

---

*Translated from Spanish*

The most serious crimes of concern to the international community as a whole must not go unpunished, and it is the duty of States to exercise their criminal jurisdiction over those responsible for such crimes.

The primary responsibility for investigation and prosecution lies with the State in whose territory the crime has been committed, or with States that have a connection to the crime, such as the State of nationality of the perpetrator or of the victims. If those States are unable or unwilling to exercise their jurisdiction, other States can fill the void by invoking universal jurisdiction, which is an additional and exceptional tool, in order to prevent impunity. Universal jurisdiction is therefore a critical component of the international criminal justice system. However, its unrestricted use could create conflicts of jurisdiction between States, subject individuals to procedural abuses or give rise to politically motivated prosecutions.

Argentina is of the view that there must be clear rules governing the application of universal jurisdiction in order to ensure its reasonable exercise, particularly in light of certain myths and misinterpretations surrounding the concept.

It is important to distinguish between universal jurisdiction and the principle of *aut dedere aut judicare*. Although, in some cases, the two concepts overlap, from a strictly theoretical perspective, they are distinct. The principle of *aut dedere aut judicare* is intended to prevent impunity for crimes when the requested State refuses to extradite the suspect from its territory. It does not actually establish on what basis jurisdiction should be exercised if the requested State chooses to submit the case to its own judicial authorities. By contrast, universal jurisdiction is in itself a basis that enables jurisdiction to be exercised based solely on the nature of the crime, regardless of where it was committed, the nationality of the victim or the alleged offender, or any other connection to the national interests of the State exercising jurisdiction. Hence, the principle of *aut dedere aut judicare* may overlap with universal jurisdiction when a State has no connection to the crime other than the mere presence of the alleged offender in its territory and, in application of the principle of *aut dedere aut judicare*, chooses to refuse extradition, with the result that universal jurisdiction must be invoked to prosecute the case.

The difference between universal jurisdiction and the principle of *aut dedere aut judicare* must be taken into account when reviewing international treaties, domestic laws and judicial practice, otherwise the wrong conclusions may be drawn.

Explicit references to universal jurisdiction in treaty law are limited. Some of the multilateral instruments that expressly include it are the four Geneva Conventions of 1949 (articles 49, 50, 129 and 146, respectively), the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (article 28), the United Nations Convention on the Law of the Sea (article 105) and the International Convention on the Suppression and Punishment of the Crime of Apartheid (article V).

---

In practice, the Argentine Republic has accepted the principle of universal jurisdiction on several occasions by initiating investigations in Argentina into crimes that are considered *delicti jus gentium*, even if they were committed outside Argentina and neither the principle of nationality nor the protective principle applies. It has done so in application of article 118 of its Constitution, of the international obligations assumed under existing human rights treaties that have been incorporated into the Constitution by means of article 75, paragraph 22, and of the universal right of access to justice.

Furthermore, the Argentine courts have applied the principle of universal jurisdiction after reviewing whether the alleged events have already been adjudicated or investigated by other competent courts. In all such cases, the courts have justified their intervention based on subsidiary universal jurisdiction, that is, after determining that the crimes had not been prosecuted or that prosecution had not been possible. The Supreme Court has stated that the State is no longer authorized to make decisions that result in a waiver of criminal prosecution (the 2005 case concerning *Simón, Julio H. et al*).

The Argentine Republic has submitted requests for international legal assistance and extradition to a large number of countries as part of ongoing investigations by Argentine federal justice officials into crimes against humanity (including torture and enforced disappearance), genocide and war crimes, basing its jurisdiction on the fact that those crimes are imprescriptible and, as *delicti jus gentium*, are subject to prosecution under the principle of universal jurisdiction.

It has been difficult to obtain a response to some of the requests for international legal assistance, principally because the crimes in question are time-barred under the laws (and