

Translated from Russian

Comments from the Institute of State, Law and Democracy of Turkmenistan in connection with resolution 74/192 on the scope and application of the principle of universal jurisdiction, adopted by the General Assembly on 18 December 2019

1. Following the adoption by the General Assembly of resolution 74/192 on the scope and application of the principle of universal jurisdiction, a careful study of the topic is in order. Terrorist acts, trafficking in persons, smuggling, and trafficking in narcotic drugs and psychotropic substances in the context of transnational crime require States to work together and develop new preventive methods to counter them. According to the principle of universal jurisdiction, States have a right and an obligation to exercise jurisdiction based solely on the nature of the crime, without regard to where the crime was committed, the nationality of the perpetrator, the nationality of the victim, or any other factors.¹

2. Universal jurisdiction is one of several types of extraterritorial criminal jurisdiction under which States can prosecute and punish individuals without regard to where the crime was committed, the nationality of the accused person or the nationality of the victim. It is based mainly on the nature of those crimes, the prosecution of which is in the universal interest of the international community as a whole. The application of universal jurisdiction is provided for in several international conventions (mainly the Geneva Conventions relating to humanitarian law). Turkmenistan is a party to those international instruments and has implemented their basic principles and provisions in its national legislation in keeping with its obligations.

3. Most crimes that are subject to universal jurisdiction violate norms of international law, or international public order (*ordre public*). They include genocide, crimes against humanity, war crimes, torture and acts of international terrorism. Universal jurisdiction is provided for in international treaties (in particular the Geneva Conventions of 1949) and in national law as a possible legal basis for the prosecution of persons who have committed serious international crimes008875 0 595.56 842.52 reW*nBTtionao tie20 ,

humankind are provided for in chapter 21, in particular planning, preparing, unleashing or conducting a war of aggression (art. 167-1); the use of prohibited means and methods of warfare (art. 167-4); violations of the laws and customs of war (art. 167-5); criminal breaches of international humanitarian law during an armed conflict (art. 167-6); failure to act or the issuance of a criminal order during an armed conflict (art. 167-7); genocide (art. 168); participation in armed conflicts or hostilities in foreign States (art. 169-2); and attacks against internationally protected persons (art. 170);

No statute of limitations applies to crimes against peace and the security of humankind (art. 74, para. 5) to ensure that no crime against humanity goes unpunished.

The following are offences for which universal jurisdiction has been established in the Criminal Code (including other grounds for jurisdiction): trafficking in persons (art. 129-1); torture (art. 182-1); crimes against the foundations of the constitutional system and the security of the State (chap. 22, arts. 171 180); crimes against public security and public order (chap. 29, arts. 271 291); and crimes against public health (chap. 30, arts. 292 310).

7. International criminal jurisdiction can currently be exercised through the national application of the principle of universal jurisdiction. In its national legislation, Turkmenistan has provided for universal jurisdiction with respect to a range of international criminal offences, such as terrorism, the financing of terrorism and attacks on persons enjoying diplomatic protection. On 10 December 2019, Turkmenistan adopted a number of policy documents, in particular the National Strategy for Preventing Violent Extremism and Countering Terrorism 2020 2024 and the National Action Plan to Counter Trafficking in Persons 2020 2022, with a view to ensuring the people's welfare, peace, security, a humane society and sustainable development.

Under the Criminal Code of Turkmenistan, all the above-mentioned offences are classified as serious or particularly serious crimes. Serious crimes are wilful or negligent acts for which the maximum penalty provided for under criminal law is imprisonment for a term of up to 15 years (art. 11, para. 4). Particularly serious crimes are wilful criminal acts for which the penalty provided for under criminal law is imprisonment for a term of up to 25 years (art. 11, para. 5).

8. The question of universal jurisdiction with regard to human rights is a timely one. Human rights violations which are subject to universal jurisdiction include genocide, crimes against humanity, war crimes and torture.

Under article 4 of the Constitution of Turkmenistan, people are the most valuable asset of society and the State. The main task of the authorities is to protect, support and serve people. Turkmenistan recognizes and respects the basic democratic rights and freedoms of persons and citizens as adopted by the international community and laid down in international law. Under article 32 of the Constitution of Turkmenistan, all persons have the right to life and the freedom to lead their lives. No one may be deprived of the right to life. The right of all persons to live in freedom is protected by the State on the basis of the law. Turkmenistan has abolished the death penalty.

Following the accession of Turkmenistan to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, in 1999, and the issuance on 6 January 1999 by the President of Turkmenistan of a decree imposing a moratorium on the application of the death penalty as a form of criminal punishment, the courts in Turkmenistan ceased to pronounce death sentences in criminal cases as from 1 January 1999.

9. The Criminal Code sets out various categories of crimes against humanity, including genocide, crimes against humanity, war crimes and torture.

