

# A Preview on the Extent of Universal Jurisdiction Application

Amal Najem Alselmi  
International Law

## Abstract

For those states that have accepted the concept, the principle of universal jurisdiction arising from the fourth Geneva Convention of 1949 is a code that empowers the national courts to have authority over cases of crimes against humanity in their specific countries. The principle has been the subject of divisive issues relating to various aspects of international law, including concerns regarding its authenticity as well as how this principle should be implemented. This study's significance stems from its review of the code of universal jurisdiction, whether it has to be abandoned or not, and whether it ought to be moderately applied. Nevertheless, this study bridges the gap of understanding on the extent of the submission to universal jurisdiction, and whether it is fully or partially applied or on the path to being abandoned. It also seeks to assess the applicability of universal jurisdiction.

**Keywords:** Universal Jurisdiction, Application

**DOI:** 10.7176/JLPG/120-04

**Publication date:** April 30<sup>th</sup> 2022

## Introduction

The doctrine of universal jurisdiction that is stated in the fourth Geneva Convention of 1949 has been a controversial issue stemming from a variety of facets of international law. To start with, there have been questions concerning its legality and whether it is recognized by all states or not. There have also been questions as to how the principle of universal jurisdiction should be exercised. While some scholars argue that universal jurisdiction should be abandoned, other scholars contend that it should be exercised on a case-by-case basis.

Pasculli explained that the doctrine of universal jurisdiction empowers national courts of countries that have adopted the law of universal jurisdiction to preside over cases of crimes against humanity.<sup>1</sup> He clarifies that courts that practice universal jurisdiction have the power to prosecute individuals regardless of their citizenships and country of residences.<sup>2</sup>

Universal jurisdiction is the last recourse to abolish heinous crimes against humanity. It is a legal authority that enables a state to apply the penal law within the territories of the state and it is aligned towards the examination of the nature of the crime regardless of the location in which the crime was committed.<sup>3</sup> Therefore, based on these metrics, there are crimes which are so serious that they warrant the censure of the entire international community. Crimes such as genocide, war crimes, and extrajudicial executions warrant the response of the entire international community. However, some of those acts were ignored by the international community despite the inhuman actions tied to them.

Wurmböck argued that the principle of universal jurisdiction is practiced by countries that reinforce the international treaty such as United Kingdom, Belgium, Spain, and France.<sup>4</sup> However, Spain and Belgium are considered to be the pioneers of the principle given that they were the first nations to implement the principle and incorporate it into their national laws.<sup>5</sup> Since then there have been revisions of the principle as practiced by Belgium, France, Spain, and the United Kingdom. The alternatives to universal jurisdiction include national or state jurisdiction.<sup>6</sup> Under these frameworks, courts are only allowed to try cases that involve individuals within a given geographical region, such as the European Union. Based on Tekeuchi, the principle of universal jurisdiction became a trend during the 1990s following serious violations of human rights as well as international crimes that were committed, such as those in Yugoslavia in 1993 and Rwanda in 1994.<sup>7</sup>

According to Tekeuchi changes in the legal climate caused the international community to focus on projects of international criminal justice.<sup>8</sup> Tekeuchi reported that, stimulated by mass atrocities that took place in Rwanda and Yugoslavia, the project became a global war against impunity, resulting in the development of some of the

<sup>1</sup> M. A. Pasculli, *Universal jurisdiction between unity and fragmentation of international criminal law*, 5(1) RIVISTA DI CRIMINOLOGIA, VITTIMOLOGIA E SICUREZZA 34-37 (2011), [http://www.vittimologia.it/rivista/articolo\\_pasculli\\_2011-01.pdf](http://www.vittimologia.it/rivista/articolo_pasculli_2011-01.pdf).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> A. Wurmböck, *A Global System of Justice? The International Criminal Court or Universal Jurisdiction: A Comparative Study of Two Approaches to Hold Jurisdiction Over Human Rights Violations* (Master's, Universitat Wien 2012), [http://othes.univie.ac.at/20625/1/2012-05-21\\_0401584.pdf](http://othes.univie.ac.at/20625/1/2012-05-21_0401584.pdf).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> M. Tekeuchi, *Modalities of the Exercise of Universal Jurisdiction in International Law* (2014) (Ph.D thesis, University of Glasgow), <http://theses.gla.ac.uk/5472/3/2014takeuchiphd.pdf>.

<sup>8</sup> *Id.*

international criminal tribunals such as the International Criminal Court.<sup>1</sup> Other than international criminal tribunals, the universal jurisdiction principle has been considered a central apparatus for promoting some conventions and protocols that were designated as ‘crimes under international law (crimes de droit international)’.<sup>2</sup>

This research seeks to evaluate the applicability of universal jurisdiction. Additionally, if it is universally applicable in theory, the question arises as to why it was not enacted in certain cases, such as the case against George W. Bush, Sr., with regard to the 1991 Gulf War. Another such case came against Prime Minister Ariel Sharon of Israel, who was charged with involvement in the massacre of Palestinians in refugee camps in Lebanon in 1982. On the other hand, universal jurisdiction was once used successfully in the prosecution of four Rwandans involved in the 1994 genocide, in cases that were all heard by a Belgian court using the universal jurisdiction law.<sup>3</sup> This research sheds light on the application of universal jurisdiction and explores the reasons behind discrepancies in its application.

In particular, this study aims to achieve the following objectives:

- 1- Examine the controversies surrounding universal jurisdiction as a form of jurisdiction.
- 2- Evaluate why universal jurisdiction is essential, since territorial jurisdiction in most cases never functions well when it comes to cases of international crime accusing one of the great nations, such as the United States.
- 3- Examine whether the universal jurisdiction will become more widespread, with more countries adopting it – and if so, whether it will escalate to new level – or the principle will be abandoned.

### Literature Review

Anywhere in the world, national courts can prosecute criminals for human rights violations. Since the responsibility for crimes against humanity – including genocide, war crimes, torture, enforced disappearances, and extrajudicial executions – is presented in international law standards, all countries must investigate such crimes in their national courts, as well as prosecute the perpetrators of these crimes. The previously mentioned crimes fall under the Geneva Convention, which is concerned with the protection of civilians in times of war.<sup>4</sup>

According to Chevigny, universal jurisdiction for international crimes obligates governments of various countries to prosecute the perpetrators of crimes against humanity independently based on their location that can be utilized to punish mass murderers, trial in their home countries, and may even motivate some law-makers to stop massive crimes.<sup>5</sup> When the authorities of that country where the crimes occurred are corrupt or too weak to prosecute, other governments without a history in the crimes can punish those international criminals. More than fifteen years ago countries began to conduct experiments with universal jurisdiction. For example, in 1999 Amnesty International reported that twenty-four countries had adopted universal jurisdiction in terms of such serious international crimes as genocide.

According to Tashakkul, universal jurisdiction uses the competence of a national court for prosecuting a person who is charged with such international crimes as war crimes, genocide, torture, or crimes against humanity – even if the suspects and victims are not citizens of the state where this court is located, or even if the crime itself was committed outside that country.<sup>6</sup> It is a legal principle that evolved for overcoming jurisdictional flaws in international legislation.

However, the uncertainty of the universal jurisdiction concept, the scope and features of its application, and the varying degrees of its adoption by different countries all hinder the full use of its mechanisms.<sup>7</sup> Nevertheless, there have been a number of successful issuance of the cases in the international courts. Some of these cases are described in the articles by Roth and Kissinger.<sup>8</sup>

According to the Center of Justice and Accountability (CJA), one case goes to 1982 when General Efraín Ríos Montt of Guatemala, a Central American country south of Mexico, started a “scorched earth” operation against the country’s Ixil Maya population. In 1999, three years after the peace accords of 1996, the primary

<sup>1</sup> *Id.*

<sup>2</sup> *Id.*

<sup>3</sup> BBC, *Belgium drops war crimes cases*, BBC EUROPE (Sept. 24, 2003), <http://news.bbc.co.uk/2/hi/europe/3135934.stm>.

<sup>4</sup> Fourth Geneva Convention, Geneva, Switz., *Convention (IV) relative to the Protection of Civilian Persons in Time of War* (Aug. 12, 1949) (1st ed.).

<sup>5</sup> P. Chevigny, *The Limitations of Universal Jurisdiction*, GLOBALPOLICY.ORG (2006), <https://www.globalpolicy.org/component/content/article/97-general/32133.html>.

<sup>6</sup> R. Tashakkul, *The Problem of Universal Jurisdiction in Curbing International Crimes*, 7(1) ACTA UNIVERSITATIS DANUBIUS 110-125 (2011).

<sup>7</sup> Tekeuchi, *supra* note 7.

<sup>8</sup> K. Roth, *The Case for Universal Jurisdiction. Foreign Affairs*, GLOBALPOLICY (2001), <https://www.globalpolicy.org/component/content/article/163/28202.html>; H. Kissinger, *The Pitfalls of Universal Jurisdiction*, GLOBALPOLICY (2001), <https://www.globalpolicy.org/component/content/article/163-general/28174.html>.

endeavors to consider the genocide's instigators responsible occurred in Spain. The Rigoberta Menchú recorded a criminal grumbling under the observant eye of the Spanish National Court against Ríos Montt and other senior authorities. The CJA joined the case as lead insight in 2006. The Spanish legitimate procedures later shaped a case in Guatemala. In 2012, a Guatemalan court – with the CJA acting as a key counsel – indicted Ríos Montt on allegations of torment, genocide, constrained vanishings, state fear-based oppression, and violations against humanity. Based on the Center of Justice and Accountability, the trial brought about Ríos Montt's conviction and he was sentenced to 80 years in jail. This was the first occasion that a previous head of state had been sentenced as being guilty of genocide by a national court. The decision was additionally the state's first official affirmation that the genocide had happened. Weeks after the incident, the judgment was toppled. The CJA has kept on pushing for responsibility in the Spanish National Court.

According to Kontorovich, courts of the world rely on universal jurisdiction more frequently in order to justify issues against perpetrators of human rights in foreign countries.<sup>1</sup> The universal jurisdiction doctrine holds that a country can prosecute crimes to which it has no link at all. According to the doctrine, any country can prosecute universal crimes. Based on Kontorovich, examples of using the doctrine include the indictment of the former Israeli Prime Minister Ariel Sharon by Belgium for responsibility of war crimes in Lebanon, as well as the conviction by Swiss and German courts of Serbian officials for war crimes against Muslims in Bosnia.<sup>2</sup>

Therefore, after more than 20 years of “fighting impunity” through universal jurisdiction, the results are far from “universal” in any reasonable sense. The study by Reydams, which was published by European Parliament, explores not only what was wrong and why it was so, but also which role the European Union can play in improving the application of the principle among the EU Members and other countries.<sup>3</sup> Among others, Princeton University developed the Princeton Principles on Universal Jurisdiction, which were designed to guide and to give greater legitimacy and coherence to the exercises of universal jurisdiction. Intuitively, these principles suggest more accountability for perpetrators of very serious crimes according to international laws in ways that are consistent with a concern for the abuse of power.<sup>4</sup>

One of the significant controversies in applying universal jurisdiction is associated with the question of whether diplomatic or sovereign immunity is available to state officials when they are charged with crimes against humanity, genocide, or war crimes. Davis attempts to answer it by focusing on the House of Lords' decisions in the Pinochet Cases, using the Rome Statute, which has been used by International Criminal Courts and the International Court of Justice decisions in the Congo v. Belgium case.<sup>5</sup> The topic of the Pinochet Case is also comprehensively explored in a 1999 report by the human rights organization Amnesty International.<sup>6</sup> This work sets forth the organization's position on the legal issues that were involved in the appeal to the House of Lords from the English High Court of Justice, which granted immunity to Pinochet. In turn, Goldmann explored the Congo v. Belgium case comprehensively, which has been of essential importance for decision-making on many other cases that relate to diplomatic or sovereign immunity.<sup>7</sup>

Belgium's laws probably provide the most striking exercises of universal jurisdiction on crimes in human rights of any country.<sup>8</sup> The Congo v. Belgium case is also considered in detail in the work by Wirth.<sup>9</sup> He stated that the International Criminal Justice, in its Judgment, concluded that in practice former Foreign Affairs Ministers have diplomatic immunity even in those cases where they committed a very serious international crime.<sup>10</sup> This provision would not apply only if they acted in their private capacity. This statement is seen as not reflecting the current state of international laws. As a rule, modern Belgian practices deny any immunities for core crimes to any former or incumbent state official.

<sup>1</sup> E. Kontorovich, *The Piracy Analogy: Modern Universal Jurisdiction's Hollow Foundation*, HARVARD ILJ (2004), [http://www.harvardilj.org/wp-content/uploads/2011/04/HILJ\\_45-1\\_Kontorovich2.pdf](http://www.harvardilj.org/wp-content/uploads/2011/04/HILJ_45-1_Kontorovich2.pdf).

<sup>2</sup> *Id.*

<sup>3</sup> L. Reydams, *The application of universal jurisdiction in the fight against impunity*, BRUSSELS: EUROPEAN PARLIAMENT (2004), Retrieved from <http://statewatch.org/news/2016/apr/ep-study-universal-jurisdiction-fight-against-impunity-4-16.pdf>.

<sup>4</sup> Stephen Macedo et al., *The Princeton Principles on Universal Jurisdiction* (Princeton, 1st ed. 2001), [https://lapa.princeton.edu/hosteddocs/unive\\_jur.pdf](https://lapa.princeton.edu/hosteddocs/unive_jur.pdf).

<sup>5</sup> T. Davis, *Sovereign and Diplomatic Immunity for War Crimes*, TIMDAVIS.COM (1st ed. 2008), [http://www.timdavis.com.au/Papers/Diplomatic\\_Immunity\\_War\\_Crimes.pdf](http://www.timdavis.com.au/Papers/Diplomatic_Immunity_War_Crimes.pdf); Rome Statute of the International Criminal Court (1st ed. n.d.); Congo v. Belgium, 2002 I.C.J. 3.

<sup>6</sup> Amnesty International, UK: *The Pinochet Case: Universal Jurisdiction and the Absence of Immunity for Crimes against Humanity*, AMNESTY.ORG (1999), <https://www.amnesty.org/en/documents/eur45/001/1999/en/>.

<sup>7</sup> M. Goldmann, *Arrest Warrant Case (Democratic Republic of the Congo v Belgium)*, OPIL.OUPLAW.COM (2009), <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1249>.

<sup>8</sup> R. Lemaître, *Belgium rules the world: Universal Jurisdiction over Human Rights Atrocities*, LAW.KULEUVEN.BE (2001), <https://www.law.kuleuven.be/apps/jura/public/art/37n2/lemaître.pdf>.

<sup>9</sup> S. Wirth, *Immunity for Core Crimes? The ICJ's Judgment in the Congo v. Belgium Case*. EJIL.ORG (2002), <http://www.ejil.org/article.php?article=1565&issue=32>.

<sup>10</sup> *Id.*

Lemaître considered the contributions of the Belgian courts in using universal jurisdiction in criminal matters.<sup>1</sup> In particular, he summarized the proceedings that involved Pinochet's crimes against humanity in Chile and the genocide in Rwanda.<sup>2</sup> The topic of Belgian courts and their role in the implementation of universal jurisdiction was also explored in the observance document of the United Nations (n.d.) in detail.

Other countries might soon join Belgium in the successful implementation of universal jurisdiction. According to Fernandez, in March 2014 a new law reform in regards to universal jurisdiction was passed in Spain.<sup>3</sup> International legal obligations that were undertaken by Spain were alleged to have established universal jurisdiction in the country. However, two different trends can be seen depending on who is behind the commission of an offense: a non-state or a state actor. Researchers' access to criminal courts of Spain has remained blocked by additional restrictions.

Another country, the UK, will witness changes on universal jurisdiction. The Ministry of Justice and the Right Honorable Kenneth Clarke QC issued the relevant press release of the British government.<sup>4</sup> It states that new changes to the Social Responsibility Act and the Police Reform will not affect universal jurisdiction rights, and those who are accused of war crimes, torture, and hostage-taking will be brought to justice if there is enough evidence against them.<sup>5</sup> The earlier mentioned information indicates a clash of opinions on universal jurisdiction with regard to whether it will be applied or not.

Nevertheless, as of today the Director of Public Prosecutions' consent will be required before a warrant for arrest is issued in cases of universal jurisdiction. Morrison and Weiner informed Israeli judges about features of applying universal jurisdiction.<sup>6</sup> They state that the universal jurisdiction principle was, and continues to be, an important instrument in the legal practitioner's toolbox and a key means for making justice for international crimes.<sup>7</sup> Unfortunately, as they say, this principle also becomes a political device for more sarcastic means and less upright purposes.<sup>8</sup>

Another important question, whether Universal Jurisdiction leads to fragmentation or unity within the framework of International Criminal Law, was explored by Maria Pasculli.<sup>9</sup> She concluded that the essential strain influencing the global utilization of general purview is spoken to by the contention between the ethical cases of human rights standards and the political reality of global justice.<sup>10</sup> However, the principle of universal jurisdiction will normally be portioned until it attains an intelligent legitimate status. This could be the case, however, in an iterative popularity-based process – a procedure of “linguistic, legal, cultural and political repetitions in-transformation which change built up understandings as well as change what goes as substantial.”<sup>11</sup>

The topic of relationships between universal jurisdiction and the International Criminal Court (ICC) was also explored in an article by Cedric Ryngaert.<sup>12</sup> It dealt with the interrelation between the universal jurisdiction principle and the ICC jurisdiction. There were voices that appealed to expand the jurisdictional base of the Rome Statute of the ICC in order to include the principle of universality. The topic of universal jurisdiction in modern international law and the ICC is explored more deeply by Mitsue Inazumi.<sup>13</sup>

Another side of the relationships between universal jurisdiction and the International Criminal Court (ICC) was presented in the work by Wurmböck.<sup>14</sup> She compared the approaches of both institutions to hold investigation and jurisdiction over human rights abusers. This work by Wurmböck allows researchers to deepen the knowledge on international criminal law and its association with universal jurisdiction.

One of the most significant controversies in the application of universal jurisdiction relates to the fact that it has never functioned well when it comes to cases of international crime where superpower nations are accused. Boyl presented the terrible war crimes that were authorized by U.S. governmental figures – including, for

<sup>1</sup> Lemaître, *supra* note 24.

<sup>2</sup> Wirth, *supra* note 25.

<sup>3</sup> R. Fernandez, *The 2014 Reform of Universal Jurisdiction in Spain: From All to Nothing*, ZEITSCHRIFT FÜR INTERNATIONALE STRAFRECHTSDOGMATIK (2014), [http://zis-online.com/dat/artikel/2014\\_13\\_883.pdf](http://zis-online.com/dat/artikel/2014_13_883.pdf).

<sup>4</sup> Ministry of Justice and the Rt Hon Kenneth Clarke QC, *Universal Jurisdiction Press Release*, GOV.UK (Sept. 15, 2011), <https://www.gov.uk/government/news/universal-jurisdiction>.

<sup>5</sup> *Id.*

<sup>6</sup> D. Morrison & J. Weiner, *Curbing the Manipulation of Universal Jurisdiction*, JERUSALEM CENTER FOR PUBLIC AFFAIRS (2010), <http://www.jcpa.org/text/universal-jurisdiction.pdf>.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Pasculli, *supra* note 1.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Cedric Ryngaert, *The International Criminal Court and Universal Jurisdiction*, LEUVEN CENTRE FOR GLOBAL GOVERNANCE STUDIES (2010), [https://ghum.kuleuven.be/ggs/publications/working\\_papers/new\\_series/wp41-50/wp46.pdf](https://ghum.kuleuven.be/ggs/publications/working_papers/new_series/wp41-50/wp46.pdf).

<sup>13</sup> MITSUE INAZUMI, *UNIVERSAL JURISDICTION IN MODERN INTERNATIONAL LAW: EXPANSION OF NATIONAL JURISDICTION FOR PROSECUTING SERIOUS CRIMES UNDER INTERNATIONAL LAW* (Antwerp: Intersentia, 1st ed. 2005).

<sup>14</sup> Wurmböck, *supra* note 4.

example, the destruction of facilities that were essential to life for civilians and economic productivity in Iraq, attacks on facilities in Iraq using dangerous substances in violation of the Geneva Protocol of 1977, and depriving the Iraqi people of potable water, essential medicines, food, and other necessities – however, there was no application of universal jurisdiction on these crimes.<sup>1</sup> Gold supported and proved the thesis about selective application of universal jurisdiction with strong and reliable evidence.<sup>2</sup>

Thus, it is not clear what stipulates the application of universal jurisdiction from one case to another or from one country to another. However, the reviewed studies show that the scope and methods of application of universal jurisdiction are always evolving and developing. Based on the cases where universal jurisdiction was applied, they provide the legal basis for the improvement of various countries' legislation. In general, it can be concluded that this review has significantly increased knowledge about various aspects of universal jurisdiction and prepared the foundation for future deeper research of this issue. To date, this scope has provided a lot of directions for further research.

### Methodology

In order to conduct a full and comprehensive research of such a tool as universal jurisdiction, it is necessary firstly to develop a methodology for the study. The methodology employed is a theoretical one that makes it possible to explore with the greatest certainty such complex and multifunctional objects as in the topic considered. The research will include adding and selecting facts, and establishing links between them. The theoretical part will include the disclosure of the domestic structure and patterns of development of systems in the internal laws of the states and the phenomena, as well as their interaction and conditioning.

Assessment of existing cases will be conducted by using the following methods: study organizational reports and the analysis of documents such as case files. The information that is obtained in this case is not comprehensive and not explained very well as it is from legal documents that are hard to obtain, but the advantages of the method are that the researcher has to retain a position of impartiality and objectivity because the research is based on lawful events and actions.

With document analysis, the advantage lies in looking at scholarly work, public legal figures, and political leaders according to time flow, particularly looking at legal actions or events that occurred from 1949 up to 2016. The time flow approach will facilitate understanding in the application of universal jurisdiction – whether it is becoming generalized universally or restricted in limits such as the immunity point. Moreover, the research will be able to highlight the facts that lead to the conclusions and clarifications regarding how the objectives will be achieved.

Documents such as artifacts are able to testify to the actual once-existing, primary facts of the legal life of society and individuals – various lawmaking acts, government rulings, and protocols of investigative actions. An important place among the methods of collecting primary information is the cases. In this case, it will allow to determine and reveal the state of public opinion regarding the importance of universal jurisdiction.

Qualitative research methods will be used in the research. Qualitative research methods must necessarily include the analysis of both historical documents and case studies. The main question that must be answered is to determine the degree of importance and significance of universal jurisdiction and the attitude of the public towards it. In this regard, in addition to studying the documents, scholarly opinions in this field such as those in research or working papers will play an important role in the research.

Based on the literature studied it is already possible to give evidence that universal jurisdiction is a poorly studied topic. In this regard, there must be strong evidence – such as Rwandan genocide, the Congo v. Belgium case, and many other cases – for the confirmation or refutation of the relevance of universal jurisdiction. These arguments, which are presented with the help of research methods, must be compared to each other in order to reveal their tendencies, their obvious differences, and the relationship between them.

The basis for ethical behavior will be using only legal means of obtaining information, i.e. the legality of its collection; however, this ethical practice forms a limitation to the study that interferes with some informational aspects that are maintained for confidentiality considerations. Often, information regarding legal and interstate issues are hidden and it will not be possible to obtain legally – for example, the United States and its involvement in the Gulf War in 1990, where most of the information is hard to find. In this regard, in order to avoid limiting factors in the study, this information will be based on full honesty, reliability, and ethical standards.

<sup>1</sup> F. BOYL, FLASHBACK US WAR CRIMES DURING THE GULF WAR (1st ed. 2002), <https://ratical.org/ratville/CAH/fab090202.html>.

<sup>2</sup> D. GOLD, TOWER OF BABBLE, HOW THE UNITED NATIONS HAS FUELED GLOBAL CHAOS (New York: Crown Forum, 1st ed. 2013).

## Discussion

This section is intended to show the importance of results revealed in light of the analyses that were made by other studies earlier. The concept of universal jurisdiction is still a controversial issue. This situation is caused by various aspects of international law as well as domestic laws of different countries. Up to this moment, as evidenced by many studies, there are many unclear approaches to this concept. Some works tried to determine if universal jurisdiction is legal in many countries that have included its recognition in their domestic laws. In addition, it is still not always clear in which cases the principle of universal jurisdiction can be applied and to which other cases it is inappropriate. However, as it will be demonstrated, that was another question that some researchers tried to clarify.

In general, some scholars state that the principle of universal jurisdiction should be applied on a case by case basis, while others believe that it should be abandoned. Proceeding from such positions, the following objectives for this research were defined to investigate possible controversies that accompany the universal jurisdiction concept: to consider whether this concept is essential because as a rule it never works in the cases when superpower nations are accused of international crimes; to determine whether universal jurisdiction will go up to a new level, when more countries adopt it such as the UK and others; and whether or not it will be abandoned.

The universal jurisdiction concept is intended to allow internal courts of any country to consider cases of the most terrible crimes against humanity, such as genocide or war crimes, even if these crimes took place in the territories of other countries. Moreover, the crimes might be committed by government members of those countries. The doctrine is not new, though an interest in it has increased in recent decades only. The case of Chilean dictator Augusto Pinochet in the 1990s dramatically changed the attitude towards the concept. It did not eventually go to trial, however it had a significant legal impact on the further development of applying universal jurisdiction. The case of Pinochet allowed for the pursuit of other leaders whose crimes against humanity were well-documented; for example, Ariel Sharon and many others were among such leaders. Recently governments of some countries such as Belgium, Spain, and France restricted the possibilities of the use of universal jurisdiction by their national courts after strong pressure from such countries as the United States, China, and Israel. The establishment of the International Criminal Court (ICC) in 2002 was another move that helped to reduce the necessity for national courts to use the universal jurisdiction doctrine.

As shown by the works of Morrison and Weiner, Lemaître, and Fernandez, researchers mostly hold an opposing point of view, although some of them are rather neutral.<sup>1</sup> Chevigny, Tashakkul, and Fernandez, as well as the Ministry of Justice and the Right Honorable Kenneth Clarke QC provide a positive outlook on universal jurisdiction and pin their hopes on it because more countries have adopted this concept in their legislation.<sup>2</sup> In addition, Kontorovich reports the successful application of the concept in some cases.<sup>3</sup> The successful application of the principle is also evidenced by Roth and Kissinger.<sup>4</sup> The story of successful cases is continued by Goldmann, Lemaître, and Wirth.<sup>5</sup> Morrison and Weiner also recognize the importance of applying universal jurisdiction.<sup>6</sup> In contrast, Tekeuchi, Reydams, and Davis state the non-effectiveness of applying universal jurisdiction in some cases.<sup>7</sup> Boyd and Gold continue this point of view and report the selective application of the doctrine.<sup>8</sup> Nevertheless, it can be noted that the majority of the studied literature shows a positive attitude towards applying universal jurisdiction.

Specifically, this study has three objectives: first, to examine the controversies surrounding universal jurisdiction as a form of jurisdiction; second, to evaluate why universal jurisdiction is essential since territorial jurisdiction in most cases never functions well when it comes to cases of international crime accusing superpower nations; and third, to examine if universal jurisdiction will become more widespread as more countries adopt it, if it will escalate to a new level, or if the principle will be abandoned.

## Universality

The universality of universal jurisdiction has been questioned in the past, as weaker nations perceive unfairness from stronger ones. In nearly every case where universal jurisdiction has been cited it has involved the prosecution by an economically more powerful country such as the United States in the Gulf War of 2003.

---

<sup>1</sup> Morrison & Weiner, *supra* note 32; Lemaître, *supra* note 24; Fernandez, *supra* note 29.

<sup>2</sup> Chevigny, *supra* note 13; Tashakkul, *supra* note 14; Fernandez, *supra* note 29; Ministry of Justice and the Rt Hon Kenneth Clarke QC, *supra* note 30.

<sup>3</sup> Kontorovich, *supra* note 17.

<sup>4</sup> Roth, *supra* note 16; Kissinger *supra* note 16.

<sup>5</sup> Goldmann, *supra* note 23; Lemaître, *supra* note 24; Wirth, *supra* note 25.

<sup>6</sup> Morrison & Weiner, *supra* note 32.

<sup>7</sup> Tekeuchi, *supra* note 7; Reydams, *supra* note 19; Davis, *supra* note 21.

<sup>8</sup> Boyd, *supra* note 41; Gold, *supra* note 42.

### **Belgium, Rwanda, and the Congo, along with the US in the Gulf War**

Belgium established laws regarding universal jurisdiction in 1993 that made it possible for a country to judge suspects who are accused of war crimes such as genocide. Belgium convicted four citizens of Rwanda for crimes committed during the Hutu-Tutsi attacks. The criminals received between 12 and 20 years in prison. These cases led to an upsurge in the number of crimes required to be reviewed under universal jurisdiction in Belgium. This included Ariel Sharon, who was accused of masterminding the Sabra and Shatila genocide, as well as the people of Israel who filed against Yasser Arafat citing that he funded terrorists. There were victims who spoke out and filed criminal suits against the US president in the Gulf War, as well.

The cases required to be addressed under universal jurisdiction increased so much that Belgium changed the law – it now requires that the accused person be Belgian or available in Belgium.

The Minister of Foreign Affairs for the Democratic Republic of Congo was challenged to appear before the ICC;<sup>1</sup> however, the ICC revealed that it lacked the jurisdiction to consider universal jurisdiction. Addressing the question of immunity was seen as a better approach to the problem. Some individuals have suggested that immunity may protect a high-ranking official even from universal jurisdiction. The case received mixed judicial interpretations with some factions noting that it ends with piracy as others offered broader opinions such as the opinion of Judge Oda.<sup>2</sup> Following these interpretations, the Belgian legal system was amended and universal jurisdiction was replaced with extraterritorial jurisdiction. Extraterritorial jurisdiction is more restrictive than what is available in other European countries.

The US's participation in the Gulf War triggered criminal complaints that led to an official filing against George H. W. Bush. In spite of the complaints against the top US leaders, no international prosecution has ever succeeded in pressing charges based on universal jurisdiction. Clearly the US had many human rights violations in the Gulf War; by sending dangerous forces in to attack they made a violation of Article 56 of Geneva Protocol I of 1977, although civilians were killed in such attacks.

### **Proponents and Opponents**

Universal jurisdiction makes it possible for states and international bodies to make claims of jurisdiction over an accused person regardless of their country of residence, nationality, or relationship to the prosecutor. The main reason why these kinds of crimes are prosecuted by such bodies is that they are deemed too serious to stand any form of legal arbitrage. Universal jurisdiction has a close link with all international norms.

Amnesty International notes that some crimes are such a big threat to the world community that it is the moral duty of every state in the world to prosecute them. Additionally, these threats are deemed so grave that it is only logical for any institution with legal power to prosecute the individual who is responsible. The most common crimes that authors have classified as deserving of universal jurisdiction include genocide, a crime against humanity, torture, forced disappearances, and war crimes. Many legal writers support the authority of other states and institutions to prosecute crimes that fall under universal jurisdiction.

Some legal writers and corporatists do not agree that universal jurisdiction is a positive aspect of the legal sphere. For instance, Henry Kissinger stated that having external forces judge a crime breaches the sovereignty of the State. Henry Kissinger was suspected of having committed war crimes in Chile and many other countries, and was alleged to have committed the war crimes when he was the Secretary of State for Richard Nixon. Kissinger noted that the United Nations Charter protects the sovereignty of every country. He also noted that by having foreign governments and foreign bodies prosecute the citizens of other countries for crimes that occurred in those territories, the foreigner entities essentially place themselves above the sovereignty of the native countries.

One may think that the widespread agreement or acceptance of the concept of universal jurisdiction would lead the way for the development of international bodies that prosecute such crimes such as international courts. However, the opposite effect has occurred with international tribunals being seen as irrelevant. Opponents of universal jurisdiction state that allowing states to exercise such authority over foreign lands may create dictatorships. Additionally, such complicated power relationships may lead to show trials which are motivated by politics. This may soon become a political competition with states on their foreign enemies.

### **The Syrian Situation**

The Justice for Syria movement appeals to governments to end impunity and make responsibility a reality for the Syrian people by supporting and subsidizing the investigative system in Syria. In December 2016 the UN General Assembly voted in favor of this movement, associating criminals with war crimes and violations against

<sup>1</sup> Myint Zan, *Democratic Republic of Congo v Belgium: Arrest Warrant of 11 April 2000; Crimes against Humanity: 'Immunity' versus 'Impunity'*, 7(1) J. SOUTH PAC. L. 4 (2003), <http://www.paclii.org/journals/fJSPL/vol07no1/4.shtml>.

<sup>2</sup> *Id.*

humanity in Syria by enforcing universal jurisdiction to investigate and prosecute in their own courts.<sup>1</sup>

It is highly unlikely that the Syrian situation can be solved by applying the principles of universal jurisdiction.<sup>2</sup> The Syrian situation has been affected negatively by politics of the West. Russia and China have continuously blocked any attempts to set up a special international court, and the two countries have vetoed such efforts continuously in the UN Security Council. Consequently, there has been increased emigration from the country as millions of Syrian refugees pour into Europe.

The European Union has continuously stated that it will not become a haven for people who have committed crimes against humanity. Several European countries have already started efforts to prosecute individuals suspected of such crimes who have arrived in their countries. The first few cases of prosecution started in 2016.<sup>3</sup> These prosecution efforts are likely to be mildly effective; for instance, in 2016 only 11 refugees were captured and prosecuted. However, they were all low-level suspects, with the chief perpetrators remaining protected by powerful business and political forces in Europe and elsewhere. This may partly explain why China and Russia have continued to block the formation of special courts; to them, such prosecutions are also likely to be compromised politically.

While the crimes at issue are clear, prosecuting individuals linked to their official duties will be tough. The Syrian situation has become one of the most controversial wars in the recent past. It has reawakened the uncertainty of the Cold War. Worse, a third player has joined the platform: China. One of the factors explaining why universal jurisdiction is likely to fail in Syria is that it will be difficult to enact any policies that the West (Western Europe and the United States) can agree on with the East (Russia and China). The situation appears so dire that the internal conflict in Syria is feared to awaken a third world war if any side is unwilling to negotiate.

In spite of these difficulties, the UN General Assembly has offered its approval of an impartial international mechanism for centralizing evidence that has been gathered during the war. The same mechanism has enjoyed a lot of support in the Gulf countries. The Independent International Commission of Inquiry on Syria (ICIS) has been recording and gathering information on the crimes that have been committed in Syria since 2011, and the offices of the mechanism will be situated in Geneva near the ICIS. The crimes have been perpetrated by the Syrian government, Islamic Jihadists, rebels, and international forces. If the mechanism is given the necessary jurisdiction, these files could be sent to the International Criminal Court.

## Conclusion

This study aimed at addressing the following points: the disagreements surrounding universal jurisdiction as a form of authority; the vitality of universal jurisdiction given that territorial jurisdiction has not worked well in a number of cases concerning global crimes perpetrated by superpower nations; and whether universal jurisdiction is likely to become more prevalent, more improved, or abandoned. From the author's point of view, the idea of universal jurisdiction is intended to allow local courts in any nation to adjudicate cases of the most horrible crimes against humanity, such as war crimes and genocides, even if these wrongdoings took place within other countries. Consequently, such crimes can be committed by government officials of those countries. To the author, the policy of universal jurisdiction can still be renewed, nevertheless, as interest in it has only grown in recent decades.

## Bibliography

- Amnesty International . (2017, March 15). *Syria: Time for global leaders to ensure justice, truth and reparation for millions of victims of war*. Retrieved from Amnesty.org: <https://www.amnesty.org/en/latest/news/2017/03/syria-time-for-global-leaders-to-ensure-justice/>
- Amnesty International,. (1999). *UK: The Pinochet Case: Universal Jurisdiction and the Absence of Immunity for Crimes against Humanity*. Amnesty.org. Retrieved from <https://www.amnesty.org/en/documents/eur45/001/1999/en/>
- BBC (2003, September 24). *Belgium drops war crimes cases*. BBC Europe. Retrieved from <http://news.bbc.co.uk/2/hi/europe/3135934.stm>
- Boyl, F. (2002). *Flashback US War Crimes During the Gulf War* (1st ed.). Retrieved from <https://ratical.org/ratville/CAH/fab090202.html>
- Chevigny, P. (2006). *The Limitations of Universal Jurisdiction*. Globalpolicy.org. Retrieved from <https://www.globalpolicy.org/component/content/article/97-general/32133.html>
- Davis, T. (2008). *Sovereign and Diplomatic Immunity for War Crimes* (1st ed.). Retrieved from [http://www.timdavis.com.au/Papers/Diplomatic\\_Immunity\\_War\\_Crimes.pdf](http://www.timdavis.com.au/Papers/Diplomatic_Immunity_War_Crimes.pdf)
- Democratic Republic of Congo v Belgium: Arrest Warrant of 11 April 2000; Crimes against Humanity:

<sup>1</sup> Amnesty International, *supra* note 22.

<sup>2</sup> Stéphanie Maupas, *Universal jurisdiction gains ground from Pinochet to Syria*, JUSTICEINFO.NET (c. 2017), <http://www.justiceinfo.net/en/component/k2/universal-jurisdiction-as-a-weapon-against-impunity.html>.

<sup>3</sup> Amnesty International, *supra* note 22.



- 'Immunity' versus 'Impunity.' (2017). Paclii.org. Retrieved from <http://www.paclii.org/journals/fJSPL/vol07no1/4.shtml>
- Fernandez, R. (2014). *The 2014 Reform of Universal Jurisdiction in Spain: From All to Nothing*. Zeitschrift Für Internationale Strafrechtsdogmatik. Retrieved from [http://zis-online.com/dat/artikel/2014\\_13\\_883.pdf](http://zis-online.com/dat/artikel/2014_13_883.pdf)
- Gold, D. (2013). *Tower of Babel, How the United Nations Has Fueled Global Chaos* (1st ed.). New York: Crown Forum.
- Goldmann, M. (2009). *Arrest Warrant Case (Democratic Republic of the Congo v Belgium)*. Opil.ouplaw.com. Retrieved from <http://opil.ouplaw.com/view/10.1093/law/epil/9780199231690/law-9780199231690-e1249>
- Inazumi, M. (2005). *Universal Jurisdiction in Modern International Law: Expansion of National Jurisdiction for Prosecuting Serious Crimes under International Law* (1st ed.). Antwerp: Intersentia.
- Kissinger, H. (2001). *The Pitfalls of Universal Jurisdiction*. Globalpolicy.org. Retrieved from <https://www.globalpolicy.org/component/content/article/163-general/28174.html>
- Kontorovich, E. (2004). *The Piracy Analogy: Modern Universal Jurisdiction's Hollow Foundation*. SSRN Electronic Journal. Retrieved from [http://www.harvardilj.org/wp-content/uploads/2011/04/HILJ\\_45-1\\_Kontorovich2.pdf](http://www.harvardilj.org/wp-content/uploads/2011/04/HILJ_45-1_Kontorovich2.pdf)
- Lemaître, R. (2001). *Belgium rules the world: Universal Jurisdiction over Human Rights Atrocities*. Law.kuleuven.be. Retrieved from <https://www.law.kuleuven.be/jura/art/37n2/lemaitre.htm>
- Ministry of Justice, & The Rt Hon Kenneth Clarke QC., (2011). Universal Jurisdiction - Press releases. Gov.uk. Retrieved from <https://www.gov.uk/government/news/universal-jurisdiction>
- Morrison, D. & Weiner, J. (2010). *Curbing the Manipulation of Universal Jurisdiction*. Jerusalem: Jerusalem Center for Public Affairs. Retrieved from <http://www.jcpa.org/text/universal-jurisdiction.pdf>
- Pasculli, M. (2011). *Universal Jurisdiction between Unity and Fragmentation of International Criminal Law*. Rivista Di Criminologia, Vittimologia E Sicurezza. Retrieved from [http://www.vittimologia.it/rivista/articolo\\_pasculli\\_2011-01.pdf](http://www.vittimologia.it/rivista/articolo_pasculli_2011-01.pdf)
- Pasculli, M. A. (2011). *Universal jurisdiction between unity and fragmentation of international criminal law*. Rivista di Criminologia, 5(1), 34-37.
- Reydams, L. (2004). *The application of universal jurisdiction in the fight against impunity*. Brussels: European Parliament. Retrieved from <http://statewatch.org/news/2016/apr/ep-study-universal-jurisdiction-fight-against-impunity-4-16.pdf>
- Roth, K. (2001). *The Case for Universal Jurisdiction*. Foreign Affairs. Retrieved from <https://www.globalpolicy.org/component/content/article/163/28202.html>
- Ryngaert, C. (2010). *The International Criminal Court and Universal Jurisdiction*. Retrieved from [https://ghum.kuleuven.be/ggs/publications/working\\_papers/new\\_series/wp41-50/wp46.pdf](https://ghum.kuleuven.be/ggs/publications/working_papers/new_series/wp41-50/wp46.pdf)
- StéphanieMaupas, c. (2017). JusticeInfo.net - Universal jurisdiction gains ground from Pinochet to Syria. Justiceinfo.net. Retrieved from <http://www.justiceinfo.net/en/component/k2/universal-jurisdiction-as-a-weapon-against-impunity.html>
- Takeuchi, M. (2014). *Modalities of the Exercise of Universal Jurisdiction in International Law* (Ph.d). University of Glasgow. Retrieved from <http://theses.gla.ac.uk/5472/3/2014takeuchiphd.pdf>
- Tashakkul, R. (2011). *The Problem of Universal Jurisdiction in Curbing International Crimes*. ACTA UNIVERSITATIS DANUBIUS, 7(1), 110-125.
- The Center for Justice & Accountability . (2016). *Genocide of Mayan Ixil Community*. Retrieved from The Center for Justice & Accountability : <http://cja.org/what-we-do/litigation/the-guatemala-genocide-case/?list=type&type=83>
- The Geneva Convention relative to the protection of civilian persons in time of war* of August 12, 1949 (Convention no. IV). (1949) (1st ed.). Geneva.
- The Princeton Principles on Universal Jurisdiction*. (2001) (1st ed.). Princeton, NJ. Retrieved from [https://lapa.princeton.edu/hosteddocs/unive\\_jur.pdf](https://lapa.princeton.edu/hosteddocs/unive_jur.pdf)
- The Rome Statute of the International Criminal Court* (1st ed.).
- United Nations, *Observations by Belgium on the scope and application of the principle of universal jurisdiction*. New York, NY: UN. Retrieved from [http://www.un.org/en/ga/sixth/65/ScopeAppUniJuri\\_StatesComments/Belgium\\_E.pdf](http://www.un.org/en/ga/sixth/65/ScopeAppUniJuri_StatesComments/Belgium_E.pdf)
- Wirth, S. (2002). *Immunity for Core Crimes? The ICJ's Judgment in the Congo v. Belgium Case*. Ejiil.org. Retrieved from <http://www.ejiil.org/article.php?article=1565&issue=32>
- Wurmbock, A. (2012). *A Global system of justice? the international criminal court or universal jurisdiction: A Comparative study of two approaches to hold jurisdiction over human rights violations*. Wien : Universitat Wien .
- Wurmbock, A. (2012). *A Global System of Justice? The International Criminal Court or Universal Jurisdiction* (Master's). Universitat Wien. Retrieved from [http://othes.univie.ac.at/20625/1/2012-05-21\\_0401584.pdf](http://othes.univie.ac.at/20625/1/2012-05-21_0401584.pdf)