

Translated from Spanish

Report of the Republic of El Salvador pursuant to United Nations General Assembly resolution 66/103

The scope and application of the principle of universal jurisdiction

With regard to the scope and application of the principle of universal jurisdiction, El Salvador is submitting the present report pursuant to resolution 66/103, by which Member States were invited to submit, before 30 April 2012, information and observations on the topic, including information on the relevant applicable international treaties, their domestic legal systems and judicial practice.

By way of introduction, it may be useful to reiterate briefly the observations made by El Salvador in the reports submitted at previous sessions, in order to present the relevant conceptual and regulatory basis before describing recent developments with regard to this important topic.

- First, attention is drawn to the report submitted in 2010 pursuant to General Assembly resolution 64/117, which stated that El Salvador has recognized the principle of universal jurisdiction in its criminal legislation, as follows:

Penal Code of El Salvador.

Article 10. — Salvadoran criminal law shall also apply to offences committed by any person in a place not subject to Salvadoran jurisdiction, provided that they impair legal rights internationally protected by specific agreements or rules of international law or entail a serious breach of universally recognized human rights.

Based on this provision, it was recognized that national courts are empowered to apply the principle of universal jurisdiction at the domestic level, not merely to an exhaustive list of crimes but to any crimes the commission of which impairs rights internationally protected by international agreements or universally recognized human rights. However, according to the responses provided by the judiciary upon consultation, in practice there had been no cases giving rise to the application of the said principle as of the date of the aforementioned report.

- The report submitted by El Salvador in 2011 pursuant to General Assembly resolution 65/33 focused on analysing the nature of the principle of universal jurisdiction with the aim of distinguishing it from other similar concepts, and on describing certain basic principles — of which there had at that time been little discussion in the Sixth Committee — that might be useful for determining its scope once a decision had been taken to exercise it in specific cases.

Thus, with regard to the nature of th

was stated that there would be no justification for equating universal jurisdiction with other ways of exercising jurisdiction, or for requiring the presence of elements inherent to the territoriality principle and the personality principle in order for it to apply.

In particular, the requirement for crimes to impair internationally protected legal rights was examined with regard to Salvadoran legislation, which does not establish an exhaustive list of crimes. The requirement entails prior recognition of the principle of infringement, by virtue of which no punishment or security measure may be imposed if the act or omission does not infringe upon or jeopardize a protected legal right; in other words, a good that is fundamental for the individual and society, which must be protected notwithstanding any deficiencies in international law.

In addition, it was clarified that unive

In light of the above considerations, and with a view to the inclusion of additional information on the scope and application of the principle of universal jurisdiction in the report to be prepared by the Secretary-General, as requested by the United Nations General Assembly in resolution 66/103, the most recent developments in relation to this topic are set out below:

- As indicated in reports to previous sessions, article 10 of the Salvadoran Penal Code expressly provides for universal jurisdiction, though without establishing an exhaustive list of crimes, since the key element for application of the principle is the commission of crimes that impair legal rights internationally protected by specific agreements of international law or entail a serious breach of universally recognized human rights.

This requirement, however, does not diminish the importance of prior work to define international crimes within the domestic legal system, since such definition is also a prerequisite for ensuring that the conduct of criminal proceedings is characterized by legal certainty, in that it links the activity of the State to the principle of legality, thereby assuring those subject to the law that their conduct cannot be penalized other than by virtue of law issued and promulgated prior to the commission of the act deemed to be an offence. For example, according to the jurisprudence of the Constitutional Chamber of the Supreme Court of Justice of El Salvador, this principle “constitutes a guarantee [...] for the individual that he or she may not be subject to any penalty or punishment that has not been previously established, thereby preventing abuses of power”.

In line with the foregoing, the recent reform of the Salvadoran Penal Code, by which the crime of torture was included as a crime against humanity, should be highlighted as a major step forward in the context of universal jurisdiction. The reform is based on the provisions of the Constitution of the Republic that recognize the human person as the origin and purpose of the activity of the State, which is organized to attain justice, legal certainty and the common good, and, furthermore, recognize that every person has the right to physical and psychological integrity.

The reform also derives from the State's obligation to align national legislation with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was ratified by the Salvadoran State by means of Legislative Decree No. 833 of 23 March 1994. That instrument requires that its provisions be implemented in good faith, including article 4 thereof, which requires each State Party to ensure that all acts of torture, as well as any attempt to commit torture and any act by any person which constitutes complicity or participation in torture, are offences under its criminal law.

In drafting the reform, particular attention

or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”.

With respect to the prior regulation of the crime of torture in the Salvadoran legal system, it is important to point out that torture was previously criminalized in article 297 of the Penal Code, under the title “Offences relating to the fundamental rights and guarantees of the person”, legal right protected being linked primarily to the individual rights of persons and constitutional provisions establishing that no person shall be subjected to any condition that undermines his or her dignity or involves any form of torture; thus the definition of the crime did not yet incorporate sufficiently clearly its international dimensions. The article in question read as follows:

Article 297. — Any official or public employee, law enforcement officer or public authority who, in the performance of his or her duties, subjects another person to physical or psychological torture or who, having the power to hinder or prevent it, fails to do so, shall be sentenced to three to six years’ imprisonment and shall be disqualified from holding the corresponding public office or employment for the same period (repealed).

Following the reform, the crime of torture was moved to title XIX of the Penal Code relating to “crimes against humanity”. Its inclusion under that title could bring about the future application of the principle of universal jurisdiction in specific cases, since it is now possible to link the legal rights protected internationally, in this case, in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as to the violation of universally recognized rights such as the right to personal integrity.

Moreover, the wording of the article was modified with the aim of broadening its scope and adapting it to cover different means of commission. One of the main changes introduced was the express prohibition of grave acts such as coercing, instigating or inducing others to commit torture and using torture as a means of coercion or intimidation.

Furthermore, the reform increased the statutory penalty for the crime of torture — which had previously been 3 to 6 years’ imprisonment — to 6 to 12 years’ imprisonment, to which is added the accessory penalty of disqualification from the corresponding public office or employment for the same period. Following the legislative reform, the crime is now defined as follows:

Article 366-A. Any official or public employee, public authority or law enforcement officer who, in the performance of his or her duties, intentionally inflicts severe pain or suffering, whether physical or mental, on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he has committed or is suspected of having committed, or intentionally humiliating or degrading him.

