General Assembly Sixth Committee

**Topic A: The scope and application of the principle of universal jurisdiction**

“For the United Nations, this decision has special significance. We never forget that our Organization has its origins in a global struggle against regimes which were guilty of mass murder on a horrendous scale. And unhappily we have had to deal all too recently, in Rwanda and the Former Yugoslavia, with new crimes of the same appalling nature, if not quite of the same magnitude.”

Former Secretary-General Kofi Annan

**Background**

Jurisdiction refers to a government’s ability to prescribe laws and subsequently punish offenders for breaking those laws. With regards to international law, states may prescribe laws with respect to:

1. (a) conduct that, wholly or in substantial part, takes place within its territory;
2. (b) the status of persons, or interests in things, present within its territory;
3. (c) conduct outside its territory that has or is intended to have substantial effect within its territory;
4. (2) the activities, interests, status, or relations of its nationals outside as well as within its territory; and
5. (3) certain conduct outside its territory by persons not its nationals that is directed against the security of the state or against a limited class of other state interests.

The basis for jurisdiction in any of the above incidents is related either to territoriality (meaning the crime occurs in or has a substantial effect on a state) or nationality (meaning the crime has an effect on persons claiming the citizenship of that state).

However, there are some crimes that are widely accepted to be so egregious that international law allows any state which may capture the offender is allowed to apply its own laws to punish the offender. Universal jurisdiction recognizes that some crimes require international cooperation to combat.

Universal jurisdiction was first implemented as way to punish the crime of piracy. It was one of the first steps in a movement toward comprehensive international law and provides governance to areas of the world that are not under the jurisdiction of a state. Over time, the theory behind universal jurisdiction has expanded to include crimes that threaten the peace and security of the international community. Even if a state does not have a territorial or extra-territorial...

---

4 L. Oppenheim, International Law, 609 (8th ed., 1955)
(nationality) connection to the crime, universal condemnation of the crime allows a state to punish a heinous crime in an effort to protect the international community as a whole.

**Current Issues**

While many Member States have an understanding that universal jurisdiction is a part of international law, specifically in areas that deal with heinous crimes such as war crimes, genocide, piracy, and torture, concern remains over the possibility of abuse under the umbrella of universal jurisdiction. There are many calls for the application of universal jurisdiction to occur only after every other plausible measure has been executed. Additionally, due to vagueness of the current definition, there is concern by some states in regard to the principle of universal jurisdiction.\(^5\)

**Sixth Committee**

In October of 2009 the Sixth Committee held a special session to discuss a universal definition of universal jurisdiction. With respect to the scope of universal jurisdiction, delegations expressed divergent opinions. Some delegations emphasized that there was no clarity or consensus on the scope of crimes covered by the principle beyond piracy, while some other delegations included genocide, war crimes, torture and crimes against humanity within the scope of crimes encompassed by universal jurisdiction. The view was also expressed that the material scope of universal jurisdiction was in fact under constant development and whether it was advisable to reach a consensus on a list of crimes was questioned. Some delegations cautioned against any unwarranted expansion of the crimes covered under universal jurisdiction. African nations as well members of the European Union supported a broad definition that encompasses both criminal jurisdiction as well as civil jurisdiction. Both blocs agree that the scope and authority of international tribunals should be expanded and included into the definition. The United States and Russian Federation supported a much narrower definition that would work within national frameworks and not impede state sovereignty. No definition was agreed upon at the end of the session and more questions were raised than were answered. According to the Secretary-General, universal jurisdiction is a subject that could possibly become politicized or abused by states wishing to push alternative agendas and needs to be defined with all possible haste.\(^6\)

**General Assembly**

In December 2013, the General Assembly passed A/RES/68/117 titled “The scope and application of the principle of universal jurisdiction.” Under the resolution, the General Assembly requested Member States and relevant observers to submit “information and observations on the scope and application of universal jurisdiction, including, where appropriate,

---


information on the relevant applicable international treaties, their domestic legal rules and judicial practice”7 and asked the Secretary-General to prepare a report on this information.

The General Assembly decided to continue discussions during the next session. For this purpose, a working group of the Sixth Committee has been established to undertake a thorough discussion of the scope and application of universal jurisdiction. It was also understood that the Secretariat would prepare for the working group envisaged in the draft resolution a compilation of international treaties and decisions of international tribunals, which may be relevant to the principle of universal jurisdiction. The international community has yet to develop a comprehensive definition for the scope and application of universal jurisdiction but has taken steps and shown that they are committed to achieving a definition as soon as possible.8

International Tribunals and the International Criminal Court

Recent history has seen the creation of special tribunals to punish war crimes and genocide. The UN has created International Criminal Tribunals in Rwanda and the former Yugoslavia as well as special tribunals in Sierra Leone, Lebanon, Cambodia, and East Timor.9 With the creation of these special courts, there was no need for states to claim universal jurisdiction to prosecute the political and/or military leaders responsible.

The creation of the International Criminal Court (ICC) has also called the need for expanded universal jurisdiction into question. The ICC is an “independent, permanent court that tries persons accused of the most serious crimes of international concern;”10 the same crimes that a country would claim universal jurisdiction to prosecute. However, unlike universal jurisdiction, the ICC first requires that a nation with territorial or extra-territorial jurisdiction either fail to prosecute (either because they are unwilling or unable) or fail to genuinely prosecute (i.e. if formal proceedings are used to shield a criminal from liability) an individual.11

Future Outlook

In terms of the scope of universal jurisdiction, there is divided consensus on how broad of a scope it should encompass. While on one end of the spectrum, there are Member States who view universal jurisdiction as not covering any crimes aside from piracy, others believe that heinous crimes such as genocide, war crimes, torture, and crimes against humanity fall under the

11 Id.
scope of universal jurisdiction. Additionally, definitions of these crimes are problematic. What one Member State considers genocide or torture may be different than another Member States’ definition.

Additionally, one principle that is consistently challenged and questioned when discussing universal jurisdiction is the principle of state sovereignty. When applying universal jurisdiction in practice, it is important to consider the rights of states to self govern and any action that takes place under the principle of universal jurisdiction must take that into consideration.

**Focus Questions**

1) What aspects of universal jurisdiction does your state support?
2) Does your state already have a domestic definition of universal jurisdiction?
3) How does your states legal system deal with international law?
4) What is your state’s view of state sovereignty? Do you feel strongly about it?
5) What tribunals, International Criminal Court cases, or International Court of Justice cases has your state been involved in?
6) Does your state accept the full jurisdiction of the International Court of Justice? If not, do they accept it with rights or deny it all together?

---

Works Cited


