

## **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.<sup>1</sup> 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.<sup>2</sup> 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.

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<sup>1</sup> 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.

<sup>2</sup> 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.<sup>3</sup> 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

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<sup>3</sup> 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.<sup>4</sup>

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 statute<sup>5</sup> 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

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<sup>4</sup> 18 U.S.C. § 2280.

<sup>5</sup> 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.