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# Universal Jurisdiction: A Tool Against Impunity or a Threat to Sovereignty

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## ABSTRACT

*This paper critically examines the evolving doctrine of universal jurisdiction (UJ) and its role in enforcing accountability for international crimes such as genocide, war crimes, crimes against humanity, and torture. UJ empowers national courts to prosecute such crimes regardless of where they occurred or the nationality of those involved. Advocates regard it as a necessary instrument to combat impunity when domestic and international forums fail. However, its use has also provoked strong opposition, raising concerns over sovereignty, political manipulation, and judicial overreach.*

*Through a doctrinal analysis and comparative study of state practices in Germany, Spain, and Belgium, along with critical case studies—including the Pinochet case, Hissène Habré, and Germany's Koblenz trial—this research evaluates both the legal foundations and the practical challenges of universal jurisdiction. It identifies key benefits, such as filling justice gaps and deterring atrocity crimes, while also addressing the risks of politicization, selective enforcement, and conflict with international institutions like the ICC.*

**Keywords:** *Universal Jurisdiction, International Criminal Law, Genocide, Crimes Against Humanity, War Crimes, International Court of Justice (ICJ)*

## I. INTRODUCTION

Universal jurisdiction is one of the most debated doctrines in modern international law. It permits national courts to exercise criminal jurisdiction over individuals regardless of where the alleged crimes occurred, and irrespective of the nationality of the accused or victims, when those crimes violate fundamental norms of international law. Universal Jurisdiction's normative justification is rooted in the idea that certain crimes are so grave—genocide, torture, crimes against humanity, war crimes—that they affect the international community as a whole and therefore merit prosecution by any state. The landmark 1998 Pinochet case in the UK, in which Spain sought the extradition of Chile's former dictator for torture, brought the doctrine to global attention. However, the growing use of UJ, especially by European states

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such as Germany, Spain, and Belgium, has sparked serious questions: Is universal jurisdiction being used to fill gaps in accountability where international courts (e.g., ICC) or national jurisdictions fail? Or is it being misused as a political tool, threatening state sovereignty, diplomatic relations, and the principle of non-intervention? This paper will explore whether universal jurisdiction has evolved into a legitimate tool to combat impunity, or whether its unregulated application risks eroding the foundational norms of international relations.

Despite its noble aims, universal jurisdiction poses a deep tension between accountability and sovereignty. While it promises justice for victims and deterrence for perpetrators, its application often raises the following challenges:

- Perceived political motivations, especially when cases target foreign officials from weak or non-Western states,
- Diplomatic backlash and allegations of jurisdictional overreach,
- Risk of undermining the principle of state sovereignty and non-intervention, foundational to international law (UN Charter, Article 2(1)).

This tension becomes most visible when UJ is exercised unilaterally by national courts, without multilateral consensus or cooperation, sparking fears that it may evolve into a tool of selective justice or political interference.

## **II. DEFINITION AND EVOLUTION OF UNIVERSAL JURISDICTION**

### **A. Definition of Universal Jurisdiction**

Universal jurisdiction (UJ) is a principle of international law that allows a state to prosecute individuals accused of committing certain grave international crimes, regardless of where those crimes occurred, the nationality of the accused, or the nationality of the victims. It is grounded in the idea that some crimes—such as genocide, war crimes, crimes against humanity, torture, and piracy—are so heinous that they affect the international community as a whole, and thus, any state may act to uphold justice.<sup>3</sup>

Unlike territorial or nationality-based jurisdiction, universal jurisdiction operates independently of any connection between the prosecuting state and the crime, making it a unique mechanism for combating impunity when no other legal forum is available.

### **B. Historical Evolution**

The origins of universal jurisdiction lie in the prosecution of piracy, regarded as a *hostis*

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<sup>3</sup> Princeton Principles On Universal Jurisdiction, Principle 1 (2001).

humani generis (enemy of all humanity) in customary international law. Pirates could be prosecuted by any state because their crimes occurred on the high seas, outside the jurisdiction of any one nation.<sup>4</sup>

The concept expanded significantly in the 20th century with the development of international criminal law:

- The Nuremberg Trials (1945–46) established the precedent for holding individuals accountable for war crimes and crimes against humanity, emphasizing that sovereignty could not shield perpetrators of grave crimes.
- The Geneva Conventions (1949) and the Convention Against Torture (1984) introduced treaty obligations for states to either prosecute or extradite persons accused of serious international crimes (aut dedere aut judicare), laying the groundwork for treaty-based universal jurisdiction.<sup>5</sup>
- In recent decades, universal jurisdiction has been applied to crimes such as torture (e.g., Pinochet case), genocide (e.g., Rwanda cases), and crimes against humanity (e.g., Syria-related trials in Germany).

This shift represents a move from UJ's historical functional necessity to its normative justification: to ensure that no safe haven exists for perpetrators of the most serious crimes.

### C. Importance in a Globalized Legal Order

In an increasingly interconnected world, international crimes often involve multiple jurisdictions or occur in failed states where local accountability is impossible. Universal jurisdiction plays a vital role in:

- Closing impunity gaps when perpetrators evade justice at home,
- Enforcing jus cogens norms that are binding on all states,
- Reinforcing international solidarity in the pursuit of justice,
- Complementing the work of international tribunals like the ICC, especially when such bodies lack jurisdiction or capacity.

States such as Germany, Spain, and Belgium have used UJ as part of a “global justice” framework, stepping in where international or domestic mechanisms fail.

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<sup>4</sup> Eugene Kontorovich, *The Piracy Analogy: Modern Universal Jurisdiction's Hollow Foundation*, 45 HARV. INT'L L.J. 183 (2004).

<sup>5</sup> Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 5(2), Dec. 10, 1984, 1465 U.N.T.S. 85.

### III. LEGAL BASIS OF UNIVERSAL JURISDICTION IN INTERNATIONAL LAW

The legal foundation of universal jurisdiction (UJ) lies in both customary international law and treaty law, particularly in relation to crimes considered *jus cogens*—norms from which no derogation is permitted. While no single treaty comprehensively codifies Universal Jurisdiction, several legal instruments and judicial precedents support its application in prosecuting international crimes, especially where national jurisdictions are unwilling or unable to act.

#### A. Customary International Law

Customary international law recognizes universal jurisdiction for certain crimes that are of universal concern, such as:

- Piracy (the classical UJ crime),
- Genocide,
- Crimes against humanity,
- War crimes, and
- Torture.

The basis for Universal Jurisdiction under custom arises from **state practice** and **opinio juris**, the belief that such jurisdiction is a legal obligation.<sup>6</sup>Courts have frequently acknowledged Universal Jurisdiction as an evolving but accepted doctrine for punishing crimes that "shock the conscience of humanity."

#### B. Geneva Conventions of 1949 – Grave Breaches Regime

The 1949 Geneva Conventions, particularly Common Article 49 of the First Convention, impose a duty on states to search for and prosecute individuals responsible for grave breaches, regardless of nationality or location. This introduces a form of obligatory universal jurisdiction.<sup>7</sup>

Grave breaches include:

- Willful killing,
- Torture or inhuman treatment,
- Unlawful deportation or confinement of civilians.

Under the grave breaches regime, every state party must enact domestic laws to prosecute

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<sup>6</sup> M. Cherif Bassiouni, *International Criminal Law* 287–91 (3d Ed. 2008).

<sup>7</sup> Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field art. 49, Aug. 12, 1949, 75 U.N.T.S. 31.

such crimes or extradite the accused. This framework is one of the most robust treaty-based endorsements of UJ.

### **C. Convention Against Torture (1984) – Article 5(2)**

The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) further entrenches UJ. Article 5(2) requires states to establish jurisdiction over acts of torture if the alleged offender is present in any territory under their jurisdiction, even if:

- The crime occurred elsewhere,
- The victim or offender is not a national.

This provision gives effect to *aut dedere aut judicare* (extradite or prosecute), obligating states to deny safe haven to torturers.<sup>8</sup> The Pinochet case (UK, 1998) relied heavily on CAT provisions and helped affirm the viability of Universal Jurisdiction under treaty law.

### **D. Rome Statute of the International Criminal Court – Complementarity vs. Universal Jurisdiction**

The Rome Statute (1998), which established the International Criminal Court (ICC), does not explicitly recognize universal jurisdiction. The Court's jurisdiction is based on:

- Crimes committed on the territory of a State Party (Article 12),
- Crimes committed by a national of a State Party, or
- Referrals by the UN Security Council.

However, the principle of complementarity under Article 17 allows domestic courts to take primary responsibility for prosecuting international crimes. This complements rather than conflicts with UJ, and many states use their Universal Jurisdiction laws to fill accountability gaps when the ICC cannot act due to jurisdictional or political limitations.<sup>9</sup>

### **E. Jurisprudence of the ICJ, ICTY, and ICTR**

International courts have made significant contributions to the development of universal jurisdiction:

- In the Arrest Warrant Case (Belgium v. Congo, 2002), the International Court of Justice (ICJ) did not reject universal jurisdiction *per se*, but held that it may not override immunities of sitting officials.<sup>10</sup>

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<sup>8</sup> Convention Against Torture art. 5(2), Dec. 10, 1984, 1465 U.N.T.S. 85.

<sup>9</sup> Rome Statute of the International Criminal Court art. 17, July 17, 1998, 2187 U.N.T.S. 90.

<sup>10</sup> Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium), 2002 I.C.J. 3.

- The International Criminal Tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR) also underscored the notion that individuals—not states—bear direct criminal responsibility for international crimes, reinforcing the idea that such crimes are not protected by sovereign immunity or territorial constraints.

These rulings reflect a growing consensus that certain crimes transcend national boundaries and justify extraterritorial enforcement, including Universal Jurisdiction.

#### **F. Types of Jurisdiction in International Law**

Understanding universal jurisdiction requires distinguishing it from other bases of jurisdiction:

Type	Basis
<b>Territorial</b>	Where the crime occurred
<b>Nationality</b>	Nationality of the perpetrator (active personality)
<b>Passive Personality</b>	Nationality of the victim
<b>Protective</b>	Protection of vital state interests (e.g., counterfeiting currency)
<b>Universal</b>	Jurisdiction over grave crimes of international concern, regardless of any link to the prosecuting state

### **IV. STATE PRACTICE: COMPARATIVE ANALYSIS**

The application of universal jurisdiction (UJ) varies widely across national legal systems. While international treaties and customary law provide the legal basis, it is ultimately domestic legislation and judicial interpretation that determine how UJ is implemented in practice. This section examines how Germany, Spain, and Belgium—three prominent jurisdictions in the development and limitation of Universal Jurisdiction have approached this doctrine through legislation and landmark cases.

#### **A. Germany**

Germany has emerged as one of the leading enforcers of universal jurisdiction in recent years, owing largely to its progressive legal framework and strong commitment to international

criminal justice.

### **1. German Code of Crimes against International Law (VStGB)**

In 2002, Germany enacted the Völkerstrafgesetzbuch (VStGB) or Code of Crimes Against International Law, which incorporates the core crimes of genocide, war crimes, and crimes against humanity into domestic law.<sup>11</sup> The VStGB enables German courts to exercise universal jurisdiction without requiring a territorial, nationality, or victim-based link to Germany.

### **2. Syrian War Crimes Trials (Anwar R. and Eyad A.)**

Germany's application of UJ gained international attention with the Koblenz trial of Anwar R. and Eyad A., two former officials of the Syrian regime. In 2022, the Higher Regional Court of Koblenz convicted Anwar R. of crimes against humanity for overseeing the torture of more than 4,000 detainees.<sup>12</sup> The trial was groundbreaking as the first criminal case worldwide against members of the Assad regime and marked a significant step in the use of universal jurisdiction to address atrocities in Syria.

### **3. No Direct National Connection Required**

German courts have consistently held that the presence of the accused on German soil is sufficient to trigger universal jurisdiction under the VStGB.<sup>13</sup> This broad application has positioned Germany as a key actor in the global fight against impunity, often filling gaps left by the ICC or national jurisdictions unwilling to act.

## **B. Spain**

Spain was once a global pioneer in universal jurisdiction, particularly during the late 1990s and early 2000s. However, political pressures and diplomatic consequences later prompted legislative restrictions that significantly narrowed its scope.

### **1. The Pinochet Case (1998)**

Spain's global role in UJ was cemented by Judge Baltasar Garzón's issuance of an arrest warrant for Chilean dictator Augusto Pinochet in 1998, on charges of torture and human rights violations.<sup>14</sup> Although Pinochet was never prosecuted in Spain, the case affirmed the principle that former heads of state are not immune from prosecution for international crimes, and brought universal jurisdiction into the global spotlight.

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<sup>11</sup> Völkerstrafgesetzbuch [VStGB] [Code of Crimes Against International Law], BGBl. I at 2254, last amended by BGBl. I at 2600 (Ger.).

<sup>12</sup> Higher Regional Court of Koblenz, Judgment of Jan. 13, 2022 – 1 StE 9/19.

<sup>13</sup> Kai Ambos, *Universal Jurisdiction and the German VStGB*, 18 J. INT'L CRIM. JUST. 165 (2020).

<sup>14</sup> Regina v. Bartle and the Commissioner of Police for the Metropolis and Others Ex Parte Pinochet, [1999] UKHL 17.



## **2. Legal Reforms (2009 and 2014)**

In response to political backlash, including objections from the United States, China, and Israel, Spain reformed its UJ laws:

- In 2009, jurisdiction was limited to cases with a "Spanish nexus" (e.g., Spanish victims).
- In 2014, Spain further restricted UJ to cases where the suspect is present in Spain, and either the victim is Spanish or Spain has a specific obligation under an international treaty.<sup>15</sup>

These reforms largely curtailed Spain's earlier global reach in universal jurisdiction enforcement.

## **3. Rifaat al-Assad Case**

Despite the restrictions, Spain pursued Universal Jurisdiction in cases such as that of Rifaat al-Assad, uncle of Syrian President Bashar al-Assad, for alleged crimes committed in the 1980s.<sup>16</sup> While the case was ultimately dismissed due to jurisdictional limits under the new law, it underscored Spain's ongoing—though limited—engagement with international criminal accountability.

## **4. Political Pushback and Diplomatic Pressure**

Spain's earlier assertiveness on Universal Jurisdiction sparked strong opposition from powerful states, which accused it of politicizing justice. The diplomatic fallout from Universal Jurisdiction cases helped drive the legal amendments, illustrating the tension between legal idealism and geopolitical pragmatism.

## **C. Belgium**

Belgium was another early leader in promoting universal jurisdiction but also experienced significant political backlash that led to legal reform and a more cautious approach.

### **1. Broad Universal Jurisdiction Law in Early 2000s**

Belgium's 1993 law allowed its courts to prosecute grave breaches of international humanitarian law regardless of any territorial or personal connection.<sup>17</sup> The statute attracted high-profile complaints, including cases filed against Israeli Prime Minister Ariel Sharon,

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<sup>15</sup> Ley Orgánica 1/2014, de 13 de marzo, por la que se modifica la Ley Orgánica 6/1985, de 1 de julio, del Poder Judicial (Spain).

<sup>16</sup> El País, "La Audiencia archiva el caso contra Rifaat al Assad," June 9, 2020.

<sup>17</sup> Belgian Act Concerning the Punishment of Grave Breaches of International Humanitarian Law, 1993 (amended 1999).

U.S. President George H. W. Bush, and other global figures.

## **2. Sharon and Bush Lawsuits Prompt Reform**

The Sharon case (for alleged crimes in the 1982 Sabra and Shatila massacre) and attempts to prosecute American officials provoked intense political and diplomatic backlash. The United States warned Belgium that such actions could affect NATO operations, leading to Belgium's decision to repeal and replace its law.<sup>18</sup>

## **3. 2003 Amendment Limiting Jurisdiction**

In 2003, Belgium significantly narrowed its UJ law, requiring:

- A Belgian connection to the case (e.g., the suspect or victim is Belgian), or
- Presence of the suspect on Belgian territory, along with prosecutorial discretion to proceed.

This reform effectively ended Belgium's experiment with global jurisdiction without constraints.

## **4. Belgium v. Congo (ICJ, Arrest Warrant Case, 2002)**

The International Court of Justice (ICJ) ruled against Belgium in the Arrest Warrant Case, finding that Belgium's attempt to prosecute a sitting foreign minister of Congo violated principles of diplomatic immunity.<sup>19</sup> While the ICJ did not reject Universal Jurisdiction itself, the case emphasized the limits of universal jurisdiction in light of state sovereignty and the inviolability of certain officials while in office.

# **V. BENEFITS OF UNIVERSAL JURISDICTION**

Despite the controversies surrounding its application, universal jurisdiction remains a powerful legal mechanism in the international criminal justice architecture. When carefully and responsibly applied, universal jurisdiction provides multiple benefits that enhance the fight against impunity and reinforce the global rule of law. This section outlines the key advantages of universal jurisdiction in theory and practice.

## **A. Fills Accountability Gaps**

One of the most important contributions of UJ is that it offers a legal avenue of last resort when domestic systems are unwilling or unable to prosecute serious international crimes. In situations involving:

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<sup>18</sup> Human Rights Watch, "Belgium: Universal Jurisdiction Law Repealed," Aug. 1, 2003.

<sup>19</sup> Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium), 2002 I.C.J. 3.

- Failed states (e.g., Somalia, Syria),
- Uncooperative regimes (e.g., North Korea),
- or domestic bias or incapacity (e.g., transitional justice environments),

universal jurisdiction empowers foreign courts to step in where other avenues of justice are blocked.<sup>20</sup> This is particularly important when international tribunals like the International Criminal Court (ICC) lack jurisdiction or face political constraints. In this way, universal jurisdiction acts as a critical safety net to ensure that gross human rights violations do not go unpunished.

### **B. Promotes Deterrence and Moral Accountability**

Universal jurisdiction reinforces the principle that no one is above the law, regardless of their rank or location. By removing geographic and political safe havens, it:

- Sends a strong message to potential perpetrators that international crimes will be pursued globally,
- Deters future violations by creating legal uncertainty for violators who travel abroad,
- Reinforces moral accountability and the idea that certain acts—such as genocide and torture—are crimes against all humanity.

The Anwar R. trial in Germany is a landmark example of this deterrent effect, signaling that even high-level officials who commit atrocities abroad may face trial in a foreign court.<sup>21</sup>

### **C. Embodies the Principle of International Criminal Responsibility**

Universal jurisdiction reflects the evolution of international law from state-centric to individual criminal responsibility. Since Nuremberg, the trend in international law has shifted toward holding individuals—not states—accountable for war crimes, genocide, and crimes against humanity.<sup>22</sup> Universal jurisdiction operationalizes this principle by enabling domestic courts to bring individuals to justice, reinforcing the notion that grave crimes transcend borders and immunities.

### **D. Empowers Victims and Civil Society**

Universal jurisdiction also serves as a vehicle for victim empowerment and civil society advocacy. NGOs, diaspora groups, and human rights organizations have played a pivotal role in initiating universal jurisdiction cases by:

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<sup>20</sup> Antonio Cassese, *When May Senior State Officials Be Tried for International Crimes?*, 13 EUR. J. INT'L L. 853, 856 (2002).

<sup>21</sup> Higher Regional Court of Koblenz, Judgment of Jan. 13, 2022 – 1 StE 9/19.

<sup>22</sup> Charter of the International Military Tribunal art. 6, Aug. 8, 1945, 82 U.N.T.S. 279.

- Collecting evidence and witness testimonies,
- Filing criminal complaints in host countries,
- Lobbying prosecutors and policymakers.

This dynamic makes universal jurisdiction a participatory model of justice, giving voice to survivors who are often ignored or silenced in their home jurisdictions. The ECCHR (European Center for Constitutional and Human Rights) has been instrumental in facilitating Syrian war crimes trials in Germany, working closely with victims and witnesses.<sup>23</sup>

### **E. Complements the ICC and Ad Hoc Tribunals**

Universal Jurisdiction is not a competitor but a complementary mechanism to international tribunals such as the ICC, ICTY, and ICTR. Under the principle of complementarity enshrined in the Rome Statute, national courts have the primary duty to prosecute international crimes. Universal jurisdiction extends this principle by:

- Ensuring that perpetrators do not escape justice due to jurisdictional gaps,
- Relieving pressure on overburdened international institutions,
- Providing regional or decentralized justice options that may be more accessible or timely.

Thus, universal jurisdiction contributes to a pluralist and multi-layered system of international criminal accountability.

## **VI. CHALLENGES AND CRITICISMS OF UNIVERSAL JURISDICTION**

While universal jurisdiction offers an important avenue for pursuing justice when national or international courts fail, it remains one of the most controversial principles in international law. Critics argue that its unregulated and discretionary use can produce unintended legal, political, and diplomatic consequences. This section explores the key challenges and criticisms associated with the exercise of universal jurisdiction.

### **A. Alleged Abuse for Political Ends**

One of the primary concerns raised against UJ is its potential misuse as a political tool. Critics argue that some states may selectively initiate prosecutions:

- To target political adversaries,
- To exert foreign policy pressure,
- Or to score moral victories without meaningful justice outcomes.

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<sup>23</sup> European Center for Constitutional and Human Rights (ECCHR), “Syria: Torture by the Assad Regime,”

The 1998 Pinochet case, though celebrated by many as a triumph of accountability, also drew criticism from Chile and its allies, who viewed it as a politically motivated interference in national reconciliation efforts.<sup>24</sup> Similarly, universal jurisdiction complaints filed in Belgium against U.S., Israeli, and Chinese officials led to accusations of judicial overreach for political purposes.

### **B. Diplomatic Friction and Retaliatory Measures**

The exercise of UJ often leads to diplomatic tensions, especially when sitting or former officials of powerful states are targeted. In response to UJ cases:

- The United States pressured Belgium to amend its universal jurisdiction law after lawsuits were filed against American and Israeli officials in the early 2000s.<sup>25</sup>
- China and Israel protested Spain's UJ proceedings, leading to diplomatic standoffs and eventual legislative rollbacks.

In extreme cases, retaliatory measures have included threats to cut bilateral aid, withdraw military cooperation, or boycott international forums, showing how legal actions under UJ can strain foreign relations and reduce its practical effectiveness.

### **C. Sovereignty Concerns: Non-Intervention and Equal Sovereignty**

Universal jurisdiction challenges the foundational principle of state sovereignty enshrined in Article 2(1) of the UN Charter, which affirms the sovereign equality of all states and prohibits intervention in domestic affairs.<sup>26</sup>

Universal Jurisdiction effectively permits one state's courts to judge another state's conduct without consent or territorial link, raising questions about:

- Violation of the non-intervention principle, and
- Imbalances in legal power, particularly when universal jurisdiction is invoked predominantly by Global North countries against actors from the Global South.

As a result, many developing nations see universal jurisdiction as a neocolonial mechanism that enables powerful states to project judicial authority globally, undermining the legal autonomy of weaker nations.

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<sup>24</sup> Regina v. Bartle and the Commissioner of Police for the Metropolis and Others Ex Parte Pinochet, [1999] UKHL 17.

<sup>25</sup> Human Rights Watch, "Belgium: Universal Jurisdiction Law Repealed," Aug. 1, 2003.

<sup>26</sup> U.N. Charter art. 2(1).

### **D. Practical Challenges: Evidence, Access, and Fair Trials**

From a procedural perspective, universal jurisdiction trials face significant logistical obstacles:

- Access to evidence and witnesses is often difficult, especially for crimes committed in war zones or authoritarian regimes.
- Prosecutors must rely on second-hand reports, diaspora testimonies, or NGO investigations.
- Ensuring fair trials and due process is also a concern when key participants cannot be brought before the court.<sup>27</sup>

For example, in the Koblenz trial in Germany, prosecutors overcame these challenges through extensive collaboration with NGOs and Syrian refugee communities—but such efforts are resource-intensive and not easily replicable.

### **E. Selectivity and Inconsistency in Application**

The selective and inconsistent application of universal jurisdiction undermines its credibility as a universal tool for justice. Critics argue that:

- UJ is invoked only when politically safe or symbolically rewarding,
- Cases involving powerful states or allies are avoided or dismissed,
- There is no uniform standard for when and how universal jurisdiction should be applied.

This perception of legal double standards can erode public trust and reinforce impunity in regions where UJ is either politically inconvenient or diplomatically sensitive.

### **F. Overlap and Tension with the ICC's Complementarity Principle**

Although UJ can complement the International Criminal Court (ICC), tensions may arise over jurisdictional primacy and strategic duplication. The Rome Statute grants the ICC subsidiary authority, acting only when national systems are unwilling or unable to prosecute (Article 17).<sup>28</sup>

Problems emerge when:

- Multiple jurisdictions initiate overlapping proceedings,
- Domestic UJ cases are seen as undermining the ICC's legitimacy or focus,

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<sup>27</sup> Luc Reydam, *Universal Jurisdiction: International and Municipal Legal Perspectives* 173–176 (2003).

<sup>28</sup> International Criminal Court, Rome Statute, art. 17, July 17, 1998, 2187 U.N.T.S. 90.

- States bypass multilateral processes in favor of unilateral legal action.

Moreover, non-ICC member states using UJ to prosecute crimes under ICC jurisdiction (e.g., the U.S. or Syria) raise questions about normative consistency and international coordination.

## VII. CASE STUDIES

This section examines key case studies that illustrate the development, application, and limits of universal jurisdiction (UJ). To assess the scope, effectiveness, and limitations of universal jurisdiction (UJ), it is essential to examine its application through key judicial precedents. These case studies illustrate both the potential of UJ in delivering justice and the controversies it generates, especially regarding sovereignty, immunity, and political backlash.

### A. The Pinochet Case (UK/Spain, 1998–2000)

The Pinochet case is widely regarded as the foundational precedent for modern UJ. In 1998, former Chilean dictator Augusto Pinochet was arrested in London following a Spanish extradition request based on the Convention Against Torture and UJ principles.<sup>29</sup>

#### Key Significance:

- The UK House of Lords ruled that a former head of state could be extradited for acts of torture, narrowing immunity for international crimes.
- This case transformed UJ from theory to practice, emphasizing that gross human rights violations cannot be shielded by sovereign status.
- Although Pinochet was ultimately released on health grounds, the case inspired other universal jurisdiction efforts globally and reshaped the international legal landscape.

### B. Hissène Habré Case (Senegal/Chad, 2016)

The prosecution of Hissène Habré, former president of Chad, by a hybrid court in Senegal marked the first time a former African head of state was prosecuted for human rights violations in another African country under UJ.<sup>30</sup>

#### Key Significance:

- The Extraordinary African Chambers (EAC) were created under the auspices of the African Union, showing a regional ownership model for UJ.
- Habré was convicted of crimes against humanity, torture, and rape, and sentenced to life imprisonment in 2016.

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<sup>29</sup> Regina v. Bartle and the Commissioner of Police for the Metropolis and Others Ex Parte Pinochet, [1999] UKHL 17.

<sup>30</sup> Extraordinary African Chambers, Prosecutor v. Hissène Habré, Judgment, May 30, 2016.

- This case demonstrated that UJ can be exercised within a multilateral African framework, countering the criticism that UJ is a Western-dominated tool.

### **C. Germany's Koblenz Trial (2022)**

The Koblenz trial in Germany was the first criminal trial worldwide focused on state-sponsored torture in Syria, conducted under the VStGB (Code of Crimes Against International Law).<sup>31</sup>

#### **Key Significance:**

- Anwar R., a former Syrian intelligence officer, was convicted of crimes against humanity and sentenced to life in prison.
- The case showcased Germany's leadership in applying universal jurisdiction based solely on the presence of the accused, without any national link.
- It was praised for setting new standards in documentation, victim participation, and cooperation with civil society organizations.

### **D. Belgium v. Congo (2002 ICJ Arrest Warrant Case)**

In this landmark case, the International Court of Justice (ICJ) ruled that Belgium's issuance of an arrest warrant against Congo's foreign minister violated international law by breaching his functional immunity.<sup>32</sup>

#### **Key Significance:**

- The ICJ did not reject universal jurisdiction as a concept but clarified that it cannot override the immunities of sitting high-level officials (e.g., foreign ministers).
- The judgment limited the reach of universal jurisdiction, particularly when it clashes with customary international law on immunities.
- The decision highlighted the tension between accountability and sovereignty, especially in inter-state legal conflicts.

### **E. Spain v. Rwandan Officials (2008)**

In 2008, a Spanish judge issued indictments against 40 Rwandan military officials for genocide and other crimes allegedly committed during and after the 1994 genocide.<sup>33</sup>

#### **Key Significance:**

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<sup>31</sup> Higher Regional Court of Koblenz, Judgment of Jan. 13, 2022 – 1 StE 9/19.

<sup>32</sup> Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium), 2002 I.C.J. 3.

<sup>33</sup> Human Rights Watch, "Universal Jurisdiction in Europe: The State of the Art," June 2006.



- The indictments invoked universal jurisdiction without any clear Spanish link to the crimes, reflecting Spain's then-broad UJ law.
- The case was heavily criticized by the Rwandan government and eventually halted after Spain's universal jurisdiction reforms in 2009.
- It exposed the political and diplomatic fallout of unilateral UJ assertions and demonstrated the need for nexus-based limitations.

### **VIII. VIII. THE WAY FORWARD: PRINCIPLES FOR RESPONSIBLE USE**

While universal jurisdiction offers a potent legal tool to combat impunity for grave international crimes, its continued relevance depends on responsible and principled application. To avoid political misuse, legal overreach, and diplomatic fallout, states and the international community must adopt a coherent framework that balances justice, sovereignty, and legal certainty. This section proposes five key principles to guide the future exercise of UJ.

#### **A. Subsidiarity: Use Universal Jurisdiction as a Last Resort**

The principle of subsidiarity holds that local or territorial jurisdictions should have the primary responsibility to prosecute international crimes. UJ should be invoked only when:

- Domestic courts are unwilling or unable to act,
- The International Criminal Court (ICC) lacks jurisdiction or political capacity,
- Victims have no access to justice in their home countries.

This approach mirrors the complementarity principle under the Rome Statute and avoids accusations of judicial imperialism or forum shopping. Applying subsidiarity ensures UJ is not overused, and instead functions as a backstop for accountability.

#### **B. International Minimum Standards for Fair Trials**

To uphold the credibility and legitimacy of UJ proceedings, states should adhere to internationally recognized standards of due process. These include:

- The right to a fair and public hearing,
- Access to legal representation and interpreters,
- Protection of the accused's rights during pre-trial and trial stages.

The establishment of minimum procedural guarantees through UN guidelines or regional instruments would help standardize UJ application and prevent abuses, especially in politically charged or high-profile cases.

### **C. Coordination with the ICC and Regional Bodies**

To avoid duplicative proceedings and jurisdictional conflict, domestic UJ efforts must be coordinated with international and regional mechanisms. This includes:

- Sharing information with the ICC, regional courts, and hybrid tribunals,
- Respecting ICC arrest warrants and complementarity decisions,
- Consulting with regional human rights bodies (e.g., African Court, Inter-American Court) to ensure coherence.

Such coordination fosters legal efficiency, prevents fragmentation of international criminal law, and reinforces the principle of collective responsibility for prosecuting atrocity crimes.

### **D. Stronger Evidentiary and Due Process Safeguards**

UJ prosecutions are often hampered by challenges such as:

- Limited access to crime scenes,
- Reliance on victim testimony in exile,
- Lack of physical evidence or state cooperation.

States should invest in specialized units, mutual legal assistance treaties, and cooperation with NGOs to improve evidence-gathering. Additionally, judicial authorities must:

- Apply strict evidentiary standards,
- Avoid trials in absentia unless exceptional safeguards are met,
- Provide robust appeals processes to guard against miscarriages of justice.

These safeguards enhance judicial integrity and reduce the risk of selective or politically motivated prosecutions.

### **E. Diplomatic Dialogue to Prevent Abuse**

UJ prosecutions—especially of former or sitting officials—can generate diplomatic tensions. To mitigate such risks, states should:

- Engage in prior diplomatic consultations where feasible,
- Distinguish between individual criminal accountability and state responsibility,
- Consider bilateral or multilateral discussions before initiating high-impact cases.

While criminal justice must remain independent, a balance can be struck between legal action and international comity. Creating interstate consultative mechanisms (perhaps under UN auspices) could reduce the potential for diplomatic escalation.

## IX. CONCLUSION

Universal jurisdiction stands as a powerful but contentious mechanism within international law. Its core promise—to ensure that perpetrators of the gravest crimes do not enjoy impunity—has inspired landmark prosecutions and offered hope to victims when all other legal avenues have failed. From the arrest of Augusto Pinochet to the conviction of Anwar R. in Germany, universal jurisdiction has evolved into a credible and increasingly utilized tool in the global fight against atrocity crimes.

However, this evolution has not been without controversy. The doctrine's broad discretionary application, the lack of uniform legal standards, and its potential for political misuse have sparked criticism and diplomatic backlash. The inconsistency in its implementation, particularly in cases involving officials from powerful states or without a direct nexus to the prosecuting state, has exposed the fragility of its legitimacy.

To preserve and strengthen universal jurisdiction as a legitimate instrument of justice, states must embrace a principled and cautious approach. This includes adhering to the subsidiarity principle, aligning with international standards of fair trial rights, improving evidentiary practices, and coordinating with institutions such as the International Criminal Court. Equally important is maintaining diplomatic prudence, especially in high-profile cases that risk escalating into political disputes.

In conclusion, universal jurisdiction is a double-edged sword: when exercised responsibly, it reinforces the international legal order, deters future crimes, and closes impunity gaps. When abused or politicized, it risks undermining the very foundations of sovereignty, legal equality, and multilateralism. The way forward lies not in abandoning universal jurisdiction, but in governing its use with clarity, consistency, and commitment to justice.

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