

## THE ROLE OF UNIVERSAL JURISDICTION IN COMBATING IMPUNITY FOR GRAVE INTERNATIONAL CRIMES

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### **Abstract**

*This research paper examines universal jurisdiction as a vital mechanism in international criminal law for combating impunity for the gravest crimes, including genocide, war crimes, crimes against humanity, and other serious violations. Unlike traditional territorial or nationality-based principles, universal jurisdiction allows states to prosecute such offences regardless of where they occurred or who was involved. Rooted in customary international law, treaty frameworks, and national legislation, it reflects the international community's shared responsibility to uphold justice. The paper explores the doctrine's conceptual and legal foundations, tracing its development through instruments like the Princeton Principles and its incorporation into international conventions and domestic statutes. It evaluates its practical enforcement through landmark cases—Adolf Eichmann, Augusto Pinochet, Hissène Habré, and John Demjanjuk—which have shaped jurisprudence on accountability beyond borders. It also highlights recent progress in domestic courts, particularly in Germany and Argentina. Finally, the paper assesses ongoing challenges, including political influence, evidentiary hurdles, jurisdictional conflicts, immunities, amnesty laws, resource constraints, and statutory limitations, and offers recommendations to strengthen the legitimacy and effectiveness of universal jurisdiction..*

**Keywords:** Universal Jurisdiction, International Criminal Law, War Crimes, Crimes Against Humanity, Genocide, Impunity, International Justice, Customary International Law, Erga Omnes Obligations, Princeton Principles, Human Rights Violations.

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## Introduction

Over the years, the evolution of International criminal law has demonstrated a growing consensus among states that the gravest offences, such as war crimes, crimes against humanity, genocide, aggression, torture, must not go unpunished, irrespective of where or by whom they are committed. Among the legal mechanisms developed to hold accountable those who commit these crimes, the doctrine of universal jurisdiction stands out as both prominent and controversial.<sup>1</sup> Universal jurisdiction emerged from the international community's commitment to end impunity for grave violations of international law.<sup>2</sup> It serves as a legal mechanism to bridge jurisdictional gaps when national courts are unwilling or unable to prosecute offenders.<sup>3</sup> It reflects a shared moral and legal obligation to guarantee that perpetrators of the grave international crimes cannot evade prosecution by exploiting territorial boundaries or invoking state sovereignty.<sup>4</sup>

Despite its great potential to promote global justice, the application of universal jurisdiction remains constrained by political, legal, and procedural controversies.<sup>5</sup> The doctrine has sparked considerable theoretical debate. Proponents argue that it reinforces a cosmopolitan model of justice by enabling states to prosecute crimes that concern the international community as a whole.<sup>6</sup> However, critics caution that it may infringe upon the sovereignty of states, violate the principle of non-intervention, and be misused for politically motivated prosecutions.<sup>7</sup> This tension between the ideals of universal justice and the realities of state sovereignty, often framed as a conflict between cosmopolitanism and Westphalianism, lies at the heart of ongoing scholarly discourse regarding the scope, legitimacy and enforceability of universal jurisdiction.

This research paper explores the concept, scope, and underlying rationale of universal jurisdiction as an instrument for prosecuting international crimes. It examines the contribution of the *Princeton Principles on Universal Jurisdiction* in promoting coherence and consistency among state practices, as well as in clarifying legal ambiguities surrounding the doctrine.

Furthermore, the paper analyses the recognition and codification of universal jurisdiction within international conventions, customary international law, and domestic legal systems.

Drawing upon relevant case law from various jurisdictions, the paper evaluates the practical implementation of universal jurisdiction and its evolving influence on the development of international criminal law's jurisprudence. Finally, the study concludes by identifying the key challenges that hinder the practical application of universal jurisdiction and offers recommendations to enhance its implementation in pursuit of global justice, not merely as a discretionary right of states but as an emerging customary duty under international law.

## **Universal Jurisdiction and International Crimes**

Before delving into the scope and rationale behind these legal principles, it is pertinent to establish a clear understanding of these concepts.

### **1. Concept of Universal Jurisdiction**

Universal jurisdiction is a legal doctrine that allows a state to exercise jurisdiction over certain crimes, irrespective of where they were committed or the nationality of the victim or perpetrator.<sup>8</sup> This principle allows a state to exercise jurisdiction where there are no other jurisdictional connections, like territoriality, nationality, or passive personality, between the perpetrator and the state exercising it.<sup>9</sup> The basis of this jurisdiction lies solely in the crime itself,<sup>10</sup> because certain crimes are so grave and universally condemned that they are regarded as a threat to the entire international community.<sup>11</sup> As such, universal jurisdiction represents the collective interest of the global community in ensuring that perpetrators of the most serious crimes do not find a haven anywhere in the world.<sup>12</sup>

### **2. Nature and the Scope of International Crimes**

The term "international crimes" refers to extremely grave violations of international law.<sup>13</sup> Almost all scholars, as well as international courts and tribunals, agree that the defining feature of international crimes is their universality: they are considered criminal and prosecutable, no matter where they are committed.<sup>14</sup>

This universal nature distinguishes international crimes from domestic crimes, which derive their criminality from national law, such as murder, and from transnational crimes, which are criminalised through international treaties that require states to incorporate such offences into their domestic legal systems, such as drug trafficking and money laundering.<sup>15</sup>

What further distinguishes international crimes is that they involve the violation of jus cogens norms, peremptory principles of international law that are essentially non-derogable and binding on all states. Because of the fundamental nature of these norms, individuals who commit such crimes cannot invoke official capacity as a defence or claim immunity from prosecution.<sup>16</sup> Most of the international law scholars and jurists agree that international crimes include aggression, crimes against humanity, war crimes, and genocide.<sup>17</sup> Other such crimes, like torture and terrorism, are considered international crimes only by certain scholars.<sup>18</sup>

### **3. Conceptual Rationale Behind Universal Jurisdiction**

Almost all nations observe almost all principles of international law and almost all of their obligations almost all the time.<sup>19</sup> Historically, the concept of universal jurisdiction dates back to the era when piracy posed a significant threat, and pirates were labelled as *hostis humani generis*, which means 'enemies of all humankind.'<sup>20</sup> Their ability to operate beyond national borders, often committing crimes on the high seas, made it exceptionally difficult to capture and prosecute them.<sup>21</sup> This challenge necessitated the development of universal jurisdiction, which allows any state to apprehend and prosecute pirates regardless of where the crime occurred.<sup>22</sup>

In the 20th century, similarly grave crimes, like war crimes, genocide, and crimes against humanity, claimed the lives of millions.<sup>23</sup> The perpetrators of these crimes were often granted impunity within their domestic legal systems, which enabled them to evade accountability for their actions.<sup>24</sup> Therefore, the primary rationale for exercising universal jurisdiction is to fulfil states' erga omnes obligations to combat impunity and protect the rights of victims of grave international crimes.<sup>25</sup> This principle ensures that those guilty of serious crimes are held accountable wherever they are found.<sup>26</sup>

Another significant mechanism for ensuring accountability for grave crimes has been the creation of ad hoc international criminal tribunals, most notably the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), following the creation of the permanent International Criminal Court (ICC).

These institutions represent the collective action by the global community to tackle mass atrocities, aiming to ensure individual criminal responsibility for grave violations of international law.<sup>27</sup>

The International Criminal Court's jurisdiction, as specified in the Rome Statute, is limited to the principles of territoriality and nationality; that is, the Court may prosecute crimes either committed within the territory of a State Party or perpetrated by its nationals.<sup>28</sup> In limited circumstances, the Court may also exercise jurisdiction through an ad hoc declaration by a non-party State,<sup>29</sup> or via a referral from the United Nations Security Council.<sup>30</sup>

Yet the International Criminal Court does not exercise universal jurisdiction; if it did, it could prosecute any grave violations committed anywhere in the world.<sup>31</sup> In this context, the doctrine of universal jurisdiction, as exercised by individual states, plays an essential role in bridging the jurisdictional gaps.<sup>32</sup> By allowing national courts to prosecute perpetrators of grave international crimes regardless of national or territorial links, universal jurisdiction ensures that impunity is not tolerated and justice is upheld on behalf of the entire international community.

### **Princeton Principles on Universal Jurisdiction**

In January 2001, the Princeton Project on Universal Jurisdiction convened an assembly of scholars, legal practitioners, and jurists from across the globe at Princeton University.<sup>33</sup> The primary objective of this initiative was to support the continued evolution of universal jurisdiction by formulating a set of guiding principles.<sup>34</sup> These guidelines were designed to assist national legislative bodies, judiciaries, and governments in consistently applying universal jurisdiction, thereby advancing accountability for international crimes.<sup>35</sup>

The Princeton Principles on universal jurisdiction assert that the exercise of universal jurisdiction is based solely on the nature of the crime, irrespective of territorial, national, or other jurisdictional connections.<sup>36</sup>

They provide that universal jurisdiction may be exercised by the ordinary and competent judicial authorities of a state, provided that such exercise is in accordance with internationally accepted standards of due process and is conducted in good faith.<sup>37</sup>

The Principles specify certain crimes that warrant the exercise of universal jurisdiction, drawing on the historical development of this concept.<sup>38</sup> These crimes include slavery, piracy, crimes against humanity, war crimes, crimes against peace, genocide, and torture.<sup>39</sup> In such cases, a state may either prosecute individuals alleged to have committed these crimes or extradite them to a jurisdiction willing and able to hold them accountable.<sup>40</sup> Moreover, a state may seek mutual assistance, particularly in the gathering and exchange of evidence relevant to these prosecutions.<sup>41</sup>

In international law, the immunity of a state official is generally categorised into two distinct types: immunity *ratione personae* and immunity *ratione materiae*.<sup>42</sup> Immunity *ratione personae* denotes the personal immunity afforded to certain senior state officials, such as heads of state, heads of government, and foreign ministers, while they are in office.<sup>43</sup> This immunity is absolute and extends to both official and private acts of the official, and persists for the duration of the official's tenure.<sup>44</sup> In contrast, immunity *ratione materiae* is a functional immunity that shields officials from legal proceedings for tasks performed in their official capacity.<sup>45</sup> This form of immunity does not extend beyond the official's tenure in office and may be lifted, particularly in cases involving the commission of the crimes mentioned above.<sup>46</sup>

The Principles also emphasise that domestic statutes of limitation shall not limit prosecution under universal jurisdiction, and that the granting of amnesties for such crimes is inconsistent with international legal obligations.<sup>47</sup> In addition, proper measures must be taken to prevent multiple prosecutions for a single conduct, thereby upholding the doctrine of *ne bis in idem*, the principle of Double Jeopardy.<sup>48</sup> States are recommended to enact the necessary domestic legislation to ensure the practical application of universal jurisdiction over the crimes mentioned above.<sup>49</sup> Recognising the potential for concurrent jurisdictional claims, the Principles provide criteria to assist in resolving such conflicts.

Where a state exercises jurisdiction solely on the grounds of the universality principle and holds custody over the accused, its authorities are encouraged to evaluate their duty to prosecute or extradite by considering several factors.<sup>50</sup>

These include: the existence of relevant obligations arising out of bilateral or multilateral treaty signed by the states; the location of the crime; the nationality of the suspected offender; connections between the requesting state and the alleged offender; the likelihood of prosecution in the requesting state and existence of good faith; the impartiality and fairness of its judicial proceedings; and the broader interest of justice.<sup>51</sup>

Importantly, all participants of the project clarified that these principles are not intended to restrict the scope of universal jurisdiction nor to hinder future developments in international criminal accountability.<sup>52</sup> Instead, the ultimate goal of these principles is to bring greater clarity and consistency to the doctrine's application, encouraging its responsible and reasonable use as a vital mechanism for the enforcement of international criminal law.<sup>53</sup>

### **Legal Basis for Universal Jurisdiction**

The principle of universal jurisdiction is grounded in multiple sources of international law, including treaty obligations and customary international law.<sup>54</sup> Additionally, various states have incorporated this principle into their domestic legal systems, thereby reinforcing its applicability at the national level.<sup>55</sup>

#### **1. International Conventions**

A substantial number of international conventions support the application of universal jurisdiction not only over grave international crimes, such as war crimes, torture, crimes against humanity,<sup>56</sup> but also over other crimes of concern to the entire international community.<sup>57</sup> These legal instruments establish a binding obligation upon State Parties to ensure the prosecution of those guilty of such crimes.<sup>58</sup>

Closely intertwined with the doctrine of universal jurisdiction is the international obligation of *aut dedere aut judicare*, which means either to extradite or to prosecute, as outlined in several conventions.<sup>59</sup>

This doctrine mandates that a state must either initiate domestic criminal proceedings against an alleged offender, often under the auspices of universal jurisdiction, or extradite the individual to another state with jurisdiction over the matter or to a competent international criminal tribunal.<sup>60</sup> The obligation under *aut dedere aut judicare* is generally categorised into two distinct frameworks:

- i. **Extradition-First Clause:** Under this framework, the primary obligation is to extradite the alleged perpetrator.<sup>61</sup> The duty to prosecute arises only if extradition is refused.<sup>62</sup> Such clauses prioritise prosecution in the requesting or territorial state. Examples include the *International Convention for the Suppression of Counterfeiting Currency*<sup>63</sup> and the *African Union Convention on Preventing and Combating Corruption*.<sup>64</sup>
- ii. **Prosecution-First Clause:** In this model, the state is under a direct obligation to prosecute the alleged offender domestically.<sup>65</sup> Extradition is presented as an alternative, applicable only if the state declines to prosecute.<sup>66</sup> Examples include the *Convention for the Suppression of Unlawful Seizure of Aircraft*<sup>67</sup> and the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.<sup>68</sup>

A range of conventions explicitly provides for the exercise of universal jurisdiction for grave international crimes. These include the four *Geneva Conventions of 1949*,<sup>69</sup> the *International Convention for the Protection of All Persons from Enforced Disappearance* (2006),<sup>70</sup> the *International Convention on the Suppression and Punishment of the Crime of Apartheid* (1973),<sup>71</sup> and the *Convention against Torture* (1984).<sup>72</sup>

Several of these instruments are widely interpreted to establish what is termed “quasi-universal jurisdiction.”<sup>73</sup> Under this concept, states are obliged to enact domestic legislation enabling their national judiciary to exercise jurisdiction over specified offences that are essentially jus cogens, even in the absence of traditional jurisdictional links such as territory, nationality, or passive personality.<sup>74</sup>

## 2. Customary International Law

Customary international law emerges from the uniform and consistent conduct of states, coupled with *opinio juris*, the conviction that this practice is followed out of a legal obligation.<sup>75</sup>

It constitutes a primary source of universal jurisdiction,<sup>76</sup> imposing a duty on states not to provide safe havens to perpetrators of grave crimes and to actively combat impunity.<sup>77</sup>

This customary obligation initially arose in response to increasing piracy,<sup>78</sup> and over time, has evolved to encompass the prosecution of those responsible for grave international crimes, such as crimes against humanity, genocide, war crimes, and other egregious violations of human rights.<sup>79</sup>

The right of a state to exercise universal jurisdiction exists independently of treaty obligations and is firmly grounded in longstanding state practice recognised as binding under international law.<sup>80</sup> Although certain international conventions, such as the Genocide Convention, address severe violations of international law, they do not explicitly permit the exercise of universal jurisdiction.<sup>81</sup> Nonetheless, customary international law authorises the national judicial system to assert universal jurisdiction over such crimes, regardless of whether the concerned state is a party to the relevant convention.<sup>82</sup>

### **3. National Legislation**

Building upon the obligations arising from customary international law, national implementation serves as the practical conduit through which universal jurisdiction is exercised. The effective application of universal jurisdiction requires its incorporation into each country's domestic legal system, particularly in dualist systems, where international norms do not automatically acquire legal force without corresponding national legislation.<sup>83</sup> It is neither practical nor sufficient for a state to rely exclusively on customary international law or treaty obligations to assert universal jurisdiction.<sup>84</sup> Till now, nearly 150 states have implemented legislation authorising their local courts to exercise universal jurisdiction over a broad range of crimes, including crimes against humanity, war crimes, and genocide.<sup>85</sup> This widespread legislative practice is underpinned by states' conviction that such crimes warrant prosecution regardless of their commission location or the offender's or victim's nationality.<sup>86</sup> Amnesty International's 2011 survey provides a comprehensive overview of how universal jurisdiction is reflected in national legal systems.<sup>87</sup> The report indicates that nearly 85% of states had incorporated international crimes into their national legal systems, yet only around 75.1% of those states had explicitly provided for the application of universal jurisdiction.<sup>88</sup> The number of states that have actually applied universal jurisdiction remains considerably low, a disparity that will be addressed in detail in the subsequent section on challenges.

## Landmark Cases on Universal Jurisdiction

This section analyses relevant case law from domestic and international courts to demonstrate the practical implementation and legal challenges of exercising universal jurisdiction in prosecuting grave international crimes.

### 1. *Eichmann Trial (Israel, 1961)*

The *Eichmann* trial is one of the few notable instances in which a domestic court expressly applied universal jurisdiction in its proceedings.<sup>89</sup> Proceedings were initiated against Adolf Eichmann, a senior Nazi official,<sup>90</sup> instrumental in implementing *Endlösung der Judenfrage*, the “Final Solution to the Jewish Question.”<sup>91</sup> Under this genocidal policy, Nazi Germany orchestrated the deportation and extermination of approximately six million Jews.<sup>92</sup> Eichmann played a central role in coordinating these operations, which directly led to the deaths of over 1.5 million victims.<sup>93</sup>

Following the collapse of the Nazi regime, Eichmann evaded justice and fled Germany. He was eventually located by Mossad in Argentina, from where he was abducted and secretly brought to Israel.<sup>94</sup> This raised both moral and legal questions regarding his prosecution; however, Israel justified it by citing the abhorrent and severe nature of the crimes committed,<sup>95</sup> and argued that the method by which a suspect is brought before the court does not affect the legitimacy of the trial.<sup>96</sup> Israel’s Attorney General charged Eichmann with 15 different counts, including war crimes, crimes against humanity, and crimes against the Jewish people,<sup>97</sup> under the *Nazi and Nazi Collaborators (Punishment) Law, 1950*.<sup>98</sup> The court ultimately convicted him on all charges and sentenced him to death, with the execution carried out in 1962.<sup>99</sup>

The *Eichmann* judgment remains a landmark precedent in the jurisprudence of universal jurisdiction.

It affirmed the authority of domestic courts to prosecute individuals responsible for serious international crimes, regardless of territorial or national connections.<sup>100</sup> Notably, the judgment contributed to the development of procedural principles associated with universal jurisdiction, including the principle that extradition is not a prerequisite for prosecution when justice would otherwise be delayed or denied.<sup>101</sup>

The court also rejected the primacy of the territorial state, especially where that state had failed to investigate or prosecute the suspect.<sup>102</sup> Moreover, it rejected the application of statutes of limitations to crimes of such gravity, acknowledging their imprescriptible character under international law.<sup>103</sup>

## **2. *Ex-parte Pinochet* (UK, 1998-1999)**

This case concerned Augusto Pinochet Ugarte, a former Chilean Commander-in-Chief who seized power in a 1973 military coup.<sup>104</sup> Systematic human rights abuses, including torture, enforced disappearances, and extrajudicial killings, marked his regime.<sup>105</sup> In October 1998, Pinochet was arrested in the United Kingdom during a medical visit,<sup>106</sup> following a Spanish extradition request for crimes against humanity committed in Chile.<sup>107</sup>

Pinochet challenged the Spanish arrest warrant, arguing that, as a former head of state, he was entitled to immunity *ratione materiae* (functional immunity) from criminal prosecution.<sup>108</sup> However, the House of Lords UK, in both of its judgments, dismissed this argument. In its initial judgment, the court affirmed that the acts attributed to Pinochet, namely torture and other serious human rights violations, did not constitute the Head of State's official functions and, therefore, fell outside the scope of this immunity.<sup>109</sup> In its subsequent decision, the House of Lords further emphasised that, in light of the Convention against Torture having been ratified by both the United Kingdom and Chile, acts of torture could not be shielded by immunity under international law.<sup>110</sup> Despite these judicial determinations, Pinochet was ultimately not extradited to Spain.<sup>111</sup> The UK authorities determined that Pinochet was medically unfit to stand trial due to declining mental health, and he was consequently allowed to return to Chile.<sup>112</sup>

Nevertheless, the Pinochet case marked a significant jurisprudential milestone, affirming that former heads of state may be held criminally accountable for grave international crimes such as torture and that foreign domestic courts may pursue such accountability under the principle of universal jurisdiction.<sup>113</sup> Moreover, this case firmly established that immunity cannot be invoked as a defence against prosecution for the most grave violations of international law.

### **3. *Hissène Habré Case (Sénégal, 2016)***

The trial of Hissène Habré marked a landmark application of universal jurisdiction in Africa.<sup>114</sup> Habré, President of Chad from 1982 to 1990, fled to Senegal after being overthrown.<sup>115</sup> In 1992, the Chadian National Truth Commission released a report documenting 40,000 victims of systematic torture under Habré's regime and called for his prosecution for extensive human rights violations.<sup>116</sup> Senegal initially declined jurisdiction over crimes committed abroad, prompting victims to file a complaint in Belgium under its universal jurisdiction law.<sup>117</sup> To avoid the political controversy of extraditing an African leader to a European court, Senegal referred the matter to the African Union.<sup>118</sup>

In 2012, the International Court of Justice (ICJ) ruled in *Belgium v. Senegal* that Senegal was obligated either to prosecute Habré or to extradite him to Belgium.<sup>119</sup> That same year, Senegal, in cooperation with the African Union, established the Extraordinary African Chambers within its national judicial system, specifically mandated to prosecute Habré for international crimes committed in Chad between 1982 and 1990.<sup>120</sup> In 2016, Habré was convicted by the Extraordinary African Chambers, a verdict that was subsequently upheld by the Senegalese Appeals Chamber in 2017.<sup>121</sup>

He was sentenced to life imprisonment for committing crimes against humanity, war crimes, and acts of torture.<sup>122</sup> The court ordered Habré to pay €213 million in reparations to a trust fund established for the victims.<sup>123</sup> This set a significant precedent for accountability and victim compensation in international criminal justice.

### **4. *Prosecution of John Demjanjuk by Israel and Germany***

John Demjanjuk, a Ukrainian-born former Red Army soldier and later U.S. citizen, was accused of serving as a guard at Nazi extermination camps during World War II.<sup>124</sup> He initially joined the Soviet Red Army in 1940, approximately one year before the breakdown of the Nazi-Soviet Non-Aggression Pact.<sup>125</sup> In 1942, he was captured by German forces after sustaining injuries in combat.<sup>126</sup> The time span between his capture and the conclusion of the war remains highly contested and is central to the accusations brought against him.<sup>127</sup>

After immigrating to the United States in 1952,<sup>128</sup> Israel sought his extradition in 1983 under the *Nazi and Nazi Collaborators (Punishment) Law* of 1950,<sup>129</sup> alleging he was “Ivan the Terrible,” a notoriously brutal guard at the Treblinka extermination camp.<sup>130</sup>

Demjanjuk was extradited to Israel, where he was tried and initially convicted by a lower court in 1988, receiving a death sentence.<sup>131</sup> However, in 1993, the Israeli Supreme Court overturned the conviction, determining that the evidence was insufficient to establish his identity as ‘Ivan the Terrible.’<sup>132</sup> Following this ruling, he returned to the United States.

In 2005, the United States government revoked Demjanjuk’s citizenship, citing evidence that he had misrepresented his wartime activities during his immigration process.<sup>133</sup> The government sought to deport him to Ukraine, Germany, or Poland.<sup>134</sup> Demjanjuk contested this action. Meanwhile, prosecutors in Munich initiated legal proceedings and began pursuing his extradition based on allegations that he had served as a guard at the Sobibor extermination camp, among other sites.<sup>135</sup>

In 2009, he was extradited to Germany and tried before the Munich Regional Court II. In 2011, he was found guilty of being an accessory to the murder of more than 28,000 individuals at the Sobibor extermination camp.<sup>136</sup> However, Demjanjuk died on March 17, 2012, before his appeal could be adjudicated, which under German law meant that the verdict was not legally final.<sup>137</sup> As a result, the proceedings were formally terminated following his death.

These and other landmark cases have played a crucial role in advancing the development and acceptance of universal jurisdiction within international law. They affirmed that individuals accused of serious international crimes, such as genocide, torture, and crimes against humanity, may be held accountable outside the territorial boundaries where the offences were committed. Collectively, these rulings have helped to legitimise and broaden the practical use of universal jurisdiction, motivating states and judicial bodies to take a more proactive stance in addressing impunity for such crimes.

## 5. Recent Developments in the Jurisprudence of Universal Jurisdiction

While the historical cases of Eichmann, Pinochet, and Habré established the early judicial foundations of universal jurisdiction, recent jurisprudence demonstrates a progressive expansion of its application. In recent years, domestic courts have increasingly applied universal jurisdiction in response to serious violations of international law. According to the *Universal Jurisdiction Annual Review 2025*, published by TRIAL International, nearly 95 cases invoking extraterritorial or universal jurisdiction were initiated across 16 different jurisdictions.<sup>138</sup> This upward trend demonstrates a growing commitment among national legal systems to combat impunity and uphold international justice, despite the legal and political challenges inherent in such proceedings.<sup>139</sup>

A particularly significant case exemplifying this trend is the prosecution of former Syrian military doctor, Alaa Mousa, by the Higher Regional Court of Frankfurt, Germany.<sup>140</sup> Mousa served as a junior physician at a military hospital and an intelligence detention centre during the initial phase of the Syrian Civil War.<sup>141</sup> He was suspected of being involved in the torture and abuse of detainees affiliated with opposition groups or deemed enemies of the Assad regime.<sup>142</sup> After settling in Germany in 2015 under a skilled worker visa, Mousa continued practising as an orthopaedic doctor until his arrest in 2020.<sup>143</sup> Initially, during his proceedings in 2022, he denied direct involvement in acts of torture but acknowledged witnessing the abuse.<sup>144</sup> However, on 16 June 2025, based on the testimonies of over 50 witnesses, Mousa was convicted and sentenced to imprisonment for life for crimes including torture, murder, and war crimes committed in Syria.<sup>145</sup> This case highlights the growing willingness of domestic courts to exercise universal jurisdiction over grave international crimes, thereby fulfilling their *erga omnes* obligations.

Another recent milestone in the development of universal jurisdiction is the Uyghur genocide case before Argentina's Federal Court of Criminal Cassation.<sup>146</sup> On 16 August 2022, the World Uyghur Congress and other advocacy groups submitted a complaint under Argentina's universal jurisdiction provisions, seeking accountability for alleged crimes against humanity and genocide perpetrated by Chinese authorities against the Uyghur population in Xinjiang.<sup>147</sup>

The allegations include mass arbitrary detention, systematic torture, forced sterilisations, family separations, and cultural erasure.<sup>148</sup>

On 11 July 2024, Argentina's highest criminal court overturned an earlier decision by the Court of Appeals of Buenos Aires, which had upheld the prosecutor's dismissal of the case.<sup>149</sup> The Federal Court of Criminal Cassation recognised both the sufficiency of evidence and Argentina's legal competence to pursue the matter.<sup>150</sup> Subsequently, on 18 June 2025, the court reaffirmed that no legal impediments exist to opening a formal investigation, which is now actively underway.<sup>151</sup> This decision shows Argentina's growing role in promoting accountability for international crimes and supports the idea that no state should be beyond legal scrutiny when such serious crimes are involved.

Taken together, these developments reflect a broader trend of national courts becoming more active in applying universal jurisdiction, marking a more substantial commitment to enforcing international law at the domestic level.

### **Challenges in the Exercise of Universal Jurisdiction**

Despite being a viable mechanism for combating impunity, particularly when traditional bases of jurisdiction fail, and for protecting the rights of victims,<sup>152</sup> the application of universal jurisdiction remains subject to several controversies and challenges. These challenges encompass the compatibility of universal jurisdiction with domestic legal frameworks, the execution of investigations, the gathering and admissibility of evidence, the application of immunities, political interference, and other related obstacles, as elaborated below:

1. In many states, there is an absence of comprehensive legislation covering the full range of crimes subject to universal jurisdiction.<sup>153</sup> International crimes such as genocide, war crimes, enforced disappearances, and torture are frequently either absent from domestic law or defined in ways that do not align with international legal standards.<sup>154</sup> Prosecutors are frequently forced to rely on domestic criminal provisions, such as armed robbery or assault, that do not accurately capture the nature or severity of the international crimes in question.<sup>155</sup> This misalignment results in impunity gaps and undermines the objective of universal accountability.

2. Although international law generally excludes statutory limitations for grave international crimes,<sup>156</sup> the absence of a proper definition of these crimes in national legislation often results in the unintended application of domestic limitation periods.<sup>157</sup> This legal disconnect may bar the prosecution of grave international crimes and further impede justice.<sup>158</sup>
3. In many post-conflict societies, amnesties are granted to perpetrators of serious crimes as part of transitional justice, to secure lasting peace.<sup>159</sup> While such measures may be adopted for national reconciliation or political stability,<sup>160</sup> they often obstruct the exercise of universal jurisdiction. A notable example is the amnesty issued in 1978 to Augusto Pinochet for grave crimes committed between 1973 and 1978.<sup>161</sup> Despite credible allegations of systematic torture, enforced disappearances, and extrajudicial killings, the amnesty was one of the factors that enabled him to evade prosecution for over 20 years.<sup>162</sup> Similar practices have been followed in countries such as Brazil, Guatemala, El Salvador, Sierra Leone, and Uruguay.<sup>163</sup> While amnesties for international crimes are not explicitly prohibited under customary international law,<sup>164</sup> their legitimacy remains highly contested, particularly when they override victims' rights to justice and redress.<sup>165</sup>
4. One of the significant barriers to the effective implementation of universal jurisdiction is the continued application of immunities afforded to state officials.<sup>166</sup> While international law recognises procedural immunity for sitting high-ranking officials and diplomats, such immunity should not extend to former officeholders in cases involving international crimes.<sup>167</sup> Nonetheless, domestic courts have often upheld such immunities.<sup>168</sup> For instance, in *Ye v. Zemin*, which addressed the exercise of universal jurisdiction *in absentia*, the Court of Appeal upheld the immunity of former Chinese President Jiang Zemin, notwithstanding allegations of serious international crimes.<sup>169</sup>
5. The logistical and legal difficulties associated with investigating crimes committed abroad present a significant barrier. Many states lack comprehensive mutual legal assistance agreements, and existing treaties often contain broad exceptions that allow for the refusal of cooperation or extradition.<sup>170</sup> Limited resources, security concerns, or the involvement of state actors complicit in the alleged crimes may hinder investigations.<sup>171</sup>

Moreover, the collection, transport, and admissibility of physical evidence face numerous obstacles, including concerns over authenticity, chain of custody, and compliance with evidentiary standards.<sup>172</sup>

6. The initiation and conduct of universal jurisdiction proceedings are often influenced by political discretion.<sup>173</sup> Prosecutorial decisions often require approval from executive authorities, and decisions regarding extradition are typically framed as political rather than strictly legal.<sup>174</sup> This politicisation can compromise the impartiality of the justice system, especially when powerful states or politically sensitive individuals are involved.

In addition to the above, other obstacles to the practical application of universal jurisdiction include the absence of extradition agreements, limited awareness of the principle among legal practitioners and policymakers, and insufficient inter-state cooperation.

## Conclusion

As this paper began by underscoring the moral and legal imperative to end impunity for the gravest crimes, it concludes by reaffirming that universal jurisdiction remains a cornerstone of that global pursuit. Serving as a vital mechanism in international criminal law, universal jurisdiction empowers states to prosecute the most serious offences, such as genocide, war crimes, and crimes against humanity, regardless of where they occurred or the nationality of the accused. Rooted in customary international law, treaty obligations, and domestic legal systems, this principle embodies the international community's collective commitment to combating impunity and upholding the rule of law.

This paper has examined the foundations, evolution, and practical implementation of universal jurisdiction, alongside the legal and political challenges faced that hinder its efficacy. Landmark cases such as *the Eichmann trial*, *the Pinochet Case*, and *the Hissène Habré Case* highlight its transformative potential; however, disparities in national legislation, the invocation of immunities, evidentiary limitations, and political considerations continue to obstruct its consistent application.

## **Recommendations**

Despite the difficulties associated with the exercise of universal jurisdiction, it continues to serve as a vital mechanism for combating impunity and securing justice for victims of grave international crimes.<sup>175</sup> To address the identified challenges, the following recommendations are proposed:

1. States should ensure that their domestic legal systems explicitly acknowledge and establish provisions for the exercise of universal jurisdiction.<sup>176</sup> This entails enacting laws that authorise courts to prosecute international crimes regardless of where the offence occurred, the accused's nationality, or the victims' nationality.<sup>177</sup> Moreover, states should recognise that the exercise of universal jurisdiction is not merely a discretionary right but forms part of their collective obligation under international law to prevent and punish grave international crimes.<sup>178</sup>
2. Domestic legislation must incorporate comprehensive and internationally recognised definitions of crimes such as genocide, war crimes, crimes against humanity, and torture.<sup>179</sup> These definitions should align with core instruments like the Genocide Convention (1948), the Geneva Conventions and Additional Protocols (1949, 1977), and the Convention against Torture (1984). This would prevent the mischaracterisation or downgrading of international crimes into lesser domestic offences.
3. States must eliminate the application of statutes of limitations to grave international crimes. The gravity of these offences necessitates that they remain subject to prosecution regardless of the time that has passed since their commission.
4. National legal frameworks should explicitly prohibit amnesties or pardons for individuals accused of serious international crimes.<sup>180</sup> Allowing these undermines accountability and perpetuates impunity.
5. Prosecutors must be empowered to initiate investigations and prosecutions based solely on legal merit, without interference from political, religious, or cultural biases.<sup>181</sup> Safeguards should be established to ensure the impartiality and independence of such authorities.

6. States should provide full cooperation in the investigation, prosecution, extradition, and enforcement of penalties against individuals charged with international crimes.<sup>182</sup> This includes adopting and implementing legal frameworks for mutual legal assistance and bilateral or multilateral extradition treaties, and ensuring timely and effective collaboration in identifying suspects, collecting and exchanging evidence, and executing judicial requests.
7. All proceedings carried out under universal jurisdiction must adhere to international fair trial standards, ensuring the accused's rights to legal representation, the presumption of innocence, and due process.<sup>183</sup>
8. States exercising universal jurisdiction should abstain from imposing the death penalty or other cruel, inhuman, or degrading punishments, in line with the evolving standards of international human rights law.<sup>184</sup>
9. Additionally, states should proactively initiate investigations and prosecutions of grave international crimes without waiting for complaints from victims or other parties, in recognition of their *erga omnes* obligation to uphold international justice.<sup>185</sup> To support this, it is essential to invest in strengthening domestic judicial systems by providing specialised training for judges, prosecutors, and investigators on international criminal law and the procedural elements of universal jurisdiction. This would strengthen the effectiveness, consistency, and credibility of prosecutions undertaken under this principle.

Implementing these recommendations is essential to ensure that universal jurisdiction serves as an effective and credible mechanism for the global effort to combat immunity, uphold justice and protect fundamental rights of victims of the gravest crimes. Each year, a growing number of states incorporate universal jurisdiction into their domestic legal frameworks.<sup>186</sup> Significant efforts are still required, both nationally and internationally, to ensure that universal jurisdiction evolves into an effective tool for delivering justice.<sup>187</sup>

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