

Translated from Spanish

Ministry of Foreign Affairs and Cooperation

Office of the Under-Secretary of Foreign
Affairs and Cooperation

International Law Division

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Contribution of Spain on the W R S L Fscope and application of the principle of universal
jurisdiction

In response to the request of the General Assembly contained in paragraph 3 of its resolution 70/119 of 14 December 2015 for Member States to submit information and observations on the scope and application of universal jurisdiction, including, where appropriate, information on the relevant applicable international treaties and their national legal rules and judicial practice, Spain is

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(c) The alleged perpetrator has not been acquitted, pardoned or convicted abroad, or, in the latter case, has not served his or her sentence. If he or she has served part of the sentence, this will be taken into account in order to reduce proportionally the sentence imposed.

3. The Spanish courts shall also have jurisdiction over acts committed by Spanish nationals or foreigners outside the national territory where those acts are classified as one of the following offences under Spanish criminal law:

- (a) Treason or crimes against the peace or independence of the State;
- (b) Crimes against the monarch, his or her consort or successor or the regent;
- (c) Rebellion or sedition;
- (d) Forgery of the royal signature or seal, the State seal, the signatures of ministers or public or official seals;
- (e) Counterfeiting of Spanish currency and the circulation of such currency;
- (f) Any other act of counterfeiting that is directly detrimental to the credit or interests of the State, and the introduction or circulation of the resulting counterfeit articles;
- (g) An attack against Spanish authorities or public officials;
- (h) Crimes committed in the performance of their duties by Spanish public officials residing abroad and crimes against the Spanish public administration;
- (i) Crimes related to exchange control.

4. The Spanish courts shall also have jurisdiction over acts committed by Spanish nationals or foreigners outside the national territory, where those acts are classified as one of the following offences under Spanish criminal law:

- (a) Genocide;
- (b) Terrorism;
- (c) Piracy or unlawful seizure of aircraft;
- (d) Counterfeiting of foreign currency;
- (e) Crimes related to prostitution;
- (f) Trafficking in psychotropic, toxic or narcotic drugs;
- (g) Any other crime which should be prosecuted in Spain pursuant to an international treaty or agreement.

5. In cases such as those referred to in paragraphs 3 and 4, the provisions set forth in paragraph 2 (c) of this article shall apply.

As illustrated, paragraph 1 attributes to the Spanish courts jurisdiction over crimes committed on the national territory (territorial principle); paragraph 2 recognizes the

- (d) Crimes related to the prostitution or corruption of minors or legally incompetent persons;
- (e) Trafficking in psychotropic, toxic or narcotic drugs;
- (f) Illegal trafficking or smuggling of persons, whether or not they are workers;
- (g) Crimes relating to female genital mutilation if the perpetrators are present in Spain;
- (h) Any other crime that should be prosecuted in Spain under an international treaty or agreement, especially treaties on international humanitarian law and human rights protection.

Without prejudice to the provisions of international treaties and agreements signed by Spain, in order for the Spanish courts to have jurisdiction over the aforementioned offences, it must be established that the alleged perpetrators are present in Spain, that there are victims of Spanish nationality or that there is some relevant link with Spain and, in any event, that no other competent country or international court has initiated proceedings, including an effective investigation and, where appropriate, prosecution, of such crimes.

Criminal proceedings initiated in a Spanish court shall be temporarily stayed where it has been established that proceedings based on the alleged acts have been initiated in a country or by a court referred to in the previous paragraph.

5. In the event that criminal proceedings are initiated in Spain in cases such as those referred to in paragraphs 3 and 4 above, the provisions

(h) Crimes under the Convention on the Physical Protection of Nuclear Material, done at Vienna and New York on 3 March 1980, where the offence is committed by a Spanish national;

(i) Trafficking in toxic, narcotic or psychotropic substances, where:

1. Proceedings are brought against a Spanish national; or
2. Action has been taken to carry out one of these crimes or to establish a criminal group or organization with a view to committing one of these crimes on Spanish territory;

(j) Crimes involving the establishment and financing of or membership in a criminal group or organization, or crimes committed by members of such groups or organizations, where the latter have acted with a view to committing an offence in Spain that is punishable with a term of three or more years in prison;

(k) Crimes against the sexual freedom and inviolability of minors, where:

1. Proceedings are brought against a Spanish national;
2. Proceedings are brought against a foreign national who habitually resides in Spain;
3. Proceedings are brought against a legal person, company, organization, group or any other kind of entity or association of persons that has its headquarters or registered office in Spain; or
4. The victim had

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4. The crime is committed by a legal person, company, organization, group or any other kind of entity or association of persons that has its headquarters or registered office in Spain;

(o) Crimes under the Council of Europe Convention on the Counterfeiting of Medical Products and Similar Crimes involving Threats to Public Health of 28 October 2011, where:

1. Proceedings are brought against a Spanish national;
2. Proceedings are brought against a foreign national who habitually resides in Spain;
3. Proceedings are brought against a legal person, company, organization, group or any other kind of entity or association of persons that has its headquarters or registered office in Spain;
4. The victim had Spanish nationality at the time when the crime was committed; or
5. The victim was habitually resident in Spain at the time when the crime was committed;

(p) Any other offence in respect of which prosecution is required under a treaty that is in force for Spain or under other normative instruments of an international organization of which Spain is a member, in the cases and circumstances specified therein.

The Spanish courts shall also have jurisdiction over the above-mentioned offences, where such offences are committed outside the national territory by a foreign national present in Spain whose extradition has been refused by the Spanish authorities, if this is required under a treaty that is in force for Spain.

5. The offences referred to in the preceding paragraph shall not be prosecutable in Spain in the following cases:

(a) Where proceedings to investigate and prosecute the offence have been initiated by an international court established in accordance with a treaty or agreement to which Spain is a party;

(b) Where proceedings to investigate and prosecute the offence have been initiated in the State in which the offence was committed or in the State of nationality of the accused person, if:

1. The accused person is not present in Spanish territory; or
2. Proceedings have been initiated to extradite the accused person to the country in which the offence was committed or to the country of nationality of the victims or to bring the accused person before an international court or a court or in one of the aforementioned countries, unless the extradition is not authorized.

The provisions of subparagraph (b) shall not apply where the State that has jurisdiction is unwilling or unable genuinely to carry out the investigation; this shall be determined by the State (shall be)3(de

(a) The proceedings were or are being undertaken or the national decision was made for the purpose of shielding the person concerned from criminal responsibility;

(b) There has been an unjustified delay in the proceedings which in the circumstances is inconsistent with an intent to bring the person concerned to justice;

(c) The proceedings were not or are not being conducted independently or impartially, and they were or are being conducted in a manner which, in the circumstances, is inconsistent with an intent to bring the person concerned to justice.

In order to determine inability in a particular case, the Court shall consider whether, due to a total or substantial collapse or unavailability of its national judicial system, the State is unable to obtain the accused or the necessary evidence and testimony or otherwise unable to carry out its proceedings.

6. The offences referred to in paragraphs 3 and 4 shall be prosecutable in Spain only upon submission of a complaint by the victim or the Public Prosecution Service.⁷

Organic Act No. 1/2014 once again increased the number of offences subject to prosecution under the principle of universal jurisdiction, for instance, by extending the list of offences involving violence against women beyond genital mutilation and adding offences involving corruption of public officials or organized crime. On the other hand, it maintained the requirement of a link with Spain (to be established on a case-by-case basis); upheld the principle of subsidiarity, which is implemented by specifying to Z K L F K F R X Q W U S p a i n h F o r t h w o r l d c o d e jurisdiction, unless

