JUSTITIA ET PACE
INSTITUTE OF INTERNATIONAL LAW
KRAKOW SESSION - 2005

DIX-SEPTIEME COMMISSION
La compétence universelle en matière pénale à l'égard du crime de génocide, des crimes contre l'humanité et des crimes de guerre

SEVENTEENTH COMMISSION
Universal criminal jurisdiction with regard to the crime of genocide, crimes against humanity and war crimes

Rapporteur : M. Christian Tomuschat

RESOLUTION

The Institute of International Law,

Considering that fundamental values of the international community are infringed by serious international crimes as defined by international law (hereinafter: international crimes);

Affirming that universal jurisdiction is designed to protect and uphold these values, in particular human life, human dignity, and physical integrity, by allowing prosecution of international crimes;

Wishing therefore to contribute to the prevention and suppression of such crimes with a view to putting an end to impunity which may result, in particular, from the unwillingness or the inability of State authorities to take the requisite steps for prosecution;

Recalling that all States bear primary responsibility for effectively prosecuting the international crimes committed within their jurisdiction or by persons under their control;

Conscious of the importance of international judicial bodies entrusted with the suppression of international crimes which are not or not adequately prosecuted by the competent national judicial authorities;

Noting that universal jurisdiction is an additional effective means to prevent impunity for international crimes;

Stressing that the jurisdiction of States to prosecute crimes committed by non-nationals in the territory of another State must be governed by clear rules in order to ensure legal certainty, and the reasonable exercise of that jurisdiction;

Adopts the following Resolution:

1. Universal jurisdiction in criminal matters, as an additional ground of jurisdiction, means the competence of a State to prosecute alleged offenders and to punish them if convicted, irrespective of the place of commission of the crime and regardless of any link of active or passive nationality, or other grounds of jurisdiction recognized by international law.

2. Universal jurisdiction is primarily based on customary international law. It can also be established under a multilateral treaty in the relations between the contracting parties, in particular by virtue of clauses which provide that a State party in the territory of which an alleged offender is found shall either extradite or try that person.

3. Unless otherwise lawfully agreed, the exercise of universal jurisdiction shall be subject to the following provisions:

a) Universal jurisdiction may be exercised over international crimes identified by international law as falling within that jurisdiction in matters such as genocide, crimes against humanity, grave breaches of the 1949 Geneva Conventions for the protection of war victims or other serious violations of international humanitarian law committed in international or non-international armed conflict.

b) Apart from acts of investigation and requests for extradition, the exercise of universal jurisdiction requires the presence of the alleged offender in the territory of the prosecuting State or on board a vessel flying its flag or an aircraft which is registered under its laws, or other lawful forms of control over the alleged offender.

c) Any State having custody over an alleged offender should, before commencing a trial on the basis of universal jurisdiction, ask the State where the crime was committed or the State of nationality of the person concerned whether it is prepared to prosecute that person, unless these States are manifestly unwilling or unable to do so. It shall also take into account the jurisdiction of international criminal courts.

d) Any State having custody over an alleged offender, to the extent that it relies solely on universal jurisdiction, should carefully consider and, as appropriate, grant any extradition request addressed to it by a State having a significant link, such as primarily territoriality or nationality, with the crime, the offender, or the victim, provided such State is clearly able and willing to prosecute the alleged offender.

4. Any State prosecuting an alleged offender on the basis of universal jurisdiction is bound to comply with the generally recognized standards of human rights and international humanitarian law.

5. States should, where appropriate, assist and cooperate with each other in detecting, investigating, gathering evidence, arresting and bringing to trial persons suspected of having committed international crimes, and take adequate measures for that purpose.

6. The above provisions are without prejudice to the immunities established by international law.

Adopted on August 26, 2005.

The English text is authoritative. The French text is a translation.