
Translated from Arabic

Kuwait

Ministry of Justice

exhaustive investigation into mechanisms for applying the principle in the light of international realities. Possible starting points, scope and nature must be studied and understood, as well as the circumstances under which it will be applied, and the extent to which application is possible in the absence of those mechanisms. Consideration must also be given to previous relevant laws and the possible impact of international application.

5. It should be said that there are no obvious disadvantages to adoption of the principle of universal jurisdiction per se. The major problem lies in determining a scope, manner and procedures for application that will be universally acceptable. There continue to be numerous apprehensions as to what eventual application could entail, particularly if universal jurisdiction were used selectively or arbitrarily, without due consideration being given to requirements for and standards on universality and the need for international coordination, pursuant to the principle of international justice and equality.

6. It should perhaps be noted that the crimes to which the principle of universal jurisdiction could be applied, which include genocide, crimes against humanity and war crimes, are essentially acts that are covered by the classification of crimes contained in the Rome Statute of the International Criminal Court. That prompts us to remark that there is a clear causal link and connection between the concept of universal jurisdiction and that Statute, which makes it essential to point out that it is incumbent upon States Parties to the Statute to strengthen their cooperation in activating and applying the principle of universal jurisdiction. Matters will undoubtedly be very different with respect to those States that are not party to the above-mentioned Statute: as long as they have as yet made no attempt to ratify the Rome Statute, it will be difficult to say that the principle of universal jurisdiction is commonly accepted, particularly given that if that principle is to be implemented, one of the crimes specified in the Rome Statute must have been committed.

7. It is also essential that a differentiation should be made between bilateral and regional jurisdiction, which is determined when any two States or a regional group of States conclude agreements on the provision of mutual legal and judicial assistance or bilateral penal cooperation, thereby agreeing to apply particular frameworks to bilateral or regional jurisdiction.

8. Matters will change if consideration is given to the nature and scope of universal jurisdiction and its application throughout the international community rather than at the regional or bilateral levels. Collective universal jurisdiction can of course only be applied by the conclusion of international agreements with universal application which restrict the scope of application of that jurisdiction to States which become parties to such agreements.

9. It should be noted that universal jurisdiction has been granted by the United Nations and Security Council in very specific circumstances to all States Parties. Security Council resolution 1816 (2008), grants universal jurisdiction to States Members of the United Nations and authorizes them to enter the territorial waters of Somalia and use, within those waters, in a manner consistent with action permitted on the high seas with respect to piracy under the 1982 United Nations Convention on the Law of the Sea, all necessary means to repress acts of piracy and armed robbery.

10. It is therefore advisable to attach the principle of universal jurisdiction, as a general principle, to the Rome Statute of the International Criminal Court, and not apply it to any crime other than the crimes covered by that instrument.

11. It is worth mentioning that Kuwait has only observer status with regard to the Rome Statute of the International Criminal Court, having as yet neither signed nor ratified it, and it is therefore difficult to voice an opinion on the feasibility of extending the scope of universal jurisdiction under that Statute to States which are not party thereto.

II. International instruments that are consistent with universal jurisdiction standards

relevant measures is restricted to States parties to or members of such instruments. No judicial obligations should be imposed on other States that have not yet ratified all those international instruments: if universal jurisdiction is carefully scrutinized, it will be found to be a general universal requirement for international justice and the suppression of internationally prevalent tyranny and double standards.

2. It is also fitting that the international community, through the United Nations, should firmly establish universal jurisdiction and disseminate it through an international convention or instrument in that regard, with a view to universally systematizing the rules, measures, procedures and means of implementation relating to that type of jurisdiction. It would then be possible to urge and encourage States to achieve comprehensive global ratification, thereby assuring the universality of such jurisdiction. That proposal may be the most apposite and realistic for the purpose of providing the international legal and judicial guarantees necessary in order to prevent abuse of that principle or alienation from its goals, and in order to ensure the firm establishment of justice and equality and removal of any selectivity that could take place in the implementation of existing international instruments.

3. Finally, it should be noted that if universal jurisdiction passes into law, States will have to amend their national legislation in order to allow for requirements for national implementation of that jurisdiction in the global context.

(Signed) [illegible]

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