

*Translated from Arabic*

## **Permanent Mission of Bahrain to the United Nations**

### **Memorandum of the Legislative and Legal Opinion Commission on the scope and application of the principle of universal jurisdiction in the Kingdom of Bahrain**

The Legislative and Legal Opinion Commission is writing in response to letter No. 3/2/1-2017-1645-OD-O dated 24 December 2017 which it received from the Director of the Organizations Department of the Ministry of Foreign Affairs, in reference to General Assembly resolution 72/120, entitled “The scope and application of the principle of universal jurisdiction”, in which the Assembly invites Member States and relevant observers, as appropriate, to submit, before 27 April 2018, information and observations on the scope and application of universal jurisdiction, including, where appropriate, information on the relevant applicable international treaties and their national legal rules and judicial practice, and requests the Secretary-General to prepare and submit to the General Assembly at its seventy-third session a report based on such information and observations.

Further to the letter, the Commission conducted a study on the scope and application of the principle of universal jurisdiction in the Kingdom of Bahrain, in particular in the light of domestic laws and international conventions on the principle of universal jurisdiction that the Kingdom of Bahrain has acceded to or ratified.

For its study, the Commission started by examining the significance of the principle from the perspective of international law (specifically the Princeton Principles on Universal Jurisdiction, which were distributed as a document of the United Nations General Assembly at its fifty-sixth session under agenda item 164). The principle of universal jurisdiction is defined, from an international perspective, as “criminal jurisdiction based solely on the nature of the crime, without regard to where it was committed, the nationality of the alleged or convicted perpetrator, the nationality of the victim, or any other connection to the State exercising such jurisdiction”. The Commission found that universal jurisdiction is linked directly to serious crimes under international law that are set out in many international conventions which allow their States parties to punish the perpetrators thereof, regardless of their nationality or the territory in which the crimes were committed.

Principle 2 of the Princeton Principles on Universal Jurisdiction, entitled “Serious crimes under international law”, states as follows: “For purposes of these Principles, serious crimes under international law include: (1) piracy; (2) slavery; (3) war crimes; (4) crimes against peace; (5) crimes against humanity; (6) genocide; and (7) torture.”

The Commission also referred to international conventions which include provisions to combat these serious crimes, which are defined exclusively in accordance with the above-mentioned Principle 2. It found that many of the conventions acceded to or ratified by the Kingdom of Bahrain authorize the application of the principle of universal jurisdiction to combat such serious crimes, including the following:

Convention	Articles that authorize the exercise of universal jurisdiction
The Convention on the Prevention and Punishment of the Crime of Genocide adopted on 9 December 1948, which the Kingdom of Bahrain acceded to via Legislative Decree No. 4 of 1990	Article 6  Persons charged with genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the State in the territory of which the act was

	committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.”
The two Optional Protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict, and on the sale of children, child prostitution and pornography, attached to the United Nations Convention on the Rights of the Child, which the Kingdom of Bahrain acceded to via Legislative Decree No. 19 of 2004	Article 4 (4) of the second Optional Protocol to the Convention on the Rights of the Child:  “The present Protocol does not exclude any criminal jurisdiction exercised in accordance with internal law.”
The Geneva Conventions of 12 August 1949, which the Kingdom of Bahrain acceded to via Legislative Decree No. 7 of 1971	Article 49, second paragraph, of the First Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field  Article 50, second paragraph, of the Second Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea  Article 129, second paragraph, of the Third Geneva Convention relative to the Treatment of Prisoners of War  Article 146, second paragraph, of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War  “Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts”.

The Commission found that the Kingdom of Bahrain has acceded to several conventions that provide for the application of the principle of universal jurisdiction, including those which expressly provide for its application, such as the four Geneva Conventions, or those which implicitly provide for its application, such as the Convention on the Prevention and Punishment of the Crime of Genocide adopted on 9 December 1948. Although article 6 provides for the prosecution of the perpetrator by the courts of the State in the territory of which the act was committed (territorial principle), it does not exclude the application of the principle of universal jurisdiction by an international criminal court, should such a court be established.

It should also be noted that, under the Constitution of the Kingdom of Bahrain, international conventions signed by His Majesty the King have force of law. Article 37 of the Constitution

stipulates that: “The King shall conclude treaties by decree and shall communicate them to the Shura Council and the Chamber of Deputies forthwith, accompanied by the appropriate statement. A treaty shall have force of law once it has been concluded and ratified and published in the Official Gazette.”

However, peace treaties and treaties of alliance, treaties relating to State territory, natural resources, rights of sovereignty, the public and private rights of citizens, treaties pertaining to commerce, shipping and residence, and treaties involving the State Treasury in non-budgetary expenditure or which entail amendment of the laws of Bahrain, must be promulgated by law to be valid.”

Accordingly, all the above-mentioned conventions, which were adopted or promulgated by the legislature or by decree and allow their States parties to apply the principle of universal jurisdiction to prosecute the perpetrators of internationally recognized serious crimes, have force of law after are incorporated into the internal laws of the Kingdom of Bahrain.

The legislator has incorporated the principle of universal jurisdiction into the domestic legislation of Bahrain. For example, Act No. 1 of 2008 on Combating Trafficking in Persons criminalizes acts of trafficking in persons and defines them in accordance with international criteria for combating trafficking in persons. Article 1 of the Act stipulates that:

- (a) For the purpose of implementing the provisions of this Act, trafficking in persons shall mean the recruitment, transportation, transfer, harbouring, or receiving of persons, by means of threat or the use of force or other forms of coercion, abduction, fraud, deceit, abuse of power or of position or any other direct or indirect unlawful means. Exploitation shall include the exploitation of such person or the prostitution of others or any other forms of exploitation, sexual assault, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.
- (b) Recruitment, transportation, transfer, harbouring, or receiving of persons who are less than eighteen years of age or who are in a condition or personal state in which their consent or freedom of choice cannot be guaranteed shall be deemed to constitute trafficking in persons if the intent is to exploit them, even if such act is not accompanied by any of the means provided for in the preceding paragraph.
- (c) The perpetrator shall be presumed to have knowledge of the real age of the victim who is not eighteen years of age.

Article 2 of the Act provides for the punishment of the perpetrator of the offence of trafficking in persons by stipulating that:

Without prejudice to any harsher penalty prescribed by the Penal Code or any other law, any person committing a crime of trafficking in persons shall be punished by imprisonment and a fine of no less than 2,000 Bahrain dinars and not exceeding 10,000 Bahrain dinars.

Article 9 of the Bahraini Penal Code, which was promulgated by Legislative Decree No. 15 of 1976, allows for the application of the principle of universal jurisdiction to punish the perpetrators of the crimes set forth in the Code if they have not made a request for extradition, by stipulating that:

“This Code shall apply to every foreigner in Bahrain who may have committed an offence abroad, even though such crime is not covered under articles 6, 7 and 8 of this Code and where application for extradition has so far not been made.”

Article 111 of the Code provides that:

"The provisions of this Part shall apply to crimes stipulated under the relevant laws unless they contain any ruling to the contrary."

Articles 9 and 111 allow for the application of the principle of universal jurisdiction to the crime of trafficking in persons set out in Act No. 1 of 2008 on combating trafficking in persons, as a special law encompassing all the provisions of the general section of the Penal Code - including the principle of universal jurisdiction – in the event that the perpetrator of the crime of trafficking in persons has not been sought for trial for that crime by another State with inherent jurisdiction.

The legislator went one step further, stipulating that trafficking in persons is a crime of a non-national nature that is deemed an aggravating circumstance (confirming the application of the principle of universal jurisdiction over such crimes) if the consequences of the crime committed extend beyond the territory of the Kingdom of Bahrain to affect other States or have a foreign element to them and are therefore international in nature, based on article 4 of the Trafficking in Persons Act, which stipulates that:

"Subject to the provisions of Chapter V of Part III of the Penal Code, an aggravating circumstance for the offense of trafficking in persons is the following:

- 1.
3. If the offence is of a non-national nature ... "

Sincerely,

Legislative and Legal Opinion Commission