

*Translated from French*

## **Permanent Mission of Switzerland to the United Nations**

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The Permanent Mission of Switzerland to the United Nations presents its compliments to the Secretary-General and has the honour to transmit herewith the observations of Switzerland on the scope and application of the principle of universal jurisdiction in accordance with General Assembly resolution 64/117 dated 16 December 2009.

The Permanent Mission takes the opportunity to convey to the Secretary-General the renewed assurances of its highest consideration.

New York, 26 April 2010

## Information and observations on the scope and application of the principle of universal jurisdiction

### I. Definition

Switzerland understands universal jurisdiction to be the principle according to which **a court can exercise its jurisdiction even in the absence of a link between the case and the forum State**, such as territory, nationality of perpetrator or victim, or infringement upon the fundamental interests of the State. This principle is based on the idea that certain **crimes are so serious that they affect the whole international community** and that, as a result, every State has the *right* to exercise its jurisdiction to prosecute the perpetrators. **Examples** of crimes for which universal jurisdiction can be used are: genocide, crimes against humanity, war crimes and apartheid. Piracy was the first crime for which universal jurisdiction was recognized in international law.

While **universal jurisdiction** is a *legal* principle, it **can also be an obligation as a result of an international convention**.

### II. Different interpretations

Switzerland notes that there are **two different interpretations** of universal jurisdiction:

- (i) The **“absolute” or “unlimited” interpretation**, which allows for the possibility of exercising universal jurisdiction in criminal proceedings by default (or in absentia), i.e. without the accused being in the jurisdiction (The 5ault e5)pn5s ag

A number of terrorism-related conventions, for example the 1997 **International Convention for the Suppression of Terrorist Bombings**, also provide for the exercise of universal jurisdiction on condition of non-extradition.

## V. Universal jurisdiction in the Swiss legal regime

Switzerland **recognizes and applies the principle of universal jurisdiction** in its legal regime and has been doing so for a number of years (article 7<sup>1</sup> of the Swiss penal code; for war crimes, see article 10, paragraph 1 bis, of the military penal code<sup>2</sup> which still requires the condition of a “close link” with Switzerland). Switzerland therefore subscribes to the **“conditional” or “limited” interpretation** of universal jurisdiction. **The exercise of universal jurisdiction is subject to two conditions:**

- (i) The person suspected of the offence is within Swiss territory;
- (ii) The suspect has not been extradited to another competent jurisdiction.

In the Swiss legal regime, universal jurisdiction is therefore a jurisdiction exercised **subsidiarily**, when no other jurisdiction with a stronger jurisdictional link (by territory or nationality, for example) can prosecute the perpetrator of the crimes in question. In addition, the exercise of universal jurisdiction is **reserved for serious crimes**. Other crimes and offences are prosecuted on the basis of the “traditional” principles of jurisdiction (territory or nationality, for example).

At the present time, Swiss legislation requires a “close link” for war crimes (CPM article 10).<sup>3</sup> The compatibility of the requirement for a “close link” with international law (Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) has been called into question. In the context of the adoption of legislative amendments to the Swiss penal code and the military penal code, with a view to implementing the Rome Statute of the International Criminal Court in Switzerland, the requirement for a “close link” will in all likelihood be abandoned. These legislative amendments are currently being considered by the Swiss Parliament and are expected to come into force in 2011.

*Example of a case prosecuted in Switzerland on the basis of universal jurisdiction: “the F. N. case” (ruling of military court of appeal 1A on 26/5/2000 and decision of the military court of cassation on 27/4/2001).*<sup>4</sup> In this case, the

