

Forum: Legal Committee

Issue: Determining the scope of universal jurisdiction and creating supportive mechanisms

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Introduction

Crime is committed every minute around the world. A person could be stealing bread or murdering another person right now. These are two very different crimes in terms of severity, but each requires its court or lawyers to be answered for. Sometimes, however, the criminals may escape from facing the consequences and look for a new life. Now, for a baker, one person who stole bread might not be that critical. For a person who lost a dear one, the desire for justice will never cease. Since the criminal has gone to another country, legal boundaries may deem it complex for the person to be tried. Although it may not go as deep as simple murder cases, universal jurisdiction appeared in this point, to bring justice avoiding the limits of borders.

Following the impact that the Second World War had on the world, international organizations started to form to achieve unity in many fields. Legislation is one of these fields, and the concept of international law rose with the Geneva Convention regarding war. Looking to the future with the ultimate goal of becoming a better world, the United Nations (UN) set out an important target of unallowing criminals with serious activities on their sleeves to find peace in another nation. Universal jurisdiction became quickly popular as it was a solution to a huge ethical issue facing the countries and their laws.

A term and an issue this broad, however, needed loads of clarification and helping mechanisms. The specific crimes allowing universal jurisdiction, the methods, and the laws needed to be set straight. The mentioned parts have been addressed for many years, yet there are still questions regarding universal jurisdiction. Questions arise on the topics of trials in different countries or international courts, to what extent is this applicable, and what if the criminal escapes to a state that does not practice this jurisdiction. Detailed answers are needed to expand the scope and build mechanisms to help universal jurisdiction, which will surely benefit to mend the cracks in the rules-based international order.

Definition of Key Terms

Jurisdiction: Jurisdiction means the competence of a court system to hear certain kinds of cases. (UN Human Rights Seoul)

Universal Jurisdiction: Universal jurisdiction is a specific form of extraterritorial jurisdiction. It is based on the idea that some crimes are so serious that all states have the obligation to prosecute offenders, even if the offender is not a national of that state and even if the crime was committed elsewhere. (UN Human Rights Seoul)

Impunity: Freedom from punishment or from the unpleasant results of something that has been done. ("Impunity")

Responsibility to Protect (R2P): The Responsibility to Protect – known as R2P – is an international norm that seeks to ensure that the international community never again fails to halt the mass atrocity crimes of genocide, war crimes, ethnic cleansing and crimes against humanity. ("What is R2P?")

War Crime: War crime, in international law, serious violation of the laws or customs of war as defined by international customary law and international treaties ("War Crime").

Torture: Torture is the intentional destruction of a human being by another. The methods by which severe pain and suffering are inflicted vary, but they all have the same objective: to break a person, erase them as an individual, and deny they are human ("What is Torture").

Genocide: Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such ("Definitions of Genocide and Related Crimes.").

General Overview

As Adolf Hitler's Germany started to lose wars and lands to the Allies, not only a great war came to its end but also many atrocities saw daylight as well. The things committed by the Nazi commanders and soldiers against the Jews in concentration camps were quickly released to the press and raised questions on the nature of war and humanity itself. Following the defeat of Germany and Japan, the world was at peace at a great cost. To ensure nothing as hideous ever happened again, all nations sat down at the table and discussed once again the laws of war. This is called the Fourth Geneva Convention.

Although many important articles were passed concerning other parts of war, one of the most important was the realization of crimes beyond the scope of any country's own laws, but crimes against humanity. War crimes, genocides, and similar crimes were agreed upon as crimes that had to be served no matter the location of the person that perpetrated it. If one person did something unimaginable in a hypothetical war in Türkiye, for example, they could be sentenced for their crimes while living in the US, is what the concept argued. Seen as a major step towards achieving peace and justice in the entire world, this concept is called universal jurisdiction and it appeared in the world as a

response to never allow such crimes to go unpunished ever again.

The Nuremberg Trials

When the Allies won the war against the Axis powers, they also quickly joined forces to prosecute the Nazi generals that had committed horrendous actions towards many. Together, the International Military Tribunal was found and 22 Nazi generals were tried. This event also set out the starting point of punishing people with major crimes not as one country, but as the entire world. The US, Soviet Union, France, and the UK all prosecuted the generals and reached a common verdict. There was supposed to be a second round of trials held, but it was never put into action due to the early signals of the Cold War.

Adolf Eichmann

Adolf Eichmann can be considered as one of the first people that was tried through the understanding of universal jurisdiction. Being involved as a high ranked officer during a meeting that determined the fate of the Jews in Europe, where basically it was decided that all Jews were to be deported to their final destination of Auschwitz, Eichmann was arrested immediately following the war. He managed to escape the consequences of his actions and flee to other countries before getting to Argentina under a fake identity.

Although he got through a decade with his fake identity, the Israeli secret service was not too eager on letting people off the hook and they captured Eichmann in Argentina to take him back to Israel ("Adolf Eichmann"). This was definitely against the laws of Argentina and many organizations looked for a way and tried to mediate a deal with Israel for an international trial. The efforts did not work, though, as for Israel this was also an issue of honour ("Adolf Eichmann"). His trial spanning over a year, Eichmann met his end by being hanged, the decision of the court.

This was an application of Israel practicing universal jurisdiction, however it was a very controversial issue. It brought up the questions that the concept would have to face over the following years. It was clear that there wasn't an entirely unbiased and objective court during the trial, the suspect was kidnapped from another nation, and the decision to end his life was the only case ever in the history of Israel ("Adolf Eichmann"). Some saw it as abusing the right to punish only the desired criminals, some saw it as a just use of universal jurisdiction.

The Rome Statute

The Rome Statute is the key treaty that established the foundation of the International Criminal Court ("Rome Statute of the International Criminal Court"). It encompasses the relevant point made previously in the report and is the legal document of universal jurisdiction. It allows criminals of high severity crimes to be tried in the court internationally, tried against the rules of humanity.

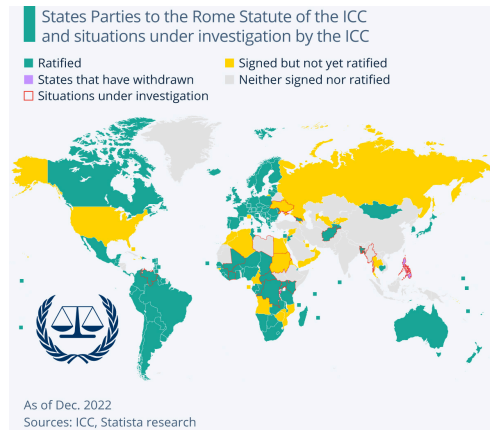


Image I: Map of States' involvement with the Rome Statute (International Criminal Court (ICC))

As can be seen on the map above, Member States' involvement in the issue is mixed, as most of the Western countries have accepted the Statute in some manner while most Asian countries have not recognized the court. This is where the issue arises on the topic of jurisdiction, there is a major division. To understand the scope that universal jurisdiction can reach and how to build on mechanisms to support it, the reasons that it is not applied everywhere around the world must be looked into as well.

Obstacles

The first apparent obstacle in universal jurisdiction to expand is each Member States' legislation. Each country has their own view on what crime constitutes the seriousness of a crime against humanity and how it should be handled. There is also a dispute between whether a nation should hand the criminal over to the International Criminal Court or apply universal jurisdiction in their own courts, as seen in Israel's case. Furthermore, there might also be a lack of laws focused on this particular issue in some countries.

The second obvious conflict is political action, will, and perspective on universal jurisdiction. Whilst some countries may view this as an ethical issue that has to be answered, other countries can distance themselves from the internationality of the issue as there has been nothing committed against their people and state. This can also be practiced in the opposite way, where the country wishes to punish the person immediately of the crimes against themselves previously, once again observed in Eichmann. The person in question can also be beneficial to the nation due to the crimes being committed in a hostile country and the person in question can be protected from domestic or international trial. So, political motivation is also highly crucial in handling universal jurisdiction.

The part that also has to be understood here is that the issue of universal jurisdiction is not an issue to ensure it is being applied everywhere around the world. Forcing nations to apply the laws would not be fitting to international law. The issue here is to determine the reaches of this jurisdiction

and to help the nations agreeing to implement it.

Major Parties Involved and Their Views

Israel

One of the first implementers following the Geneva Convention, Israel is known to apply universal jurisdiction in the Eichmann case to answer the crimes against their own in WW2. The case has been considered as controversial on the grounds that Israel refused to hand over the suspect to the hands of international courts and ensured a fair trial. The case ended with a hanging, drawing attention from the media once again.

Australia

Following an amendment to the War Crimes Act in 1988 allowing for all Europeans that traveled to Australia and settled to be tried for their crimes during the war, Australia also applied the concept and tried Polyukhovich. Australia is currently a ratifier of the Rome Statute.

Belgium

Belgium passed a law in 1993 that put universal jurisdiction into the law of the nation, allowing every suspect that is alleged to commit a serious crime around anywhere in the world to be tried in the nation (Amnesty). The Belgium court later on tried four people from Rwanda on the grounds of committing crimes against the citizens of Rwanda, a case that was completely independent of Belgium. Belgium is currently a ratifier of the Rome Statute.

Spain

As a country that considers war crimes in other places to be punishable domestically, Spain's trial of Augusto Pinochet is famously known for the person tried. Pinochet was a former president of Chile and was living in the United Kingdom when the Spanish court subpoenaed Pinochet to be delivered to the nation to face justice with allegations of terrorism, genocide, and torture (Amnesty). The discussion around the case revolved around the impunity of Pinochet as he was a former government official. Spain is currently a ratifier of the Rome Statute.

Russian Federation

The Russian Federation has stated previously on the problem of universal jurisdiction that the principles and laws surrounding it are still hugely vague. The nation has recognized the importance of the concept and is supporting the establishment of creating more mechanisms to support it, but the

holes must be filled in first to form mechanisms. The Russian Federation is not a ratifier of the Rome Statute but it has signed the document.

Germany

Germany is another country actively involved in cases surrounding universal jurisdiction. The nation has been involved in cases regarding the Bosnian War and has tried former Yugoslavs and Serbians with the crimes of murder of innocents during the war. The nation has also been involved in a few situations concerning the Syrian Civil War and has recently tried two people for their crimes against humanity in the war. Germany is currently a ratifier of the Rome Statute.

Timeline of Events

1474	Trial of Peter von Hagenbach in the Holy Roman Empire - the first example
20 November 1945 - 1 October 1946	The Nuremberg Trials are held
9 December 1948	The Convention on the Prevention and Punishment of the Crime of Genocide was adopted.
11 April - December 15, 1961	The trial of Adolf Eichmann by Israel is held and he is hanged following the verdict.
10 December 1984	The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was adopted.
17 July 1988	The adoption of the Rome Statute and subsequently the founding of the International Criminal Court.
25 November 1998	The former Chilean president Augusto Pinochet getting arrested in England for crimes such as genocide and terrorism.
2022	Many states such as Germany, Spain, and Lithuania start investigations for

	crimes in the Russia-Ukraine War.
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UN Involvement

The United Nations have been mostly effective in establishing legal documents with Member States to handle the issue and also creating the ICC. Other than working on these two things, the UN have been involved with handling the crimes committed at specific instances, creating tribunals such as the International Criminal Tribunal for the former Yugoslavia (ICTY), handling cases regarding the territory Yugoslavia covered as understood from the title. The UN Security Council has also benefited from universal jurisdiction through referring criminals to be investigated to the ICC, even though the state the crimes were committed were not a part of the Rome Statute.

Overall, the UN has been involved in the issue to widen the application of the concept, breaking legal boundaries and setting new standards that fits most member states, and ensuring the correct and unbiased application of the principle.

Relevant UN Documents

The scope and application of the principle of universal jurisdiction - Report of the Secretary General (28 June 2016, A/71/111)

- This document lists some countries such as Spain, Finland and Georgia and mentions their application of universal jurisdiction while also giving examples of specific cases about specific crimes.

What is Universal Jurisdiction - OHCHR Seoul

- A document explaining what universal jurisdiction is and relative terms.

The scope and application of the principle of universal jurisdiction - Resolution adopted by the General Assembly (7 December 2023, 11 December 2023)

- Most recent resolution on the issue.

Treaties and Events

The Nuremberg Trials (1945-1946)

- Following the defeat of the Axis forces in WW2, the Allies founded the International Military Tribunal (IMT) to prosecute Nazi generals for crimes against humanity and peace. The name of these trials is "The Nuremberg Trials".

Convention on the Prevention and Punishment of the Crime of Genocide (1948)

- A convention written to put a definition to genocide, prevent it from happening, and the consequences of perpetrating it.

The Trial of Adolf Eichmann (1961)

- A Nazi general who was tried for his crimes against the Jews in Israel. His trial was highly debated around the world and raised many concerns regarding universal jurisdiction.

The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)

- A convention written to put a definition on above crimes, prevent these from happening, and the consequences of perpetrating it.

The Rome Statute (1988)

- A statute that paved the way for international courts (ICJ and ICC) and enforced a different method of universal jurisdiction. There are many who are a party to it, however some major nations such as USA, China, and Russian Federation are not a signatory of it.

Evaluation of Previous Attempts to Resolve the Issue

Treaties

The most prominent issue when discussing universal jurisdiction amongst nations is basing it on a legal basis. Each nation should have a common method and set of rules when faced with a case against humanity. The other problem is to align it with countries' domestic laws. If the common law does not align with the domestic, states will tend to implement laws on their own when faced with foreigner criminals, and may end up not putting them up to trial.

The point of previous conferences and treaties that specify each crime and the severity of it is to achieve the previous paragraph. Documents like Rome Statute, conventions on torture and genocide allow for states to use the common ground for prosecuting purposes. Even though over the last eight years following the end of WW2, there is still much all states are offering to the table for debate and more specification. So, all the documents have been useful to expand the scope of universal jurisdiction, but there is still some way to go.

The International Criminal Court

The International Criminal Court is another organization that aligns with the application of universal jurisdiction. People that have committed serious crimes at different places around the world

are put into a fair trial in the ICC ensured by unbiased judges. Unlike countries trying people, the people in the ICC require some kind of referral so they can be tried. The ICC has been successful in prosecuting many criminals that have committed crimes against humanity, yet its reach is very limited compared to a world where each party can operate under universal jurisdiction.

Possible Solutions

Agreements with Member States

There are still many Member States that are not a part of the Rome Statute and therefore are not involved in the universal jurisdiction discussion mostly. To expand the reach for international trials for countries, the UN can send legal representatives to meet with those nations' representatives and reach a common consensus on the Rome Statute to involve them in the discussion. Certain amendments can be made for the nation in question, without entirely changing the statute, and some articles may not be practiced in that country to respect their sovereignty. Through this, many other countries will be more willing to take part in universal jurisdiction through negotiation but the delegates should be aware that such a solution may lead to discrepancies amongst different cases around the world. It might also raise some tension from nations already a ratifier of the document, so the delegates must consider this solution idea carefully before writing it down.

Establishing a Separate UN Body

For this issue to be resolved quicker and spread around the world faster, a separate UN organ linked to the sixth committee seems necessary. The issue's complex nature involving laws of each nation, international courts, and war crimes require a supporting mechanism to constantly seek improvement. The mentioned UN body should be tasked with monitoring advances in universal jurisdiction, ensuring the legitimacy of each application and deciding whether or not an international trial is required, and raising global awareness on the issue. The body itself must consist of many legal experts on international and domestic laws of different regions and always try to broaden the scope of the concept in regions not practicing.

Bibliography

"Adolf Eichmann." *Britannica*, 25 Jan. 2025, www.britannica.com/biography/Adolf-Eichmann. Accessed 20 Feb. 2025.

"Basic Facts on Universal Jurisdiction." *Human Rights Watch*, 19 Oct. 2009, www.hrw.org/news/2009/10/19/basic-facts-universal-jurisdiction. Accessed 20 Feb. 2025.

- "Definitions of Genocide and Related Crimes." *United Nations Office on Genocide Prevention and the Responsibility to Protect*, www.un.org/en/genocide-prevention/definition. Accessed 20 Feb. 2025.
- "Impunity." *Cambridge Dictionary*, dictionary.cambridge.org/dictionary/english/impunity. Accessed 20 Feb. 2025.
- "International Criminal Court (ICC)." *Plutus IAS*, plutusias.com/international-criminal-court-icc/. Accessed 20 Feb. 2025.
- "Rome Statute of the International Criminal Court." *International Criminal Court*, www.icc-cpi.int/publications/core-legal-texts/rome-statute-international-criminal-court. Accessed 20 Feb. 2025.
- "Universal Jurisdiction." *International Justice Research Center*, ijrcenter.org/cases-before-national-courts/domestic-exercise-of-universal-jurisdiction/. Accessed 20 Feb. 2025.
- "Universal Jurisdiction." *TRIAL International*, trialinternational.org/topics-post/universal-jurisdiction/. Accessed 20 Feb. 2025.
- "Universal Jurisdiction: The Challenges and Opportunities of Addressing International Crimes." *Wayamo Foundation*, www.wayamo.com/archives/video/universal-jurisdiction-the-challenges-and-opportunities-of-addressing-international-crimes/. Accessed 20 Feb. 2025.
- "War Crime." *Britannica*, 19 Feb. 2025, www.britannica.com/topic/war-crime. Accessed 20 Feb. 2025.
- "What is R2P?" *Global Centre for the Responsibility to Protect*, www.globalr2p.org/what-is-r2p/#:~:text=The%20Responsibility%20to%20Protect%20%E2%80%93%20known,cleansing%20and%20crimes%20against%20humanity. Accessed 20 Feb. 2025.
- "What is Torture." *OMCT*, www.omct.org/en/who-we-are/what-is-torture. Accessed 20 Feb. 2025.