



HA 17/2020

The Permanent Mission of Malaysia to the United Nations presents its compliments to the Office of Legal Affairs and has the honour to refer to the note LA/COD/59/1 of 6 January 2020.

The Permanent Mission of Malaysia to the United Nations has further the 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 Malaysia to the United Nations avails itself of this opportunity to renew to the Office of Legal Affairs the assurances of its highest consideration.

New York, 21 April 2020

**United Nations Office of Legal Affairs
New York**

With reference to General Assembly resolution 74/192 of 18 December 2019, entitled “The scope and application of the principle of universal jurisdiction”, the position of Malaysia is set out below, together with a table outlining relevant international treaties, national legal rules and judicial practice.

The scope and application of the principle of universal jurisdiction

1. Malaysia has previously shared its preliminary views on the foundation and scope of the principle of universal jurisdiction, and the application of the principle in Malaysia including the applicable domestic legislations. Malaysia has also consistently provided extensive comments, shared relevant information and raised noteworthy concerns regarding the exact scope and application for the implementation of the principle of universal jurisdiction.

2. While noting the applicability of the principle in numerous national laws and its application in current judicial practice, Malaysia maintains its view that it is pertinent that the principle should go through in-depth legal analysis in order to achieve common consensus and understanding by all Member States. This is to ensure that throughout the consideration of the topic, the gap of differences between Member States can be narrowed, and a State’s sovereignty and territorial integrity are protected and fully respected.

3. Apart from the divergent views from Member States on the scope of the principle, Malaysia notes that there has been minimal and relatively slow response from Member States in providing information on the scope and application of universal jurisdiction, the relevant applicable international treaties as well as their national legal rules and judicial practice in relation to the principle. In Malaysia’s view, therefore, it is timely to consider an in-depth analysis on the root cause of the unforthcoming response from Member States.

4. Whilst noting that universal jurisdiction could be an effective response to ensure accountability, end impunity and protect the rights of victims, Malaysia views it necessary to find the right balance to end impunity and not to abuse the principle of universal jurisdiction.

Relevant international treaties, domestic legal rules and judicial practice related to universal jurisdiction

5. The following table outlines Malaysia's legal rules with respect to international treaties on the following areas:

- (a) Piracy;
- (b) Slavery;
- (c) Torture;
- (d) War crimes;
- (e) Crimes against humanity; and
- (f) Genocide.

6. In terms of judicial practice, the table outlines the exercise of extra-territorial criminal jurisdiction on the basis of Malaysia's obligations as a party to the following international treaties:

- (a) Convention on Offences and Certain other Acts Committed on Board Aircraft (Tokyo Convention);
- (b) Convention for the Suppression of Unlawful Seizure of Aircraft (The Hague Hijacking Convention); and
- (c) Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal Convention).

THE SCOPE AND APPLICATION OF UNIVERSAL JURISDICTION IN MALAYSIA

SUBJECT MATTER NO.	INTERNATIONAL TREATIES	NATIONAL LEGAL RULES
1.	<p><u>(A) Piracy</u></p> <p>1. The United Nations Convention on the Law of the Sea (UNCLOS) which was adopted in 1982 is a treaty between States of which Malaysia became a State Party on 14 October 1996. The UNCLOS lays down a comprehensive regime of law and order in the world’s oceans and seas establishing rules governing all uses of the oceans and their resources.</p> <p>2. Article 101 of the UNCLOS provides as follows:</p> <p style="padding-left: 40px;"><i>“Piracy consists of any of the following acts:</i></p> <p style="padding-left: 80px;"><i>(a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:</i></p>	<p><u>(A) Piracy</u></p> <p>1. It is observed that the Courts of Judicature Act 1964 [Act 91] specifically provides that High Court has the jurisdiction to try the offence of piracy. In this regard, paragraph 22(a)(iv) of Act 91 provides as follows:</p> <p style="padding-left: 40px;"><i>“22. (1) The High Court shall have jurisdiction to try—</i></p> <p style="padding-left: 80px;"><i>(a) all offences committed—</i></p> <p style="padding-left: 120px;"><i>(i) ...</i></p> <p style="padding-left: 120px;"><i>(ii) ...</i></p> <p style="padding-left: 120px;"><i>(iii) ...</i></p> <p style="padding-left: 120px;"><i>(iv) <u>by any person on the high seas where the offence is piracy by the law of nations;</u></i></p> <p style="padding-left: 80px;"><i>and”</i></p>

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	<p>(i) <i>on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;</i></p> <p>(ii) <i>against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;</i></p> <p>(b) <i>any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;</i></p> <p>(c) <i>any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).”.</i></p>	<p>2. Apart from that, other relevant national legal rules pertaining to piracy are as follows:</p> <p>(a) Maritime Enforcement Agency Act 2004 [Act 633]; and</p> <p>(b) Penal Code [Act 574].</p> <p>3. Section 6 (3) (c) of the Maritime Enforcement Agency Act 2004 [Act 633] states on the function of the agency on preventing and suppressing piracy. Section 6(3)(c) is reproduced as below:</p> <p><u>“Functions of the Agency</u></p> <p>6. (1) <i>The functions of the Agency shall be—</i></p> <p>(a) ...;</p> <p>(b) ...;</p> <p>(c) ...;</p> <p>(d) ...;</p>

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		<p>(2) <i>Subject to the provisions of this Act, the functions of the Agency shall be performed within the Malaysian Maritime Zone.</i></p> <p>(3) <i>Notwithstanding subsection (2), the Agency shall be responsible—</i></p> <p style="padding-left: 40px;">(a);</p> <p style="padding-left: 40px;">(b);</p> <p style="padding-left: 40px;">(c) <u>for preventing and suppressing piracy</u>; and</p> <p style="padding-left: 40px;">(d) ...,”</p> <p>4. With regard to the offence of piracy committed beyond the limits of Malaysia, Section 3 of the Act 574 provides as follows:</p> <p style="text-align: center;"><i>“Punishment of offences committed beyond, but which by law may be tried within Malaysia</i></p>

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		<p>3. <i>Any person liable by law to be tried for an offence committed beyond the limits of Malaysia, shall be dealt with according to the provisions of this Code for any act committed beyond Malaysia, in the same manner as if such act had been committed within Malaysia.”</i></p> <p>5. Be that as it may, there has been no statutory criminalization of the act of piracy under Malaysian laws. However, as a State Party to UNCLOS, Malaysia will be specifically criminalizing piracy as defined under Article 101 of UNCLOS to give effect to its treaty obligations.</p> <p>6. Malaysia is further drafting its Maritime Security Bill which, among others, purports to strengthen its regime against maritime offences, including piracy. In the proposed law, the basis of jurisdiction will include universal jurisdiction. In other words, although the jurisdiction of the High Court to try the offence of piracy</p>

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		<p>has been provided for by Act 91, the offence of piracy has yet to be prescribed.</p> <p>7. In absence of clear prescription, it is unclear whether the basis of jurisdiction to try the offence of piracy is universality principle or other principles of criminal jurisdiction.</p> <p><u>The Gulf of Aden incident</u></p> <p>8. In view of the above, as there is neither definition nor penalty prescribed for the crime of piracy under any Malaysian legislation, Malaysian court has never tried cases under the offence of piracy specifically. However, Malaysia has previously charged the offenders for the Gulf of Aden incident.</p> <p>9. On 20 January 2011, seven (7) Somali pirates were captured in the Gulf of Aden by the Royal Malaysian Navy while they were trying to hijack the <i>MT Bunga</i></p>

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		<p><i>Laurel</i>, a chemical tanker registered in Panama, owned by a Japanese shipping company, and managed and chartered by the Malaysian International Shipping Corporation.</p> <p>10. The offenders were later charged under section 3 of the Firearms (Increased Penalties) Act 1971 [<i>Act 37</i>] for <u>using firearms against Malaysian Armed Forces with the intention to hurt or kill</u>. The provision is read together with section 34 of the Penal Code [<i>Act 574</i>].</p> <p>11. Section 3 of Act 37 provides as follows:</p> <p style="text-align: center;"><i>“Penalty for discharging a firearm in the commission of a scheduled offence</i></p> <p style="text-align: center;"><i>3. Any person who at the time of his committing or attempting to commit or abetting the commission of a scheduled offence discharges a firearm with intent to</i></p>

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		<p><i>cause death or hurt to any person, shall, notwithstanding that no hurt is caused thereby, be punished with death.”</i></p> <p>12. Section 34 of Act 574 provides as follows:</p> <p><i>“Each of several persons liable for an act done by all, in like manner as if done by him alone</i></p> <p><i>34. When a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if the act were done by him alone.”</i></p> <p>13. Pursuant to a plea bargain, the offenders pleaded guilty to the amended charges of the crime for firing at the armed forces with the intent to avoid lawful</p>

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		<p>detention on 20 January 2011, on board the <i>MT Bunga Laurel</i>, under section 32 of Arms Act 1960 [Act 206] which is punishable by life imprisonment, or for a term not exceeding 14 years.</p> <p>14. Section 32(1)(a) of Act 206 provides as follows:</p> <p><i>“Penalty for use and possession of arms and imitation arms in certain cases</i></p> <p><i>32. (1) (a) If any person makes or attempts to make any use whatsoever of an arm or imitation arm with intent to resist or prevent the lawful apprehension or detention of himself or any other person, he shall, on conviction, be liable to imprisonment for life or for a term not exceeding fourteen years.”</i></p>

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		<p>15. The High Court sentenced three (3) of the offenders each to 10 years in prison and four (4) of the offenders each to eight years, on the grounds that they were juvenile offenders when they committed the crime.</p> <p>16. It is noted that the court charged and convicted the Somali pirates with <u>different crimes other than the crime of piracy itself</u>. In this case, considering the lack of domestic law relating to piracy, since the Somali pirates fired upon Malaysian Navy, they were originally tried under Act 37 then Act 206.</p>
2.	<p><u>(A) Slavery</u></p> <p>i. According to the website of the United Nations Human Rights Office of the High Commissioner (OHCHR), the practice of traditional slavery has been abolished everywhere, but it has not been completely eradicated. This is because slavery can persist as a state of mind- among victims and their descendants and among the inheritors of those who practised</p>	<p><u>(A) Slavery</u></p> <p>(a) <u>Federal Constitution (FC)</u></p> <ul style="list-style-type: none"> • Clauses (1) and (2) of Article 6 of the Federal Constitution (FC) provide that no person shall be held in slavery and all forms of forced labour are prohibited. However, exceptions to this provisions

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	<p>it. At the present time, there are slavery-like practices which remain a grave and persistent problem in the world today.</p> <p>ii. These contemporary forms of slavery include but is not limited to issues such as forced labour, debt bondage, serfdom, children working in slavery or slavery-like conditions, domestic servitude sexual slavery and servile marriages.</p> <p>iii. Additionally, it is important to note that the question of whether universal jurisdiction applies to slavery-like practices is still unsettled. However, it is found that while customary international law recognize slavery and slave-related practices as jus cogens international crimes, the practice of states has not evidenced the fact that universal criminal jurisdiction has been applied to all forms and manifestations of slavery and slave-related practices.</p> <p>iv. For purposes of providing input on this issue, slavery includes contemporary forms of slavery as mentioned at subparagraph (A)(ii) above.</p>	<p>are as provided under clauses (2), (3) and (4) of article 6, <i>i.e.</i>, compulsory military/national service, work undertaken by a prisoner which is incidental to a sentence of imprisonment and compulsory employment in the service of the government.</p> <p>(b) <u>Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 [Act 670]</u></p> <ul style="list-style-type: none"> • Act 670 was enacted to prevent and combat trafficking in persons and smuggling of migrants. • Reference is made to section 2 of the Act which defines ‘exploitation’ among others as all forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery and servitude.

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	<p>(a) <u>Universal Declaration of Human Rights (UDHR)</u></p> <ul style="list-style-type: none"> • UDHR was proclaimed by the United Nations General Assembly in Paris on 10 December 1948. • The UDHR defines the basic human rights and freedoms to which all individuals are entitled and is not a legally binding document as decided by the Federal Court in the case of Mohamad Ezam Mohd Noor v. Ketua Polis Negara & Other [2002] 4 MLJ 449. Nonetheless Malaysia’s domestic legal framework adheres to the underlying principles of the UDHR. • Article 4 of the UDHR provides that no one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms. <p><u>Human rights treaties which define and prohibit slavery and slavery-like practices including forced labour</u></p>	<ul style="list-style-type: none"> • Additionally, any activity committed for the purpose of exploitation under the purview of the Act is an offence under sections 12, 13, 14, 15 and 15A of the Act 670. The offenders, if convicted shall be punished with imprisonment and liable to fine. <p>(c) <u>National Service Training Act 2003 [Act 628]</u></p> <ul style="list-style-type: none"> • Generally, based on the long title of Act 628, this Act is to make provisions for the national service training and for matters connected therewith and incidental thereto. • It should be noted that article 6 clause 2 of the FC provides that all forms of forced labour are prohibited, but the Parliament may by law provide for compulsory service for national purposes, i.e., Act 628.

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	<p>(b) <u>Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery of 1956</u></p> <ul style="list-style-type: none"> • The Supplementary Convention was signed on 7 September 1956 and entered into force on 30 April 1957. • It aims to intensify national and international efforts towards the abolition of slavery, the slave trade and institutions and practices similar to slavery. • In gist, amongst the practices covered under the Supplementary Conventions are as follows: <ul style="list-style-type: none"> a. Article 1 - Debt bondage, serfdom, servile marriage and child servitude; b. Section II – Slave Trade; and c. Section III – Slavery and institutions and practices similar to slavery. 	<ul style="list-style-type: none"> • A national service programme is not included as forced or compulsory labour under subparagraph (3)(c)(ii) of article 8 of the International Covenant on Civil and Political Rights (ICCPR) of which Malaysia is not a party to.

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	<ul style="list-style-type: none"> • Malaysia acceded to the Supplementary Convention on 18 November 1957. <p>(c) <u>Forced Labour Convention, 1930 (No. 29) (C.29)</u></p> <ul style="list-style-type: none"> • C.29 was adopted by the International Labour Conference (ILC) in 28 June 1930. • The aim of C.29 is to suppress the use or compulsory labour in all its forms. • Malaysia ratified C.29 on 11 November 1957. <p>(d) <u>Abolition of Forced Labour Convention 1957 (No. 105) (C.105)</u></p> <ul style="list-style-type: none"> • C.105 was adopted by the ILC in 1959. • The aim of C.105 is to combat emerging new uses of forced labour such as for political repression, economic 	

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	<p>development, labour discipline, punishment for participation in strikes and racial, social, national or religious discrimination.</p> <ul style="list-style-type: none"> • Malaysia ratified C.105 on 13 October 1958 and denounced the same on 10 January 1990 due to divergences with the International Labour Organization (ILO) in the interpretation of national legislation with regard to C.105. <p>(e) <u>Convention on the Rights of Persons with Disabilities (CRPD)</u></p> <ul style="list-style-type: none"> • CRPD entered into force on 3 May 2008. Malaysia ratified the CRPD on 19 July 2010 with reservation to articles 15 and 18. • Article 27(2) of the CRPD provides that States Parties shall ensure that persons with disabilities are not held in slavery or in servitude, and are protected, on an equal basis with others, from forced or compulsory labour. 	

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	<p><u>(B) Torture</u></p> <p>(a) <u>UDHR</u></p> <ul style="list-style-type: none"> Article 5 of the UDHR provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. <p>(b) <u>Convention on the Rights of the Child (CRC)</u></p> <ul style="list-style-type: none"> CRC entered into force on 2 September 1990 and Malaysia acceded to CRC on 17 February 1995. Currently, Malaysia makes reservation to article 37 which concerns, among others, the prohibition of torture, aside from other four (4) provisions, i.e., articles 2, 7, 14 and 28 paragraph 1 (a), and declared that the said provisions shall be applicable only if they are in conformity with the 	<p><u>(B) Torture</u></p> <p>(a) <u>Federal Constitution</u></p> <ul style="list-style-type: none"> The Government of Malaysia does not condone the act of torture, cruel, inhumane or degrading treatment. Although there is no express provision in the Federal Constitution on torture, cruelty, inhuman or degrading treatment of person, article 5(1) of the FC provides that no person shall be deprived of his life or personal liberty save in accordance with law. <p>(b) <u>Penal Code [Act 574]</u></p> <ul style="list-style-type: none"> The relevant provisions under the Penal Code which concerns the act or torture, cruel and inhumane treatment are as follows- <ul style="list-style-type: none"> a. Section 44 provides that “the word "injury" denotes any harm whatever illegally caused to

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	<p>Constitution, national laws and national policies of the Government of Malaysia.</p> <ul style="list-style-type: none"> Article 37 of the CRC is provided below : <p><i>“(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;</i></p> <p><i>(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;</i></p> <p><i>(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the</i></p>	<p>any person, in body, mind, reputation or property.”</p> <p>b. Section 43 states that “the word "illegal" or "unlawful" is applicable to everything which is an offence, or which is prohibited by law, or which furnishes ground for a civil action. And in respect of the word "illegal", a person is said to be "legally bound to do" whatever it is illegal in him to omit.”</p> <p>c. Section 40 (1) provides that “except in the Chapter and sections mentioned in subsections (2) and (3), the word "offence" denotes a thing made punishable by this Code.” Section 40(2) states that “in Chapter IV and in sections 71, 109, 110, 112, 114, 115, 116, 117, 187, 194, 195, 203, 211, 213, 214, 221, 222, 223, 224, 225, 327, 328, 329, 330, 331, 347, 348, 388, 389 and 445, the word "offence" denotes a thing</p>

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	<p><i>needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;</i></p> <p><i>(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action."</i></p> <ul style="list-style-type: none"> • Despite the amendment to the Child Act 2001 [Act 611] by Act A1511 which came into operation on 1 January 2017 that deleted the punishment of whipping under subsection 91(1)(g), reservation to article 37 of the CRC is retained due to imposition of corporal punishment such as caning as 	<p>punishable under this Code or under any other law for the time being in force." Section 40(3) further provides that "in sections 141, 176, 177, 201, 202, 212, 216 and 441, the word "offence" has the same meaning when the thing punishable under any other law for the time being in force is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine."</p> <p>d. Chapter XVI (Section 299 – 377E) of the Penal Code provides for "Offences Affecting the Human Body".</p> <p>e. Section 319 provides that "whoever causes bodily pain, disease or infirmity to any person is said to cause hurt."</p> <p>f. Section 331 is on voluntarily causing grievous hurt to extort confession or to compel restoration</p>

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	<p>provided under the Education Rules and Regulation (School Discipline) 1959 which is against CRC.</p>	<p>of property. It provides that “whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer, or any person interested in the sufferer, to restore or to cause the restoration of any property or valuable security, or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment for a term which may extend to ten years, and shall also be liable to fine.”</p> <p>g. Section 503 provides that “whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that</p>

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		<p>person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.” Section 506 provides the punishment for criminal intimidation whilst section 507 provides the punishment for criminal intimidation by an anonymous communication.</p> <p>(c) <u>Other domestic laws</u></p> <ul style="list-style-type: none"> • In addition, below is the list of laws which provide for corporal punishment for specific offences committed which include: <ul style="list-style-type: none"> a. Sexual Offences against Children Act 2017 [Act 792]; b. Child Act 2001 [Act 611];

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		<p>c. Dangerous Drugs Act 1952 [Act 234];</p> <p>d. Kidnapping Act 1961 [Act 365]; and</p> <p>e. Education Rules and Regulation (School Discipline) 1959.</p> <p>(d) <u>States' Syariah Criminal Offences Acts/Enactments and States' Syariah Criminal Procedure Acts/Enactments</u></p> <ul style="list-style-type: none"> • States' Syariah Criminal Offences Acts/Enactments and States' Syariah Criminal Procedure Acts/Enactments that provide for corporal punishment for the commission of specific offences are in breach of Article 1 of CAT and thus should be amended such as:

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		<p>a. prostituting wife or child and illicit intercourse under sections 47 and 48 of the Crimes (Syariah) Enactment 1992 of Perak;</p> <p>b. incest, prostitution, sexual intercourse out of wedlock, <i>liwat</i> (sexual relations between male persons) and <i>musahaqah</i> (sexual relations between female persons) under sections 20, 21, 23, 25 and 26 of the Syariah Criminal Offences Enactment 1997 of Johor;</p> <p>c. <i>zina</i>, an act preparatory to the commission of <i>zina</i>, <i>liwat</i> and intoxicating drinks under sections 11, 12, 14 and 25 of the Syariah Criminal Code 1985 of Kelantan; and</p> <p>d. false doctrine, incest, an act preparatory to prostitute, prostituting wife or child and <i>musahaqah</i> under sections 4, 24, 25, 27 and 30</p>

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		<p>of the Syariah Criminal Offences (Takzir) (Terengganu) Enactment 2001.</p>
	<p><u>Conclusion</u></p> <p>Based on the above, it is found that for the crimes of slavery and torture, none of the domestic legislation or international conventions which Malaysia are party to provides for the application of universal jurisdiction.</p>	
3.	<p><u>(A) War Crimes</u></p> <p>Malaysia also is a State Party to the 1949 Geneva Conventions namely –</p> <ul style="list-style-type: none"> (a) Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field; (b) Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea; (c) Geneva Convention Relative to the Treatment of Prisoners of War; and 	<p><u>(A) War Crimes</u></p> <p>Malaysia has enacted the Geneva Conventions Act 1962 [Act 512], which reflects the obligations of the abovementioned Conventions. Subsections 3(1) and (2) of Act 512 provides that –</p> <p><i>“3. (1) Any person, whatever his citizenship or nationality, who, whether in or outside Malaysia, commits, or aids, abets or procures the commission by any other person of any such grave breach of any of the scheduled conventions as is referred to in the following articles respectively of those conventions:</i></p>

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	(d) Geneva Convention Relative to the Protection of Civilian Persons in Time of War.	<p>(a) <i>article 50 of the convention set out in the First Schedule¹;</i></p> <p>(b) <i>article 51 of the convention set out in the Second Schedule²;</i></p> <p>(c) <i>article 130 of the convention set out in the Third Schedule³; or</i></p> <p>(d) <i>article 147 of the convention set out in the Fourth Schedule⁴, shall be guilty of an offence and shall, on conviction,</i></p> <p style="padding-left: 40px;"><i>(i) in the case of such a grave breach as aforesaid involving the wilful killing of a person protected by the convention in question, be sentenced to imprisonment for life;</i></p>

¹ Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field.

² Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea.

³ Geneva Convention Relative to the Treatment of Prisoners of War

⁴ Geneva Convention Relative to the Protection of Civilian Persons in Time of War

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		<p><i>(ii) in the case of any other such grave of breach as aforesaid, be liable to imprisonment for a term not exceeding fourteen years.</i></p> <p><i>(2) In the case of an offence under this section committed outside Malaysia, a person may be proceeded against charged, tried and punished therefor in any place in Malaysia as if the offence had been committed in that place, and the offence shall, for all purposes incidental to or consequential on the trial or punishment thereof, be deemed to have been committed in that place.”.</i></p>
	<p><u>(B) Crimes against humanity</u></p> <p>Malaysia had withdrawn from ratifying the Rome Statute of the International Criminal Court in 2019.</p>	<p><u>(B) Crimes against humanity</u></p> <p>1. Malaysia does not have specific legislation on crimes against humanity. Nevertheless, a number of acts reflect the elements stipulated in Article 7 of the Rome</p>

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		<p>Statute such as murder, enslavement, torture, rape are prescribed under the Act 574 and Anti Trafficking in Persons and Smuggling of Migrants Act 2007 [Act 670].</p> <p>2. For ease of reference, Article 7 of the Rome Statute of the International Criminal Court is reproduced as follows:</p> <p><i>“Article 7 - Crimes Against Humanity</i></p> <p><i>1. For the purpose of this Statute, ‘crime against humanity’ means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:</i></p> <ul style="list-style-type: none"> <i>a. Murder;</i> <i>b. Extermination;</i> <i>c. Enslavement;</i> <i>d. Deportation or forcible transfer of population;</i>

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		<p><i>e. Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;</i></p> <p><i>f. Torture;</i></p> <p><i>g. Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;</i></p> <p><i>h. Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;</i></p> <p><i>i. Enforced disappearance of persons;</i></p> <p><i>j. The crime of apartheid;</i></p> <p><i>k. Other inhumane acts of a similar character intentionally causing great suffering, or</i></p>

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		<p style="text-align: center;"><i>serious injury to body or to mental or physical health.”.</i></p>
	<p><u>(C) Genocide</u></p> <p>Malaysia had acceded the Convention on the Prevention and Punishment of the Crime of Genocide on 28 December 1994 (“Convention on the Crime of Genocide”). Article II of the Convention on the Crime of Genocide provides that genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:</p> <ul style="list-style-type: none"> (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; 	<p><u>(C) Genocide</u></p> <ol style="list-style-type: none"> 1. Although Malaysia had acceded to the Convention on the Crime of Genocide, as to date, Malaysia has yet to enact its domestic legislation/national legal rules on genocide. 2. Even though Malaysia does not have specific legislation on crime of genocide, some of the offences as stipulated under the Convention on the Crime of Genocide such as murder, causing hurt are prescribed under the section 302 and 324 of the Act 574. Section 302 and Section 324 of the Act 574 are respectively as follows: <p style="text-align: center;"><i>“Punishment for murder</i></p>

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	<p>(d) Imposing measures intended to prevent births within the group;</p> <p>(e) Forcibly transferring children of the group to another group.</p>	<p>302. <i>Whoever commits murder shall be punished with death.</i></p> <p><i>Voluntarily causing hurt by dangerous weapons or means</i></p> <p>324. <i>Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or any scheduled weapon as specified under the Corrosive and Explosive Substances and Offensive Weapons Act 1958, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment</i></p>

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		<i>for a term which may extend to ten years or with fine or with whipping or with any two of such punishments.”.</i>
Prosecution	<p><u>(A) Extra-territorial criminal jurisdiction</u></p> <p>In relation to the exercise of extra-territorial criminal jurisdiction on the basis of international treaty obligations, Malaysia is a party to the Convention on Offences and Certain other Acts Committed on Board Aircraft (Tokyo Convention), the Convention for the Suppression of Unlawful Seizure of Aircraft (The Hague Hijacking Convention) and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal Convention).</p>	<p><u>(A) Extra-territorial criminal jurisdiction</u></p> <p>1. For Malaysia, any exercise of extra-territorial criminal jurisdiction <u>must be based on enabling domestic law.</u></p> <p>For example –</p> <ul style="list-style-type: none"> • in relation to terrorism offences and offences against the State, section 4 of the Penal Code of Malaysia established the extra-territorial application of the offences. • in relation to other offences such as trafficking in person (section 4 of the Anti-Trafficking In Persons and Anti-Smuggling of Migrants Act 2007), computer crimes (section 9 of the Computer Crimes Act 1997), money laundering

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		<p>(section 82 of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001), communication and multimedia offences (section 4 of the Communications and Multimedia Act 1998), aviation offences (sections 3, 7, 8 and 9 of the Aviation Offences Act 1984) and trade of strategic items (section 4 of the Strategic Trade Act 2010), the provisions of the relevant enabling domestic laws provide such extra-territorial jurisdiction to Malaysia.</p> <p>2. Malaysia also wishes to highlight that the exercise of extra-territorial criminal jurisdiction is applied in section 127A of the Criminal Procedure Code (CPC) which among others, confers the power to the Attorney General of Malaysia to certify whether an offence under any Malaysian laws which is committed out of Malaysia has threatened Malaysia's security in order to confer extra-territorial jurisdiction to deal with such</p>

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		<p>offence as if it had been committed at any place within Malaysia.</p> <p>3. With regard to the Conventions which Malaysia are Party to, in order to fulfill the obligations under the aforementioned Conventions, Malaysia enacted the Aviation Offences Act 1984 where offences like hijacking of an aircraft is an offence in Malaysia regardless of the nationality of the accused, the State of registration of the aircraft and whether or not the aircraft is in Malaysia or elsewhere.</p>

Government of Malaysia

13 March 2020