The Opponent Opinion on the Dissertation Thesis

Topic of the Thesis: The Still Evolving Principle of Universal Jurisdiction
Author of the Thesis: Mgr. Petra Baumruk, LL.M.
Supervisor: Prof. JUDr. Pavel Šturma, DrSc.
Opponent: JUDr. Petr Válek, LL.M. Ph.D.

The author chose a timely and relevant topic for her dissertation thesis that is currently on the agenda of the Sixth (Legal) Committee of the UNGA. Furthermore, she divided her thesis into a thoughtful structure and even tried to propose a solution (in "Conclusions", pp. 166-169) to an international legal problem she identified. In addition, the author based her assertions on a thorough research of available legal literature. Nevertheless, the thesis contains the following **conceptual problems** (that should be addressed during the defense of the thesis by responding to the bellow-stated questions):

1. **The author did not include into her thesis any comprehensive information on domestic legislation on the universal jurisdiction in relevant States**. A comparative study of criminal laws of a few States - whose courts have recently applied the universal jurisdiction (U.S., France, Germany, U.K., the Netherlands etc.) - would certainly form a logical part of this thesis, in particular of its chapter dealing with the scope of universal jurisdiction. In this context, it should be pointed out that domestic legislation of States is an important source of State practice which is one of the elements of customary international law. If such comparative study was included, the thesis might be useful for the international legal practice (including the Czech Foreign Ministry). Unfortunately, as the author relied heavily on the (already well-known) secondary sources and omitted the primary ones, its practical use would be quite limited.
   The author should, therefore, discuss - during the defense of her thesis - her conclusions in light of the relevant criminal laws of the relevant States (see, *inter alia*, § 7 of the Czech Criminal Code).

2. The key point that the author has made repeatedly is that there actually has been a **"selective use"** (p. 6) or even **"abuse"** (pp. 8, 131, 155, 156) **of the universal jurisdiction.** This has been a political (not legal) argument of the African States in the Sixth Committee. According to the author, the "abuse" of universal jurisdiction could "disrupt international relations" (p. 159). The author also cites Bassiouni's exaggerated statement that it "could disrupt world order" (p. 159). **The author has provided, however, no information on any relevant court cases that would justify her claim of an "abuse" of the universal jurisdiction.** In this context, there is only one rather speculative argument in the thesis: "French judicial authorities refer cases with potential immunity to a special unit of the Foreign Affairs Ministry, which decides on the matters. This raises the concern that political, rather than legal, standards may be applied when determining whether a suspect is entitled to immunity from French jurisdiction" (p. 159). It is a standard procedure in most countries for the administrative and judicial authorities to consult the immunity issues with the Foreign Ministry, as its Office of Protocol keeps updated the Diplomatic List and has both knowledge and experience on immunity issues. As such, this point is hardly

convincing. In sum, if there was no such "abuse", then there is probably no problem to be solved.
The author should, therefore, provide concrete examples of "selective uses/abuses" of universal jurisdiction (and how the prosecutors and judges might "disrupt international relations/world order", should be explained too).

3. The author rightly recalls that some (mainly African) delegations in the Sixth Committee "pointed out that the application of universal jurisdiction should be regulated at the international level to avert any unwarranted and selective use" (p. 64) and subsequently embraces this idea (p. 155). The author further develops this plan in her "Appraisal" (p. 149) suggesting that "**an international body or mechanism tasked with assessing the legitimacy and legality of procedures undertaken on the basis of universal jurisdiction** might serve to decide on these criteria and simultaneously alleviate some of the international tension related to the perceived abuses of the jurisdictional basis and to legitimize both specific prosecutions and universal jurisdiction *per se*." The author, however, does not take into account **the independence of the judiciary**. In line with this approach, the author even does not trust the national courts in the chapter called "New Approach to Universal Jurisdiction – Looking Ahead": "Leaving interpretation of international crimes to national courts could have adverse effects on the integrity of international law" (p. 164).
The proposed establishment of such international mechanism is probably supposed to solve the alleged conflict between the exercise of universal jurisdiction and the State sovereignty (pp. 156-158, 166). Nevertheless, would this solution - enabling the influence of an international political body into the criminal proceedings - comply with the human rights law, in particular with the right to "a fair and public hearing by a competent, independent and impartial tribunal established by law"? (see Art. 14(1) of the ICCPR and Art. 6(1) of the ECHR). In this context, the author should clarify whether she gives priority to the State sovereignty over the independence of judiciary.

4. The author stated that: "State sovereignty is affected when universal jurisdiction is exercised by developed countries that may entail **the danger of imposing Western values on developing countries** in which most serious international crimes are committed. It is still predicted that countries that dominate in the military, economic and political arena will continue to hold their values as binding on smaller or weaker states. Permitting powerful states to exercise universal jurisdiction could therefore allow it to be used as a political means of arbitrarily influencing weaker countries." (p. 157). This conclusion deserves an explanation. The author admitted that the scope of the universal jurisdiction (or in her own words, "a universal offence"), includes war crimes, crimes against humanity, genocide and torture. The 1949 Geneva Conventions, providing for the universal jurisdiction in case of the "grave breaches", have 196 State parties - **both "Western" and "developing"**. Other relevant treaties containing the definitions of these crimes (Genocide Convention, CAT and the Rome Statute) were ratified or acceded to by many "Western" and "developing" States.
In view of the above, the author should clarify how the exercise of universal jurisdiction by a "developed country" against a national from a "developing country" in case of a "grave breach" or other above-stated crime would result in "imposing Western values on developing countries". Is the prohibition and criminalization of genocide, war crimes etc. a "Western value"? Why then the author calls these crimes a "universal offence"? Does the establishment of the ICTR also constitute such "imposition of Western values"?

Furthermore, the thesis contains **some formal and terminological errors** that would have to be corrected, should the thesis be published, e.g.:

- According to the author, Eichmann "was abducted by the Israeli secret police" (p. 53). In reality, he was apprehended by Mossad, the Israeli intelligence agency, not by "secret police".
- The Rome Statute of the ICC is usually not referred to as the "Rome Treaty" (p. 59). The possible confusion with the Rome Treaty establishing the EEC should be avoided.
- The universal jurisdiction was put on the agenda of the UNGA by Tanzania (see A/63/237/Rev.1), not by Rwanda, as the author stated (p. 62).
- The Sixth Committee has no sessions in summer (p. 64).
- The term of "international treaty" is not correct, see Art. 2(1) of the Vienna Convention on the Law of Treaties: it is either "a treaty" or "an international agreement" (pp. 77, 86, 90 etc.).
- The author should be more reasonable when citing herself, the repeated quotations of her own two articles on the topic are – at least in my view – excessive (pp. 107, 111, 112 etc.).
- In colloquial English, the words "nation" and "State" are perhaps sometimes used as a synonym. Nevertheless, in a legal text, these terms must be used according to their meaning, otherwise the sentence legally does not make sense, such as "conflicting jurisdiction among different nations etc." (p. 157).
- Finally, the Czech translation of the Resumé is of extremely poor quality. The Resumé contains many grammatical errors and generally does not meet the basic requirements for a dissertation thesis, e.g.:
    - The principle of universal jurisdiction was translated as „univerzální princip" (p. 174) which is a novum in the Czech legal terminology, the same applies for „princip doplňkovosti" and „spravedlnost trestního řízení" (p. 176)
    - Some expressions simply do not make any sense at all: „uplatňování univerzální jurisdikce v rámci soudní pravomoce základních složek" (p. 176), „jinak nerozvážného rozhodnutí univerzální jurisdikce" (p. 176) etc.
    - The titles of the chapters are capitalized without any reason „Vznik a Důsledek Univerzální Jurisdikce" (p. 175) etc.
    - The grammatic errors are frequent: „analýzuje" (p. 174), „státy nejsou ochotni" (p. 176) etc.
    - The same problems can be found in "Anotace" in Czech (e.g.: „V současné době se utváření principu univerzality, hlavně jeho praktické uplatňování, musí řídit všeobecným konsenzem, nikoliv obhajobou států…").

Conclusion:

In spite of the above-stated shortcomings, I recommend this thesis for the defense before the competent commission for the defense of the dissertation thesis. At the same time, I assume that the author will be able to sufficiently respond to the questions included in this opinion.

Petr Válek
July 8, 2015