expressly enshrined in several international conventions binding Colombia. It can therefore be said that, at the present stage of development of international law, the principle of universal jurisdiction operates when it is enshrined in a treaty. Considering the assertions of the applicant and certain interveners, it is important to make two clarifications in respect of the principle of universal jurisdiction.

First, the principle of universal jurisdiction is essentially a mechanism for international cooperation in the fight against certain activities repudiated by the international community; in this regard, it exists alongside – and is not superior to – the ordinary jurisdictional competencies of States. This is expressly stated in the many treaties in which the principle is enshrined. Second, the universal jurisdiction of States covered by this principle should not be confused with the jurisdiction of the recently created International Criminal Court. These are two different manifestations of international cooperation against crime which, while being complementary, operate in different ways. Once it becomes operational, the International Criminal Court will be a body with areas of jurisdiction and competence that are autonomous, independent and distinct from those of its States parties."

After considering the constitutionality of article 78 of Act No. 906 of 2000, through which the Code of Criminal Procedure was adopted, the Constitutional Court stated as follows in its judgment No. C-979 of 2005:

"In international criminal law, international bodies or mechanisms have also been set up to investigate and punish the perpetrators of or participants in the most serious violations of human rights and international humanitarian law, in cases where domestic systems have failed, resulting in the promotion of impunity. These international criminal law mechanisms operate on the basis of the principles of universal jurisdiction and international jurisdiction. Under the principle of universal jurisdiction, it is in the interest of all States to investigate and punish the most serious violations of human rights and international humanitarian law, such as genocide, torture and enforced disappearance. That interest provides any State with

the principle of universal jurisdiction, it is possible to reopen cases where defendants had been acquitted or convicted for crimes against human rights and international humanitarian law “if an international body issues a ruling showing that the State had failed to investigate such violations in a serious and impartial manner.”

5. Universal jurisdiction has been expressly enshrined in several international conventions binding Colombia and in numerous judicial cooperation agreements signed by the State. Such agreements have been endorsed by the Constitutional Court (in judgments Nos. C-404 of 1999, C-406 of 1999, C-1259 of 2000 and C-554 of 2001) on the understanding that cooperation in investigations does not per se entail a violation of the principle of

"(...) What is at issue is that if individuals who have committed this type of crime prosecuted by the international community happen to be in a country other than that of their nationality, that country may prosecute them for the offence, even if it was not committed there, or refer them to an international court accepted and recognized by the States parties. This is what justifies the need for the existence of a treaty, since what is being sought is greater effectiveness in the prosecution of crimes against humanity, or crimes that threaten the peace and security of the community of nations. Hence, in some treaties, such as the International Convention on the Suppression and Punishment of the Crime of Apartheid and the Convention on the Prevention and Punishment of the Crime of Genocide, the contracting States recognize the jurisdiction of an international court for this kind of prosecution."

8. Conclusions

The principle of universal jurisdiction is based on the obligation of States to investigate, punish and prosecute crimes under international law, regardless of where they were committed or the nationality of the perpetrator.

The Constitutional Court defines universal jurisdiction as an international cooperation mechanism in the fight against certain activities repudiated by the community of nations. The principle exists alongside – and is not superior to – the ordinary jurisdictional competencies of States.

Under the principle of universal jurisdiction, it is possible to reopen cases where the defendant had been acquitted or convicted for crimes against human rights and international humanitarian law if an international body issues a ruling showing that the State had failed to investigate such violations in a serious and impartial manner, in accordance with the exception to the prohibition of double jeopardy set out in article 8 of the Criminal Code.

According to the Constitutional Court and Supreme Court of Colombia, the principle of universal jurisdiction only applies in the country when it is expressly enshrined in a treaty, and when the person being prosecuted is present within the geographical boundaries of the State, even if the crime was not committed there.

Colombia has signed various international treaties that expressly recognize universal jurisdiction for the prosecution and punishment of crimes against international law, such as genocide, torture, apartheid, terrorism and illicit drug trafficking.