



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 below¹, 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

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 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 United Kingdom 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 Annex 1 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.

On 13 November 2019, the United Kingdom Supreme Court gave judgment in the case of *R v TRA* [2019] UKSC 51, which concerned the correct interpretation of the term "*person acting in an official capacity*" in section 134(1) of the Criminal Justice Act 1988 (the CJA). Section 134 of the CJA implements in United Kingdom law certain obligations of the United Kingdom pursuant to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 (UNCAT). The Supreme Court considered the implications of universal jurisdiction as part of

its means of interpreting UNCAT. The relevant comments are included in Annex 2 to this letter.

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
23 March 2020

that the torturer is not directly connected with any public authority but that the authorities have hired him to help gather information or have at least accepted or tolerated his act. All such situations where the responsibility of the authorities is somehow engaged are supposed to