

Permanent Mission of the Kingdom of Morocco to the United Nations

Translated from Arabic

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The scope and application of the principle of universal jurisdiction

I. Definition of the principle of universal jurisdiction

The principle of State sovereignty, which is based on equality among all States, is the cornerstone of international law and international relations. It grants States the authority to

the moment when criminal jurisdiction beyond the territorial borders of the State became accepted at the international level.

States are increasingly resorting to the principle in order to tackle cross-border international crimes that poses a threat to international peace and security. Examples include terrorism, crimes against humanity, genocide and war crimes.

Although there is no internationally agreed definition of universal jurisdiction, it is generally understood to mean “a legal principle allowing or requiring a state to bring criminal proceedings in respect of certain crimes irrespective of the location of the crime and the nationality of the perpetrator or the victim”.

According to the 2009 European Union - African Union report on the principle of universal jurisdiction, universal criminal jurisdiction is the assertion by one State of its jurisdiction over crimes allegedly committed in the territory of another State by nationals of another State against nationals of another State where the crime alleged poses no direct threat to the vital interests of the State asserting jurisdiction. In other words, universal jurisdiction amounts to the claim by a state to prosecute crimes in circumstances where none of the traditional links of territoriality, nationality, passive personality or the protective principle exists at the time of the commission of the alleged offence.

II. Treaties and conventions on the application of the principle of universal jurisdiction

The principle of universal jurisdiction, as one mechanism for combating international crimes and addressing human rights violations, is asserted in numerous international conventions. When States accede to those conventions, they are required to give priority to that principle when determining the jurisdiction of courts over violations of international law.

The 1949 Geneva Conventions, which Morocco ratified in 1956, are the most important international provisions that enshrine the principle of universal jurisdiction with a view to preventing violations of international humanitarian law. The Conventions include a joint provision stipulating that the principle of universal jurisdiction shall apply in the event of violations of the rules of international law. Paragraph 2 of that article provides that each High Contracting Party shall be under the obligation to bring persons alleged to have committed, or to have ordered to be committed, such grave breaches, regardless of their nationality, before its own courts. It further provides that each High Contracting Party may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a ‘prima facie’ case. Paragraph 1 of the joint provision spells out the need for States to

adopt laws and take every measure to prevent violations of international law as set forth in the

Aircraft (the Montreal Protocol). The Montreal Protocol extends the prerogative to exercise jurisdiction over illegal acts to include the State of landing as well as the State of registration. it also entitles Contracting Parties to take such measures as may be necessary to establish jurisdiction in certain cases.


The treaty-related practice of Morocco has kept pace with the relevant international provisions and instruments. Morocco has ratified the following:



The Fourth Geneva Convention applies to prisoners of war

The Fourth Geneva Convention protects civilians, including in occupied territories.

Under those Conventions, States parties are required either to prosecute grave violations by invoking universal jurisdiction, or to extradite the suspects to other States. The four Geneva Conventions and Additional Protocol I enshrine what is perhaps the broadest scope of criminal jurisdiction, in that they do not require that the suspect be present in the territory of the State concerned.

 The two Protocols Additional to the Geneva Conventions of 12 August 1949, which Morocco ratified by virtue of Royal Decree No. 1-97-141 of 1 Ramadan A.H. 1432 (2 August 2011); *Official Gazette* No. 6001, p. 5708.

Additional Protocol I relating to the Protection of Victims of International Armed Conflicts;

Additional Protocol II relating to the Protection of Victims of Non-International Armed Conflicts;

 The Rome Statute of the International Criminal Court

Morocco contributed to the negotiations that led to the drafting of the Rome Statute of the International Criminal Court, and signed the Statute on 20 September 2000.

The competence of the International Criminal Court is defined as extending to crimes of:

 Genocide (article 6 of the Statute):

Genocide is defined as any of certain acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.

 Crimes against humanity (article 7 of the Statute):

“Crime against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: murder; extermination; enslavement; deportation or forcible transfer of population; torture; rape, sexual slavery, enforced prostitution; enforced disappearance.


 War crimes (article 8 of the Statute):

Article 8 of the Statute provides that the Court shall have jurisdiction over a series of war crimes, including the following:


- Grave breaches of the Geneva Conventions of 12 August 1949;
- Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law;

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Each State Party undertakes to take the necessary measures to establish its competence to exercise jurisdiction over the offence of enforced disappearance when the offence is committed on its territory; when the alleged offender is one of its nationals, regardless of the location; when the victim is one of its nationals, regardless of the location; or when the alleged offender is present on its territory under its jurisdiction, unless it extradites him or her to another State in accordance with its international obligations or surrenders him or her to an international criminal tribunal whose jurisdiction it has recognized. (Article 9 of the Convention)

 1948 Convention on the Prevention and Punishment of the Crime of Genocide (ratified on 24 January 1958):

The Convention requires States parties to prevent and punish genocide. Criminal jurisdiction is limited to the tribunals of the State on whose territory the crime was committed or an international penal tribunal (article 6).

 The International Convention on the Suppression and Punishment of the Crime of Apartheid, which was adopted by the General Assembly on 30 November 1973 and has not yet been ratified by Morocco.

Similarly to the other conventions requiring States parties to establish universal jurisdiction over the international crimes in question, the Convention requires States parties to adopt any legislative or other measures necessary to suppress as well as to prevent any encouragement of the crime of apartheid and similar segregationist policies or their manifestations and to punish persons guilty of that crime, and to adopt legislative, judicial and administrative measures to prosecute, bring to trial and punish persons responsible for, or accused of, the acts, whether such persons are nationals of that State or of some other State or are stateless persons.

Persons charged with the acts enumerated may be tried by a competent tribunal of any State Party to the Convention which may acquire jurisdiction over the person of the accused or by an international penal tribunal having jurisdiction with respect to those States Parties which shall have accepted its jurisdiction. (Articles 4 and 5 of the Convention)

 The 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity:

The application to war crimes and crimes against humanity of the rules of municipal law relating to the period of limitation for ordinary crimes is a matter of serious concern to world public opinion, since it prevents the prosecution and punishment of persons responsible for those crimes. The seriousness of such crimes led the United Nations to enshrine in international law, by means of the Convention, the principle that war crimes and crimes against humanity, whether committed in time of war or in time of peace, are not subject to any

Decree No. 1-02-131 of 7 Shawwal A.H. 1423 (12 December A.D. 2002) (*Official Gazette* No. 5104, p. 1490).

Under the Convention, certain offences can be subject to universal jurisdiction in cases where the alleged offender is present in its territory and it does not extradite that person to any of the States Parties that have established their jurisdiction (article 7). The offences are those set out in article 2:

Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:

- (a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex;
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Separately, the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment enshrines what might be called a subsidiary principle of universal jurisdiction. Article 5 provides that State Party shall take such measures as may be necessary to establish its jurisdiction over the relevant offences in cases where the alleged offender is present on its any territory under its jurisdiction and it does not extradite him. That provision does not mark a departure from the formulations given above.

paragraph) provides as follows: “Genocide and all other crimes against humanity, war crimes and all grave and systematic human rights violations shall be punishable by law”

To consider major and minor offences committed on Moroccan-flagged ships on the high seas, whatever the nationality of the perpetrators

To consider any offence committed on board a Moroccan flag vessel or on board a foreign commercial vessel; under article 706, Moroccan courts are competent

To consider crimes and misdemeanours committed on board Moroccan aircraft, whatever the nationality of the perpetrator

To consider major or minor offences committed on board Moroccan aircraft, if the perpetrator or the victim is a Moroccan national

To consider crimes or misdemeanours committed on board foreign aircraft

To consider any offence that was committed outside the Kingdom of Morocco by a Moroccan and that can be prosecuted in Morocco. However, suspects can be put on trial only if they return to Morocco, and only if it has not been shown that a definitive judgment has been handed down abroad and that, if the perpetrator was convicted, the sentence has been served or fallen under the statute of limitations or an amnesty has been granted

The draft code of criminal procedure grants the Moroccan judiciary comprehensive competence in respect of those offences. With regard to paragraph 4 of General Assembly resolution 78/113, our country has ratified several treaties on combating crime, including, in particular, the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Corruption, which contain provisions on universal jurisdiction – in articles 15 and 42 respectively – that are consistent with Moroccan domestic law.

■ Chapter 10

As is the case with comparable legal systems, Moroccan criminal law adopts the general principle of territoriality and personality with regard to the application of criminal law. Article 10 of the Criminal Code provides as follows: “Moroccan criminal law shall apply to any citizen, foreign national or stateless person in Moroccan territory, barring the exceptions provided for under domestic and international law”.

It also enshrines the general principle of universal jurisdiction by providing as follows: “Moroccan criminal law shall apply to offences committed outside the Kingdom, if they fall within the jurisdiction of Moroccan criminal courts”.

■ Chapters 231(1) to 231(8): Criminalization of torture

Moroccan law defines torture (Chapter 231(1) of the Criminal Code) in a manner consistent with article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment:

For the purposes of this section, “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of or with the consent or acquiescence of a public official a person for the purposes of intimidating him or coercing him or a third person to disclose information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or for any reason based on discrimination of any kind.

It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

■ Chapters 231(1) to 231(9): Criminalization of terrorism

■ Chapters 448(1) to 448(14): Criminalization of human trafficking

■ Chapters 436 to 440: Criminalization of Enforced Disappearance

Although Moroccan criminal law does not define enforced disappearance in accordance with the definition in the relevant Convention, chapters 436 through 440 set forth a series of legal requirements aimed at protecting individuals from acts of abduction, detention and imprisonment.

3) Code of Criminal Procedure

The Code provides that there shall be no statute of limitations on public prosecutions arising from offences for which the law or an international treaty ratified by the Kingdom of Morocco and published in the *Official Gazette* stipulates that there is to be no statute of limitations (article 5).

It provides that no confession obtained through violence or coercion can be relied upon (article 239).

Moroccan law adopts the principle of conditional universal jurisdiction for terrorist offences. Article 711 (1) of the Code of Criminal Procedure stipulates that “notwithstanding any legal provision to the contrary, any Moroccan or foreign national who, outside the territory of the Kingdom, commits or is an accomplice or accessory to a terrorist offence, whether or not intended to cause harm to the Kingdom of Morocco or its interests, shall be prosecuted and tried by the competent Moroccan courts.”

However, if such acts are not intended to cause harm to the Kingdom of Morocco or its interests and were committed outside Morocco by a foreigner, whether as the main perpetrator, the accomplice or accessory, he may be prosecuted only if he is present in Moroccan territory.

There can be no prosecution or judgment if the defendant shows that he was tried for the same offence, that a definitive judgment has been handed down and that, if he was convicted, the sentence has been served or has fallen under the statute of limitations.

The article distinguishes between two situations with regard to the application of the principle of jurisdiction, namely, whether the terrorist offence is or is not intended to harm Moroccan interests:

- If the terrorist offence is intended to harm Moroccan interests, Moroccan courts have jurisdiction to prosecute anyone who perpetrated it in any capacity, whether they are Moroccan or foreign.

- If the terrorist offence was committed by a foreigner outside Morocco, in any capacity, and was not intended to harm Moroccan interests, Moroccan courts have jurisdiction to prosecute only if the perpetrator is present in Moroccan territory.

In order for the Moroccan judiciary to establish jurisdiction under that principle, the following conditions must be met:

- The defendant must not have been put on trial abroad for the same act, a definitive judgment having been handed down;
- The defendant shows that the sentence has been served or has fallen under the statute of limitations.

Article 713 of the Code of Criminal Procedure enshrines the principle that international treaties take precedence over national laws in the context of judicial cooperation with foreign States.

As is mentioned above, the Moroccan judiciary is deemed to be the entity competent for prosecuting any individual of any nationality who has committed an offence on Moroccan soil. That is because, under chapter 10 of the Criminal Code, criminal legislation continues to be an aspect of State sovereignty. The Criminal Code provides that national Moroccan legislation applies to anyone in Moroccan territory, including nationals, foreigners and stateless persons, barring the exceptions set forth in domestic and international public law.

Accordingly, Moroccan law takes a particular approach to the jurisdiction of Moroccan courts over offences committed abroad and relations with foreign judicial authorities. The

The Ministry of Justice is reviewing the Criminal Code and the Code of Criminal Procedure with a view to harmonizing them with the international agreements ratified by Morocco and published in the *Official Gazette*. Some relevant new provisions are as follows:

1) Draft review of the Criminal Code

The draft review of the Criminal Code includes provisions criminalizing and setting out penalties for enforced disappearance, war crimes, crimes against humanity and genocide.

2) Draft review of the Code of Criminal Procedure

In an endeavour to harmonize national legislation with international agreements, Morocco is introducing into the Code of Criminal Procedure explicit provisions extending the jurisdiction of the national judiciary to cover acts criminalized under international agreements that have been ratified by Morocco and published in the *Official Gazette*. Article 711(2) of the draft provides as follows:

Anyone who, outside Morocco, has committed the crime of genocide, crimes against

B. It is an optional principle: its application depends on the sovereign choice of States in relation to criminal policy, treaty-based practice and mutual legal assistance;

C. It is a preventive principle: its purpose is to make up for shortcomings in certain national judicial systems with regard to the prosecution of individuals involved in crimes which the international community deems to be serious.