

*Permanent Mission of Brazil
to the United Nations
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The Permanent Mission of Brazil to the United Nations has the honor to refer to the letter requesting information and observations pursuant to General Assembly resolution 75/142, entitled “The scope and application of the principle of universal jurisdiction”, and has the honor of submitting the following information:

- Brazil exercises its jurisdiction first and foremost based on the territoriality principle. According to article 5 of the Brazilian Criminal Code, a crime committed in the Brazilian territory - including its airspace and territorial sea - is subject to its domestic legal system, regardless of the nationality of the perpetrator or the victim. According to article 6 of its Criminal Code, Brazil applies its laws both to acts initiated within its territory but completed outside it and to acts completed within its territory but initiated outside it.
- In some instances, Brazil also admits the extraterritorial exercise of its jurisdiction, based on the active nationality principle. According to article 7 II of the Criminal Code, its laws apply to crimes committed by Brazilians outside the Brazilian territory. Brazil may also exercise its jurisdiction based on the passive personality principle, when a crime is committed by a foreigner against a Brazilian abroad. In this case, there must be no extradition request (or it must have been denied), and there must be a requisition by the Minister of Justice, according to article 7 paragraph 3 of the Brazilian Criminal Code. Furthermore, based on the protective principle, Brazil applies its laws to crimes committed outside its territory against the life or freedom of the President of the Republic, and against the Public Administration, according to article 7 I of the Brazilian Criminal Code.

- The Brazilian Criminal Code only accepts the principle of universal jurisdiction in exceptional circumstances and under clear and objective conditions. According to article 7 I d of the Criminal Code, Brazilian laws apply to the crime of genocide even if committed abroad, as long as the perpetrator is a Brazilian national or someone that resides in the Brazilian territory.
- According to article 7 II b of the same Code, Brazil may also exercise its jurisdiction over crimes that it has obliged itself to repress through international treaties, such as torture, even when they are perpetrated abroad. However, six conditions need to be met in this case: i) the alleged perpetrator must be in the Brazilian territory; ii) the conduct must also be considered a crime according to the laws of the state where it was performed; iii) the accused must not have been acquitted abroad or have served the sentence outside Brazil; iv) the Brazilian law must allow the extradition for the crime; v) the accused must not have been pardoned abroad; and vi) and the claim must not have been filled after the statutory limitations period according to the most favorable law.
- Likewise, Law 9.455 of 1997, which criminalizes torture, applies to crimes committed outside the Brazilian territory, as long as the victim is a Brazilian national or the perpetrator is under the Brazilian jurisdiction. According to the Brazilian defense in the Herzog Case in the Inter-American Court of Human Rights, in 2016, this law against torture states the principle of "mitigated universal jurisdiction".
- The universal jurisdiction has never been applied as such by Brazilian tribunals. However, in the judgment of habeas corpus 95.595, in 2018, the Superior Court of Justice recognized that the principle of "universal justice", together with the nationality and protective principles, may justify the extraterritorial exercise of Brazilian criminal jurisdiction. This had already been stated by the Superior Court of Justice in the judgement of habeas corpus 18.307, in 2002.

- In different occasions, the Brazilian Supreme Court has also recognized the importance of the universal jurisdiction, for instance, in the extradition demands Ext. 595 of 1993, Ext. 658 of 1996, Ext. 1151 of 2011, Ext. 1275 of 2012, and Ext. 1300 of 2013. In none of these cases the Supreme Court has applied the universal jurisdiction, but it has mentioned doctrinal comments and observed that the principle has been adopted in the domestic system of several countries. According to the Brazilian Supreme Court, the principle is an expression of international solidarity in combating crimes (Ext. 595/1993). However, the Supreme Court has also stated that the presence of the alleged criminal in the territory of the state is a precondition to the exercise of jurisdiction (Ext. 1300/2013).
- Therefore, under no circumstance Brazil exercises its jurisdiction "in absentia", when the offender is not in its territory. Furthermore, Brazil could only exercise universal jurisdiction over serious crimes objectively recognized in international treaties.
- From the Brazilian perspective, the exercise of jurisdiction irrespective of the link between the crime and the prosecuting State is an exception to the more consolidated principles of territoriality and nationality. Hence, universal jurisdiction should only be applied in a responsible and judicious manner, based on clear and objective parameters, in order to prevent its abuse and misuse. First, the exercise of state jurisdiction based on the universality principle should be limited to the most serious crimes, prescribed in international treaties, and only by states parties. Second, the principle should play second fiddle to more direct connecting factors, such as territoriality and nationality. Third, the alleged criminal should always be in the territory of the State wishing to exercise its jurisdiction. Last but not least, universal jurisdiction should always respect the "ne bis in idem" principle.

2. The Permanent Mission of Brazil to the United Nations avails itself of this opportunity to renew to the Office of Legal Affairs of the United Nations the assurances of its highest consideration.

New York, 4 May 2021