of *Immunity of State officials from foreign criminal jurisdiction* in its programme of work and it is continuing this task till now. Furthermore, at its sixty-sixth session, in July 2014, the International Law Commission decided to include in its programme of work another topic closely related to the question of universal jurisdiction, namely “Crimes against humanity”. The delegation of Poland will meet the results of this decision with great interest.

Thank you, Mr. Chairman.