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*The following is a translation into English of selected parts of the original report. It **does not contain the detailed 20 country reports**, but only the **Introduction**, the **Comparative remarks**, the **Overview tables** as well as the **Brief synopses for the individual legal systems**. **The original report, containing the 20 country reports, is available online at the website of the SICL.**¹ It has been prepared with reference to the resources available to the SICL. In order to provide a comprehensive and meaningful comparison of the different jurisdictions, the questions treated in this report focus on the main aspects of criminal responsibility for acts committed abroad. A number of jurisdictions do not apply a general rule with regard to the extra-territoriality of criminal responsibility, but rather regulate this issue according to the particular criminal offence. Accordingly, the report has limited the scope of its enquiry by focusing specifically on acts of corruption and sexual offences. With regard to the immunity of UN personnel as well as regulations on the criminal responsibility of military personnel in the different countries studied, it was in some cases not possible to obtain reliable information, especially on the question of immunity. Accordingly, the report outlines the basic information available within the context of criminal law.*²

INTRODUCTION

Upon request by the Federal Department of Foreign Affairs (FDFA), the Swiss Institute of Comparative Law (SICL) has prepared an independent report comparing provisions in different national legislations on criminal liability for offences committed abroad and criminal responsibility for offences committed while on United Nations missions abroad. For the purposes of this comparison, **the SICL examined the legal systems of twenty states, namely the ten top troop-contributing countries and the ten top providers of financial contributions for peacekeeping operations**. The countries in question are Australia, Bangladesh, Burkina Faso, Canada, China, Ethiopia, France, Germany, Ghana, India, Italy, Japan, Nepal, Pakistan, Russian Federation, Rwanda, Senegal, Spain, the United Kingdom, and the United States of America.

The SICL's examination of these legal systems covered the following points: **Provision in national legislation for the prosecution of criminal offences committed abroad, active personality principle, passive personality principle, universal jurisdiction, double criminality, limitation to certain types of crimes, requirement for a particular level of severity, special regulations with regard to criminal responsibility of UN personnel, and general regulations with regard to criminal responsibility of military personnel**. The SICL has summarised the results of this examination in a section comprising comparative tables and comments. These comments also contain concluding remarks examining on the basis of legal standpoints **whether there are gaps** in criminal liability with regard to the criminal prosecution of offences committed by UN officials and experts as well as military personnel while on UN missions abroad, and **whether these gaps could be closed by a new international convention**.

¹ <https://www.isdc.ch/en/services/online-legal-information> (03.10.2017).

² The SICL is always seeking new sources of information on foreign law. For any questions or comments to this regard as well as to the present report or the SICL's work in general, please contact the SICL at info.isdc@unil.ch.

1. Comparative remarks

1.1. General rule regarding criminal liability for offences committed abroad

Subject to certain conditions, criminal offences committed abroad may be prosecuted in all of the 20 legal systems analysed in preparing this opinion, albeit with major differences in the scope of foreign offences to which this applies. Liability to prosecution depends primarily on whether the legal system in question provides for a **general rule** in this respect. By contrast, it is equally possible for a legal system to **make express provision for individual criminal offences** only, enabling such offences to also be subject to criminal prosecution if they are committed abroad, contrary to the fundamental principle of territoriality³. For example, a state may provide extraterritorial effect to all criminal offences committed by one of its citizens abroad, perhaps subject to the condition of double criminality, i.e. that the offence in question must also be punishable where it is committed. On the other hand, the state may also make exclusive provision for specific criminal offences allowing these to also be prosecuted if committed abroad, by way of exception to the territoriality principle.

What all 20 legal systems have in common is that criminal prosecution based on **universal jurisdiction is permitted only for certain criminal offences**. Any provision extending further than that would represent an excessive intervention in the sovereignty of the other states. The commonalities and differences with regard to universal jurisdiction are set out in section 1.1.3. below.

Leaving universal jurisdiction aside, however, there emerges a more mixed picture. On the one hand, seven of the legal systems examined have **no general regulations** on criminal liability for offences committed abroad, and express provision is instead required for the individual criminal offences or in precedent. This applies to the traditional common law states of **Australia, Canada, the United Kingdom (UK)** and the United States of America (**US**), as well as **Ghana**, which is strongly influenced by common law, and also **Japan** and **Nepal**. Almost as many states have chosen to adopt the opposite approach, and with the exception of criminal liability on the basis of universal jurisdiction **make only general provision** for foreign offences to be prosecuted, without any special regulations for individual criminal offences. This group comprises the five states of **Ethiopia, Burkina Faso, China, Italy** and **Russia**. However, the largest group of legal systems covered here have **mixed systems**. Legislation and case law in **Bangladesh, Germany, France, India, Pakistan, Rwanda, Senegal** and **Spain** partly have general provisions with regard to the active personality principle in particular (cf. section 1.1.1.), but at the same time also have lists of special offences where the possibility of prosecution should be subject to less stringent conditions.

1.1.1. Active personality principle

All 20 of the legal systems examined here provide for the possibility of prosecuting at least individual criminal offences if committed abroad by one of that country's citizens (**active personality principle**). Some have very extensive provisions in this regard, while in others prosecution is only possible in exceptional cases and only for specific criminal offences. As has been set out above (cf. section 1.1.), there is a difference in this respect in particular between the **civil law** and **common law legal systems**, with the former tending more toward general rules, partly combined with lists of specific offences, while the latter tend to adopt a more selective approach to criminal liability for offences committed abroad. **Bangladesh, India** and **Pakistan** are interesting in this respect, however. Like Ghana, these are former British colonies, and as a result their legal systems were greatly influenced by the common law tradition. Unlike Ghana, however, Bangladesh, India and Pakistan have explicitly departed from the

³ Under the territoriality principle, criminal offences are prosecuted only if committed in the country in question.

common law tradition with regard to criminal liability for offences committed abroad, making provision in the scope of their respective penal codes for rather extensive general rules permitting such prosecution in principle. Only offences not covered by the penal code and governed instead by supplementary laws are exempt from this provision, and these must therefore continue to be regulated on a case-by-case basis if they are to have extraterritorial effect. **Ghana**, meanwhile, has retained the stricter common law principle of territoriality, and has perhaps one of the most restricted set of rules among the legal systems examined here. Criminal offences committed by a Ghanaian abroad may only be prosecuted if the offender works for a state institution, commits murder, or misappropriates or dissipates public funds. Only **Nepalese** law provides for fewer possibilities for prosecuting an offence committed abroad under the active personality principle. It permits the prosecution of offences committed abroad by a Nepalese citizen only within the framework of combating corruption, with many of the offences being subject to the condition that they must have been committed by a public official.

More than half of the states make criminal liability for offences committed abroad dependent, at least in some constellations, on the act in question being a criminal offence where it is committed (**double criminality**). Only in **Ethiopia, Australia** and probably also **Italy** and **Japan** does this condition **always** have to be met for an offence committed abroad to be subject to domestic prosecution. In Italy and Japan, however, there is no provision for this in law, and it is instead derived by legal doctrine from the principle of legality. In **Burkina Faso, Germany, France, Senegal, Spain**, the **UK** and the **US**, the requirement of double criminality depends on the offence in question. For example, French law draws a distinction between whether the alleged offence is a crime or a misdemeanour, with double criminality being required only for the latter. The same is also true of the legal systems in Burkina Faso and Senegal, which are strongly influenced by French law. In Germany, Spain, the UK and the US, this requirement applies only to certain listed criminal offences or constellations, for example if the matter pertains to a foreigner habitually resident in the country in question rather than one of its citizens.

The majority of the states (**Ethiopia, Bangladesh, Burkina Faso, China, Ghana, India, Italy, Japan, Canada, Nepal, Pakistan, Rwanda** and **Spain**) focus **exclusively on the nationality** of the offender. In **Australia, Germany, France, Russia**, the **UK** and the **US**, however, it is sufficient in certain circumstances if the offender is **a foreigner permanently resident in that country**. Such circumstances include, in particular, specific criminal offences regarded as being of a more serious nature. In Russia, meanwhile, this does not apply if the offender is a foreigner, but rather only if they are stateless persons. Spain conversely provides for criminal offences committed by Spanish public officials resident abroad to also be prosecuted. Ethiopia has an unusual approach as well, expressly providing for the criminal prosecution of Ethiopians who have committed a criminal offence abroad and enjoy immunity in the country in question.

Finally, it is also interesting to note that three legal systems – **Bangladesh, Italy** and **Pakistan** – make criminal liability for offences committed abroad dependent on whether the government (Bangladesh, Pakistan) or the Minister of Justice or victim (Italy) **consent** to the prosecution.

1.1.2. Passive personality principle

The differences between the legal systems based on the common law and civil law traditions become even more pronounced when it comes to addressing the extent to which offences committed abroad against one of a country's own citizens may be prosecuted (**passive personality principle**). The legal systems of **Bangladesh, Ghana, India, Pakistan** and the **UK**, which are influenced by **common law**, **do not recognise this principle** and therefore do not subject foreign offenders who have committed criminal offences against one of their citizens abroad to criminal prosecution. In **Australia, Canada** and **Nepal** this is also only possible to a very limited extent: in Australia only in one case at the federal level

and then only with the consent of the Attorney General; in Canada only if it is a case of corruption of a Canadian public official; and in Nepal only for human trafficking and organised crime offences.

By contrast, **Ethiopia, Burkina Faso, China, Germany, France, Italy, Rwanda, Russia and Senegal** provide for rules based on **general criteria** governing when the passive personality principle should apply. The most comprehensive rule is to be found in Rwandan law, which applies the principle without restriction to all cases in which a Rwandan national was the victim of a criminal offence. Four of these legal systems limit the application of this principle. In **Ethiopia**, the offence must be **of sufficient gravity**. Two other countries insist that the offence carry the threat of a certain level of punishment, specifically at least three years' imprisonment in the case of **China** and at least one year's imprisonment in the case of **Italy**. Meanwhile in **France**, the offence must either be a crime or a misdemeanour subject to at least one year's imprisonment. Under **Ethiopian, Burkinabe, Chinese** and in part also **German** law, the offence must also carry the threat of punishment where it is committed (**double criminality**). **Canada** also provides for this requirement. **Japan** and **Spain** have adopted a different form of restriction, with their laws providing **lists** of foreign offences that can be prosecuted domestically if committed against one of their citizens. There are also cases in the **US** where the passive personality principle has been asserted. However, given that the **protective principle** often also applied in these instances, it cannot be precisely defined when the fact that the victim is a US citizen would alone be sufficient for a case to be tried in the US.

Most of the states analysed here link prosecution **exclusively to the nationality of the victim**. It is only in **Germany, France, Russia and Senegal** that there are also provisions based on the **victim being resident** in the country in question, albeit this pertains only to very few criminal offences in each of these countries. In Russia this applies in principle for all criminal offences, but only if the person resident in Russia is stateless rather than being a foreign national.

1.1.3. Universal jurisdiction

There are different definitions of the principle of universal jurisdiction. To allow for a comparison of the various concepts, this opinion takes **a very broad definition** of this principle. Accordingly, it is deemed to cover **all criminal offences committed abroad in which neither the offender nor the victim are citizens or residents of the country prosecuting the offence**. This also includes, in particular, offences committed abroad against the state (protective principle).

Owing to capacity constraints, and partly also to the fact that access to information was only possible to a limited extent in certain states, the analysis in most of the country reports and thus also these comparative remarks has had to be **restricted to express provisions in criminal law** and cannot seek to examine the implementation of international law in the individual legal systems. It should simply be stated that **France, India, Japan, Pakistan, Russia and Senegal** expressly provide for universal jurisdiction to be applied on the basis of **international conventions** to prosecute certain offences committed abroad. It is worth mentioning that for Japan this also applies to international treaties it has signed but not yet ratified.

This analysis focused on criminal law has revealed that it is only in **Bangladesh and Spain** that universal jurisdiction is **not enshrined in law**. In **Canada**, it at least applies to crimes in the areas of sexual offences and corruption.

Taking the broad definition of universal jurisdiction used here, it also includes **acts against the state itself (protective principle)**. Nine of the twenty legal systems examined provide for the prosecution of foreign offences against the state, in particular against the government and public administration or against government mints and official seals. This is the case in **Ethiopia, Burkina Faso, China, Germany,**

France, Italy, Japan, Spain and the **US**, although under Chinese law the offence must carry the threat of at least three years' imprisonment and double criminality is required.

While **Germany** and **Ghana** provide **lists** of various criminal offences that can be prosecuted on the basis of universal jurisdiction, **Ethiopia, Australia, India, Nepal, Senegal**, the **UK** and the **US** restrict application to **international crimes**. Offences listed in this respect include, in particular, terrorism, other criminal offences with an international connection such as money laundering, and international criminal law offences such as war crimes, crimes against humanity and genocide. Australia and Nepal provide for the requirement of double criminality in some cases.

The legal systems of **Ethiopia, Italy** and **Russia** are worthy of particular mention in that they have comparatively **comprehensive powers**. Russia provides for the domestic prosecution of any foreign offence against the interests of the Russian Federation. This thus goes much further, and is less precisely defined, than crimes against the state and its institutions per se. Ethiopia provides for the criminal prosecution of offences committed abroad which carry the threat of the death penalty or at least ten years' imprisonment under Ethiopian law. Italian law has a similar provision, although it sets the threshold much lower, specifying that the offence committed abroad need only be subject to at least three years' imprisonment.

1.1.4. Requirement of double criminality

The situation with regard to the question of **double criminality**, i.e. whether the legal system in question requires that the act to be prosecuted also be a criminal offence where it was committed, is rather **mixed**. In determining criminal liability for offences committed abroad, seven of the twenty legal systems examined here do not impose this requirement **for any constellation**. These are largely states whose systems have been influenced by common law (**Bangladesh, Ghana, India, Pakistan** and the **US**), although **Rwanda** and **Russia** also do not recognise this principle. In addition to these states, double criminality is not applied in **Canada** with respect to the active personality principle, and is not applied with respect to the passive personality principle in **Senegal, Spain** and the **UK**. **Nepal** provides for this requirement only in the application of universal jurisdiction in cases of money laundering.

Meanwhile, there are only few legal systems where this requirement is **imposed across the board**. Only in **China** does an offence committed abroad always have to be liable to prosecution in the country in question before it can be brought before Chinese courts. This is also the case in **Australia**, but only in respect of the active and passive personality principles, and does not apply to criminal prosecution on the basis of universal jurisdiction. Double criminality is always required for the application of the active personality principle in **Ethiopia**, and always in respect of the passive personality principle in **Burkina Faso** and **Canada**.

The remaining legal systems covered here apply **mixed approaches**. **Germany** adopts a double-pronged approach with regard to criminal liability for offences committed abroad. In addition to general rules specifying that the act must also carry the threat of punishment where it was committed, German law provides lists of criminal offences that may be also prosecuted irrespective of this restriction. **Spanish** law has a similar system, albeit applicable only to the active personality principle. **Burkina Faso, France** and **Senegal** draw a distinction based on the seriousness of the act in applying the active personality principle, and France also does so in respect of the passive personality principle. The distinction made is that double criminality is required if the offence in question is merely a misdemeanour, whereas crimes can be prosecuted irrespective of this restriction. The **UK** has also adopted a mixed system, for example drawing a distinction in the case of certain child sex offences committed abroad between whether the offender is a UK national or a UK resident, with double criminality applying only to the latter.

Italian and **Japanese** law are also interesting in that neither legal system provides for double criminality as a criterion. Nevertheless, based on the principle of legality, legal doctrine has determined that offences committed abroad may only be subject to criminal prosecution if the act also constitutes a criminal offence in the foreign jurisdiction in question. In Japan, the doctrine further stipulates that the penalty may not be higher than that which the offence carries where it was committed.

1.1.5. Particular level of severity required

If a legal system provides for **only certain criminal offences** to be prosecuted in its jurisdiction despite having been committed abroad, it is self-evident that the legislature regards these offences as being particularly serious. Hence this section will not examine the lists of offences in all the legal systems, and will instead focus on whether **provision for the criminal prosecution of offences committed abroad is linked to a specific level of severity**.

Six of the legal systems examined here explicitly link criminal liability for offences committed abroad to a **certain level of penalty**. In **Burkina Faso**, **France** and **Senegal**, in applying the active and passive personality principles the decision on whether double criminality is required hinges on whether the alleged offence is a crime or a misdemeanour. Under **Ethiopian** law, with regard to prosecution under criminal law on the basis of universal jurisdiction, the level of penalty determines whether proceedings can be brought. This is only possible if the offence carries the threat of the death penalty or at least ten years' imprisonment in Ethiopia. **Italy** also makes a link to the level of penalty. For both the active personality principle and universal jurisdiction to apply, the offence must carry the threat of at least three years' imprisonment, albeit this condition can be set aside by a request from the Minister of Justice or the victim. With regard to the passive personality principle, the term of imprisonment must be at least one year. **Chinese** law provides for a very uniform rule. For any offence committed abroad to be subject to criminal prosecution in China, it must carry a penalty of at least three years' imprisonment.

Ethiopia and **Russia** also apply somewhat more general criteria. Ethiopian law requires that the act be of sufficient gravity to justify extradition of the offender for the active and passive personality principles to be applied, while Russia excludes from its criminal code all acts deemed to be insignificant.

Nepal makes only an indirect link to a particular level of severity in providing for offences committed abroad to be subject to criminal prosecution, with universal jurisdiction being applied to organised crime offences. The law defines serious offences as being any criminal offence carrying the threat of at least three years' imprisonment, and lists some further offences.

Five of the states influenced by common law provide for the possibility of the criminal prosecution of offences committed abroad only subject to the **consent of a higher authority**. In **Australia** the Attorney General's approval is required if the offender is a foreign national, while in **Canada** the consent of the Attorney-General or Solicitor-General is required for the prosecution of certain crimes. Meanwhile, government consent is required in **Bangladesh**, **India** and **Pakistan**, although in Pakistan this consent can also be given by territorial government in some cases.

1.2. Criminal liability for offences committed on UN missions

1.2.1. Immunity for UN staff

All 20 states covered here are signatories to the **Convention on the Privileges and Immunities of the United Nations of 13 February 1946**.⁴ Under this convention, officials of the United Nations (UN) and experts working for the UN are accorded **functional immunity** while on mission.⁵ They would appear to also enjoy immunity from the jurisdiction of their home state.⁶ UN officials are “immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity”⁷ and experts working for the UN have “[i]n respect of words spoken or written and acts done by them in the course of the performance of their mission, immunity from legal process of every kind.” The latter immunity is also to continue to be accorded even if the expert no longer works for the UN.⁸ In the case of both UN officials and UN experts, the immunity is granted in the interests of the United Nations and not for the personal benefit of the individual. It is therefore the right and duty of the UN Secretary-General to **waive this immunity** if they are of the opinion that such immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations.⁹

It is unclear to what extent certain acts are covered by this functional immunity. For example, in a case of rape it was assumed that the act was outside the scope of the functional immunity; in another case in which a UN member of staff committed murder, however, the immunity was waived, giving the impression that the UN Secretary-General regarded the act as being covered by the functional immunity.¹⁰ As regards corruption in particular, however, there is a high likelihood that the act in question would come under the UN member of staff’s area of activity and would thus be covered by the immunity. This is also borne out by a judgment issued by a US court.¹¹

Member states are therefore, in principle, bound to accord this immunity. Only few of the legal systems examined here make express reference to immunity accorded on the basis of international treaties, two examples being **Germany** in a provision in law and the **US** in case law. In the absence of

⁴ United Nations Treaty Collection, available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtldsg_no=III-1&chapter=3&lang=en (13.07.2017).

⁵ United Nations General Assembly, Report of the Group of Legal Experts on ensuring the accountability of United Nations staff and experts on mission with respect to criminal acts committed in peacekeeping operations, 16.08.2006, Document A/60/980, available at http://www.un.org/ga/search/view_doc.asp?symbol=A/60/980 (13.07.2017), para. 20.

⁶ United Nations Economic and Social Council, Administration of Justice, Rule of Law and Democracy: Working paper on the accountability of international personnel taking part in peace support operations submitted by Françoise Hampson, 07.07.2005, Document E/CN.4/Sub.2/2005/42, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G05/148/03/PDF/G0514803.pdf?OpenElement> (13.07.2017), para. 42.

⁷ Art. V, Sect. 18 (a) Convention on the Privileges and Immunities of the United Nations.

⁸ Art. VI, Sect. 22 (a) Convention on the Privileges and Immunities of the United Nations.

⁹ For UN officials Art. V, Sect. 20, for experts Art. VI, Sect. 23, Convention on the Privileges and Immunities of the United Nations.

¹⁰ United Nations Economic and Social Council, Administration of Justice, Rule of Law and Democracy: Working paper on the accountability of international personnel taking part in peace support operations submitted by Françoise Hampson, 07.07.2005, Document E/CN.4/Sub.2/2005/42, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G05/148/03/PDF/G0514803.pdf?OpenElement> (13.07.2017), para. 31.

¹¹ Cf. section 3.1. on the country report on the US in the original comparative study, available at <https://www.isdc.ch/en/services/online-legal-information>.

any regulations to the contrary, however, it is assumed that the immunity provided for in the convention in principle applies without restriction.

That said, our research has found interesting provisions in five legal systems. **Ethiopia**, for example, makes an exception to this principle in making express provision for **Ethiopian officials and diplomats** to face criminal prosecution in Ethiopia if they enjoy immunity for their actions abroad. However, this is subject to the condition of double criminality, i.e. the act must also be a criminal offence in the country where it was committed. The provision made in **Italian** law does not go so far, with only **abuse of public authority by Italian officials** being exempt from immunity. **Spain** has a similar exception, but it applies to **sexual offences**. According to our understanding, **sexual offences** would presumably also be exempt from immunity in **China**, but we were not able to find any precedent on this. Besides that, Chinese law expressly states that in cases of immunity, **diplomatic channels** are to be used to find a solution. Finally, in the case of **Russia** it appears **unclear** to what extent immunity would be respected.

1.2.2. Military justice system

14 of the legal systems examined here have their **own military justice system**¹² with jurisdiction over criminal offences committed by military personnel abroad. These are **Ethiopia, Australia, Bangladesh, Burkina Faso, Ghana, India, Italy, Canada, Nepal, Pakistan, Rwanda, Spain**, the **UK** and the **US**. While the Italian system stands out in that the ordinary Court of Cassation is also the highest military court, the ordinary courts also have jurisdiction in five other states under certain circumstances. In Ethiopia and Canada they have jurisdiction if the offence is not of a specifically military nature, while in Australia the military court can decide at its own discretion whether the ordinary courts should have jurisdiction over an individual case. In India, the ordinary courts may try a case if the military courts choose not to prosecute. However, as is the case with all criminal prosecutions of offences committed abroad based on the application of the active personality principle (cf. section 1.1.1.), the consent of India's central government is required. Finally, in Nepal the ordinary courts in principle have jurisdiction over manslaughter and rape not committed within the military, as well as for criminal offences committed by military personnel while on a UN mission abroad against a citizen of the host state. There is also a special investigative committee and a military court comprising civilians and military personnel, which have jurisdiction in cases of corruption, theft, torture and disappearance.

Meanwhile, in **China, Germany** and **Japan** the **ordinary courts** have jurisdiction over offences committed abroad by military personnel. In Germany and Japan, this probably stems from the impact of the Second World War and the subsequent period of occupation, in which efforts were made to prevent excessive militarisation in both these countries. However, given the special knowledge required to deal with military matters, these are handled locally by a single judicial district in Germany.

France, Russia and **Senegal** have adopted an intermediate approach. Although criminal offences committed by military personnel are tried by **special military courts**, these courts form **part of the ordinary justice system** and are on a par with other special courts such as labour and commercial courts.

The extent to which **military personnel** are accorded **immunity** for offences committed while on UN missions is defined in the specific status of forces agreements¹³. In principle it can be said that in respect of offences committed while on UN missions abroad, military personnel enjoy **immunity from**

¹² For a general introduction to military justice systems, see for example R. Liivoja, Military Justice, in M.D. Dubber & T. Hörnle (Ed.), The Oxford Handbook of Criminal Law, Oxford 2014, page 326 *et seq.*

¹³ For a general introduction to the criminal law aspects of status of forces agreements, see for example J. Voetelink, Status of Forces: Criminal Jurisdiction over Military Personnel Abroad, The Hague 2015.

prosecution in the host state and third countries, but not in their home country. Hence they may face criminal prosecution in their home country for the offences they have committed, provided the national legislation in question provides for the prosecution of offences committed abroad.¹⁴ In **China** there is apparently a law specifically governing the participation of the Chinese People's Liberation Army in UN missions, although this appears to be subject to secrecy. **Nepal** has a further provision that states that no case will be filed against military personnel for acts, committed in good faith in the course of discharging their duties, which result in the death of a person or a loss for a person. However, this does not apply in cases of corruption, theft, torture, disappearance, rape and manslaughter.

1.3. Concluding remarks

Given the Institute's political neutrality, this survey does not contain any express or implied political statements, and instead focuses exclusively on **legal matters**. Based on this, this study also answers the question as to whether there are **differences in treatment** in respect of the criminal prosecution of offences committed by officials, experts or military personnel while on United Nations missions abroad, and **whether such unequal treatment could be prevented by an international convention**. On the one hand, the sovereignty of individual states plays a very important role in criminal law especially, and this is a factor that must be taken into account. On the other hand, the inconsistency in regulations can in some instances lead to markedly different results. For example, it is conceivable for two UN officials or two military personnel on a UN mission abroad to commit the same criminal offence together, only for their different nationalities to result in one being severely punished in their home country while the other does not even face charges. The extent to which such uneven treatment could be prevented by a new international convention is examined below. This is based on the purely legal findings set out in the present opinion.

There are several aspects that are decisive with regard to the criminal prosecution of such offences. The initial question that arises is (1) to what extent the individual legal systems differ from each other with regard to criminal liability for offences committed abroad by their **nationals**. Another aspect that has to be addressed is (2) whether only **offences with a particular level of severity** are to be prosecuted. A further pertinent factor is (3) whether **double criminality** is required. In the next phase, the relevant aspect is (4) to what extent **substantive law** differs between the individual legal systems, a question that has not been addressed in the present opinion. A further matter to be examined is (5) whether the offender in their capacity as a UN official, UN expert or military personnel is accorded **immunity** for an offence committed while on a UN mission abroad that would rule out prosecution. Finally there arises the question (6) whether the ordinary courts or special **military courts** have jurisdiction.

1.3.1. Active personality principle

In all of the legal systems examined here, it is in principle possible, at least in certain cases, for offences committed abroad by a **citizen** of the country in question to be prosecuted under criminal law. **However, there are marked differences between the various systems with regard to the extent to which this is possible.** The civil law systems in particular mostly have rather general provisions and thus permit, in principle, the prosecution of such acts committed abroad on the basis of the active personality principle. Meanwhile, in five common law legal systems as well as in Japan and Nepal, this

¹⁴ United Nations Economic and Social Council, Administration of Justice, Rule of Law and Democracy: Working paper on the accountability of international personnel taking part in peace support operations submitted by Françoise Hampson, 07.07.2005, Document E/CN.4/Sub.2/2005/42, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G05/148/03/PDF/G0514803.pdf?OpenElement> (13.07.2017), para. 39.

is only permitted by way of exception. These individual provisions in the common law legal systems often relate to sexual offences and acts of corruption. However, in the case of sexual offences for example, these often include only offences against children, while acts of corruption are determined solely on the basis of the minimum standard defined in international treaties, and do not extend beyond this.

A **new international convention declaring that the active personality principle applies to criminal offences committed while serving on UN missions abroad** would therefore close gaps in criminal liability, some of them major, and would enable more equal treatment under criminal law. A possible point in favour of this is that although **seven** of the legal systems covered by this study do not have any general provisions on the active personality principle, Nepal for example is currently debating the introduction of such provision as part of a new penal code. A further argument would be that even certain states strongly influenced by the common law system, namely **Bangladesh, India and Pakistan**, have also opted for a comprehensive application of the active personality principle. Another factor that could be taken into account is that military personnel of a national contingent deployed on a UN mission are exempt from immunity for offences committed on such missions only in their home state. Hence if a criminal prosecution in the home state were to fail owing to that country's inability to prosecute its own citizens for offences committed abroad, **illegal acts would go unpunished**. To prevent such impunity from arising, the international community has thus made military personnel subject to the jurisdiction of their home state under status of forces agreements.

1.3.2. Particular level of severity of the offence

It must be noted, however, that some legal systems link the possibility of criminal prosecution to **offences with a certain level of seriousness** or to **government consent**. It would, in principle, also be conceivable for an international convention to link criminal liability to a **particular level of severity**, for example offences carrying the threat of at least one year's imprisonment. Although this would to a certain extent make criminal liability **dependent on the substantive national law of the individual home states**, it would at the same time act to **counterbalance the unrestricted application of the active personality principle**. Excluding government consent as a condition would strengthen the **independence of the judiciary** from the executive.

1.3.3. Double criminality

A further question that arises relates to the requirement of **double criminality, i.e. that the offence must also carry the threat of punishment where it was committed**. Nine of the legal systems examined here do not impose this condition for the application of the active personality principle, while only two states always require double criminality depending on the nationality of the offender. The other states adopt mixed approaches, with a distinction being made mostly on the basis of the severity of the offence. **The requirement of double criminality could be seen as excessively curbing criminal liability for offences committed abroad**. This would in particular be a valid point given that the host states of UN foreign missions relevant for this report are **crisis-stricken states** whose laws or the enforcement of existing laws often do not meet international standards owing to a lack of appropriate capacity. For example, Syria, where the United Nations Disengagement Observer Force (UNDOF) is stationed¹⁵, has signed the United Nations Convention against Corruption of 2003 but has

¹⁵ United Nations, United Nations Peacekeeping Operations, http://www.un.org/Depts/Cartographic/map/dpko/P_K_O.pdf (13.07.2017).

not yet ratified it.¹⁶ In the area of **sexual offences**, the problem could also arise that these are very **differently defined** in the various legal systems. In particular, with regard to the offence of rape, acts against men and boys may be excluded, and the same could apply to acts within marriage, with the minimum marriageable age also being relevant in this respect. There can also be differences with regard to whether force is required as resistance or the extent to which the victim must or can express their consent. In the case of sexual offences against children and minors, the age limits in particular can vary from one legal system to another. Given this restriction of criminal liability for offences committed abroad resulting from the requirement of double criminality, a **convention that did not contain this principle could close important gaps in respect of such liability**. Excluding the condition of double criminality in this way would also be in accordance with the **protective principle**. Those legal systems that require this condition to be met for the application of the active personality principle almost invariably do so solely for less serious offences, such as misdemeanours. The reason for this is likely to be to ensure that only serious criminal offences are provided with extraterritorial effect. If the sexual and corruption offences focused on in particular here are not already deemed to be a crime, the relationship as protector could be viewed as an aggravating factor in cases of offences committed on UN missions. The role of UN peacekeeping missions is to maintain peace and security in crisis-stricken states.¹⁷ In light of this protective role, criminal offences committed against the population of the host state in question could be deemed to be of particular severity.

1.3.4. Substantive criminal law

The **aforementioned differences in substantive law** can also have an impact on the criminal prosecution of offenders in their respective home state. However, these aspects have not been addressed in the present opinion.

1.3.5. Immunity

An important aspect with regard to the criminal prosecution of offences committed while on UN missions abroad is the possible **immunity** from such prosecution accorded to the offenders. As regards **military personnel**, the pertinent **status of forces agreements** of the individual UN missions as a rule provide for military personnel **who are accorded immunity in both the host state and third countries to nonetheless be liable for prosecution under their national law for offences committed abroad**.¹⁸ Consequently the **problem of immunity does not arise** in respect of offences committed by military personnel. However, **UN officials and external experts** participating in UN missions are at least accorded **functional immunity**. The exact **interpretation of this term is unclear**, and it is in particular questionable whether corrupt practices, for example, would be contrary to the service instructions issued to the offender by their superior and thus exempt from immunity. There are also specific examples where immunity was waived in a case of murder¹⁹, which creates **legal uncertainty**. A **more clearly defined convention could under certain circumstances remove this uncertainty, although there would have to be scope for interpretation to some extent to take into account the different**

¹⁶ United Nations Office on Drugs and Crime, United Nations Convention against Corruption: Signature and Ratification Status as of 12 December 2016, <http://www.unodc.org/unodc/en/treaties/CAC/signatories.html> (13.07.2017).

¹⁷ United Nations Department of Peacekeeping Operations, Department of Field Support, United Nations Peacekeeping Operations: Principles and Guidelines, 2008, available at http://www.un.org/en/peacekeeping/documents/capstone_eng.pdf (13.07.2017), page 17.

¹⁸ Immunity in host states and third countries for military personnel serving on UN missions is also derived in part from customary international law, see for example D. Fleck, The legal status of personnel involved in United Nations peace operations, in the International Review of the Red Cross 95 (2013), page 613 *et seq.*, page 616.

¹⁹ cf. section 2.2.2. of this comparative commentary.

areas of responsibility of UN staff and experts. Only two of the legal systems examined here make express provisions for exemptions from immunity in cases of corruption offences, and two further states in cases of sexual offences. A fifth state calls for diplomatic channels to be used. The fact that the **majority of the states strictly respect immunity** in order to ensure that the organisations concerned are able to function could be an argument in favour of refraining from making exceptions to this principle. On the other hand, however, **exceptions made** to this important principle of immunity could **clearly demonstrate** the fact that **for sexual and corruption offences in particular, there appears to be a need in certain states for these to be subject to criminal prosecution irrespective of immunity.** Furthermore, an **advisory opinion handed down by the International Court of Justice** could be taken to support the **view** that while the immunity of UN officials and experts is of the utmost importance, it can be set aside for the “most compelling reasons”.²⁰

1.3.6. Military justice system

The legal systems examined **differ in the extent to which criminal offences committed by military personnel are tried before the ordinary courts or military courts.** Given that many of the states with **military justice systems** also refer to **their penal codes** in this context, a **uniform solution** to this issue would appear **not to be required.** Another argument against such a standardised approach is that military courts perform a wide range of tasks and are structured differently²¹, and **military and security law** are **fundamental functions of government.**

²⁰ International Court of Justice, Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights: Advisory Opinion of 29 April 1999, unofficial document, available at <http://www.icj-cij.org/files/case-related/100/7621.pdf> (14.07.2017), page 63 *et seq.*, page 68; quoted in M. Garcin, The Haitian Cholera Victims’ Complaints Against the United Nations, in *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 75 (2015), page 671 *et seq.*, page 679.

²¹ R. Liivoja, Military Justice, in M.D. Dubber & T. Hörnle (Ed.), *The Oxford Handbook of Criminal Law*, Oxford 2014, page 326.

2. Overview tables

2.1. Criminal liability for offences committed abroad

Abbreviations: APP = active personality principle; Art. = article; ETH CC = Criminal Code (Ethiopia); AUS CC = Criminal Code (Australia); BGD CPC 1898 = Bangladeshi Code of Criminal Procedure of 1898 (Bangladesh); BGD PC 1860 = Bangladeshi Penal Code of 1860 (Bangladesh); BFA PC = Penal Code (Burkina Faso); BFA CPC = Criminal Procedure Code (Burkina Faso); CHN CL = Criminal Law of the People's Republic of China (China); CHN CPL = Criminal Procedure Law of the People's Republic of China (China); GER StGB = Criminal Code of the Federal Republic of Germany (Germany); ESP LOPJ = Organic Law on the Judiciary 6/1985 (Spain); FRA PC = Penal Code (France); GHA CA 1993 = Courts Act 1993 (Ghana); IND CPC = Criminal Procedure Code (India); IND PC = Penal Code (India); IND UAPA 1967 = Unlawful Activities (Prevention) Act 1967 (India); ITA PC = Penal Code (Italy); JPN PC = Japanese Penal Code (Japan); CAN CC = Criminal Code (Canada); NEP AMLPA 2064 = Asset (Money) Laundering Prevention Act 2064 BS (2008 AD) (Nepal); NEP CAITCIDT = Controlling the Acts of Inflicting Torture and Cruel, Inhumane and Degrading Treatment (Nepal); NEP HTTCA 2064 = Human Trafficking and Transportation (Control) Act 2064 BS (2007 AD) (Nepal); NEP OCPA 2070 = Organized Crime Prevention Act, 2070 BS (2014 AD) (Nepal); NEP PCA 2059 = Prevention of Corruption Act, 2059 BS (2002 AD) (Nepal); PAK CCP = Code of Criminal Procedure (Act V of 1898) (Pakistan); PAK PC = Pakistani Penal Code of 1860 (Pakistan); PAK PCA 1947 = The Prevention of Corruption Act 1947 (Pakistan); PPP = passive personality principle; RWA PC = Penal Code (Rwanda); RWA CPC = Criminal Procedure Code (Rwanda); RUS CC = Criminal Code (Russia); SEN CPC = Criminal Procedure Code (Senegal); subpara. = subparagraph; subsect. = subsection; UK CJIA 2008 = Criminal Justice and Immigration Act 2008 (United Kingdom); UK SoTA 1978 = The Suppression of Terrorism Act 1978 (United Kingdom); USC = United States Code (United States); Cat. = Category

	General rule exists	APP: Active personality principle	PPP: Passive personality principle	Universal jurisdiction	Double criminality	Particular level of severity required
Australia	(-) - Criminal liability for offences committed abroad only if there is express provision for this for the act in question - The law defines different categories	(+) Cat. A, subsect. 15.1(1) AUS CC - Offender is Australian - Double criminality required (+)	(-) - Under federal law, there is a link to the nationality of the victim in only one case, sect. 11.5 AUS CC - Attorney General's consent required	(+) Cat. C Double criminality required (+) Cat. D	(+) Standard geographical jurisdiction, Division 14 AUS CC - The offence is committed abroad but the result occurs in Australia	(+) If the offender is a foreigner then only with the Attorney General's consent

	with requirements that must be met for there to be criminal liability for an offence committed abroad	Cat. B, subpara. 15.2(1)(c)(ii) AUS CC - The offender is a resident of Australia - Double criminality required - Attorney General's consent required		- In particular for international criminal law - Double criminality not required	- Double criminality required (+) Cat. A, subsect. 15.1(2), (4) AUS CC - Offender is Australian - Double criminality required (+) Cat. B, subsect. 15.2(2), (4) AUS CC - The offender is a resident of Australia - Double criminality required (+) Cat. C, subsect. 15.3(2), (4) AUS CC Double criminality required	
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	General rule exists	APP: Active personality principle	PPP: Passive personality principle	Universal jurisdiction	Double criminality	Particular level of severity required
Bangladesh	(+) Sect. 4 BGD PC 1860 - APP - Departure from common law system (-) Offences covered by other laws	(+) Sect. 4 BGD PC 1860 - Offender is Bangladeshi - Double criminality not required - Bangladeshi government approval required, Sect. 188 BGD CPC 1898	(-)	(-)	(-)	(+/-) Sect. 188 BGD CPC 1898 Bangladeshi government approval required

	General rule exists	APP: Active personality principle	PPP: Passive personality principle	Universal jurisdiction	Double criminality	Particular level of severity required
Burkina Faso	(+) Art. 670 BFA CPC APP (+) Art. 4 BFA PC PPP (-) Art. 675 BFA CPC Universal jurisdiction	(+) Art. 670 para. 1 BFA CPC - Burkinabe at the time of the offence or later - The act qualifies as a crime - Double criminality not required (+)	(+) Art. 4 para. 2 BFA PC - Victim is Burkinabe - Double criminality required	(+) Art. 675 BFA CPC Offence against the state of Burkina Faso	(+) Art. 670 para. 2 BFA CPC - APP - The act qualifies as a misdemeanour - Double criminality required (+) Art. 4 para. 2 BFA PC	(+) Art. 670 BFA CPC - Act qualifies as a crime: double criminality not required - Act qualifies as a misdemeanour: double criminality required

		Art. 670 para. 2 BFA CPC - Burkinabe at the time of the offence or later - The act qualifies as a misdemeanour - Double criminality required			- PPP - Double criminality required (-) Art. 670 para. 1 BFA CPC - APP - The act qualifies as a crime - Double criminality not required	
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	General rule exists	APP: Active personality principle	PPP: Passive personality principle	Universal jurisdiction	Double criminality	Particular level of severity required
Canada	(-) List of offences	(+) Subsect. 7(4.1) CAN CC For sexual offences against children (+) Code of Service Discipline - Offences under the CAN CC if committed by a person subject to the Code of Service Discipline	(+) Subsect. 7(4) CAN CC - For corruption of public officials - Fraud on the government - Double criminality required	(-) In any case not for sexual offences and corruption	(+) Subsect. 7(4) CAN CC For PPP	(+) Subsect. 7(7), 7(4.3) CAN CC In some cases the consent of the Attorney General or Solicitor General is required to be able to prosecute offences committed abroad in Canada

		- Punishment is based on the Code of Service Discipline				
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	General rule exists	APP: Active personality principle	PPP: Passive personality principle	Universal jurisdiction	Double criminality	Particular level of severity required
China	(+) General provisions for APP, PPP and universal jurisdiction	(+) Art. 7 CHN CL - Offender is Chinese - Offence carries threat of at least three years' imprisonment	(+) Art. 8 CHN CL - Victim is Chinese - Offence carries threat of at least three years' imprisonment - Double criminality required	(+/-) Art. 10 CHN CL - Offence against the Chinese state - Offence carries threat of at least three years' imprisonment - Double criminality required	(+) Required for PPP and universal jurisdiction (-) Not required for APP	(+) APP, PPP and universal jurisdiction only if offence carries threat of at least three years' imprisonment

	General rule exists	APP: Active personality principle	PPP: Passive personality principle	Universal jurisdiction	Double criminality	Particular level of severity required
Ethiopia	(+/-) Art. 13-18 ETH CC Govern various constellations with regard to the criminal liability for offences committed abroad	(+) Art. 18(1) ETH CC - Offender is Ethiopian - Double criminality required - If the offence has not yet been tried abroad	(+) Art. 18(1) ETH CC - Victim is Ethiopian - Double criminality required - Offence has not yet been prosecuted abroad	(+) Art. 13 ETH CC Offences against the State of Ethiopia (+) Art. 17(1) ETH CC Offence against international law	(+) Art. 18(1) ETH CC Applies for APP and PPP (+) Art. 14(1) ETH CC Ethiopians accorded immunity abroad	(+) Art. 18(1) ETH CC - APP and PPP - The act is of sufficient gravity to justify extradition to Ethiopia (+)

	<p>(+) Art. 14(1) ETH CC APP in the case of immunity abroad</p> <p>(+) Art. 15(1) ETH CC Military personnel</p> <p>(+) Art. 18(1) ETH CC APP and PPP</p> <p>(-) Art. 13 ETH CC Offences against the State of Ethiopia</p> <p>(-) Art. 17(1) ETH CC Offences against international law</p> <p>(-) Art. 18(2) ETH CC Offences carrying the threat of the death penalty or at least ten years' imprisonment</p>	<p>- The act is of sufficient gravity to justify extradition to Ethiopia</p> <p>(+) Art. 14(1) ETH CC - Ethiopians accorded immunity abroad - Double criminality required</p>	<p>- The act is of sufficient gravity to justify extradition to Ethiopia</p>	<p>(+) Art. 18(2) ETH CC Offence carrying the threat of the death penalty or at least ten years' imprisonment</p>		<p>Art. 18(2) ETH CC - Offence carrying the threat of the death penalty or at least ten years' imprisonment - Universal jurisdiction</p>
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	General rule exists	APP: Active personality principle	PPP: Passive personality principle	Universal jurisdiction	Double criminality	Particular level of severity required
France	<p>(+) Art. 113-6 FRA PC - APP for a crime, para. 1 - APP for a misdemeanour: double criminality required, para. 2</p> <p>(+) Art. 113-7 FRA PC - PPP - Crime or misdemeanour subject to imprisonment</p> <p>(-) Various articles in FRA PC - List of sexual offences against minors - Offender is French or is habitually resident in France</p> <p>(-)</p>	<p>(+) Art. 113-6 FRA PC - Crime, para. 1 - Misdemeanour: double criminality required, para. 2 - Offender is or subsequently becomes French</p> <p>(+) Various articles in FRA PC - List of sexual offences against minors - Offender is French or is habitually resident in France</p>	<p>(+) Art. 113-7 FRA PC - Victim is French - Crime - Misdemeanour subject to imprisonment</p> <p>(+) Various articles in FRA PC - Victim is a minor and habitually resident in France - Various offences, in particular the use of serious violence for the purpose of forced marriage</p>	<p>(+/-) Offences against the state</p> <p>(+) International conventions</p>	<p>(+) Art. 113-6 para. 2 FRA PC - APP - Misdemeanour</p> <p>(-) Art. 113-6 para. 1 FRA PC - APP - Crime</p> <p>(-) Art. 113-7 FRA PC - PPP - Crime or misdemeanour subject to imprisonment</p>	<p>(+) Art. 113-6 FRA PC - APP - Crime, para. 1 - Misdemeanour: double criminality required, para. 2</p> <p>(+) Art. 113-7 FRA PC - PPP - Crime - Misdemeanour subject to imprisonment</p>

	Various articles in FRA PC - Various offences, in particular the use of serious violence for the purpose of forced marriage - Victim is a minor and habitually resident in France					
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	General rule exists	APP: Active personality principle	PPP: Passive personality principle	Universal jurisdiction	Double criminality	Particular level of severity required
Germany	(+/-) - General provisions on APP and PPP - Additional lists with individual offences with less stringent requirements (in particular double criminality not required or universal jurisdiction)	(+) § 7 GER StGB: APP if the offender is German / subsequently becomes German or if a foreign offender cannot be extradited in the case in question - Double criminality required (+) § 5 GER StGB: - APP if the offender is German and / or	(+) § 7 GER StGB: - PPP if the person against whom the offence is committed is German - Double criminality required (+) § 5 GER StGB: - PPP if the person against whom the offence is committed is German and / or has	(+) § 5 GER StGB: Specific listed offences against the German state (+) § 6 GER StGB: - Specific listed offences against internationally protected legal interests - Principle of universal competence	(+) § 7 GER StGB: Required under the general rules for APP and PPP (-) § 5 GER StGB: Not required for specific listed offences	(-)

		has their domicile / habitual residence in Germany - List of offences, no general rule - Double criminality not required	their domicile / habitual residence in Germany - List of offences, no general rule - Double criminality not required			
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	General rule exists	APP: Active personality principle	PPP: Passive personality principle	Universal jurisdiction	Double criminality	Particular level of severity required
Ghana	(-) Sect. 56 GHA CA 1993 List of individual offences committed abroad	(+) Sect. 56(3) GHA CA 1993 - Offender is Ghanaian - Possible constellations: offender works for state institution, offender commits murder, offender misappropriates, dissipates or loses public funds, offender commits act on the premises of a Ghanaian diplomatic mission	(-)	(+) Sect. 56(4) GHA CA 1993 List of offences	(-)	(-)

	General rule exists	APP: Active personality principle	PPP: Passive personality principle	Universal jurisdiction	Double criminality	Particular level of severity required
India	<p>(+) Sect. 3, 4 IND PC, Sect. 188 IND CPC APP</p> <p>(-) Other laws APP only if there is express provision in respect of the specific offence</p>	<p>(+) Sect. 3, 4 IND PC - APP for all offences covered by the IND PC - Central government consent required, Sect. 188 IND CPC - Departure from common law</p> <p>(+) Other laws APP only if there is express provision in respect of the specific offence</p>	(-)	<p>(+) Sect. 15, 17 IND UAPA 1967 Terrorist acts and their financing</p> <p>(+) Offences against international treaties and acts of piracy</p>	(-)	<p>(+) Sect. 188 IND CPC - APP - Central government consent required</p>

	General rule exists	APP: Active personality principle	PPP: Passive personality principle	Universal jurisdiction	Double criminality	Particular level of severity required
Italy	<p>(+) Art. 9 ITA PC APP</p> <p>(+)</p>	<p>(+) Art. 9 ITA PC - Offender is Italian</p>	<p>(+) Art. 10 ITA PC - Victim is Italian</p>	<p>(+) Art. 7 ITA PC Offences against the state</p>	<p>Unclear - No express provisions in law or case law</p>	<p>(+) Art. 9 ITA PC - APP for crimes subject to at least</p>

	<p>Art. 10 ITA PC PPP</p> <p>(-) Art. 7 ITA PC Universal jurisdiction</p>	<p>- Crime subject to at least three years' imprisonment</p> <p>- Otherwise a request from the Minister of Justice or the victim is necessary</p> <p>(+) Art. 10 para. 1 no. 4 ITA PC Abuse of public authority by officials</p>	<p>- Crime subject to at least one year's imprisonment</p>	<p>(+) Art. 10 ITA PC - Offender is apprehended in Italy - Crime subject to at least three years' imprisonment</p>	<p>- Legal doctrine calls for double criminality, however, in part based on the principle of legality</p>	<p>three years' imprisonment</p> <p>- Otherwise a request from the Minister of Justice or the victim is necessary</p> <p>(+) Art. 10 ITA PC PPP for crimes subject to at least one year's imprisonment: victim is Italian</p> <p>(+) Art. 10 ITA PC - Universal jurisdiction over crimes subject to at least three years' imprisonment - Offender is apprehended in Italy</p>
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	General rule exists	APP: Active personality principle	PPP: Passive personality principle	Universal jurisdiction	Double criminality	Particular level of severity required
Japan	(-) APP, PPP, universal jurisdiction apply only for listed offences	(+) Art. 3 JPN PC - List of offences for which APP applies - Although not stipulated in the law, the opinion in legal doctrine is that double criminality is required - Where double criminality is applied, the penalty should not be more severe than where the offence was committed (+) Art. 4 JPN PC - APP for Japanese public officials abroad - List of offences	(+) Art. 3-2 JPN PC - List of offences for which PPP applies	(+) Art. 2 JPN PC - Protective principle to protect the state - List of offences (+) Art. 4-2 JPN PC - Offences introduced by international treaties - Also applies if treaty has only been signed but not yet ratified	(+/-) Art. 3 JPN PC - Applies to APP - Although not stipulated in the law, the opinion in legal doctrine is that double criminality is required - Where double criminality is applied, the penalty should not be more severe than where the offence was committed	(-)

	General rule exists	APP: Active personality principle	PPP: Passive personality principle	Universal jurisdiction	Double criminality	Particular level of severity required
Nepal	<p>(-) Only individual laws have provisions on criminal liability for offences committed abroad</p>	<p>(-) In principle, no APP</p> <p>(+) NEP PCA 2059 - Corruption - In principle applies to all Nepalese - Many offences pertain to public officials of the Nepalese state</p> <p>(-/+) Draft NEP CC 2014 - Bill currently being debated in parliament - The present version provides for the possibility of the criminal prosecution of any person in a public office of any organisation owned or controlled by the Nepalese government</p>	<p>(-) In principle, no PPP</p> <p>(-/+) Draft NEP CC 2010 The 2010 criminal code draft provided for PPP</p> <p>(+) Sect. 1 (3) NEP HTTCA 2064</p> <p>(+) NEP OCPA 2070</p> <p>(-/+) Draft NEP CAITCIDT - Draft bill - Currently provides for APP in the case of torture</p>	<p>(+) NEP PCA 2059 - Corruption - Offences against the state</p> <p>(+) NEP OCPA 2070 - Organised crime - Covers offences with the threat of at least three years' imprisonment as well as some others</p> <p>(+/-) NEP AMLPA 2064 - Money laundering - Covers only offences where Nepal is the source or recipient country - Double criminality required</p> <p>(-/+) Draft NEP CAITCIDT - Draft bill</p>	<p>(+) Sect. 5A NEP AMLPA 2064 - Money laundering - Covers only offences where Nepal is the source or recipient country - Double criminality required</p>	<p>(+/-) NEP OCPA 2070 - Universal jurisdiction in the case of organised crime - Covers offences with the threat of at least three years' imprisonment as well as some others</p>

		(-/+) Draft NEP CAITCIDT - Draft bill - Currently provides for APP in the case of torture		- Currently provides for APP in the case of torture		
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	General rule exists	APP: Active personality principle	PPP: Passive personality principle	Universal jurisdiction	Double criminality	Particular level of severity required
Pakistan	(+) Sect. 3, 4 PAK PC, Sect. 188 PAK CCP APP (-) APP in other laws (-) Universal jurisdiction for certain international conventions	(+) Sect. 3, 4 PAK PC - APP - Consent of territorial or central government required, Sect. 188 PAK CCP (+) Other laws, e.g. PAK PCA 1947 Criminal liability for offences committed abroad only where there is express provision in law	(-)	(+) Only for certain international conventions	(-)	(+) Sect. 188 PAK CCP For APP, consent of territorial or central government required

	General rule exists	APP: Active personality principle	PPP: Passive personality principle	Universal jurisdiction	Double criminality	Particular level of severity required
Rwanda	<p>(+) Art. 13 RWA PC, Art. 207 RWA CPC APP</p> <p>(+) Art. 211 RWA PC PPP</p> <p>(-) Art. 16 RWA PC, Art. 209 RWA CPC - Universal jurisdiction - Only for international or cross-border offences</p>	<p>(+) Art. 13 RWA PC, Art. 207 RWA CPC Must be Rwandan national at the time the offence is committed, Art. 14 RWA PC</p>	<p>(+) Art. 211 RWA CPC</p>	<p>(+) Art. 16 RWA PC, Art. 209 RWA CPC Only international or cross-border offences</p>	<p>(-)</p>	<p>(-)</p>

	General rule exists	APP: Active personality principle	PPP: Passive personality principle	Universal jurisdiction	Double criminality	Particular level of severity required
Russia	<p>(+) Art. 12 para. 1 RUS CC - APP</p>	<p>(+) Art. 12 para. 1 RUS CC - APP</p>	<p>(+) Art. 12 para. 3 RUS CC - PPP</p>	<p>(+) Art. 12 para. 3 RUS CC - Offences committed abroad</p>	<p>(-)</p>	<p>(+) Art. 14 RUS CC Only offences that are not insignificant are deemed to be</p>

	- Russians and stateless persons permanently residing in the Russian Federation	- Russians and stateless persons permanently residing in the Russian Federation	- Russians and stateless persons permanently residing in the Russian Federation	against the interests of the Russian Federation - Offences under international conventions		crimes under the RUS CC
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	General rule exists	APP: Active personality principle	PPP: Passive personality principle	Universal jurisdiction	Double criminality	Particular level of severity required
Senegal	(+) Art. 664 SEN CPC APP (+) Art. 664bis SEN CPC PPP (-) Art. 669 SEN CPC - Universal jurisdiction PPP	(+) Art. 664 SEN CPC - Offender is a Senegalese citizen at the time of the offence or subsequently acquires Senegalese citizenship - Act qualifies as a crime, para. 1 - Act qualifies as a misdemeanour: double criminality required, para. 2	(+) Art. 664bis SEN CPC (+) Art. 669 SEN CPC - Victim is resident in Senegal - Limited to certain offences: international criminal law, certain international treaties, terrorism	(+) Art. 669 SEN CPC - Person was arrested in Senegal or government enforces extradition - Limited to certain offences: international criminal law, certain international treaties, offences against the state, terrorism	(+) Art. 664 para. 2 SEN CPC - APP - Offence qualifies as a misdemeanour - Double criminality required (-) Art. 664 para. 1 SEN CPC - APP - Offence qualifies as a crime - Double criminality not required	(+) Art. 664 SEN CPC - APP - If the offence qualifies as a crime: double criminality not required - If the offence qualifies as a misdemeanour: double criminality required

	General rule exists	APP: Active personality principle	PPP: Passive personality principle	Universal jurisdiction	Double criminality	Particular level of severity required
Spain	<p>(+) For APP, otherwise a list of offences</p> <p>(-) For PPP, only a list of offences</p>	<p>(+) Art. 23.2 ESP LOPJ - Offender is or subsequently becomes Spanish, - Double criminality required, - Victim or state prosecutor apply to Spanish court, and - No acquittal, pardon or conviction abroad or, in case of conviction, must not have served the sentence</p> <p>(+) Art. 23.3 ESP LOPJ Offender is a Spanish public official resident abroad</p> <p>(+) Art. 23.3 ESP LOPJ List of specific offences</p>	<p>(+) Art. 23.4 ESP LOPJ List of specific offences</p>	<p>(+) Art. 23.3 ESP LOPJ Offence against the Spanish authorities</p> <p>(-) Art. 23.4 ESP LOPJ - Previously governed universal jurisdiction, contains a list of specific offences - Stricter requirements following reforms in 2009 and 2014, now more APP and PPP than universal jurisdiction</p>	<p>(+) Art. 23.2 ESP LOPJ Double criminality required for APP as a basic rule</p> <p>(-) Art. 23.4 ESP LOPJ Not required with the list of specific offences</p>	(-)

	General rule exists	APP: Active personality principle	PPP: Passive personality principle	Universal jurisdiction	Double criminality	Particular level of severity required
United Kingdom	(-) Express provision for criminal liability for offences committed abroad for the offence in question	(+) Sect. 12 Bribery Act 2010 (+) Sect. 72 UK CJIA 2008 - Certain sexual offences against minors - If the offender is a UK national: double criminality not required - If the offender is a UK resident: double criminality required	(-)	(-) For sexual offences and corruption (+) For piracy, hijacking an aircraft (+) UK SoTA 1978 - In the case of offences in member states of the corresponding convention - Murder, manslaughter, kidnapping, false imprisonment	(+) Sect. 72(2) UK CJIA 2008 - Certain sexual offences against minors - Offender is a UK resident - Double criminality required (-) Sect. 72(1) UK CJIA 2008 - Certain sexual offences against minors Offender is a UK national - Double criminality not required (-) Sect. 12 Bribery Act 2010	(-)

	General rule exists	APP: Active personality principle	PPP: Passive personality principle	Universal jurisdiction	Double criminality	Particular level of severity required
United States of America	(-) Criminal liability for offences committed abroad only in individual cases	(+) APP possible in individual cases - Partly express provision in law for the offence - Partly case law - Mostly covers citizens only; also covers foreigners habitually resident in the United States only where there is express provision in law e.g. 18 USC §1596, 18 USC §2423 (b)-(f), USC 18 §1956	(+) PPP possible in individual cases, although often in combination with the protective principle	(+) For specific international crimes, e.g. sexual abuse of children, 18 USC 2423 (+/-) For offences against the state (protective principle)	Probably (-) There is at least no express provision	(-)

2.2. Criminal liability for offences committed on UN missions

Abbreviations: Art. = Article; ETH CC = Criminal Code (Ethiopia); ETH CPC = Criminal Procedure Code (Ethiopia); BGD AA 1952 = The Army Act of 1952 (Bangladesh); DGD AFA 1953 = The Air Force Act of 1953 (Bangladesh); BGD NO 1961 = The Navy Ordinance of 1961 (Bangladesh); BFA CMJ = Code of Military Justice (Burkina Faso); BFA CPC = Criminal Procedure Code (Burkina Faso); CHN CL = Criminal Law of the People's Republic of China (China); CHN CPL = Criminal Procedure Law of the People's Republic of China (China); GER GVG = Courts Constitution Act (Germany); GER WStG = Military Penal Code (Germany); FRA CMJ = Code of Military Justice (France); princ. = principle; IND AA 1950 = The Army Act 1950 (India); IND CPC = Criminal Procedure Code (India); ITA Const. = Constitution (Italy); ITA PC = Penal Code (Italy); CAN NDA = National Defence Act (Canada); NEP AA 2063 = Army Act, 2063 BS (2006 AD) (Nepal); PAK AA 1952 = Pakistan Army Act, 1952 (Pakistan); PAK PC = Pakistani Penal Code of 1860 (Pakistan); RWA COJ = Organic law determining the organisation, functioning and jurisdiction of courts (Rwanda); RWA PC = Penal Code (Rwanda); RUS MCL = Law on Military Courts of the Russian Federation (Russia); RUS CC = Criminal Code (Russia); Sect. = Section; SEN CMJ = Code of Military Justice (Senegal); UK AFA 2006 = Armed Forces Act 2006 (United Kingdom); UN = United Nations; UN 1946 Convention = Convention on the Privileges and Immunities of the United Nations of 1946; USC = United States Code (United States).

	Immunity for UN staff	Military justice system has jurisdiction
Australia	Probably (+)	<p>(+)</p> <p>Defence Force Discipline Act 1982</p> <ul style="list-style-type: none"> - Separate military justice system (courts martial jurisdiction) for offences of a military nature committed in Australia and for criminal offences committed while serving on missions abroad - Decision on applicability of military jurisdiction or whether ordinary courts have jurisdiction lies at discretion of court martial <p>(-/+)</p> <p>Status of forces agreements for missions abroad:</p> <ul style="list-style-type: none"> - Military personnel have immunity against prosecution in host state - Military personnel have no immunity against prosecution in home country

	Immunity for UN staff	Military justice system has jurisdiction
Bangladesh	Probably (+)	(+) Sect. 59(1) BGD AA 1952 Sect. 78(1) BGD NO 1961 Sect. 71(1) BGD AFA 1953 - Court martial - For any criminal offence committed by persons covered by one of the acts
	Immunity for UN staff	Military justice system has jurisdiction
Burkina Faso	(+)	(-) Art. 2 BFA CMJ - Military justice system comprises <i>Tribunal militaire permanent</i> and <i>Tribunal prévôtal</i> - Jurisdiction over simple violations of ordinary and military law - BFA CPC applies unless BFA CMJ states otherwise, Art. 50 BFA CMJ
	Immunity for UN staff	Military justice system has jurisdiction
Canada	(+)	(+) Code of Service Discipline provides framework for military justice system - Summary trial by commanding officer or superior commander - Full trial by court martial (-) Sect. 273 CAN NDA - If the offence is not sufficiently connected to the military - Military judge decides whether the offence is to be tried before a court martial in accordance with the Code of Service Discipline or

		before the ordinary courts in accordance with CAN CC (Sect. 71 CAN NDA)
	Immunity for UN staff	Military justice system has jurisdiction
China	<p>(+/-) Art. 11 CHN CL, Art. 16 CHN CPL - Diplomatic channels are to be used - Immunity would presumably be respected</p> <p>(-) 7th Point for Attention set down by Mao Zedong - For sexual offences, immunity would probably not be respected - In the event of disputes, there would therefore probably be recourse to the reservation on Art. 8 Sect. 30 of the UN 1946 Convention, on the basis of which China does not bring matters of interpretation before the International Court of Justice for clarification</p>	<p>(-) Art. 7 CHN CL, Military personnel are subject to the CHN CL</p> <p>(?) There are special regulations on UN missions, but these appear to be subject to secrecy</p>
	Immunity for UN staff	Military justice system has jurisdiction
Ethiopia	<p>(-) Art. 14(1) ETH CC - ETH CC applies if an Ethiopian official / diplomat cannot be prosecuted abroad by virtue of immunity - Double criminality required</p>	<p>(+) Art. 4 ETH CPC - Military justice system exists - However, military offences are covered by the ETH CC</p> <p>(+/-) Art. 15 ETH CC - Criminal offences committed abroad by military personnel - Offence against ordinary criminal law: local courts have jurisdiction, ordinary criminal law where the offence was committed applies</p>

		<ul style="list-style-type: none"> - Offence against ordinary criminal law, offender subsequently comes to Ethiopia: courts in Ethiopia have jurisdiction, ordinary criminal law applies - Offence against military law: Ethiopian military court has jurisdiction
	Immunity for UN staff	Military justice system has jurisdiction
France	Probably (+)	(+/-) Art. L.121-1 FRA CMJ No separate justice system, but special courts
	Immunity for UN staff	Military justice system has jurisdiction
Germany	(+) § 20 GER GVG Strictly respected	(-) - Ordinary courts have jurisdiction - Military services courts only for disciplinary matters (-) In particular § 1a GER WStG
	Immunity for UN staff	Military justice system has jurisdiction
Ghana	(+)	(+) Sect. 79(1) GHA AFA 1962 - Military justice system (court martial): summary trial by commanding officer, summary trial by superior officer, general court martial, disciplinary court martial - For murder, manslaughter or rape: ordinary courts have jurisdiction if the offence was committed in Ghana

	Immunity for UN staff	Military justice system has jurisdiction
India	<p>Probably (+)</p>	<p>(+) Sect. 69 IND AA 1950 IND AA 1950 applies to any criminal offence committed by military personnel, in India or abroad</p> <p>(+) IND AA 1950 - 4 kinds of courts martial: general court martial, summary general court martial, district court martial, summary court martial - For murder, manslaughter, rape of civilians: court martial if the offence was committed abroad or on service, otherwise the ordinary courts have jurisdiction - court martial has jurisdiction over some specific sexual and corruption offences</p> <p>(-) Sect. 197(2) IND CPC - Charges may be brought before ordinary court if court martial does not prosecute the offence - Central government consent required, Sect. 108 IND AA 1950</p>
	Immunity for UN staff	Military justice system has jurisdiction
Italy	<p>(+) International treaties</p> <p>(-) Art. 7 para. 1 no. 4 ITA PC No immunity for abuse of public authority by Italian officials</p>	<p>(+) Art. 103 ITA Const. - Military courts have jurisdiction - Exact area of jurisdiction varies in times of war and times of peace - Highest court is the Court of Cassation (<i>Cassazione</i>)</p>

	(+/-) Case law: <ul style="list-style-type: none"> - Immunity is purely procedural - Does not preclude prosecution for war crimes and crimes against humanity 	
	Immunity for UN staff	Military justice system has jurisdiction
Japan	Probably (+)	(-/+) <ul style="list-style-type: none"> - Ordinary criminal law applies to Self-Defense Forces - Immunity only in the case of self-defence as defined by the Self-Defense Forces
	Immunity for UN staff	Military justice system has jurisdiction
Nepal	(+) Basic principle (-) Sect. 22 NEP AA 2063 <ul style="list-style-type: none"> - No criminal liability for military personnel in respect of acts committed in good faith in the course of discharging their duties - Applies to a loss or the death of a person - Does not apply to corruption, theft, torture, disappearance, rape, manslaughter 	(+) Sect. 67 NEP AA 2063 <ul style="list-style-type: none"> - Military justice system (court martial): - Jurisdiction over criminal offences committed by military personnel - Exceptions: manslaughter, rape (Sect. 66 NEP AA 2063), provided not committed by military personnel against military personnel (-) Sect. 3 NEP AA 2063 Ordinary courts have jurisdiction over offences committed while serving on a UN peacekeeping mission against a citizen of the host state (+/-) Sect. 62 NEP AA 2063

		<ul style="list-style-type: none"> - Special investigative committee and military court comprising civilians and military personnel - Applies only to corruption, theft, torture and disappearance
	Immunity for UN staff	Military justice system has jurisdiction
Pakistan	Probably (+)	(+) Sect. 59 PAK AA 1952 <ul style="list-style-type: none"> - Military justice system (court martial) also has jurisdiction over offences covered by PAK PC - Unclear whether missions abroad always also correspond to 'active duty' where this is required for a specific criminal offence - Military courts: general court martial, district court martial, field general court martial, summary court martial
	Immunity for UN staff	Military justice system has jurisdiction
Rwanda	(+)	(+) Military justice system has jurisdiction <ul style="list-style-type: none"> - Offences against ordinary law or military law - Applies to military personnel of all ranks, Art. 137 f. RWA COJ - Same penalties as in Penal Code, Art. 708 RWA PC
	Immunity for UN staff	Military justice system has jurisdiction
Russia	Unclear	(-/+) RUS MCL <ul style="list-style-type: none"> - Military courts have jurisdiction over crimes against military service - However, military courts are part of the ordinary justice system - Highest authority: (ordinary) Supreme Court of the Russian Federation

		- Particular crimes against military service are covered by the RUS CC, Art. 331 et seq.
	Immunity for UN staff	Military justice system has jurisdiction
Senegal	(+)	(+/-) Art. 1 SEN CMJ Specially trained ordinary courts have jurisdiction
	Immunity for UN staff	Military justice system has jurisdiction
Spain	(+) - Immunity in principle - Case law: UN staff / experts can be subject to criminal prosecution for sexual offences	(+) Code of military justice contains some criminal offences but also refers to ordinary criminal law (+) Military courts have jurisdiction
	Immunity for UN staff	Military justice system has jurisdiction
United Kingdom	(+)	(+) Sect. 50 UK AFA 2006 - Court martial comprises a presiding Judge Advocate and lay service members - Court martial has jurisdiction over serious 'service offences' (criminal offences and disciplinary matters) (+) Sect. 42 UK AFA 2006 Ordinary criminal law also applies to military personnel

	Immunity for UN staff	Military justice system has jurisdiction
United States of America	<p>(+) 22 USC 7424 Even demands immunity from the ICC</p> <p>(+) Case law on issue - Also with regard to UN staff - Functional immunity examined in greater detail</p>	<p>(+) 10 USC §§822, 823, 834 Military justice system (courts martial) headed by commanding officers: general courts martial, special courts martial, summary courts martial</p>

BRIEF SYNOPSES FOR THE INDIVIDUAL LEGAL SYSTEMS

In **Australia**, at the federal level the criminal prosecution of foreign offences is possible only for those offences where there is express provision in the law. There are four different categories in this respect, each with different requirements for criminal liability. Three of these categories require there to be double criminality. This essentially only applies with the active personality principle and universal jurisdiction, however, since the passive personality principle applies only in one case, and then only with the consent of the Attorney General. Australia has a separate military justice system, which has jurisdiction over domestic offences of a military character as well as criminal offences committed while on missions abroad.

In **Bangladesh**, there is only very limited scope for the criminal prosecution of offences committed abroad. In a departure from the common law tradition, the active personality principle does apply to all offences covered by the Penal Code, with express provision being required for offences covered by any other legislation. However, the consent of the government is required in all cases. Furthermore, neither the passive personality principle nor universal jurisdiction are recognised under the Penal Code of Bangladesh. Criminal offences committed by military personnel come under the military justice system.

Burkina Faso has a general provision on the active personality principle, under which crimes committed abroad by its own citizens can always be prosecuted. Misdemeanours can also be prosecuted subject to the condition of double criminality. Double criminality is always required for the application of the passive personality principle. Crimes against the state may be prosecuted under universal jurisdiction. Although Burkina Faso does have two military courts, these deal solely with simple violations.

In **Canada**, offences committed abroad are subject to criminal prosecution only to a limited extent under federal law, specifically where there is express provision made for the offence in question. With respect to the active personality principle, this is in particular the case for certain sexual offences against children; for the passive personality principle this is the case for corruption of public officials, although double criminality is required in such instances. In Canada, criminal offences committed by military personnel are dealt with by military courts.

Chinese law links any criminal prosecution of offences committed abroad to the seriousness of the act in question. The offence must carry the threat of at least three years' imprisonment under Chinese law. Furthermore, double criminality is required for the application of the passive personality principle and universal jurisdiction, with the latter applying only to offences committed against the state. For criminal offences committed by persons accorded immunity, Chinese law expressly prescribes the use of diplomatic channels. Immunity would presumably not be respected for sexual offences. There appear to be special regulations on the deployment of military personnel as part of UN missions abroad, although these regulations are subject to secrecy. The ordinary courts also have jurisdiction over military personnel in respect of criminal matters.

Ethiopian law has a range of general provisions governing the various constellations in respect of criminal liability for offences committed abroad. These provisions encompass both the active and passive personality principles, and double criminality is required in both instances. On the basis of universal jurisdiction, offences committed abroad by and against foreigners can be prosecuted if Ethiopian law provides for the death penalty or at least ten years' imprisonment. It is also possible for Ethiopian officials and diplomats accorded immunity abroad to be subject to criminal prosecution, again subject to the condition of double criminality. Criminal offences committed by military personnel are tried by military courts.

Offences committed abroad may, in principle, be subject to criminal prosecution in **France** on the basis of the active and passive personality principles. However, double criminality is also required in the case of a misdemeanour if the offender is French. For certain sexual offences committed against minors, habitual residence is sufficient and the offender need not be French. Certain criminal offences, in particular relating to forced marriage, can also be prosecuted if the victim is a minor and habitually resident in France. Crimes against the state may be prosecuted under universal jurisdiction. Criminal offences committed by military personnel come under the jurisdiction of special military courts, but the latter are part of the ordinary justice system.

The **German** Criminal Code has general provisions on the active and passive personality principles, with double criminality being required in both instances. Added to this, there are lists of specific criminal offences committed abroad that can be prosecuted without this requirement being met, these being in part linked to the citizenship of the person in question and in part to their place of residence. There is also an exhaustive list of foreign offences that can be prosecuted on the basis of universal jurisdiction. Although the ordinary courts have jurisdiction over criminal offences committed by military personnel, local jurisdiction is concentrated in a single judicial district.

In **Ghana**, there is only very limited scope for the criminal prosecution of offences committed abroad. A Ghanaian citizen may only be prosecuted under the active personality principle if they work for state institutions, commit murder, or misappropriate or dissipate public funds. The passive personality principle is not applied in Ghana, and universal jurisdiction is provided for only in the case of some listed criminal offences. In principle, criminal offences committed by military personnel fall under the jurisdiction of military courts, with the ordinary courts having jurisdiction only over cases of murder, manslaughter or rape committed in Ghana.

In a departure from the common law tradition, **India** has introduced a general provision applying the active personality principle to all offences covered by the Penal Code, albeit subject to the sanction of the central government. For offences covered by other laws, there must be express provision for acts committed abroad to be prosecuted. The passive personality principle is not applied in India. Terrorist acts and their financing may be subject to criminal prosecution on the basis of universal jurisdiction, as may criminal offences covered by international treaties. India has a separate military justice system, which has jurisdiction, in particular, over murder, manslaughter and rape committed against civilians abroad or while on service, as well as over certain sexual offences and acts of corruption. Other criminal offences come under the jurisdiction of the ordinary courts. However, even in the case of the aforementioned acts, charges may be brought before the ordinary courts if the military court does not prosecute the offence.

Italy links the liability to prosecution for offences committed abroad to the seriousness of the act in question. The active personality principle is applied to crimes that carry a penalty of at least three years' imprisonment, or at the request of the Minister of Justice or the victim. However, abuse of public authority by Italian officials may be prosecuted irrespective of the severity of the act. For the passive personality principle to be applied, the offence must be a crime carrying a penalty of at least one year's imprisonment. Both crimes against the state and criminal offences subject to at least three years' imprisonment may be prosecuted under universal jurisdiction if the offender is apprehended in Italy. The law does not require double criminality for any of the above constellations. Nevertheless, legal doctrine has derived from the principle of legality that foreign offences must also be punishable by law where they are committed. Italian law makes provision for immunity to be removed in cases of abuse of public authority by Italian officials. Special military courts have jurisdiction over offences committed abroad by military personnel. However, the highest court is the ordinary Court of Cassation.

Under **Japanese** law, only certain listed offences are liable to criminal prosecution if committed abroad. This applies to both the active and passive personality principles, and also to universal jurisdiction. The law also specifies various foreign offences liable to prosecution if committed by Japanese public officials. Although there is no provision for this in law, with regard to the application of the active personality principle, legal doctrine calls for the condition of double criminality and for the penalty not to be higher than that in the country where the offence was committed. Criminal offences committed by military personnel are dealt with by the ordinary courts.

Under current **Nepalese** law there is no general rule on the criminal prosecution of offences committed abroad. The latter can therefore only be prosecuted if there is express provision in law for doing so for the offence in question. There is provision for the application of the passive personality principle in cases of organised crime and human trafficking, and a form of the active personality principle for acts of corruption committed by Nepalese public officials. There is a type of universal jurisdiction over corruption, organised crime and money laundering, although for the latter Nepal must be the source or recipient country and double criminality must exist. In principle, criminal offences committed by military personnel fall under the jurisdiction of military courts. However, there are various exceptions in this regard, in particular for homicides and rape, as well as for offences committed while serving on a UN peacekeeping mission against a citizen of the host state.

In a departure from the common law tradition, **Pakistan** has a general provision on the active personality principle, although offences committed abroad can only be prosecuted subject to the consent of the territorial or central government. If the offence is an act outside of the Penal Code, it can only be prosecuted if there is express provision for doing so with regard to offences committed abroad. The passive personality principle is not applied in Pakistan, while universal jurisdiction applies only in the case of criminal offences covered by certain international conventions. The military courts have jurisdiction over criminal offences committed by military personnel.

The Russian Federation has rather far-reaching provisions on criminal liability for offences committed abroad. Prosecution is possible on the basis of the active and passive personality principles without any further conditions being required, and both principles are also applicable to stateless persons permanently residing in the Russian Federation. Criminal offences covered by international conventions may be prosecuted under universal jurisdiction, as may acts against the interests of the Russian Federation. It is unclear to what extent immunity is respected in Russia. Although Russia has special military courts, these are part of the ordinary justice system.

Rwandan law provides for far-reaching regulations on the active and passive personality principles. Both are applicable without limitation, although in the case of the active personality principle the offender must have been a Rwandan national at the time the offence was committed. Universal jurisdiction applies to international and cross-border crimes. In Rwanda, criminal offences committed by military personnel fall under the jurisdiction of the military courts.

Senegalese law has general provisions for the active and passive personality principles. In accordance with these provisions, crimes committed abroad may be subject to prosecution. However in the case of misdemeanours, the active personality principle may only be applied if there is double criminality. For certain criminal offences, the offender having their place of residence in Senegal is sufficient for the passive personality principle to apply. Universal jurisdiction is applicable only for certain criminal offences. Offences committed by military personnel fall under the jurisdiction of ordinary courts, but only those that have special training.

In **Spain**, offences committed abroad may be prosecuted under the active personality principle if there is double criminality and if the victim or public prosecutor applies to a Spanish court. For the passive personality principle, the law provides only a list of certain offences. Offences against the Spanish

authorities in particular can be prosecuted on the basis of universal jurisdiction. Although Spanish law respects immunity in principle, its legislation provides for UN staff and experts to face criminal prosecution for sexual offences. Offences committed abroad by military personnel are dealt with by military courts.

The **United Kingdom** has no general provisions on offences committed abroad. Such offences can only be prosecuted if there is express provision in law for doing so. While there are appropriate provisions in respect of the active personality principle for individual offences, the passive personality principle is not applied. Certain sexual offences against minors may also be prosecuted even if the offender is a foreigner provided such person is a UK resident and the condition of double criminality is met. Universal jurisdiction can also only be applied if there is express provision in law for doing so. This does not appear to be the case for sexual offences and acts of corruption. In the United Kingdom, criminal offences committed by military personnel fall under the jurisdiction of military courts.

In the **United States**, there must be express provision for the criminal prosecution of offences committed abroad either for the specific act in question or in precedents. There are corresponding provisions for the active personality principle and for universal jurisdiction in both law and case law. For the passive personality principle, however, it is currently only possible to take recourse to case law, with the individual cases as a rule also being based on different principles. The United States has a military justice system which has jurisdiction over criminal offences committed by military personnel.

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