



**Permanent Mission of the Republic of Sierra Leone
to the United Nations**

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The Permanent Mission of the Republic of Sierra Leone to the United Nations presents its compliments to the Director of the Codification Division of the United Nations, Office of Legal Affairs, and has the honour to submit the attached written comments from the Republic of Sierra Leone on the "Scope and Application of the Principle of Universal Jurisdiction."

The Permanent Mission of the Republic of Sierra Leone to the United Nations avails itself of this opportunity to renew to the United Nations' Office of Legal Affairs the assurances of its highest Consideration. 

New York, 26th April 2019

UNITED NATIONS HEADQUARTERS
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INFORMATION AND OBSERVATIONS FROM THE REPUBLIC OF SIERRA LEONE
on the Scope and Application of the Principle of Universal Jurisdiction
26th April 2019

I. Introduction

1. In accordance with paragraph 4 of United Nations General Assembly resolution A/73/208 of 20th December 2018, the Republic of Sierra Leone appreciates the opportunity to submit “*information and observation on the scope and application of universal jurisdiction, including, [...] information on the relevant applicable international treaties and on their national legal rules and judicial practice*”.¹
2. Sierra Leone is firmly associated with the fight against impunity for atrocity crimes, for which Member States of the United Nations have adopted legislations which apply the principle of universal jurisdiction, as part of the global efforts to end impunity. As an undeniable fact, the people of Sierra Leone experienced the commission of some of the most serious atrocity crimes during the rebel-initiated war which claimed the lives of thousands of innocent civilians in the decade between March 1991 and January 2002. After several efforts to end the conflict failed, between 1995 and 1999, the Government of Sierra Leone requested United Nations assistance to establish the Special Court for Sierra Leone (SCSL). The *Agreement between the United Nations and the Government of Sierra Leone on the Establishment of the Special Court for Sierra Leone* (UN-Sierra Leone Agreement), to which was annexed the *Statute of the SCSL* (SCSL Statute), was signed on 16 January 2002.² The mandate of the SCSL was to prosecute those who bore the greatest responsibility for war crimes, crimes against humanity and other serious violations of international humanitarian law committed between November 1996 and January 2002. This led to the conviction of nine persons, including former Liberian President Charles Taylor, who is today serving his 50-year sentence in the United Kingdom.
3. Sierra Leone notes with appreciation the progress that has been made since Member States of the United Nations have been invited to submit information and observations on the agenda item, “*the Scope and Application of the Principle of Universal Jurisdiction*”.³ Since the Sixth Committee of the General Assembly took up the issue of universal jurisdiction in 2009, in successive annual sessions, Member States have forged a common understanding of the universality principle and to distinguish it from related concepts such as the jurisdiction of international criminal tribunals and the extraterritorial application of national laws.⁴ The debates have also attempted to clarify the scope of application of universal jurisdiction. This includes identification of the “core crimes” to which universal jurisdiction would apply, the conditions or criteria for the application of the principle, and the procedural and other limitations that should govern the exercise of this important jurisdictional ground under international law.

¹ See General Assembly resolution A/73/208 of 20 December 2018.

² See the *UN-Sierra Leone Agreement* and the annexed *Statute of the SCSL*, reprinted in 2178 U.N.T.S. at p. 138 and 145. The legislative history of the SCSL is available in *Report of the Secretary-General on the establishment of a Special Court for Sierra Leone*, UN Doc. S/2000/915, 4 October 2000.

³ General Assembly resolution A/RES/64/117.

⁴ See Reports of the Secretary-General A/65/181, A/66/93, A/67/116, A/68/113, A/69/174, A/70/125, A/71/111 and A/72/112.

4. Sierra Leone further notes with appreciation that the Secretary-General of the United Nations has catalogued helpful evidence of state practice on universal jurisdiction. The rich reports have demonstrated that this principle is recognized and embraced by the domestic legislation of countries from all regions of the world.
5. Sierra Leone is proud to be part of the international community's ongoing efforts to curb impunity for grave crimes, whether through the application of the principle of universal jurisdiction at the national level or the prosecutions of atrocity crimes in a hybrid court such as the SCSL, and the further stated objective to address the concerns of its *ad hoc* and arbitrary application.

II. Information and Observation on the Scope and Application of Universal Jurisdiction in Sierra Leone

6. Sierra Leone duly notes that during the Sixty-Third Session of the General Assembly, the United Republic of Tanzania, on behalf of the Group of African States, requested inclusion on our agenda of the topic "Scope and Application of the Principle of Universal Jurisdiction".⁵ Tanzania proposed this issue for Sixth Committee deliberation following an African Union decision because while many African States recognize universal jurisdiction as a vital legal tool to combat impunity for core international crimes, there was serious concern about the potential for abuse of the principle by the courts of non-African States against African officials.⁶ This could endanger international law as well as international peace and security.
7. As a preliminary issue, Sierra Leone strongly supports the efforts of the African Union in seeking clarity on the scope and application of the principle of universal jurisdiction, and notes that the spirit underlying the universality principle is enshrined in article 4(h) of the African Union Constitutive Act.⁷
8. With regards to the status of international law in Sierra Leone, our country approaches the issue from the dualist perspective. This requires that national legislation be passed to incorporate international law into our domestic system, without any formal rule of hierarchy as between treaties or customary international law. The 1991 Constitution, currently in force, provides in Section 40(4) for the ratification by Parliament of treaties, agreements or conventions executed by or under the authority of the President. In this regard, Sierra Leone domestic law recognizes a form of universal jurisdiction for grave breaches of the Geneva Conventions and Additional Protocol I, which are war crimes, irrespective of the nationality of the perpetrator or the place of commission of the crimes under Part II of the Geneva Conventions Act of 20 December 2012.⁸

⁵ See A/63/237/Rev.1.

⁶ *Ibid.*

⁷ See A/66/93, "Scope and application of universal jurisdiction: comments by observers" by the African Union, 20-21.

⁸ The Geneva Conventions Act, 2012: "*Being an Act to give effect to the Geneva Conventions done at Geneva on 12th August 1949 and to the Protocols additional to those Conventions done at Geneva on 8th June 1977 and for other related purposes*".

9. Section 2 of the *Geneva Conventions Act* of 20 December 2012 states:

(1) A person of whatever nationality commits an offence if that person, whether within or outside Sierra Leone commits, aids abets or procures any other person to commit a grave breach specified in–

- (a) article 50 of the First Geneva Convention;*
- (b) article 51 of the Second Geneva Convention;*
- (c) article 130 of the Third Geneva Convention;*
- (d) article 147 of the Fourth Geneva Convention;*
- (e) paragraph 4 of article 11 or paragraph 2, 3, or 4 of Article 85 of the First Protocol.*

(2) A person who commits an offence under subsection (1) is liable on conviction– (a) in the case of a grave breach which involves the willful killing of a person protected by the relevant Convention or Protocol to imprisonment for life; (b) in the case of any other grave breach, to imprisonment for a term not less than 10 years and not exceeding twenty five years.

(3) A person who in Sierra Leone commits , abets, aids or procures any other person to commit a breach of the Conventions or Protocols not covered under subsection (1) commits an offence and is liable on conviction to imprisonment for a term not less than 10 years and not exceeding twenty five years.

(4) A citizen of Sierra Leone who outside Sierra Leone , commits or aids, abets or procures the commission by another person of a breach of any of the Conventions or Protocols not covered under subsection (1) commits an offence and is liable on conviction to imprisonment for a term not less than 10 years and not exceeding 25 years

(5) Where a person commits an offence under this section outside Sierra Leone, that person may be tried and punished as if the offence was committed in Sierra Leone.

10. The High Court of Sierra Leone is clothed with jurisdiction to try an offence committed under section 2 of the *Geneva Conventions Act* 2012, but there has been no judicial application of the principle in Sierra Leone under the said legislation to date.

11. Sierra Leone is also a party to a number of other multilateral treaties that require Member States to prohibit certain international and transnational crimes in their national law. This includes the Rome Statute of the International Criminal Court, which addresses the crimes of genocide, crimes against humanity and war crimes. National legislation has not been adopted in respect of some of those conventions. Those instruments would in any event provide for a treaty-basis for any such crimes, and in some cases for instance the hijacking of aircraft, may not necessarily be considered universal jurisdiction offences as such.

12. Further to the above, Sierra Leone finds it appropriate to further state her appreciation of the endorsement by the African Union Assembly of Heads of State

and Government of the African Union Model National Law on Universal Jurisdiction over International Crimes in 2012. The African Union Assembly commended the model law to all African Union Member States though it does not, at present, form part of our national law.⁹ In our view, the core goal of the model law is - and remains - to strengthen the domestic capacity of African states to investigate, prosecute and punish the perpetrators of a short list of crimes especially war crimes, crimes against humanity and the crime of genocide.

III. Conclusion

13. In closing, Sierra Leone again wishes to pay tribute to Member States for the substantive progress made on the topic, as we remain hopeful that, as the International Law Commission (ILC) has added the topic of "universal criminal jurisdiction" to its long-term programme of work,¹⁰ it will no doubt bring to bear its known technical rigor to the universal jurisdiction topic. This seems important because, while any international legal rule can be manipulated or abused for political purposes, universal jurisdiction is ultimately a technical legal question of public international law. Relatedly, although we appreciate the establishment of a working group of the Sixth Committee to further "thorough discussions" of the "scope and application of the principle of universal jurisdiction", there is a clear lack of agreement on progress towards a consensus outcome. The ILC's topic therefore deserves dispassionate expert consideration, and for that reason, we reiterate our call for other African States and others to join our request for ILC assistance with the goal of bringing greater certainty. An ILC study would bring greater clarity on universal jurisdiction, *especially* given the Commission's prior and current work on related topics such as the draft code of crimes against the peace and security of mankind, the question of international criminal jurisdiction, *aut dedere aut judicare*, crimes against humanity, *jus cogens* and immunity of state officials from foreign criminal jurisdiction.¹¹

-End.

⁹ African Union Decision EX.CL/731(XXI) adopted at Addis Ababa on 13 July 2012.

¹⁰ See International Law Commission, Report on the work of the seventieth session 2018 (A/73/10).

¹¹ After years of debate without substantial progress towards a consensus outcome, Sierra Leone is pleased to learn that the International Law Commission decided to place this topic on its long-term programme of work during its 70th session which concluded at Geneva in August 2018. This is a direct response to the invitation of many states, including some from Africa, which have called for the Commission to assist the Sixth Committee by taking up a study of this important topic. This is consistent with General Assembly resolution on the Sixth Committee topic, last adopted on 20 December 2018, in which the General Assembly has decided at paragraph 2 that consideration of the issue here "is without prejudice to the consideration of this topic and related issues in other forums of the United Nations". The ILC, as a subsidiary organ of the General Assembly comprised of independent legal experts representing the principal legal systems of the world, can best assist us by carefully studying this issue and advancing practical recommendations pursuant to its Statute.