



United Kingdom Mission  
to the United Nations

One Dag Hammarskjold Plaza  
(885 Second Avenue)  
New York, NY 10017

Tel: +1 (212) 745 9200  
Fax: +1 (212) 745 9316

Email: [uk@un.int](mailto:uk@un.int)  
[http://twitter.com/UKUN\\_NewYork](http://twitter.com/UKUN_NewYork)

## UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

UNITED NATIONS GENERAL ASSEMBLY, SIXTH COMMITTEE,  
SEVENTY-FIRST SESSION, AGENDA ITEM 86,  
THE SCOPE AND APPLICATION OF THE PRINCIPLE OF  
UNIVERSAL JURISDICTION

STATEMENT BY MS. AHILA SORNARAJAH  
FIRST SECRETARY (LEGAL AFFAIRS)  
UNITED KINGDOM MISSION TO THE UNITED NATIONS

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Mr Chairman,

The United Kingdom of Great Britain and Northern Ireland considers the term "universal jurisdiction" to refer to national jurisdiction established over a crime irrespective of the nationality of the victim, the location of the alleged perpetration, or other links with the prosecuting State.

As we set out in our statement to the Sixth Committee last year, it is necessary to distinguish universal jurisdiction from other, similar, exercises of jurisdiction.

First, universal jurisdiction is distinct from the jurisdiction of international judicial mechanisms established by treaty, including the International Criminal Court. Secondly, it is distinct from jurisdiction established under treaties to which the State parties establish a "extradite or prosecute" regime. Some States, including the United Kingdom, may establish universal jurisdiction as a matter of domestic law in order to implement such obligations. By way of example, the United Kingdom has established such jurisdiction for the offence of torture, in order to implement its obligations on the United Nations Convention against Torture.

Thirdly, universal jurisdiction is distinct from the extra-territorial jurisdiction enjoyed as a matter of domestic law by the courts of many States in relation to the extra-territorial conduct of their citizens or residents. For example, in the United Kingdom, the starting point is that the criminal courts enjoy jurisdiction in relation to crimes where a substantial measure of the conduct in question took place within our jurisdiction. However, there are exceptions, such as when serious offences, such as murder or serious sexual offences, are committed by British nationals overseas. Under the International Criminal Court Act 2001, our courts may also exercise jurisdiction over genocide, war crimes and crimes against humanity committed overseas by those who are resident in the United Kingdom.

The United Kingdom wishes to stress that it considers the scope of universal jurisdiction to be relatively narrow. It is only established for a small number of specific crimes, including piracy and war crimes.

The rationale for establishing such universal jurisdiction as a matter of international law is twofold. First, the most serious international crimes affect the international legal order as a whole and, as such, should be subject to the jurisdiction of all States. Offences falling into this category include grave breaches of the Geneva Conventions.

Secondly, the unique nature of some other criminal offences attracts universal jurisdiction. Piracy is the prime example. While not commensurate with grave breaches of the Geneva Conventions, the international community as a whole has for some time recognised that piracy is subject to universal jurisdiction. But for universal jurisdiction, there would be a significant risk that those who engage in piracy may otherwise escape the jurisdiction of any State.

The United Kingdom acknowledges that there is a further, limited, group of crimes which some States consider to attract universal jurisdiction. However, there is a lack of international consensus on the extent to which certain crimes attract universal jurisdiction. The United Kingdom notes with great interest the work of the International Law Commission in relation to crimes against humanity in this regard.

That a relatively narrow selection of criminal offences attract universal jurisdiction – both pursuant to the domestic legal regimes of States, and as a matter of customary international law – reflects the general rule that the authorities of the State in whose territory an offence is committed are best placed to prosecute that offence.

The territorial approach to jurisdiction also reflects the reality that evidence and witnesses are likely to be easier to secure in the State in which the offence was committed. Assessing the impact of the harm upon the victim, an important consideration throughout a criminal prosecution, from the selection of charges, gathering and presentation of evidence, and imposition of penalty, is an activity best conducted by a court located in the jurisdiction where the offence took place.

However, the exercise of territorial jurisdiction is not always possible or appropriate. In such cases, while not the option of first resort, universal jurisdiction can be a necessary and important tool to ensure that perpetrators of serious crimes do not escape justice.

The United Kingdom considers that procedural safeguards must be in place to ensure that universal jurisdiction is exercised responsibly. For example, the United Kingdom prosecuting authorities would not usually seek to proceed against any suspect who was not present in the United Kingdom. Further safeguards exist by virtue of the need to obtain the consent of the Attorney General or equivalent law officer elsewhere in one of the United Kingdom jurisdictions, for a prosecution under universal jurisdiction to proceed. The Attorney General ensures that public interest considerations, including matters of international comity, may be taken into account when determining whether to consent to such prosecutions.

While rare, establishing universal jurisdiction before the courts of the United Kingdom is not legally complex. Parliament has legislated to confer such jurisdiction on the courts in relation to certain offences, and experience has demonstrated that the relevant legal framework may be applied with clarity. Difficulties are more likely to arise in relation to practical, evidential matters or, in some cases, whether the accused person enjoys any immunities under international law. Scrutinising offences alleged to have been committed thousands of miles away is likely to present challenges. This was the recent experience of the United Kingdom during a prosecution for torture alleged to have taken place outside the United Kingdom. While there were few legal difficulties with establishing universal jurisdiction pursuant to the domestic legislation implementing the United Kingdom's obligations under the Torture Convention, obtaining evidence and dealing with practical issues such as

translation proved to be problematic. Difficulties may also arise in relation to whether the principle of *autrefois convict* prevents criminal proceedings in the United Kingdom in circumstances where the same facts have been subject to criminal proceedings in another jurisdiction, albeit for a lesser offence.

The United Kingdom stands ready to contribute to further discussions on this topic in the Sixth Committee.

Thank you, Mr Chairman