Permanent Mission of the Argentine Republic to the United Nations

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The Permanent Mission of the Argentine Republic to the United Nations presents its compliments to the Codification Section of the Office of Legal Affairs, of the United Nations Secretariat, and is pleased to offer its comments on the scope and application of the principle of universal jurisdiction, as follows below.

I. General considerations:

Today, it is universally accepted that the most serious crimes of concern to the international community as a whole must not go unpunished and, to that end, international law affirms that every State has the obligation to exercise its criminal jurisdiction against those responsible for such crimes.

The responsibility to conduct an investigation and prosecute a crime lies primarily with the State in whose territory the crime has been committed, or else with other States that may be connected to the crime in some way, as for example, the perpetrator’s State of nationality or the victims’ State of nationality. Nevertheless, under some circumstances, when a State is not able or willing to exercise its jurisdiction, other States that are not directly connected to the crime may fill this legal gap by invoking universal jurisdiction. Thus, it may be said that universal jurisdiction offers an additional tool for the exercise of criminal jurisdiction which may be used as a means of significantly reducing impunity. This function of universal jurisdiction makes it a critical component of the international criminal justice system.

At the same time, it should be recalled that the exercise of universal jurisdiction without limitations could create jurisdictional conflicts between States, subject individuals to abuse of process or give rise to politically motivated legal prosecutions. The unwarranted exercise of universal jurisdiction could also create tension between States, as it could be perceived as a means of interfering in the domestic affairs of another State or as a hegemonic jurisdiction exercised by some developed countries against individuals from developing countries.

The Argentine Republic is of the view that there must be clear rules governing the application of universal jurisdiction in order to ensure its reasonable exercise, particularly in view of the “myths” and misinterpretations surrounding the concept.
II. The Argentine Republic considers that the working group of the Sixth Committee that will be entrusted with undertaking a thorough study of the issue should consider, among others, the following issues:

1. The concept of universal jurisdiction;

2. The conditions that must govern the exercise of universal jurisdiction; and

3. The status of universal jurisdiction within international law and the legislative and judicial practice of States.

In view of the complexity of the issue, the Argentine Republic believes that the study undertaken by the working group should be conducted in stages. In that regard, the first stage of the study could focus on clarifying the concept of universal jurisdiction.

1. Concept of universal jurisdiction

Universal jurisdiction is often confused with other jurisdictional solutions, such as those evoking the principle of complementarity or the principle of aut dedere aut judicare. Universal jurisdiction is also often inextricably — and not always correctly — associated with other concepts, such as jus cogens or obligations erga omnes. Of all these issues, we find it important in this case to note the differences between universal jurisdiction and the principle of aut dedere aut judicare, given that the two concepts are currently being considered within the United Nations.

Although, in some cases, there are some areas of overlap between these two concepts, from a strictly theoretical perspective, they are distinct. The principle of aut dedere aut judicare is intended to prevent impunity for crimes when a State denies the extradition of the suspect from its territory. The principle of aut dedere aut judicare does not in itself stipulate which jurisdictional grounds need to be invoked when the requested State chooses to refer the case to its own judicial authorities. In contrast, universal jurisdiction does in itself constitute grounds for jurisdiction, based solely on the nature of the crime, regardless of where it has been committed, the nationality of the victim or of the alleged perpetrator, or any other aspect that may relate to the national interests of the State exercising the jurisdiction. In view of the foregoing, it is accepted that the principle of aut dedere aut judicare may overlap with universal jurisdiction when a State has no connection to a crime other than the mere presence of the suspect in its territory and, in application of the principle of aut dedere aut judicare, chooses not to grant extradition and consequently must base its prosecution of the case on the principle of universal jurisdiction. It is understood that it is only in such a case that the two concepts overlap, or, in other words, it is in this case that universal jurisdiction plays a decisive role in the full application of the principle of aut dedere aut judicare.

Analysis of international treaties, domestic legislation and judicial practice on these issues must take into account the distinction between universal jurisdiction and the principle of aut dedere aut judicare to avoid risking erroneous conclusions.

Explicit references to universal jurisdiction in its full sense within treaty law are limited. Multilateral instruments that expressly entertain the notion of universal


The principle of *aut dedere aut judicare* is included in the majority of multilateral treaties on combating transnational crime, as, for example, in the 13 international conventions on counter-terrorism, the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the 2000 United Nations Convention against Transnational Organized Crime and the 2003 United Nations Convention against Corruption, among others. It is worth noting that the treaties that implicitly allow for universal jurisdiction, such as those mentioned in the preceding paragraph, also make provision for the principle of *aut dedere aut judicare*.

With regard to this issue of the distinction between universal jurisdiction and the principle of *aut dedere aut judicare*, it should be noted that the latter is currently the subject of a study by the International Law Commission. Making a clear distinction between the two concepts had previously been a salient issue for the Commission. Although it was understood that in some cases both concepts could apply, the Commission decided to focus on the principle of *aut dedere aut judicare* and not universal jurisdiction. Similarly, while the study undertaken by the working group created by General Assembly resolution 65/33 should recognize and explore the relationship between universal jurisdiction and other concepts, it should focus on the elements inherent in the principle of universal jurisdiction.
III. The preceding comments are preliminary in nature and in line with the step-by-step approach that should be taken in the study of universal jurisdiction to be undertaken by the working group of the Sixth Committee. The Republic of Argentina reserves the right to submit additional comments on other aspects of this issue on future occasions.

The Permanent Mission of the Argentine Republic to the United Nations takes this opportunity to convey to the Codification Section of the Office of Legal Affairs, United Nations Secretariat, the assurances of its highest consideration.

New York, 29 April 2011