
[Translated from Spanish]

Permanent Mission of El Salvador to the United Nations

DNU-0055

A.550.AG

New York, 3 May 2010

Sir,

I have pleasure in writing to you concerning resolution 64/117 on the scope and application of the principle of universal jurisdiction, adopted by the General Assembly of the United Nations at its sixty-fourth session, on 15 January 2010.

Please find annexed hereto the response of El Salvador to the request contained in the

MINISTRY OF FOREIGN AFFAIRS

Department of Legal Affairs

Report under resolution 64/117 adopted by the General Assembly
of the United Nations on 15 January 2010

The Government of the Republic of El Salvador,

1. Bearing in mind resolution 64/117 adopted by the General Assembly of the United Nations on 15 January 2010, at its sixty-fourth session, on the scope and application of the principle of universal jurisdiction, in particular its first paragraph, which reads:

1. Requests the Secretary-General to invite Member States to submit, before 30 April 2010, information and observations on the scope and application of the principle of universal jurisdiction, including information on the relevant applicable international treaties, their

Universal jurisdiction refers to the capacity to try the perpetrators of specific crimes irrespective of their nationality or the place where the crimes were committed. It is thought to apply to a series of crimes that States may or must punish, on grounds of international interest.

Universal jurisdiction may be exercised through the enactment of a domestic law (universal legislative jurisdiction) or the investigation and trial of accused persons (universal contentious legislation). The former is much more common in

Accordingly, international treaties must undergo a process of ratification by all those who are instrumental in the determination of legislative will, according to the nature of the rule. In this specific case, after negotiations between the executive branch and the entity serving as the source of the international instrument, the Legislative Assembly must issue the corresponding decree of ratification before taking the measures laid down by that instrument for it to enter into force.

Thus it is that, when the conditions have been met for the ratification and entry into force of international instruments, they are considered in El Salvador to be laws of the Republic.

Taking up this point, and reviewing the international norms in force in our country, it is noted that neither the International Covenant on Civil and Political Rights nor the Inter-American Convention against Torture contains any mention of universal jurisdiction.

However, the webpage of the International Committee of the Red Cross offers a consolidated review of the application of universal jurisdiction over war crimes,¹ and from this the interesting fact emerges that, in accordance with the four Geneva Conventions, States parties are required to apply universal jurisdiction to war crimes. As a State party, El Salvador is bound by that rule.

¹ ICRC information kit on the national punishment of violations of international humanitarian law

In other words, **the Geneva Conventions, in addition to article 10 of the Penal Code reproduced above, provide a legal basis for the application of legal jurisdiction.**

Provisions of domestic law

The primary source of law in the Salvadoran normative system is the Constitution. It follows that the provisions of the Constitution are of fundamental importance in determining the place of customary law or treaty law in the national legal system.

In El Salvador, the principle of universal jurisdiction is not expressed in provisions of constitutional rank. There does exist, however, a criminal normative framework (secondary law) that explicitly provides for the exercise of universal jurisdiction when permitted or demanded by international law. Accordingly, the sole requirement for possible application of the principle in question is to determine that it is not to the detriment of the precepts of the Constitution.

So far as domestic law is concerned, it should be noted that article 11 of the Salvadoran Constitution establishes the rule that no one shall be tried twice for the same offence (*ne bis in idem*), which is a condition for the application of the principle of universal jurisdiction and which in turn would be a limit not entertained by the Penal Code (article 10), but which prevails by virtue of its being enshrined at the pinnacle of the legal order. Hence, either universal jurisdiction may properly be applied only to cases where the accused person has not been tried for the same offence,

at either the national or the international level, or account must be taken at least of penalties already imposed abroad for an offence of which a judicial body wishes to take cognizance in the name of universal jurisdiction.

In any event, provision is usually made for universal jurisdiction in the ordinary criminal

Moreover, out of a sample of some 35 criminal courts throughout the country (trial courts

country-wide and magistrate's courts

