

Note No: 57/11

The Permanent Mission of the United Kingdom of Great Britain and Northern Ireland presents its compliments to the Codification Division of the Office of Legal Affairs and has the honour to refer to General Assembly resolution 65/33 of 6 December 2010 (A/RES/65/33). Pursuant to that resolution, the Permanent Mission encloses information and observations of the United Kingdom on the scope and application of the principle of universal jurisdiction.

The Permanent Mission of the United Kingdom to the United Nations avails itself of this opportunity to convey to the Codification Divisions assurances of its highest consideration.



United Kingdom Mission
to the United Nations
15 April 2011

**United Kingdom of Great Britain
and Northern Ireland**

**Scope and application of the principle of universal
jurisdiction**

**UK Mission to the UN
15 April 2011**

The term universal jurisdiction properly refers to national jurisdiction established over a crime irrespective of the place of perpetration, the nationality of the suspect or the victim or other links between the crime and the prosecuting State. The main rationale for universal jurisdiction is that the most serious international crimes affect the international legal order as a whole and that all States should therefore be able to prosecute such crimes.

Universal jurisdiction should be distinguished from certain other types of jurisdiction:

First, from the jurisdiction of international judicial mechanisms, including the International Criminal Court;

Second, from jurisdiction established under treaties which provide for an "extradite or prosecute" regime, although some States, including the United Kingdom, may establish universal jurisdiction at the domestic level in order to implement such treaties. As an example, universal jurisdiction was established in UK national law in order to implement the United Nations Convention against Torture;

Third, it needs to be distinguished from the extra-territorial jurisdiction of national courts to prosecute crimes committed by a State's nationals overseas. In the United Kingdom, domestic courts do not have jurisdiction over offences committed by UK nationals overseas across the board, but there is legislation establishing such jurisdiction over a limited number of offences, including murder and manslaughter, slavery and sexual offences against children.

The United Kingdom has in some cases extended its extra-territorial jurisdiction to cover persons with a close connection with the United Kingdom other than UK nationals. For example, the International Criminal Court Act 2001 provides for jurisdiction over genocide, war crimes and crimes against humanity committed overseas by persons who are resident in the United Kingdom.

The United Kingdom considers that under international law, universal jurisdiction in its true sense is only clearly established for a small number of specific crimes: piracy and war crimes, including grave breaches of the Geneva

Conventions. Universal jurisdiction is permissive, unless a mandatory treaty-based obligation exists to provide for the prosecution these crimes, for example as provided by the Geneva Conventions in respect of grave breaches. In other words, under international law States are entitled, but not obliged, outside of treaty based obligations, to assert universal jurisdiction over these crimes.

The United Kingdom acknowledges that there is a further limited group of crimes which some States consider to attract universal jurisdiction, including genocide and crimes against humanity, but there is a lack of international consensus on the issue. These crimes are not underpinned by treaties providing for universal jurisdiction. Accordingly, a careful study of state practice and *opinio iuris* would be required to determine whether they are established under customary international law as crimes of universal jurisdiction and whether there are conditions for the exercise of such jurisdiction.

The United Kingdom legal system is built on the tradition that, as a general rule, the authorities of the State in whose territory an offence is committed are best placed to prosecute the crime, in particular because of the availability of evidence and witnesses and the visibility of justice for victims. However, the exercise of territorial jurisdiction is not always possible. In such cases, while it will not be the option of first resort (as illustrated by the very limited examples of its exercise in practice, both within the United Kingdom and elsewhere, as shown in the Secretary-General's report in 2010) universal jurisdiction can be a necessary and important tool to ensure that the perpetrators of serious crimes do not escape justice.

Where universal jurisdiction is exercised – or indeed in other cases where there may be competing jurisdictional claims – the United Kingdom considers that it is advisable that safeguards be put in place to ensure that jurisdiction is exercised responsibly. For example, UK prosecuting authorities would not usually seek to proceed against any suspect who was not present in the United Kingdom. In addition, our legislation requires the consent of the Attorney General for England and Wales, or his equivalent elsewhere in the UK, for a prosecution under universal jurisdiction to proceed. This ensures that public

interest considerations, including issues of international comity, can be taken into account in decisions to proceed with such prosecutions.

The Secretary-General's report made clear that there is a diversity of views among member States on the scope and application of the principle of universal jurisdiction, even among the relatively small number of States which made written submissions. Views are similarly diverse on the question of the conditions for the exercise of such jurisdiction. Against that background, the United Kingdom considers that it would be premature to conclude that the time was ripe for the adoption of new international instruments on this issue. Nevertheless, we stand ready to contribute to further discussions on this topic in the Sixth Committee.

The following table outlines the domestic law and judicial practice of the United Kingdom relating to international crimes for which universal or extraterritorial jurisdiction has been established.

International Crime	Domestic law	Judicial Practice
Piracy	<p>Piracy is a criminal offence at common law throughout the United Kingdom.</p> <p>The definition of piracy in the UN Convention on the Law of the Sea has been incorporated into United Kingdom domestic law (see section 26 and schedule 5 to the Merchant Shipping and Maritime Security Act 1997).</p> <p>A prosecution for piracy can take place in the United Kingdom regardless of any national nexus.</p>	
Grave Breaches of the Geneva Conventions	<p>Geneva Conventions Act 1957¹</p> <p>This Act, as amended, gives the United Kingdom courts jurisdiction over grave breaches of the four Geneva Conventions of 1949 and the Additional Protocol I (the Act applies to a person of any nationality acting in the United Kingdom or elsewhere). The Act was further amended in 2009 to include grave breaches of Additional Protocol III in respect of the perfidious use of certain emblems.</p>	
Torture	<p>Criminal Justice Act 1988¹</p> <p>Section 134 provides for universal jurisdiction over the offence of torture (the Act applies to a person of any nationality acting in the United Kingdom or elsewhere).</p>	<p>Faryadi Zardad, an Afghan national, was convicted in 2005 of conspiracy to torture and conspiracy to take hostages in Afghanistan. He was sentenced to 20 years imprisonment.</p>
Terrorism	<p>Terrorism Act 2000¹</p> <p>Part VI provides for universal jurisdiction over terrorist bombings (implementing the International Convention for the</p>	

	Suppression of Terrorist Bombings 1997) and terrorism financing offences (giving effect to the International Convention for the Suppression for Financing of Terrorism 1999)	
Hijacking	Aviation and Security Act 1982 ¹ Part I & II provides for universal jurisdiction over the crime of hijacking an aircraft or ship (giving effect to the Convention for the Suppression of Unlawful Seizure of Aircraft 1970 and the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988)	
Endangering the safety of aircraft	Aviation and Maritime Security Act 1990 ¹ Part I provides for universal jurisdiction over acts endangering the safety of an aircraft (giving effect to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971)	
Hostage Taking	Taking of Hostages Act 1982 ¹ Section 1 provides for universal jurisdiction over hostage taking in order to compel a State, international governmental organisation or person to do or abstain from doing any act (giving effect to the International Convention Against the Taking of Hostages, 1982)	See the Faryadi Zardad case noted above under the heading "torture".
Misuse of Nuclear Material	Nuclear Materials (Offences) Act 1983 ¹ Provides for universal jurisdiction in respect of the misuse of nuclear material (giving effect to the Convention on the Physical Protection of Nuclear Material) Anti-terrorism, Crime and Security Act 2000 ¹ Establishes universal jurisdiction in respect of the offence of knowingly causing a	

	nuclear explosion without authorisation.	
Offences against the safety of ships and fixed platforms	Aviation and Maritime Security Act 1990 ¹ Part I provides for universal jurisdiction over offences against the safety of ships and fixed platforms (giving effect to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation 1988 and the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf)	
Attacks and threats of attacks on protected persons	Internationally Protected Persons Act 1978 ¹ Section 1 provides for universal jurisdiction in respect of attacks and threats of attacks on internationally protected persons (giving effect to the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons 1977)	
War Crimes	War Crimes Act 1991 ¹ Provides jurisdiction over war crimes amounting to murder, manslaughter or culpable homicide committed in Germany or German occupied territory during the Second World War by any person, irrespective of their nationality at the time of the crime, who was, or who subsequently became, a British citizen or resident in the United Kingdom.	On 15 April 1996, a UK resident, Szymon Serafinowicz, was charged under the Act with murder of three persons in 1941- 1942 at a concentration camp in the Byelorussia (now Belarus) where he was serving as a guard. On 17 January 1997, he was found by a jury at the Central Criminal Court to be unfit to stand trial. On 1 April 1999, Anthony (Andrzej) Sawoniuk was sentenced under the War

		Crimes Act 1991 to life imprisonment for the murder of two civilians in Domachevo, Byelorussia in 1942.
Genocide Crimes Against Humanity War crimes	International Criminal Court Act 2001 ¹ Provides for jurisdiction over genocide, crimes against humanity and war crimes when committed outside the UK by UK nationals, residents or persons subject to UK service jurisdiction, including persons who were not UK residents at the time of the offence but who subsequently become UK residents and are resident at the time proceedings are brought. Following an amendment in 2009, proceedings may be brought, subject to certain conditions, in relation to offences committed on or after 1 January 1991. The International Criminal Court (Scotland) Act 2001 makes equivalent provision in respect of Scotland.	

¹: A prosecution under these Acts for an offence committed outside the United Kingdom may only proceed in England and Wales or Northern Ireland with the consent of the Attorney-General or Advocate-General for Northern Ireland. In Scotland all prosecutions on indictment are done in the name of the Lord Advocate.

Note: The preceding table includes the main examples of international crimes of universal jurisdiction and extraterritorial jurisdiction in the United Kingdom. Other miscellaneous offences attracting such jurisdiction have not been included (e.g. under the Merchant Shipping Act 1995).



NV from the UK Mission
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1 attachment



Note No 57-11.pdf

Please find attached a note verbale from the UK Mission. The original is being sent by mail.

Regards,

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