

2006086E

Translated from French

Swiss Confederation

Federal Department of Foreign Affairs (DFAE)

Directorate of Public International Law

24 April 2020

The scope and application of the principle of universal jurisdiction

Information concerning the position of Switzerland submitted under paragraph 3 of General Assembly resolution 74/192 of 18 December 2019

In paragraph 3 of its resolution 74/192, the General Assembly “invites Member States ... to submit, before 24 April 2020, information and observations on the scope and application of universal jurisdiction, including, where appropriate, information on the relevant applicable international treaties and on their national legal rules and judicial practice, and requests the Secretary-General to prepare and submit to the Assembly at its seventy-fifth session a report based on such information and observations”.

The scope and application of universal jurisdiction in Switzerland

For Switzerland, universal jurisdiction is a customary principle whereby a court can exercise its jurisdiction even in the absence of ties between the case and the forum State (territory, nationality of the offender or the victim, attack against the fundamental interests of the State).

In the Swiss legal order, universal jurisdiction is a secondary jurisdiction exercised when no other court with stronger jurisdictional ties (territoriality or nationality, for example) can try the offender for the crimes in question.

Switzerland subscribes to the “conditional” or “limited” conception of universal jurisdiction, the exercise of which is subject to two conditions:

- (a) The presumed offender is in Swiss territory;
- (b) The presumed offender has not been extradited to another competent jurisdiction.

The requirement of “close ties” with Switzerland, which existed for war crimes, was abandoned following the amendment of its civilian and military criminal legislation with a view to implementing the Rome Statute (amendments that entered into force on 1 January 2011).

The scope of universal jurisdiction is defined in the general provisions of the Swiss Criminal Code (CP; Recueil systématique 311.0, http://www.admin.ch/ch/f/rs/c311_0.html). Switzerland recognizes and applies the principle of universal jurisdiction for certain offences against minors (art. 5 CP), crimes or offences prosecuted under the terms of an international agreement (art. 6 CP), and particularly serious crimes proscribed by the international community (art. 7, para. 2 (b) and art. 264m CP), namely genocide (art. 264 CP), crimes against humanity (art. 264a CP) and war crimes (arts. 264b to 264j CP).

Practice of the judicial authorities

Swiss courts are presently considering several cases brought against foreign nationals for allegations of crimes against humanity and/or war crimes committed abroad. The Public Ministry of the Confederation sent an indictment based on universal jurisdiction to the Federal Criminal Court for the first time on 26 March 2019. The case concerns A.K., a Liberian national, who is being prosecuted for war crimes.

One case was concluded on the basis of universal jurisdiction by a Swiss military court, when it was still competent to hear cases on the crimes concerned. F.N., a Rwandan national, was convicted of war crimes committed in Rwanda (decision of the Military Court of Cassation of 27 April 2001).

International legal cooperation plays a key role in facilitating the collection of evidence for such proceedings. Switzerland is committed to facilitating legal cooperation in relation to the relevant crimes and calls on all States to collaborate in order to promote the success of the related proceedings.

Position of Switzerland regarding the discussions on universal jurisdiction in the Sixth Committee of the General Assembly

Switzerland welcomes the fact that the General Assembly, in its resolution 74/192, reiterates its commitment to fighting impunity, while noting the views expressed by States that the legitimacy and credibility of the use of universal jurisdiction are best ensured by its responsible and judicious application consistent with international law.

Switzerland is convinced that universal jurisdiction is an effective tool for fighting impunity, since it ensures that those guilty of the most serious crimes are brought to justice in cases where no court has been seized pursuant to other rules of jurisdiction.

Nonetheless, since the international community has not been able to reach a consensus on the definition and scope of universal jurisdiction, the issue should be further examined by experts. Switzerland therefore continues to propose that the International Law Commission be involved and welcomes the Commission's decision to include the topic of universal criminal jurisdiction in its long-term programme of work.

The Commission's involvement is desirable owing to the highly legal and technical nature of the topic, which should first be examined in detail by legal experts, without the political considerations that inevitably surround the issue. The Commission's work could contribute to more informed discussions within the Sixth Committee and the working group on the topic.