

REPUBLIC OF KOREA
PERMANENT MISSION TO THE UNITED NATIONS

MUN/260/22

13 May 2022

The Permanent Mission of the Republic of Korea to the United Nations presents its compliments to the United Nations Office of Legal Affairs (OLA) and, with reference to the latter's Note Verbale (Reference: LA/COD/59/1) dated January 10, 2022, has the honour to submit the following enclosed information and observations on the scope and application of universal jurisdiction.

The Permanent Mission of the Republic of Korea 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.

Enclosed: As Stated

United Nations
Office of Legal Affairs
New York

Republic of Korea

I. Basic Legal Rule

1. Relevant national legal rule

The Republic of Korea has incorporated the principle of universal jurisdiction into domestic legislation by allowing prosecution of certain crimes that did not take place in the territory of the Republic of Korea by foreign nationals.

The Criminal Act extends criminal liability under universal jurisdiction for crimes of trafficking in persons to implement the United Nations Convention against Transnational and Organized Crime by amending Article 296-2 (Universality) of the Criminal Act in 2013.

Criminal Act Article 296-2 (Universality)

Articles 287 through 292 and 294 shall apply to aliens who commit crimes outside the territory of the Republic of Korea.

* Article 287 (Kidnapping or Abduction of Minors), Article 288 (Kidnapping, Abduction, etc. for Purpose of Indecent Acts, etc.), Article 289 (Trafficking in Persons), Article 290 (Inflicting or Causing Another's Bodily Injury while in Kidnapping, Abduction, Trafficking in Persons, Transportation, etc.), Article 291 (Killing Another or Causing Death of Another while in Kidnapping, Abduction, Trafficking in Persons, Transportation, etc.), Article 292 (Receiving, Harboring, etc. of Person Kidnapped, Abducted, Trafficked, or Transported), Article 294 (Attempts)

The Republic of Korea also enacted the Act on Punishment of Crimes under Jurisdiction of the International Criminal Court to implement the Rome Statute of the International Criminal Court in 2011, the Act on Punishment for Damaging Ships and Sea Structures to implement the United Nations Convention on the Law of the Sea in 2021, and the Act on Counter-terrorism for the Protection of Citizens and Public Security to implement the related resolutions of the United Nations Assembly and Security Council in 2021. The universality clauses provide a basis for the exercise of universal jurisdiction to related crimes when these have been committed abroad by foreign nationals.

Act on Punishment of Crimes under Jurisdiction of the International Criminal Court Article 3 (Scope of Application)

(5) This Act shall apply to any foreigner who commits the crime of genocide, etc. outside the territory of the Republic of Korea and resides in the territory of the

Republic of Korea.

* Article 8 (Crime of Genocide), Article 9 (Crimes against Humanity), Article 10 (War Crimes against Persons), Article 11 (War Crimes against Property and Rights), Article 12 (War Crimes against Humanitarian Activities, Distinctive Emblems, etc.), Article 13 (War Crimes Using Forbidden Means), Article 14 (War Crimes Using Forbidden Weapons), Article 15 (Dereliction of Duties by Commanders, etc.), Article 16 (Offences against Administration of Justice)

Act on Punishment for Damaging Ships and Sea Structures Article 3 (Scope of Application to foreigners)

3. A foreigner who commits an offense specified in any provision of Articles 5 through 13 outside of the territory of the Republic of Korea, but stays within the territory of the Republic of Korea.

* Article 5 (Violence, Threat, Battery, and Murder), Article 6 (Seizure of Ships), Article 7 (Destruction of Ships), Article 8 (Destruction, etc. of Equipment or Facilities Related to Operation of Ships), Article 9 (Installation or Loading of Dangerous Objects), Article 10 (Communication of False Information), Article 11 (Attempts), Article 12 (Murder, Manslaughter or Injury by Battery during Seizure of Ship), Article 13 (Criminal Coercion)

Act on Counter-terrorism for the Protection of Citizens and Public Security Article 19 (Universality)

A foreigner who commits a crime provided for in Article 17 outside the territory of the Republic of Korea shall also be subject to the application of domestic Acts.

* Article 17 (Crimes of Forming Terrorist Groups)

2. Judicial Practice

The Supreme Court applied the Aviation Safety Act to a case of hijacking of foreign aircraft by foreign nationals. The Supreme Court stated that the courts of the Republic of Korea can exercise jurisdiction as a landing country with the country of aircraft registration considering the Convention on Offences and Certain other Acts Committed on Board Aircraft and the Convention for the Suppression of Unlawful Seizure of Aircraft. (1984. 5. 22. 84do39)

II. Conditions, restrictions of limitations to the exercise of jurisdiction - Constitutional and domestic legal framework

The Act on Punishment of Crimes under Jurisdiction of the International Criminal Court Article 3 (5) and the Act on Punishment for Damaging Ships and Sea Structures Article 3, 3 conditions their universal jurisdiction on the presence of the perpetrator in the territory of the Republic of Korea after the commission of the alleged offence. Therefore, investigation authorities will not open an investigation where the alleged perpetrator is not present in the country or where the alleged perpetrator has not been identified.

Provisions of Korean legislation exercising universal jurisdiction

Crimes or category of crimes	Legislation (Penal provisions)	Relevant treaties
Trafficking in persons	Criminal Act Article 296-2 (Articles 287 through 292 and 294)	United Nations Convention against Transnational and Organized Crime

Crime of Genocide	Act on Punishment of Crimes under Jurisdiction of the International Criminal Court Article 3 (5) (Article 8)	Rome Statute of the International Criminal Court
Crimes against Humanity	Act on Punishment of Crimes under Jurisdiction of the International Criminal Court Article 3 (5) (Article 9)	Rome Statute of the International Criminal Court
War Crimes against Persons	Act on Punishment of Crimes under Jurisdiction of the International Criminal Court Article 3 (5) (Article 10)	Rome Statute of the International Criminal Court
War Crimes against Property and Rights	Act on Punishment of Crimes under Jurisdiction of the International Criminal Court Article 3 (5) (Article 11)	Rome Statute of the International Criminal Court
War Crimes against Humanitarian Activities, Distinctive Emblems, etc.	Act on Punishment of Crimes under Jurisdiction of the International Criminal Court Article 3 (5) (Article 12)	Rome Statute of the International Criminal Court
War Crimes Using Forbidden Means	Act on Punishment of Crimes under Jurisdiction of the International Criminal Court Article 3 (5) (Article 13)	Rome Statute of the International Criminal Court
War Crimes Using Forbidden Weapons	Act on Punishment of Crimes under Jurisdiction of the International Criminal Court Article 3 (5) (Article 14)	Rome Statute of the International Criminal Court
Dereliction of Duties by Commanders, etc.	Act on Punishment of Crimes under Jurisdiction of the International Criminal Court Article 3 (5) (Article 15)	Rome Statute of the International Criminal Court
Offences against	Act on Punishment of	Rome Statute of the

Administration of Justice	Crimes under Jurisdiction of the International Criminal Court Article 3 (5) (Article 16)	International Criminal Court
Piracy	Act on Punishment for Damaging Ships and Sea Structures Article 3, 3 (Articles 5 through 13)	United Nations Convention on the Law of the Sea
Terrorism	Act on Counter-terrorism for the Protection of Citizens and Public Security Article 19 (Article 17)	Related resolutions of the United Nations Assembly and Security Council