

**PERMANENT MISSION OF IRELAND
TO THE UNITED NATIONS
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The Permanent Mission of Ireland to the United Nations presents its compliments to the Office of Legal Affairs and has the honour to refer to Note Verbale LA/COD/58/1, and to General Assembly Resolution 77/111 requesting information and observations from Member States on “the scope and application of the principle of universal jurisdiction”.

The Permanent Mission of Ireland has the honour to convey the enclosed submission by Ireland on this matter, and takes this opportunity to reiterate to the Office of Legal Affairs of the United Nations the assurances of its highest consideration.

UN Office of Legal Affairs

United Nations, New York

New York

1 June 2023

COMMENTS BY IRELAND
ON THE SCOPE AND APPLICATION OF UNIVERSAL JURISDICTION

I. The scope of universal jurisdiction¹

Ireland considers that universal jurisdiction allows a State to assert jurisdiction over an offence irrespective of the place in which it was committed, the nationality of the accused, the nationality of the victim, or any other link with the prosecuting State.

II. The application of universal jurisdiction in Ireland

The exercise of extra-territorial jurisdiction of any type – including universal jurisdiction – is exceptional in Ireland. The approach to extra-territorial jurisdiction is framed by Article 29.8 of Bunreacht na hÉireann (the Constitution of Ireland), which provides that the State “may exercise extra-territorial jurisdiction in accordance with the generally recognised principles of international law.” While legislation with extra-territorial effect may, therefore, be enacted, the Irish courts have construed that laws passed in Ireland do not have extra-territorial effect unless this is a necessary implication of the provision in question, or expressly set out therein.

The exercise of universal jurisdiction has remained limited under Irish law to date.

i. Universal jurisdiction in domestic law

a. Piracy

Piracy *jure gentium* is an offence under common law in Ireland. While Ireland may exercise universal jurisdiction for piracy offences, there have been no prosecutions for piracy since the foundation of the modern Irish State.

¹ *Note:* these submissions relate to universal *criminal* jurisdiction only.

b. Grave breaches of the Geneva Conventions and Additional Protocol I

The Geneva Conventions Act 1962 was adopted to implement the Geneva Conventions in Ireland. The Geneva Conventions (Amendment) Act 1998 amends the 1962 Act to reflect the ratification by Ireland of the two Additional Protocols of 1977. Section 3 of the 1962 Act, as amended, provides that:

“(1) Any person, whatever his or her nationality, who, whether in or outside the State, commits or aids, abets or procures the commission by any other person of a grave breach of any of the Scheduled Conventions or Protocol I shall be guilty of an offence...”

The International Criminal Court Act was enacted in 2006 and makes it an offence in domestic law to commit within the State any act constituting genocide, a crime against humanity or a war crime as defined by the Rome Statute. Under the Act, jurisdiction is asserted over any such act committed within Ireland’s territory or where the alleged perpetrator is an Irish national (Sections 12(1) and 12(3) of the ICC Act 2006). Section 12(2) of the ICC Act 2006, however, also asserts universal jurisdiction over war crimes constituting grave breaches of the Geneva Conventions.

c. Torture

The Criminal Justice (United Nations Convention Against Torture) Act 2000 gives effect to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Ireland (UNCAT Act 2000). Sections 2 and 3 of the Act extend universal jurisdiction to torture, as follows:

“2. (1) A public official, whatever his or her nationality, who carries out an act of torture on a person, whether within or outside the State, shall be guilty of the offence of torture.

(2) A person, whatever his or her nationality, other than a public official, who carries out an act of torture on another person, whether within or outside the State, at the instigation of, or with the consent or acquiescence of, a public official shall be guilty of the offence of torture.

3.—*A person, whatever his or her nationality, whether within or outside the State, who—*

(a) attempts to commit or conspires to commit the offence of torture, or

(b) does an act with the intent to obstruct or impede the arrest or prosecution of another person, including a person who is a public official, in relation to the offence of torture,

shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for life.”

ii. Procedural requirements under Irish law

a. Presence of the perpetrator

Irish domestic law does not allow for trials *in absentia*. The exercise of universal jurisdiction – as with any other type of jurisdiction – in Ireland is, therefore, conditional upon the presence of the perpetrator within the territory of Ireland.

b. Prosecutorial discretion

Domestic prosecutions of serious offences in Ireland are a matter for the Director of Public Prosecutions (DPP), a statutory office independent of the Government.

Under Section 3 of the Prosecution of Offences Act 1974, Section 9(2) of the ICC Act 2006 and Section 5(2) of the UNCAT Act 2000, the consent of the DPP is required to institute proceedings against a person who has been charged in relation to ICC offences and/or torture.

In a limited number of cases relating to prosecutions under the Geneva Conventions Act 1962, as amended, the consent of the Attorney General may also be required to further proceedings after a person has been charged.

Annex I

Relevant Irish legislation

Offence	Treaty	Implementing legislation
Grave breaches of the Geneva Conventions	Geneva Conventions I [Article 49], II [Article 50], III [Article 129] and IV [Article 146].	Section 3 of the Geneva Conventions Act 1962, as amended by the Geneva Conventions (Amendment) Act 1998. Section 12(2) of the ICC Act 2006.
Torture	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1994 [Article 5].	Sections 2 and 3 of the Criminal Justice (United Nations Convention Against Torture) Act 2000.
Terrorism: offence of unlawful acts against aircraft	Hague Convention for the Suppression of Unlawful Seizure of Aircraft 1970 [Article 7]. Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation 1971 [Article 7]. Montreal Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation 1988 [Article III]. European Convention on the Suppression of Terrorism [Article 7].	Sections 2 and 12 of the Air Navigation and Transport Act 1973. Sections 2, 3 and 5 of the Air Navigation Act 1975. Sections 3, 5 and 6 of Extradition (European Convention on the Suppression of Terrorism) Act 1987.
Terrorism: offence of hostage-taking	International Convention Against the Taking of Hostages 1981 [Article 5(2) and Article 8]. European Convention on the Suppression of Terrorism 1994 [Article 7].	Sections 6, 9 and 43 of the Criminal Justice (Terrorist Offences) Act 2005. Sections 3, 5 and 6 of Extradition (European Convention on the Suppression of Terrorism) Act 1987.
Terrorism: offence against internationally protected persons	Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents 1973 [Article 3(2) and Article 7]. European Convention on the Suppression of Terrorism 1994 [Article 7].	Sections 6, 11 and 43 of the Criminal Justice (Terrorist Offences) Act 2005. Sections 3, 5 and 6 of Extradition (European Convention on the Suppression of Terrorism) Act 1987.

Terrorism: offence of terrorist bombing	International Convention for the Suppression of Terrorist Bombings 1997 [Article 6(4) and Article 8(1)]. European Convention on the Suppression of Terrorism 1994 [Article 7].	Sections 6, 10 and 43 of the Criminal Justice (Terrorist Offences) Act 2005. Sections 3, 5 and 6 of Extradition (European Convention on the Suppression of Terrorism) Act 1987.
Terrorism: offence of financing terrorism	International Convention for the Suppression of the Financing of Terrorism 1999 [Article 7(4) and Article 10(1)].	Sections 6, 13 and 43 of the Criminal Justice (Terrorist Offences) Act 2005. Sections 3, 5 and 6 of Extradition (European Convention on the Suppression of Terrorism) Act 1987.
Terrorism: seizing or exercising control over a ship, performing violence against persons on board a ship, destroying a ship, causing damage to a ship etc.	Rome Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation 1988 [Article 6(4) and 10(1)]. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf 1988 [Article 3]	Sections 3 and 7 of the Maritime Security Act 2004.
Drug Trafficking Offences	Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 [Article 6(9)].	Section 31 and 36 of the Criminal Justice Act 1994.
Corruption Offences	Convention on Combating Bribery of Foreign Public Officials in International Business Transactions 1997 [Article 10(3)]. Criminal Law Convention on Corruption 1999 [Article 27(5)].	Section 7 of the Prevention of Corruption (Amendment) Act 2001.
Offences relating to nuclear material	Convention on the Physical Protection of Nuclear Material 1979 [Article 10].	Sections 38 and 39 of the Radiological Protection Act 1991.