

[Translated from Chinese]

Information from and observations by China on the scope and application of the principle of universal jurisdiction

The Government of the People's Republic of China,

Referring to the request by the United Nations General Assembly in its resolution 64/117 that the Secretary-General invite Member States to submit information and observations on the scope and application of the principle of universal jurisdiction, including information on the relevant applicable international treaties, their domestic legal rules and judicial practice;

Noting that the debate on the scope and application of the principle of universal jurisdiction that took place in the Sixth Committee during the sixty-fourth General Assembly reflected clear differences of opinion among Member States with regard to the meaning of the concept of universal jurisdiction, its legal status, scope and application;

Noting also that some practices regarding the advocacy and exercise of universal jurisdiction under disputed conditions have aroused serious concerns in the international community;

Endorsing the further exchange of ideas and information among States, the promotion of mutual understanding, and efforts to seek consensus, thereby effecting a

needed balance in promoting the international rule of law and maintaining stability and order in international relations; and

Acknowledging receipt of the letter dated 8 January 2010 from the Secretary-General addressed to its Permanent Representative regarding the foregoing;

Hereby submits the following observations and information:

I. Observations

1. Jurisdiction is an important element of State sovereignty. Under the principle of sovereign equality of States, the establishment and exercise of sovereignty by one State may not impair the sovereignty of other States. Therefore the establishment of a State's sovereignty should have as a prerequisite the existence of valid and adequate connections between that country and the cases involved, and should be limited to a reasonable scope.

2. Under the principle of territorial sovereignty in international law, a State has sovereignty regarding crimes committed on its territory (the territorial principle). Additionally, under specific conditions, a State has the right to establish and exercise extraterritorial jurisdiction on the basis of the suspect's nationality (the principle of positive nationality), the victim's nationality (the principle of negative nationality), and related actions injurious to that State's security and major interests (the principle of protection).

3. The term "universal jurisdiction" lacks a consistently clear definition internationally. By common understanding, it means that States may freely establish and exercise sovereignty in the absence of any of the aforementioned territorial, nationality,

national-security or national-interest factors involved; such universal jurisdiction exists only with regard to dealing with acts of piracy.

4. To ensure that criminals who commit acts of piracy outside the zones of jurisdiction of States are brought to justice, the right of all States to punish acts of piracy is already established in customary international law. This universal type of jurisdiction has

judicare") and ensure effective cooperation among States parties in combating the corresponding crimes. However, clear differences exist in content, scope of application and conditions between this kind of "aut dedere aut judicare" obligation and its corresponding jurisdiction, and the universal jurisdiction aimed at piracy; besides having to abide by the principle of sovereign equality of States and the principle of non-interference in the internal affairs of States enshrined in the Charter of the United Nations, the implementation of "aut dedere aut judicare" rules is also subject to numerous conditions and limitations; in particular,

(1) [Such rules] are applicable only with reference to crimes stipulated under the corresponding international treaties, and the rights and obligations entailed are limited to the States Parties to the corresponding treaties;

(3) [Such rules] are predicated on the presence of the accused persons within the territory of the State Party exercising sovereignty, and are not applicable to persons outside that territory;

(4) [Such rules] respect and to the greatest extent possible prioritize the exercise of sovereignty by the State on whose territory the criminal act occurred or of which the person accused of committing that act is a national. The State within whose territory the accused is found should immediately notify the State on whose territory the crime was committed or of which the accused is a national, providing verification of the re

(5) [Such rules] take the prior possession of sufficient evidence as a prerequisite for initiating criminal proceedings, and rigorously adhere to proper legal procedures to safeguard all legal procedural rights of the accused;

(6) A State may in no way exercise sovereignty within the territory of another State, nor may it perform the functions that properly belong to the authorities of that other State under its laws;

(7) The regulations governing immunity under international law may not be violated, especially the jurisdictional immunity enjoyed by foreign heads of State, Government leaders and other officials under international law.

Moreover, some States, in carrying out their legislative and judicial functions, have imposed further procedural limitations on the exercise of the aforementioned jurisdiction, for example by requiring the prior approval or authorization of the highest national executive or judicial authorities prior to rais

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8. Under the present circumstances, in which there is no international consensus on the definition, scope and application of universal jurisdiction, any action that goes beyond current international law, or any claim or exercise of universal jurisdiction, could lead to abuses of sovereignty, damaging the sovereignty and dignity of other countries, triggering international conflict, and jeopardizing the stability and healthy development of international relations. States should therefore exercise caution, avoiding the unilateral establishment or exercise of universal jurisdiction that is not clearly sanctioned under current international law, and conscientiously upholding the basic principles of international law and safeguarding the common interests of the international community.

9. It should be further pointed out that, insofar as no clear permission yet exists under international law, the unilateral exercise of so-called universal jurisdiction against foreign officials by the judicial organs of a State violates the principle of sovereign equality of States, and constitutes a breach of international law. Under the system of State responsibility enshrined in international law, a State is held responsible if its judicial organs damage the sovereignty and major interests of another State through the improper exercise of sovereignty, and has the obligation to desist as soon as possible and offer apologies and restitution to the State affected, eliminate negative consequences, and prevent the re-occurrence of the illegal action.

II. Information

10. Chinese domestic legislation:

Annex:

List of relevant international treaties ratified or acceded to by China

I. Treaty containing articles on universal jurisdiction:

(1) United Nations Convention on the Law of the Sea (1982)

II. Treaties containing "aut dedere aut judicare" articles and supplementary jurisdictional articles:

(1) 1949 Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (first Geneva Convention)

(2) 1949 Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (second Geneva Convention)

(3) 1949 Geneva Convention relative to the Treatment of Prisoners of War (third Geneva Convention)

(4) 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War (fourth Geneva Convention)

(5) 1977 Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts

(6) 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict and its first Protocol

(7) 1970 Convention for the Suppression of Unlawful Seizure of Aircraft

(8) 1971 Convention on Psychotropic Substances

(9) 1971 Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation

(10) 1972 Protocol Amending the Single Convention on Narcotic Drugs of 1961

(11) 1973 International Convention on the Suppression and Punishment of the Crime of Apartheid

(12) 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents

(13) 1979 International Convention against the Taking of Hostages

(14) 1980 Convention on the Physical Protection of Nuclear Material

(15) 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

(16) 1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the [1971 Montreal] Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation

(17) 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation

