

United States Submission
Information and Observations on the Scope and Application of the
Principle of Universal Jurisdiction

The United States welcomes this opportunity to submit further information and observations on the scope and application of universal jurisdiction, including information on recent amendments to U.S. domestic legal rules and recent judicial practice. In this connection, the United States notes that its last written submission providing information and observations on this topic was in 2010. The United States appends its 2010 submission and reaffirms the views set forth therein, as well as in oral submissions before the Sixth Committee on this topic.¹ The United States recalls that jurisdiction does not imply the absence of immunity and submits that universal jurisdiction must be exercised in a manner that is consistent with applicable privileges and immunities under customary international law.

War Crimes Act

In January 2023, President Biden signed into law the Justice for Victims of War Crimes Act,² which amended the 1996 War Crimes Act, codified at 18 U.S.C. § 2441. This amendment to the United States' War Crimes Act expands jurisdiction over the offenses listed in the act to include any offender who is present in the United States, regardless of the nationality of the victim or offender. Before prosecuting an offense under the War Crimes Act, Department of Justice officials must certify that such a prosecution is in the "public interest and necessary to secure substantial justice."³

¹ See, e.g., Remarks at the 78th General Assembly Sixth Committee, Agenda Item 86: Scope and Application of the Principle of Universal Jurisdiction, Elizabeth Grosso (Acting Deputy Legal Adviser), October 12, 2023, *available at*:

https://www.un.org/en/ga/sixth/78/pdfs/statements/universal_jurisdiction/12mtg_us.pdf.

² P.L. 117-351, 136 Stat. 6265 (Jan. 5, 2023).

³ Department of Justice officials must also consider additional certification factors (e.g., whether the offender may be removed for prosecution in another jurisdiction, or potential

Recent U.S. Judicial Practice⁴

In 2020, the Department of Justice charged Michael Sang Correa, a Gambian national living in the United States, in the U.S. district court for the district of Colorado, with six counts of torture—one for each of six alleged victims—stemming from his alleged infliction of severe physical pain and suffering on individuals in his custody and control in The Gambia in 2006.⁵ The charges were brought under 18 U.S.C. §§ 2340-2340A, the U.S. federal statute implementing certain obligations under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, U.N. Doc. A/RES/39/46, 1465 U.N.T.S. 85, S. Treaty Doc. No. 100-20 (Dec. 10, 1984), which specifically establishes jurisdiction over individuals present in the United States for covered offenses.⁶ On February 28, 2024, the district court denied Correa’s motions to dismiss (no challenges to the court’s jurisdiction having been raised), and the trial is scheduled for later in 2024.

In 2013, the U.S. Court of Appeals for the Fourth Circuit, in *United States v. Shibin*, 722 F.3d 233 (4th Cir. 2013), upheld the conviction of Mohammad Saaili Shibin, a Somali national, for, *inter alia*, aiding and abetting the piracy of a German merchant ship, crewed by nationals of Bangladesh, India, and Ukraine, through his actions, principally as a negotiator, while located in Somalia and onboard the vessel while it was located in Somali waters, in violation of 18 U.S.C. §§ 1651 and

adverse consequences for U.S. nationals, servicemembers or employees) in connection with potential prosecutions based solely the offender’s presence in the United States.

⁴ The United States has not conducted a fully comprehensive review of U.S. practice.

⁵ See <https://www.justice.gov/opa/pr/gambian-man-indicted-torture-charges>. See also *United States v. Correa*, 2024 WL 839360 (D.Co. Feb. 28, 2024). Correa was also charged with one count of conspiracy to commit torture pursuant to 18 U.S.C. § 2340A(c).

⁶ As noted in the United States’ 2010 submission on this topic, while various federal criminal statutes provide U.S. courts with jurisdiction over certain serious offenses even when there is no direct link between the offense and the United States other than the alleged offender’s presence in the United States, many of these statutes reflect the jurisdictional provisions of international terrorism and other treaties to which the United States is a party. But there is a small subset of offenses, “crimes like piracy, genocide and torture - for which the authority to exercise such broad jurisdiction derives, at least in part, from recognition of the offense as a universal crime under customary international law.” “United States Submission, Information and Observations on the Scope and Application of the Principle of Universal Jurisdiction,” (May 4, 2010).

2. The court found that Shibin's conduct, although it did not occur on the high seas, amounted to an act that intentionally facilitated piracy, and thus was violative of U.S. and international law, as reflected in Article 101(c) of the UN Convention on the Law of the Sea, and further that the lower court's jurisdiction over this offense arose from the universal jurisdiction applicable to the crime of piracy.

**UNITED STATES MISSION TO THE UNITED NATIONS
NEW YORK**

May 4, 2010

The United States Mission to the United Nations presents its compliments to the United Nations and has the honor to refer to the Secretariat's note LA/COD/59 dated January 8, 2010, regarding a request for information and observations from Governments on certain issues regarding the topic of universal jurisdiction as contemplated by the General Assembly in resolution 64/117. The Government of the United States hereby presents its submission on that topic.

The United States Mission avails itself of this opportunity to renew to the United Nations the assurances of its highest consideration.

Enclosure

DIPLOMATIC NOTE

United States Submission Information and Observations on the Scope and Application of the Principle of Universal Jurisdiction

The United States welcomes this opportunity to submit further information and observations on the scope and application of universal jurisdiction, including information on relevant applicable international treaties, U.S. domestic legal rules and judicial practice.

For purposes of this discussion, the United States understands universal jurisdiction to refer to the assertion of criminal jurisdiction by a State for certain grave offenses, where the State's only link to the particular crime is the presence in its territory of the alleged offender. Under this principle, jurisdiction for the offense would be established regardless of the location in which the offense took place, the nationality of either the victim or the perpetrator, or the effect of the crime on the State exercising jurisdiction.

Various federal criminal statutes provide U.S. courts with jurisdiction over certain serious offenses even when there is no direct link between the offense and the United States other than the alleged offender's presence in the United States.¹ Many of these statutes reflect the jurisdictional provisions of international terrorism and other treaties to which the United States is a party, but the statutes also cover a small subset of offenses – crimes like piracy, genocide and torture – for which the authority to exercise such broad jurisdiction derives, at least in part, from recognition of the offense as a universal crime under customary international law.² For example, shortly after World War II, genocide came to be viewed as a crime of universal concern with respect to which any state may proscribe the offense and prosecute offenders no matter where the crime occurs and regardless of the nationality of the offender or victim(s). Similarly, maritime piracy is one of the oldest recognized universal crimes. Thus, as part of its efforts to combat piracy off the coast of Somalia, the United States has strongly encouraged all states to ensure that they adequately criminalize piracy under their national laws and empower their courts with jurisdiction to prosecute cases even where the specific attack did not have a direct nexus to their state.

¹ Although the precise statutory language varies, this is most often expressed in statutory reference to the defendant being "present in" or "found in" the United States.

² See 18 U.S.C. § 1651 (Piracy); 18 U.S.C. § 1091 (Genocide); 18 U.S.C. § 2340A (Torture).

More frequently, legislation establishing broad U.S. criminal jurisdiction can be traced to U.S. treaty obligations.³ For example, U.S. domestic law criminalizes a range of offenses covered by the various international counterterrorism conventions to which the United States is a party, even where the only link between the offense and the United States is the presence of the alleged offender in the United States. These statutes include offenses covered by the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, the International Convention on the Taking of Hostages, the International Convention for the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, the Convention for the Suppression of Unlawful Seizure of Aircraft, the International Convention for the Suppression of Terrorist Bombings, and the International Convention for the Suppression of the Financing of Terrorism, among others. In this context it is useful to note that most of the international counterterrorism conventions exclude from their scope offenses committed exclusively within a single state, where the offender and the victims are nationals of that state, the alleged offender is found in the territory of that state, and no other traditional basis for another state to assert jurisdiction would apply.

In practice, although we have not conducted a fully comprehensive review of U.S. practice, we are aware of few examples of U.S. prosecutions based solely on the principle of universal jurisdiction, where there is no other link between the United States and the offense charged except that the alleged offender is present before the court. In 2003, the U.S. district court in Hawaii convicted a Chinese national of stabbing a Chinese captain and first officer of a Taiwanese-owned, Seychelles-flagged, all Chinese-crewed fishing vessel, while in international waters. After the fishing vessel made its way into U.S. waters, the defendant was indicted under the U.S. statute implementing the

³ Such legislation includes: 18 U.S.C. § 32 (Destruction of aircraft or aircraft facilities); 18 U.S.C. § 37 (Violence at international airports); 18 U.S.C. § 112, 878, 1116 (Protection of foreign officials, official guests, and internationally protected persons); 18 U.S.C. § 831 (Prohibited transactions involving nuclear materials); 18 U.S.C. § 1203 (Hostage taking); 18 U.S.C. § 2280 (Violence against maritime navigation); 18 U.S.C. § 2281 (Violence against maritime fixed platforms); 18 U.S.C. § 2332f (Bombings of places of public use, government facilities, public transportation systems and infrastructure facilities); 49 U.S.C. § 46502 (Aircraft Piracy). Broad criminal jurisdiction for some of these crimes may also reflect customary international law based on relevant state practice and opinio juris.

Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation.⁴

In two other well-known cases, although U.S. law would have permitted prosecution based solely on the principle of universality and the offender's presence in the United States, there were alternative bases for jurisdiction. For example, in 2008, a U.S. court convicted Chuckie Taylor, son of former Liberian president Charles Taylor, of torture and related crimes committed in Liberia between 1999 and 2003 under his father's regime. Although the U.S. torture statute⁵ provides jurisdiction regardless of the nationality of the offender based on the offender's presence in the United States, Taylor is also a U.S. citizen. In 1998, Ramzi Yousef was convicted of a number of charges relating to his role in the 1993 bombing of the World Trade Center in New York City and conspiracy to bomb a series of U.S. commercial airliners in Southeast Asia in 1994 and 1995. Among the many charges against him for his role in plotting and executing attacks on the United States, Yousef also was convicted of placing and causing the detonation of a bomb aboard Philippines Airlines Flight 434, while en route from Manila to Japan. In the final analysis, the appellate court determined that the protective principle provided the basis for U.S. jurisdiction.

In the U.S. justice system, federal criminal prosecutions must be brought by federal prosecutors working within the Department of Justice. Private parties may not file criminal complaints with the courts, and judges may not initiate criminal investigations. In addition, prosecution for a criminal offense must be based on a specific U.S. criminal statute that defines the offense as a crime under U.S. law.

As a general matter, the United States would note that universal jurisdiction is a basis for jurisdiction only and does not itself imply an obligation to submit a case for potential prosecution. In this sense, the principle of universal jurisdiction is distinct from the treaty-based principle of *aut dedere aut judicare*.

When considering whether to exercise universal jurisdiction, even if customary international law or a treaty regime recognizes the state's authority to assert jurisdiction over an offense, there are often prudential or other reasons why the United States refrains from exercising such jurisdiction. For

⁴ 18 U.S.C. § 2280.

⁵ 18 U.S.C. § 2340A.

example, the United States may appropriately defer asserting jurisdiction in favor of a state on whose territory the crime was committed, as such crimes injure the community where they have been perpetrated in particular, the bulk of the evidence will usually be found in that territory, and prosecution within the territorial state may contribute to the strengthening of rule of law institutions in that state.

In conclusion, a number of U.S. statutes provide for jurisdiction where the only tangible link to the particular crime is the alleged offender's presence in the United States. Although prosecutions under these authorities and circumstances are rare, the United States believes that such jurisdiction, when prudently applied, with appropriate safeguards against inappropriate application, and with due consideration for the jurisdiction of other states, can be an important tool for ensuring that perpetrators of the most serious crimes are brought to justice and that the United States does not provide a safe haven for such individuals. The United States looks forward to learning more about other Member States' practice with respect to this jurisdictional principle and its effective and appropriate implementation.