Note No: 337/19

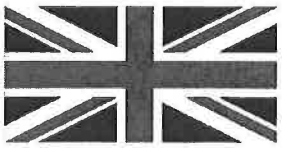
The Permanent Mission of the United Kingdom of Great Britain and Northern Ireland to the United Nations presents its compliments to the Office of Legal Affairs and has the honour to refer to the letter referenced LA/COD/59/1.

The Permanent Mission of the United Kingdom of Great Britain and Northern Ireland to the United Nations has the further honour to present its response to the request for information and observations on the scope and application of universal jurisdiction, as enclosed.

The Permanent Mission of the United Kingdom of Great Britain and Northern Ireland to the United Nations avails itself of this opportunity to renew to the Office of Legal Affairs the assurances of its highest consideration.

United Kingdom Mission
to the United Nations

8 October 2019



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UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

The Permanent Mission of the United Kingdom of Great Britain and Northern Ireland to the United Nations presents its compliments to the Office of Legal Affairs of the United Nations and has the honour to refer to the letter referenced LA/COD/59/1.

In response to the request for information and observations in the Note Verbale on the scope and application of universal jurisdiction, the United Kingdom position is set out below[1], together with a table containing examples of national legal rules and related international treaties.

The scope and application of universal criminal jurisdiction

The United Kingdom has previously made clear that it considers the term "universal jurisdiction" to refer to national jurisdiction established over a crime irrespective of the location of the alleged crime, the nationality of the alleged perpetrator, the nationality of the victim or other links with the prosecuting State. It is therefore distinct from the jurisdiction of international judicial mechanisms established by treaty (including that of the International Criminal Court). Similarly, it is distinct from other established categories of extra-territorial jurisdiction enjoyed as a matter of domestic law, for example over the extra-territorial conduct of a State's citizens or residents. Conceptually it also appears to be distinct from, though sometimes linked to, "extradite or prosecute" regimes provided for in treaties, which will usually require at least the presence of the accused on the territory of the contracting State before jurisdiction can be exercised. At the international level, the application of an "extradite or prosecute" regime to nationals of States which are not parties to the relevant treaty may depend on the status of the regime as a matter of customary international law.

The United Kingdom has previously referred to, and the International Law Commission has previously acknowledged[2], the lack of international consensus about the nature, scope and application of universal jurisdiction. This lack of consensus is in the United Kingdom's view at least partially due to the practical constraints on delivering justice by means of exercising universal jurisdiction, and the difficulties involved in extrapolating the value of universal jurisdiction in a particular case into a broad, "one size fits all" approach to a range of crimes. The primacy of the territorial approach to jurisdiction reflects the reality that the authorities of the State in whose territory an offence is committed are generally best placed to prosecute that offence, not least because of the obvious advantages in securing the evidence and witnesses necessary for a successful prosecution.

The lack of consensus between States indicates that it would be premature to take a definitive view on the crimes for which universal jurisdiction should apply or on a methodology to determine such crimes. Adopting a definitive list or methodology risks undermining the ability of States to agree on how best to deal with a particular crime by limiting the options they can take in respect of jurisdiction. It is important, therefore, that questions as to whether universal jurisdiction or another form of extra-territorial jurisdiction should apply to a particular crime are approached

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[1] This response is consistent with the United Kingdom's contributions to other recent discussions on this topic, for example in response to the International Law Commission's request for information contained in Chapter III of its report of its 70th session.

[2] Paragraph 12 of Annex A to the 2018 Report of the ILC

collaboratively between States (i.e. through treaties), with a focus on what would make an effective contribution to efforts to address that crime. In the United Kingdom's view, therefore, finding the right jurisdictional solution for particular crimes that need to be addressed at the international level and observing the development of practice thereunder is likely to be a more fruitful approach than starting from seeking to impose an *a priori* model of universal jurisdiction which States may be reluctant to accept.

National legal rules and judicial practice in this area, together with relevant applicable international treaties

The jurisdiction of the courts in the UK to try crimes is premised on a presumption of territoriality, unless there is express statutory provision to the contrary. However, in those cases in which universal jurisdiction is available, that availability does not mean that such jurisdiction should always be exercised. The United Kingdom has previously highlighted the importance of using procedural requirements to ensure that universal jurisdiction is exercised responsibly, and continues to believe this is an important safeguard. Domestic prosecuting authorities in the United Kingdom would not usually seek to institute proceedings against any suspect who was not present in the jurisdiction, and may need prior permission to proceed. For example, national proceedings for an offence under section 1 of the United Kingdom's Geneva Conventions Act 1957 (i.e. for grave breaches of the Geneva Conventions) can only be instituted in England and Wales with the consent of the Attorney General (who ensures that public interest considerations, including where appropriate considerations of international law and comity, are taken into account before a decision to prosecute is made).

There is a small number of offences for which the courts in the United Kingdom can exercise jurisdiction even where there is no apparent link to the United Kingdom. A non-exhaustive list of these offences is included in the Annex to this letter, together with extracts from relevant domestic legislation and references to related treaties. However, the fact that the United Kingdom has decided to provide for such jurisdiction as a matter of domestic law does not necessarily mean that it considers that these offences attract universal jurisdiction as a matter of international law.

The Permanent Mission of the United Kingdom of Great Britain and Northern Ireland to the United Nations avails itself of this opportunity to renew to the Office of Legal Affairs of the United Nations the assurances of its highest consideration.

United Kingdom Mission to the United Nations.

8 October 2019

ANNEX
CRIMES OVER WHICH COURTS IN THE UNITED KINGDOM HAVE UNIVERSAL JURISDICTION

Offence	**Extract of provision and (where relevant) related applicable treaty** **(these offences or similar offences apply throughout the UK although there may be minor differences in approach in Scotland and Northern Ireland)**
An offence under **section 2 of the Piracy Act 1837 (piracy when murder is attempted);**	*"Whosoever, with intent to commit or at the time of or immediately before or immediately after committing the crime of piracy in respect of any ship or vessel, shall assault, with intent to murder, any person being on board of or belonging to such ship or vessel, or shall stab, cut, or wound any such person, or unlawfully do any act by which the life of such person may be endangered, shall be guilty of felony..."*
An offence under **section 1 of the Geneva Conventions Act 1957 (grave breaches of Geneva conventions);**	*"Any person, whatever his nationality, who, whether in or outside the United Kingdom, commits, or aids, abets or procures the commission by any other person of [a grave breach of any of the scheduled conventions [, the first protocol or the third protocol] shall be guilty of an offence)"* Related treaties: Geneva Conventions I [article 49], II [article 50], III [article 129] and IV [article 146]
An offence under **section 1 of the Internationally Protected Persons Act 1978 (attacks and threats of attacks on protected persons);**	*"If a person, whether a citizen of the United Kingdom and Colonies or not, does outside the United Kingdom... (a) any act to or in relation to a protected person which, if he had done it in any part of the United Kingdom, would have made him guilty of the offence of murder, manslaughter, culpable homicide...he shall in any part of the United Kingdom be guilty of the offences aforesaid of which the act would have made him guilty if he had done it there."* Related treaty: Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents 1973 [article 3]
An offence under **section 1 of the Taking of Hostages Act 1982 (hostage-**	*"A person, whatever his nationality, who, in the United Kingdom or elsewhere...detains any other person ("the hostage"), and (b) in order to compel a State, international governmental organisation or person to do or abstain from doing any act, threatens to kill, injure or continue to detain the hostage, commits an offence."* Related treaty: International Convention against the Taking of

Offence	Extract of provision and (where relevant) related applicable treaty (these offences or similar offences apply throughout the UK although there may be minor differences in approach in Scotland and Northern Ireland)
taking);	Hostages 1979 [articles 5 and 8]
An offence under **section 1, 2 or 6 of the Aviation Security Act 1982 (hijacking etc.);**	See for example section 1(1): *"A person on board an aircraft in flight who unlawfully, by the use of force or by threats of any kind, seizes the aircraft or exercises control of it commits the offence of hijacking, whatever his nationality, whatever the State in which the aircraft is registered and whether the aircraft is in the United Kingdom or elsewhere..."*
An offence under **sections 1 to 2A of the Nuclear Material (Offences) Act 1983 (offences relating to nuclear material)**	See for example section 1(1): *"If a person, whatever his nationality, does outside the United Kingdom, in relation to or by means of nuclear material, any act which, had he done it in any part of the United Kingdom, would have made him guilty of [e.g. , murder manslaughter,] he shall in any part of the United Kingdom be guilty of such of the offences mentioned in paragraphs (a) to (d) above as are offences of which the act would have made him guilty had he done it in that part of the United Kingdom."* Related treaty: Convention on the Physical Protection of Nuclear Material 1980 [article 8]
An offence under **section 134 of the Criminal Justice Act 1988 (torture);**	*"A public official or person acting in an official capacity, whatever his nationality, commits the offence of torture if in the United Kingdom or elsewhere he intentionally inflicts severe pain or suffering on another in the performance or purported performance of his official duties..."* Related treaty: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1994 [article 5]
An offence under **section 1 of the Aviation and Maritime Security Act 1990 (endangering safety at aerodromes);**	See for example subsection (3): *"Except as provided by subsection (4) below, subsections (1) and (2) above apply whether any such act as is referred to in those subsections is committed in the United Kingdom or elsewhere and whatever the nationality of the person committing the act."* Related treaty: Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation 1971 [article 5]
An offence under **sections 9**	See for example section 9(1): *"A person who unlawfully, by the use of force or by threats of any kind, seizes a ship or exercises control*

Offence	Extract of provision and (where relevant) related applicable treaty (these offences or similar offences apply throughout the UK although there may be minor differences in approach in Scotland and Northern Ireland)
to 14 of the Aviation and Maritime Security Act 1990 (hijacking ships etc.);	*of it, commits the offence of hijacking a ship, whatever his nationality and whether the ship is in the United Kingdom or elsewhere...* " Related treaty: Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation 1988 [article 6]
An offence under **sections 1 to 3 of the United Nations Personnel Act 1997 (attacks on UN workers etc.).**	See for example section 1(1): *"If a person does outside the United Kingdom any act to or in relation to a UN worker which, if he had done it in any part of the United Kingdom, would have made him guilty of any of the offences mentioned in subsection (2), he shall in that part of the United Kingdom be guilty of that offence...* " Related treaty: Convention on the Safety of UN and Associated Personnel 1994 [article 10]