

Kuwait

Ministry of Justice

Scope and application of the principle of universal jurisdiction

Having considered the note of the Secretary-General (LA/COD/59) concerning the above-mentioned principle and the relevant General Assembly documents (resolution 64/117, A/64/452 and A/C.6/64/L.18), the Ministry would like to make the following observations:

I. The principle and application of universal jurisdiction

1. The causes and essence of the phenomenon of impunity are attributable to the inability or, occasionally, the reluctance of the national authorities of certain States to confront deeds and offences that are universally considered humanitarian crimes. The principle of universal jurisdiction has therefore gained prominence, the aim being to empower the judicial, civil and penal regulators in various other countries to undertake the duty of considering, investigating and taking legal action against such crimes on behalf of the international community.

2. The increase in international crime rates has been a factor in the international propagation of the principle, particularly given the fact that the risks posed by such crimes have reached alarming proportions. Those crimes include genocide, crimes against humanity, war crimes, piracy, torture, extrajudicial executions and forced disappearance, and under the provisions and principles of international law are universally considered to be illegal. It has therefore become considered incumbent upon all States members of the international community to extend their national judicial authority to include the investigation of such crimes, without taking into consideration their international nature, and hold perpetrators to account before their national courts.

3. From a thorough study of prevalent international practices, it is apparent that many countries make a connection between their right to exercise jurisdiction and the perpetration of certain crimes of a particular nature, including genocide, crimes against humanity and war crimes. Nevertheless, the question of the adoption of the principle of universal jurisdiction and its application outside the relevant institutions remains unclear, and lacks the pertinent frameworks, bases and mechanisms necessary in order to determine its scope and application. It is therefore difficult to make generalizations about actual application while it is not regulated by international instruments that prescribe the measures and mechanisms that States are legally permitted to use. Application of the principle without specific detail as to scope and measures will lead to numerous international legal problems and divert us from the basic aim informing the attempt to adopt the principle.

4. It is therefore appropriate that the international community should take into consideration a number of matters that are indispensable in this regard, including the need to conduct an

exhaustive investigation into mechanisms for applying the principle in the light of international realities. Possible starting points, scope and nature must be studied and understood, as well as the circumstances under which it will be applied, and the extent to which application is possible in the absence of those mechanisms. Consideration must also be given to previous relevant laws and the possible impact of international application.

5. It should be said that there are no obvious disadvantages to adoption of the principle of universal jurisdiction per se. The major problem lies in determining a scope, manner and procedures for application that will be universally acceptable. There continue to be numerous apprehensions as to what eventual application could entail, particularly if universal jurisdiction were used selectively or arbitrarily, without due consideration being given to requirements for and standards on universality and the need for international coordination, pursuant to the principle of international justice and equality.

6. It should perhaps be noted that the crimes to which the principle of universal jurisdiction could be applied, which include genocide, crimes against humanity and war crimes, are essentially acts that are covered by the classification of crimes contained in the Rome Statute of the International Criminal Court. That prompts us to remark that there is a clear causal link and connection between the concept of universal jurisdiction and that Statute, which makes it essential to point out that it is incumbent upon States Parties to the Statute to strengthen their cooperation in activating and applying the principle of universal jurisdiction. Matters will undoubtedly be very different with respect to those States that are not party to the above-mentioned Statute: as long as they have as yet made no attempt to ratify the Rome Statute, it will be difficult to say that the principle of universal jurisdiction is commonly accepted, particularly given that if that principle is to be implemented, one of the crimes specified in the Rome Statute must have been committed.

7. It is also essential that a differentiation should be made between bilateral and regional jurisdiction, which is determined when any two States or a regional group of States conclude agreements on the provision of mutual legal and judicial assistance or bilateral penal cooperation, thereby agreeing to apply particular frameworks to bilateral or regional jurisdiction.

8. Matters will change if consideration is given to the nature and scope of universal jurisdiction and its application throughout the international community rather than at the regional or bilateral levels. Collective universal jurisdiction can of course only be applied by the conclusion of international agreements with universal application which restrict the scope of application of that jurisdiction to States which become parties to such agreements.

9. It should be noted that universal jurisdiction has been granted by the United Nations and Security Council in very specific circumstances to all States Parties. Security Council resolution 1816 (2008), grants universal jurisdiction to States Members of the United Nations and authorizes them to enter the territorial waters of Somalia and use, within those waters, in a manner consistent with action permitted on the high seas with respect to piracy under the 1982 United Nations Convention on the Law of the Sea, all necessary means to repress acts of piracy and armed robbery.

10. It is therefore advisable to attach the principle of universal jurisdiction, as a general principle, to the Rome Statute of the International Criminal Court, and not apply it to any crime other than the crimes covered by that instrument.

11. It is worth mentioning that Kuwait has only observer status with regard to the Rome Statute of the International Criminal Court, having as yet neither signed nor ratified it, and it is therefore difficult to voice an opinion on the feasibility of extending the scope of universal jurisdiction under that Statute to States which are not party thereto.

II. International instruments that are consistent with universal jurisdiction standards

1. Having considered the frameworks and aspects of the possible application of universal jurisdiction, it is appropriate to review a number of international instruments to the provisions of which it may be possible to attach the bases and procedures of universal jurisdiction.

2. There are many such instruments that we believe are consistent with the proposal to apply the principle under consideration more universally and, in particular, international instruments and provisions relating to penal matters. Those instruments include, but are not restricted to, the following:

- 1982 United Nations Convention on the Law of the Sea.
- Rome Statute of the International Criminal Court.
- United Nations Convention against Corruption.
- United Nations Convention against Transnational Organized Crime and its three Protocols

on the suppression of trafficking in persons, against the smuggling of migrants and against the illicit manufacturing and trafficking in firearms.

- International conventions relating to the suppression of all forms of terrorism.
- General Assembly resolutions.

3. In general, it should be stressed that application of the principle of universal jurisdiction makes it imperative to establish another general universal principle, the import of which limits the scope of jurisdiction in respect of the above-mentioned international instruments to States which have ratified them. The universality of jurisdiction is purely relative and difficult to apply throughout the world, given that it is logical and well-established that international instruments are applied only in States which have ratified them. The same applies to the measures and arrangements pertaining to those instruments, which include universal jurisdiction measures.

III. The opinion of the Ministry

1. The Ministry is of the opinion that, in principle, there is nothing to prevent the inclusion of the principle of universal jurisdiction in the framework of the Rome Statute of the International Criminal Court or in any of the international instruments referred to above or any other similar instrument, provided that the validity of the principle and application of

relevant measures is restricted to States parties to or members of such instruments. No judicial obligations should be imposed on other States that have not yet ratified all those international instruments: if universal jurisdiction is carefully scrutinized, it will be found to be a general universal requirement for international justice and the suppression of internationally prevalent tyranny and double standards.

2. It is also fitting that the international community, through the United Nations, should firmly establish universal jurisdiction and disseminate it through an international convention or instrument in that regard, with a view to universally systematizing the rules, measures, procedures and means of implementation relating to that type of jurisdiction. It would then be possible to urge and encourage States to achieve comprehensive global ratification, thereby assuring the universality of such jurisdiction. That proposal may be the most apposite and realistic for the purpose of providing the international legal and judicial guarantees necessary in order to prevent abuse of that principle or alienation from its goals, and in order to ensure the firm establishment of justice and equality and removal of any selectivity that could take place in the implementation of existing international instruments.

3. Finally, it should be noted that if universal jurisdiction passes into law, States will have to amend their national legislation in order to allow for requirements for national implementation of that jurisdiction in the global context.

(Signed) [illegible]

Department of International Relations
