

Translated from French

Permanent Mission of France to the United Nations

Ref: AT/sec No. 214

The Permanent Mission of France to the United Nations presents its compliments to the Secretariat of the United Nations — Office of Legal Affairs, Codification Division — and, with reference to General Assembly resolution 64/117, dated 16 December 2009, transmits its comments on the scope and application of the principle of universal jurisdiction.

The Permanent Mission of France to the United Nations takes this opportunity to convey to the Secretariat — Office of Legal Affairs, Codification Division — the renewed assurances of its highest consideration.

New York, 27 April 2010

The scope and application of the principle of universal jurisdiction

Permanent Mission of France to the United Nations

In accordance with General Assembly resolution 64/117, dated 16 December 2009, Member States are invited 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 domestic legal rules and judicial practice.

In response to the invitation contained in the aforementioned resolution, the Permanent Mission of France to the United Nations submits the following information to the Secretary-General.

Universal jurisdiction is an essential instrument in the fight against impunity and France would like to reaffirm its interest in opening discussions to enable Member States to better define the scope of this concept in international law. Although it has never been defined in a convention, universal jurisdiction is understood to be the ability of a national judge to bring proceedings and rule on certain crimes committed on foreign soil, by foreign nationals and against foreign nationals.

1. The rule in French domestic law: presence on French territory

French law has accepted a specific definition of universal jurisdiction. This is laid out in article 689-1 of the Code of Criminal Procedure, as follows:

“In accordance the international agreements referred to in the following articles, any person who has committed one of the crimes listed in these articles outside the territory of the French Republic may be prosecuted and convicted by the

Articles 689-2 to 689-10 of the CCP list the international agreements that can give rise to proceedings before French judges:

- Article 689-2 of the CCP: the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, adopted in New York on 10 December 1984;
- Article 689-3 of the CCP: the *European Convention on the Suppression of Terrorism*, signed in Strasbourg on 27 January 1977, and the *Agreement concerning the application of the European Convention on the Suppression of Terrorism among the member States of the European Communities*, done at Dublin on 4 December 1979;
- Article 689-4 of the CCP: the *Convention on the Physical Protection of Nuclear Material*, opened for signature in Vienna and New York on 3 March 1980;
- Article 689-5 of the CCP: the *Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation* and the *Protocol for the Suppression*

3. The specific case of the Security Council resolutions establishing ad hoc international criminal courts

In addition to the international agreements incorporated into French law, there are also the two resolutions adopted by the Security Council, acting under Chapter VII of the Charter of the United Nations, which created the International Criminal Tribunals for the former Yugoslavia and Rwanda. French law has recognized the ad hoc universal jurisdiction of the French courts to judge offences specific to those two tribunals.

This jurisdiction was introduced by two laws adapting French legislation to the provisions of the Statutes of the two International Criminal Tribunals:

- Act No. 95-1 of 2 January 1995: United Nations Security Council resolution 827 of 25 May 1993 establishing an international tribunal for the purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia after 1 January 1991;

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- In a ruling dated 15 December 2008, the Bas-Rhin court of assizes convicted Khaled Ben Said, a Tunisian citizen, to eight years in prison for having ordered the torture of a Tunisian woman at the police station in Jendouba, while he was Police Commissioner, in October 1996. The public prosecutor's office, which had requested acquittal, has appealed the decision and the appeal will be heard by the Meurthe-et-Moselle court of assizes.

To date, there are three cases ongoing in France for acts of torture committed in the Republic of the Congo, Algeria and Cambodia. With regard to Cambodia, the Investigation Chamber of the Paris Court of Appeal handed down a ruling on 26 January 2010 approving the pursuit of investigations for a case concerning acts of kidnapping followed by acts of torture and disappearance, committed in Cambodia between 1975 and 1979.

Fifteen cases are also ongoing within the framework of the laws adapting French legislation to the provisions of the Statutes of the two International Criminal Tribunals. These concern acts committed in Rwanda (fourteen are before the Paris High Court and one is before the Paris Army Tribunal, since members of the French military are implicated).
