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# UNIVERSAL JURISDICTION IN INTERNATIONAL AND DOMESTIC LAW: CURRENT PROBLEMS RELATED TO CODIFICATION AND STATE PRACTICE

Currently among the basic principles of the exercise of criminal jurisdiction of the states, the most discussed one is a so-called principle of universal jurisdiction that attains heated debates among scholars and policy-makers. As it is known, this principle provides an opportunity to prosecute in respect of offenses punishable under international law regardless of the place where the crime was committed, as well as the nationality of the offender or the victim. The absence of internationally recognized and adopted clear criteria for the application of the principle of universal jurisdiction altogether with the lack of unification in the field of national legislation and uniform practice of its implementation constitutes a major concern of the international community. The present article deals with general problems associated with the formation of the principle of universal jurisdiction along with the problems associated with its practical application, as well as the codification carried out today at the international legal level.

## I. Definition and general characteristics of jurisdiction in international law

Primary and one of the most contentious issues in the context of the study of various aspects of jurisdiction in the doctrine of international and domestic law is the legal definition of this category. Here and now the term «jurisdiction» is one of the most frequent in the legal practice, the occurrence of which is rightly connected with the epoch of formation of the state and law. Supposedly, for the time of its use in the law could come there must be a common understanding of its essence. However, despite the repeated application of the term in different situations, a common approach either in legal science or in legal practice is still not unanimous, as noted Russian and foreign scientists[1].

It may sound paradoxically but under contemporary international law the definition of jurisdiction does not exist: the provisions of the universal conventions and local international treaties all face the gap in respect to the use of terms. The majority of the international instruments, in one way or the other affecting or concerning the jurisdictional aspects, the term «jurisdiction» is deprived of the specific content and is regarded as a kind of actions or activities that the state parties should undertake and carry out in respect of an object in order to achieve the ultimate purpose of the treaty.

[1] Akehurst, M. (1999). *Jurisdiction in International Law.* Dartmouth, 145).

Quite often the international instruments apply the term «jurisdiction» from another perspective meaning an extend of the sovereign authority of state parties to any objects or certain parts of the territory rather as a manifestation of territorial supremacy.

Other international treaties mean by «jurisdiction» the process of adoption of measures to combat transnational crime, including the criminalization of acts and conduct of criminal proceedings by the competent authorities of the states. Such conventions usually prescribe an opportunity to exercise the criminal jurisdiction on the basis of the existing principles of the criminal law, namely the territoriality and personality principles.

The third option deals with the international instruments, where jurisdiction involves a set of procedural measures within the competence of the judiciary. This includes the Rome Statute of the International Criminal Court as of 1998, or the Convention on Jurisdictional Immunities of States and their Property as of 2004.

Thus, in the process of the drafting of the Convention on Jurisdictional Immunities of States and their property in the UN International Law Commission (ILC), the Special Rapporteur proposed the following definition of jurisdiction: the term "jurisdiction" means the jurisdiction or authority of the territory of the State to institute legal proceedings, to settle disputes, or to adjudicate in civil litigation, as well as the powers to administer justice in all its aspects. This definition complements the interpretive provisions, revealing elements of the concept of "jurisdiction" (Article 3): In the context of the present articles, unless otherwise provided ... the term" jurisdiction "as defined in paragraph 1 (g) of Article 2 above, means:

– Powers to adjudicate in disputed cases;

– Powers to decide questions of law and the merits;

– Powers to dispense justice and to take appropriate measures at all stages of the proceedings; and

– Other administrative and executive powers, which are usually carried out by the judicial or administrative and police authorities on the territory of the state[1].

As can be seen in the comments of experts of the Commission, the presence of such clauses as «in the context of the present articles, unless otherwise provided,» or «for the purpose of the document» suggests

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[1] Предварительный доклад об иммунитетах должностных лиц государства от иностранной уголовной юрисдикции, Документ ООН A/CN.4/61 (28 мая 2008 года).

the possibility to interpret the term «jurisdiction» differently for each specific international treaty.

In addition, the Special Rapporteur of the ILC can use this formula: "... the provisions of paragraph regarding the use of terms in the present draft articles are without prejudice to the use of those terms or the value that they may have (in other international instruments or) in the domestic law of any state"[1] that can also serve as a basis for the interpretation of ambiguous terminology used in the treaty concerning jurisdictional issues.

Thus, the international instruments does not contain an unambiguous definition of jurisdiction alike the doctrine. Those terms of art given by foreign and domestic scholars vary greatly among themselves, for example: «jurisdiction as a state-imperious activity consists in the application of law to legal conflicts and action on legal acts»[2]; or «the term «jurisdiction» is commonly used to refer to the courts` competence to review the civil, criminal and other cases"[3]; or «jurisdiction of the states is one of the most contentious areas of international law affecting the possibility of applying the law of the state in the events and individuals who are outside its territory, under circumstances that affect the interests of other states"[4].

Analysis of the existing international legal studies on various aspects of jurisdiction suggests that the content of jurisdiction is considered by scientists from three basic positions.

Proponents of the first position apply a broad approach to determine the legal nature of jurisdiction. For example, G.Oxman believes that the jurisdiction of the State in its broadest sense, refers to the legal right of the state to act, and hence its right to decide whether to act, and if to act, how[5]. Malcolm Shaw writes that the jurisdiction is the authority of the state to influence human's property and human circumstances and reflects the basic principles of state sovereignty, equality of States and non-interference in internal affairs[6]. Among the Russian scholars such a

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[1] Третьий доклад КМП об обязательстве выдавать или осуществлять судебное преследование (aut dedere aut judicare), документ ООН A/CN.4/603 (10 июня 2008 года).

[2] Prisacaru, V. (1974). *Jurisdictiile spezial in Repablica Sozialista Pomania.* Bucuresti, 22.

[3] Клименко, Б.М. (1970). *Основные проблемы государственной территории в международном праве: f*втореф. дисс. ... д.ю.н. Москва, 8.

[4] Schachter, O. (1997). *International Law in Theory and Practice.* Martinus Nijhoff Publishrrs. Dordrecht/Boston/London, 250.

[5] Oxman, H.B. (1992*). Jurisdiction of States, Encyclopedia of Public International Law*, v.1., Elsevier Sciences Publishers, Amsterdam, 55.

[6] Shaw, M. (2003). *International Law, fourth ed.* Cambridge University Press, 452.

broad interpretation of jurisdiction is adhered by A.A.Moiseev, who argues that «the jurisdiction of the state is a set of state`s rights and powers to carry out lawful actions of the state, its state power»[1].

Without going into the whole in-depth analysis of the nature and content of jurisdiction in international law, in our opinion, the jurisdiction can be defined as the quality of the subjects of international law, having the authority expressed in the opportunity to carry out the legal regulation of social relations and ensure compliance through the use of the enforcement mechanism[2].

The scope and limits of jurisdiction, according G. Schwarzenberger can be best be described using the classification of its basic forms[3]. As a result of doctrinal studies, we came to the following conclusion on the classification of jurisdiction as follows:

- on the subject of jurisdiction – international jurisdiction and domestic (national) jurisdiction;
- content – prescriptive jurisdiction and enforcement jurisdiction;
- the method of implementation – judicial, executive and enforcing jurisdiction;
- the nature of the regulated relations – administrative, civil and criminal jurisdiction;
- the volume – full and limited jurisdiction.

Domestic (national) jurisdiction may also be differentiated:

- effect in respect to the space – territorial and extraterritorial jurisdiction;
- the nature of government – legislative, executive (administrative) and judiciary jurisdiction;
- effect in respect to the persons – personal and universal jurisdiction.

The practice shows that the implementation of the state criminal jurisdiction over individuals is based on a number of basic principles. The key ones are territorial; personal (national, principle of active citizenship); the principle of protection (security or real); passive personal (passive nationality principle) and universal principle.

**II. Codification of jurisdiction in international law**

Codification of international law is an essential and indispensable factor capable to accompany the progressive development. The first attempt

[1] Моисеев, А.А. (2009). *Суверенитет государства в международном праве:* учебное пособие. Москва: Восток – Запад, 32.

[2] Каюмова, А.Р. (2009). *Международно-правовые аспекты уголовной юрисдикции государств: некоторые вопросы теории и практики*. Казань: Центр инновационных технологий.

[3] Schwarzenberger, G. (1967). *A manual of international law.* London: Stevens & Sons limited, 91.

to create a generalized and integrated system of principles and rules governing inter-state relations has been taken in the era of bourgeois-democratic revolutions. Then, back to in 1795 French Abbe Gregoire formulated the general principles of international law that existed at that time

At that time process of codification was understood as a creation of universal international code, recognized in all countries. A number of scientists was dedicated to drafting such code covering the most important sections of international law: I. Bentham (1786, England); F. Lieber (1863, USA); D. Dudley Field (1872, USA); A. Domin-Petrushevich (1861, Austria); P. Mancini (1872, Italy), J. Bluntschli (1868, Switzerland).

The codification activities were devoted to international conferences during the late XIX – early XX century in Geneva, Paris, Lima, St. Petersburg, Montevideo, of great importance for the codification of the laws and customs of war had the Hague Peace Conference of 1899 and 1907.

Modern understanding of codification, its essence and content, were developed after the Second World War and was associated with the adoption of the United Nations Charter and the establishment within the International Law Commission, which now occupies a central place in this process.

The first official definition of codification was given in the Regulations on the International Law Commission, to be more precise – in accordance with Article 15 and is understood as a codification of a more precise formulation and systematization of international law in the areas where there was already extensive practice, precedent or doctrine.

However, the content and form of current codification have not remained unchanged. In our view, first, this is connected with the trends of development of bilateral relations and deepening of international relations. These factors are crucial for the expansion of the spatial and objective sphere of influence of international legal regulation; they also contribute to the emergence of new views on current international law.

The relevance and need for the codification of certain problematic issues of both domestic and international jurisdiction can be verified by analyzing the program of work of the Commission since 1949. If the preliminary list of topics for codification (14 questions in total) included only two issues that directly address issues of jurisdiction (namely, the jurisdictional immunities of States and their property and jurisdiction over crimes committed outside the territory of the state), later their number has increased significantly . So today a long-term program Commission's working program includes issues such as the jurisdictional immunity of international organizations; protection of personal data in

trans-border flow of information; protection of persons in the event of disasters and others.

Among the common topics that affect certain aspects of jurisdiction and were provided for the attention of the Commission, a few issues are highlighted, specifically those related to the criminal jurisdiction: for the time of its activities, the Commission has done a great job on its codification.

It is known that in 1947, in resolution 177 (II) of the UN General Assembly called for the codification of positive principles and norms of international law and assigned the International Law Commission to formulate and establish principles of international law recognized in the Charter of the Nuremberg Tribunal and reflected in its judgment[1]. This task was carried out in 1950 at the second session of the ILC.

In the same resolution, the UN General Assembly requested the Commission to draw up a draft Code of Crimes against the Peace and Security of Mankind. The work of the experts on the said assignment stretched for many years. The Commission's task was to analyze the international instruments to combat international offenses that have been taken in recent years. After much discussion and after two readings the draft Code of Crimes against the Peace and Security of Mankind, consisting of 26 articles, the Code was adopted in 1996.

Almost simultaneously with the commencement of work on the draft Code, the Commission's experts have begun to develop the Statute of the International Criminal Court (ICC), the establishment of which was announced by the General Assembly in 1948. Finally, on 17 July 1998 during the Rome Diplomatic Conference, which united the representatives of 160 countries, 33 intergovernmental organizations and a coalition of 236 non-governmental organizations, the Statute of the International Criminal Court was adopted.

Today, the work of the Commission is tied to the codification of certain aspects of extraterritorial jurisdiction of the states. Despite the fact that the theme «Jurisdiction over the crimes committed outside the territory of the state» was included in the list of priority areas for codification in 1949, this issue has not yet been directly dealt with by ILC. However, current realities dictate their terms. The need to improve the efficiency of countermeasures to some transnational crimes, such as international terrorism, arms smuggling, human trafficking, piracy and sea robbery, as well as the problem of criminal responsibility of State officials for crimes

[1] Планы по сформулированию принципов, признанных статутом Нюрнбергского трибунала и нашедших выражение в его решении, ГА ООН Резолюция 177(II) (21 ноября 1947 года)

against the peace and security of mankind is largely caused the inclusion of a number of related topics in the list of questions for codification.

The content of the obligation to extradite or prosecute (Does the order of these two elements matters, and whether one element has a priority over the other)

The relationship between the obligation to extradite or prosecute and other principles (links to the principle of universal jurisdiction, non-extradition of its own citizens, the principles of international criminal law *nullum crimen sine lege, nulla poena sine lege, non bis in idem*);

Conditions upon which the obligation to extradite or prosecute shall be carried out (the presence of the alleged offender in the state, the presence of state jurisdiction over the offense, the presence of an extradition request, and others);

The practical implementation of the obligation to extradite or prosecute;

The relationship between the obligation to extradite or prosecute with the alleged perpetrator and the extradition of a competent international criminal tribunal[1].

Another topic launched by the ILC as a question for codification is «The Immunity of State Officials from Foreign Criminal Jurisdiction». The decision to include the topic in the long-term program of work was adopted by the Commission on 59 session in 2007[2].

Codification of the norms related to the extraterritorial jurisdiction of states is carried out by another subsidiary organ of the United Nations – Sixth Committee of the UN General Assembly.

## III. Universal Jurisdiction: Formation, Codification and Current problems of Development

Perhaps, among all currently existing basic principles of administration of criminal jurisdiction by the states, the most questionable is the principle of universality.

In the Middle Ages, it is believed that the history of the origin of the principle of universality is associated primarily with such crimes as piracy and the slave trade. However, as evidenced by the historical facts, the aforementioned were not the only acts for which may result in responsibility of the guilty persons. The Code of Justinian mentions the universal power of the country where the defendant is a resident, and in the Middle

[1] Документ ООН A/64/10. Доклад Комиссии международного права ООН за 2009 год. <http://www.un.org/law/ilc/>.

[2] Документ ООН A/63/10. Доклад КМП Генеральной Ассамблее ООН за 2008 год. <http://www.un.org/law/ilc/>.

Ages the cities of northern Italy adhered to the practice of prosecution of dangerous criminals under their jurisdiction without any regard to the place where the crime was committed.

This practice became the basis of universal practice, or as it was called before «the cosmopolitan» theory of the effect of criminal law in space, according to which the State may exercise jurisdiction over the crime regardless of where the crime was committed, the nationality of the offender or the victim.

Under the provisions of the project at Princeton University on the principles of universal jurisdiction in 2001, «universal jurisdiction is criminal jurisdiction based solely on the nature of the offense, regardless of the place of committing, the alleged nationality or conviction of the offender, the victim's nationality or any other connection to the state that carries out such jurisdiction. "

It must be noted, the cosmopolitan theory is actively developed by scientists in the field of criminal and international law in the second half of the XIX century. Many Russian scientists of the time were of the theory. As noted by the professor Schmidt of Kazan University, every crime, where or by whom it was done either constitutes an encroachment on the general legal order, covering all States, therefore no crime should be left unpunished, and each state that keeps the criminals in its power should punish him.

However, at the same time, the cosmopolitan universal theory was called the «theory of the future» because «it will get the complete domination only when all States to reach full development when all the sudden aggravation will be smoothed and all nations will live approximately the same life»[1]. That is, in fact, they talked about the legal interests of the community, which in fact, at that time did not exist[2].

So, the effects of World War II raised the question of such a community and of the unity of the legal assessment of their results by states with new vigor. Isolation of crimes against peace, war crimes and crimes against humanity as the most serious crimes, international crimes at the Nuremberg and Tokyo trials, the adoption of the Genocide Convention and the Geneva Conventions revived the theory of universality to life, turning from the «theory of the future» in the theory of modernity.

Years after the end of World War II, in the early 60s, one of the first countries that have implemented criminal jurisdiction on the basis of the principle of universality, became, as is known, Israel, where the trial of

[1] Никольский, Д. (1884). *О выдаче преступников*. Санкт-Петербургъ, 14.

[2] Таганцев, Н.С. (1887). *Лекции по русскому уголовному праву*. Вып.1. Санкт-Петербургъ, 288.

Nazi war criminal Adolf Eichmann – "architect of the Holocaust", which during World War II was the head of the department of the Jews by the Gestapo, and during his stay in the position in Europe according to different sources were destroyed from four to four and a half million Jew was held. After reviewing the case, defense counsel then stated that Eichmann was not a German citizen, and the state of Israel did not exist at the time of the offense. However, according to the court heinous crimes he committed, are crimes not only in Israeli law, and are serious crimes against humanity as a whole (*delicta juris gentium*).

This case has become a textbook one, but for nearly three decades remained perhaps the only one.

With the adoption of an increasing number of international legal instruments that contain a reference to the possibility of applying the principle of universality in the execution by the state its criminal jurisdiction, and reflection of that principle in domestic law, it has been applied more often, causing among scholars, policy makers and practitioners more debates and heated debate.

While some may argue that the case law on the basis of the principle of universal jurisdiction is negligible, the fact remains a fact: on the basis of universal jurisdiction the crimes were prosecuted in Belgium, Austria, Great Britain, Denmark, France, Germany, the Netherlands, Spain, Switzerland.

As everyone knows, the best known was the Case of Augusto Pinochet, the former Chilean military dictator, who was arrested in the UK in October 1998. His arrest was followed by a petition for his extradition to Spain to stand trial on charges of torture and other crimes committed during his ruling.

In July 1999, France began the process against Ali Ould Dha – Mauritanian army officer accused of war crimes. The court considered the accusations in his direct participation and organization of torture of political prisoners in jail and sentenced Mauritanian officer to 10 years in prison.

In 2000, Senegal initiated the prosecution against former Chadian President Hussein Habr? for crimes against humanity and torture committed during his rule from 1982 to 1990.

Finally, a country that has a unique experience in the application of the principle of universal jurisdiction i.e. Belgium must not be omitted.

The possibility to apply the principle of universality in the administration of criminal jurisdiction established in the Law of the State of June 16, 1993 that incorporated into Belgian law the four Geneva Conventions of 1949 and the two Protocols of 1977 and further supplemented by the Act of February 10, 1999, and the crime of genocide and crime against

humanity, has allowed the national courts of this country to spend more than a dozen high-profile cases against foreign officials.

In particular, during the fifty-seventh session, in 2005, the Commission decided to include in its program of work the topic «The obligation to extradite or prosecute (*aut dedere aut judicare)*». During the reporting period, the ILC has received and reviewed a few reports of the Special Rapporteur on the subject. The working group established by the Commission in 2008, identified a number of issues for detailed consideration in the context of the development of the principle *aut dedere aut judicare*. Among them:

The legal basis for the obligation to extradite or prosecute (based whether and to what extent on the norms of customary international law);

The material scope of the obligation to extradite or prosecute (defining categories of crimes covered by the obligation *aut dedere aut judicare*, as well as whether the recognition of a criminal offense as an international crime a sufficient reason for the existence of liabilities);

The most notorious of these was the process that formed the basis for the treatment of the DRC to the International Court of Justice. The so-called Case of the Arrest Warrant today is the loudest case and the principal judicial precedent relating to the application of universal jurisdiction by the state. The bottom line is that on 11 April 2000 the Belgium authorities issued an international arrest warrant in respect of the Minister of Foreign Affairs of the Democratic Republic of the Congo Yerodia Abulayi Ndombasi accused of violations of international humanitarian law, which led to the application of this State to the International Court of Justice.

In general, since the late 1990s of the last century before the national courts (mostly European) instituted several dozen cases on the basis of the principle of universality in respect of senior officials of a number of states: Fidel Castro (Spain); Muammar Gaddafi (France); Jiang Zemin and four other high-ranking officials of China (in Spain); Zakirjon Almatov (in Germany); Anatoly Kulikov (Denmark); Hashemi Rafsanjani (in Belgium); Tzipi Livni (in the UK); Anatoly Kuleshov (in France) and others.

One of the latest criminal proceedings on the basis of the principle of universality related to war crimes allegedly committed on the territory of Ukraine is a criminal case against Igor Kolomoisky and Arsen Avakov Investigative Committee of Russia in June this year.

However, as a rule, the implementation of universal jurisdiction by States always has a wide international response and, despite the increase in the number of cases brought before the national courts, this process is far from painless. The lack of clearly defined mechanisms at the

international level for the application of the principle raises many political discrepancies, as well as the legal issues.

This situation, of course, requires own international legal solution that must be found by means of the codification of rules in respect of this legal phenomenon

Not by chance, since the beginning of the new millennium, two major UN codification bodies i.e. the Sixth Committee of the UN General Assembly and the UN International Law Commission review and discuss topics relating to certain aspects of the application of the principle of universality that are inextricably linked. To the said aspects belong the obligation *aut didere aut judicare* (extradite or prosecute), the issue of immunities of senior government officials, as well as the theme of the scope and application of the principle of universal jurisdiction

The urgent need for speedy codification of these issues at the official level is confirmed by the activities of international non-governmental organizations such as the Institute of International Law, the International Bar Association, International Law Association, Amnesty International and others. Within the frames of these forums the research and development on the issues raised is carried out in recent years.

It is noteworthy that in 1935 at Harvard University the above-mentioned draft on the criminal jurisdiction of the states was developed (Draft Convention on jurisdiction with Respect to Crime)[1]. The Draft Convention consists of 17 articles, most of which contains a formulation of the basic principles of criminal jurisdiction of states, as well as the conditions of their application.

Today, such projects are initiated and conducted by the researchers (e.g. on the basis of Princeton University, at the Institute of International Law in Krakow 2005).

In 2000, on the basis of Princeton University, with support of a number of non-governmental agencies, and leading academics in the field of international law, started a project to consolidate the principle of universal jurisdiction, the main purpose of which was a convergence of opinions on the nature of universal jurisdiction. The main principles of the project were presented to the world by «the Godfather of international criminal law» C.Bassiouni, supported by W.Butler, S.Oxman, K.Bleksley and other Western scholars. The presented project was discussed in conference in Princeton at the conference held in late January 2001, attended by scientists and politicians representing the principal legal systems of the world. Project participants suggested the principles

[1] Draft Convention on jurisdiction with Respect to Crime (1935). *American Journal of international law, Vol.29, Supplement: Research in International Law*, 439-442.

of universal jurisdiction, designed for the widest possible harmonization of domestic legislation of states on this issue[1].

Official modern codification of universal jurisdiction (without taking into account the topics mentioned on extradition and Immunities) began in 2009 with the request of the group of African states to the UN Secretary-General requesting the inclusion in the agenda of the 63 session of the General Assembly the paragraph on the scope and application of the principle of universal jurisdiction. In its decision 63/568, the Assembly decided to include a new paragraph to the agenda and recommended that it should be considered during the Sixth Committee. According to the results of the report submitted to the Assembly at its sixty-fourth session, the UN General Assembly adopted a resolution in which it encouraged Member States to submit before April 30, 2010, information and observations concerning the scope and application of the principle of universal jurisdiction, including information on the relevant applicable international treaties, their national legislation and judicial practice, and decided to include in the provisional agenda of its sixty-fifth session the item entitled "The scope and application of the principle of universal jurisdiction"[2].

Beginning in 2009, similar resolutions were adopted each year i.e. the resolution 65/33 of 6 December 2010; 66/103 of 9 December 2011; 67/98 of 14 December 2012 and 68/117 of 16 December 2013. As the 69th session of the UN General Assembly, the Sixth Committee prepares a draft of such a resolution[3].

All of these documents are actually of the same content and reflects the previously mentioned recommendations to countries on measures taken on the matter. The latter points to the need to submit the information available but with a new deadline – until April 30, 2015.

In our opinion, this situation suggests that a working group of the Sixth Committee made little progress on this issue.

Of course, it must be noted that the essential and universal jurisdiction and its big «advantage» is the inevitability of punishment of those who have committed serious international crimes.

At the same time, many questions allow us to perceive the realization of such jurisdiction with great caution.

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[1] *The Princeton rinciples on universal jurisdiction* (2001). *Program in Law and Public Affairs and Woodrow Wilson School of Public and International Affairs, Princeton University.* <http://www.law.depaul.edu/centers_institutes/ihrli/downloads/Princeton %20Principles.pdf>.

[2] ГА ООН Резолюция 64/117 (15 января 2010 года). Охват и применение принципа универсальной юрисдикции. < http://www.un.org/ru>.

[3] ГА ООН, проект резолюции, документ ООН A/C.6/69/L.8 (30 октября 2014 года). Охват и применение принципа универсальной юрисдикции.

Analysis of the information and comments received from Governments and the special report by the UN Secretary General, suggests the complete absence of a unified approach at the national level and the existence of a range of disagreements on this issue.

Among the issues which have caused debate is the definition of a range of offenses subject to the principle; the problem of immunity of State officials; the possibility of abuse and the use of «double standards» on the part of national courts in the application of the principle; its relation to extradition and application of the principle *aut dedere aut juducare*; the question of the relationship between universal jurisdiction and the jurisdiction of the international criminal courts and others.

In my opinion, the most controversial questions clearly heard in the comments of the representative of Peru, who pointed out that:

1. It is important to consider the specific crimes for which such jurisdiction is distributed in accordance with international treaties and customary international law, and to determine which treaties provides for universal jurisdiction and how it is regulated by them;
2. How universal jurisdiction relates to offenses classified as *jus cogens*, and what are the implications of this communication;
3. Can the state exercise universal jurisdiction in the absence of the domestic law of a specific provision to that effect;
4. Should there be a link between the state and the accused, such as the presence of the latter on the territory of the State;
5. Which state has the priority rights to take legal action in the event of conflict of jurisdiction;
6. How the exercise of the universal jurisdiction is tied to the regime of immunity applied not only to the heads of state or government and foreign ministers, but also to other government officials and staff of international organizations;
7. What are the implications of amnesty laws;
8. What are the standards of due process and whether it is possible to exercise universal jurisdiction over persons who were arrested after the abduction or unlawful issuance;
9. How the evidence collecting regime is regulated;
10. How the verdicts are regulated;
11. How is the exercise of the rights of the accused, including the right to visit their relatives is regulated and, most importantly, how the rights of victims to participate in the trial and to receive compensation are regulated.

Some key questions regarding the application of universal jurisdiction refer to the existence of universal jurisdiction *in absentia*. On the question

of whether the state has a right to establish jurisdiction over offenses committed abroad by foreigners against foreigners when the offender is not on the territory of that State, Belgium in the case of the arrest warrant gave an affirmative answer, but did not use this opportunity. In his dissenting opinion in the *Case of Arrest Warrant* Judge Guillaume stated that international law has only one true case of universal jurisdiction: piracy. Universal jurisdiction *in absentia*, which is applicable in the courts of the state where the perpetrator is not present on its territory, unknown to international law (paras 12-13). This is also evidenced by today's existing standards for the protection of human rights.

Also controversial is the scope (range) of crimes subject to universal jurisdiction. According to the project at Princeton University (Principle 2) formulations of such crimes should be limited to piracy, slavery, war crimes, crimes against peace and crimes against humanity, torture and genocide.

Finally, one of the most sensitive issues – the question of abuse by States in the exercise of universal jurisdiction

In many ways, the initiative for the codification and harmonization of rules for the application of the principle of universality belongs to African states that exhibit deep concern at the fact that in respect of officials of these countries holding an office the criminal proceedings are pending in another country based on the principle of universality.

As noted by the Rwanda`s representative, the universal jurisdiction indeed played an important role in the fight against impunity. Many of the persons involved in the organization of the genocide in the country deserved to be brought to responsibility. However, «the warrants of arrest and indictments issued in respect of those people who put an end to genocide». In his speech, he cited cases of manipulation of the judicial process for political purposes, and spoke of abuses by a number of states.

The presentation of the representative of South Africa who remembered the famous Case of the Arrest Warrant and the dissenting opinion of Judge Rezek, thinking on what would be the reaction of some European countries if the judge of the Congo accused their leaders of crimes committed by them themselves or by order seems rather interesting.

Overall, since 2008, the Assembly of the African Union adopted a number of documents, which call for the United Nations and the European Union to develop a clear legal criteria for application of the principle and a moratorium on the execution of arrest warrants in respect of such persons until all the legal and political issues are not exhaustively discussed within the framework of these organizations. That's what they say in the decision of the AU Assembly of 1 July 2008:

«The abuse of the principle of universal jurisdiction could endanger international law and order and security;

– The politicization and abuse of the principle of universal jurisdiction by judges from some non-African States against African leaders, particularly in Rwanda, is a clear violation of the sovereignty and territorial integrity of these states;

– Abuse and misuse of indictments against African leaders have a destabilizing effect and a negative impact on the political, social and economic development of nations;

– Such an arrest warrant will not be executed in the countries of the African Union;

– There is a need to establish an international body mandated to review and / or complaints and appeals related to abuse of the principle of universal jurisdiction by individual states»[1].

With regard to the last report of the UNSG on the issue of the scope and application of the principle of universal jurisdiction for 2014[2], his analysis suggests that the differences in the comments and information submitted by the Governments of the Member States of the Organization, is still not resolved.

Thus, the practice of recent years shows that there are many political discrepancies, as well as legal issues regarding the application of the universal jurisdiction principle by the states. These starts from the listing the offenses subject to the principle; the problem of immunity of the states` officials; the possibility of abuse and the use of «double standards» in that national courts during application of the principle; its relation to extradition and others. Having in mind current importance attached to codification of universal jurisdiction within the UN and other international intergovernmental and non-governmental organizations, it can be assumed that the necessary consensus will be reached soon and clear international legal standards will provide a solid legal basis for applying this principle.

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1 Decision on the report on the Commission on the abuse of the principle of universal jurisdiction (Doc.Assembly/AU/14(XI) // Документ АС Assembly/AU/Dec.199 (XI) (1 июля 2008 года). <http://www.africa-union.org/>

2 ГА ООН Доклад Генерального секретаря 69/174 (23 июля 2014 года). Охват и применение принципа универсальной юрисдикции.