

Translated from Arabic

Kuwait

Ministry of Justice

Memorandum on the scope and application of the principle of universal jurisdiction

Having considered the note of the Secretary-General (LA/COD/59/1), General Assembly resolutions 64/117, 65/33 and 66/103, the Ministry would like to make the following observations:

I. Overview of the character and application of the principle of universal jurisdiction

1. The causes and essence of impunity are attributable to the inability or, occasionally, the reluctance of the national authorities of certain States to confront deeds and offences that are universally considered humanitarian crimes. The principle of universal jurisdiction has been justified on those grounds, the aim being to empower the judicial, civil and penal regulators in various other countries to undertake the duty of considering, investigating and taking legal action against such crimes on behalf of the international community.

2. The increase in international crime rates has been a factor in the international propagation of the principle, particularly given the fact that the risks posed by such crimes have reached alarming proportions. Those crimes include genocide, crimes against humanity, war crimes, piracy, torture, extrajudicial executions and enforced disappearance, all of which, under the provisions and principles of international law are universally considered to be illegal. It has therefore become incumbent upon all States members of the international community to extend their national judicial authority to include the investigation of such crimes, without taking into consideration their international nature, and hold perpetrators to account before their national courts.

3. From a thorough study of prevalent international practices, it is apparent that many countries make a connection between their right to exercise jurisdiction and the perpetration of certain crimes of a particular nature, including genocide, crimes against humanity and war crimes. Nevertheless, the question of the adoption of the principle of universal jurisdiction and its application outside the relevant institutions remains unclear, and lacks the pertinent parameters, bases and mechanisms necessary in order to determine its scope and application. It is therefore difficult to make generalizations about actual application while it is not regulated by international instruments that prescribe the measures and mechanisms that States are legally permitted to use. Application of the principle without specific detail as to scope and measures will lead to numerous international legal problems and divert us from the basic aim informing the attempt to adopt the principle.

4. It is therefore appropriate that the international community should take into consideration a number of matters that are indispensable in this regard, including the need to conduct an exhaustive investigation into mechanisms for applying the principle in the light of international reality.

undoubtedly be very different with respect to those States that are not party to the above-mentioned Statute: as long as they have as yet made no attempt to ratify the Rome Statute, it will be difficult to say that the principle of universal jurisdiction is commonly accepted, particularly given that if that principle is to be implemented, one of the crimes specified in the Rome Statute must have been committed.

7. It is worth mentioning that Kuwait has only observer status with regard to the Rome Statute of the International Criminal Court, having as yet neither signed nor ratified it, and it is therefore difficult to voice an opinion on the feasibility of extending the scope of universal jurisdiction under that Statute to States which are not party thereto.

8. It is also essential that a differentiation should be made between bilateral and regional jurisdiction, which is determined when any two States or a regional group of States conclude agreements on the provision of mutual legal and judicial assistance or bilateral penal cooperation, thereby agreeing to apply particular parameters to bilateral or regional jurisdiction.

9. Matters will change if consideration is given to the nature and scope of universal jurisdiction and its application throughout the international community rather than at the regional or bilateral levels. Collective universal jurisdiction can of course only be applied by the conclusion of international agreements with universal application which restrict the scope of application of that jurisdiction to States which become parties

