



QUESTIONS & ANSWERS ON THE ICC AND UNIVERSAL JURISDICTION

What is universal jurisdiction?

Universal jurisdiction is a legal doctrine which permits domestic courts to try and punish perpetrators of some crimes so heinous that they amount to crimes against the whole of humanity, regardless of where they occurred or the nationality of the victim or perpetrator. The crimes subject to universal jurisdiction include piracy, slavery, crimes against humanity, war crimes, torture, and genocide. Universal jurisdiction is a departure from traditional approaches that require a direct connection between the prosecuting state and the particular crime. There is no formal legal basis for universal jurisdiction; rather, it represents a customary international norm.

How do states exercise universal jurisdiction?

Countries typically enact legislation granting domestic courts the power to assert universal jurisdiction over particular crimes. The scope and content of universal jurisdiction laws often vary among nations. National implementing legislation, however, may not always be necessary for national courts to exercise universal jurisdiction. International conventions and international customary norms may also provide for the exercise of universal jurisdiction by states parties.

What are the arguments for universal jurisdiction?

Proponents of universal jurisdiction argue that it is not always possible to prosecute crimes in the countries in which they were committed. For example, after a devastating conflict or war, a transitional state may lack the necessary legal infrastructure and resources to carry out an investigation and prosecution. Alternatively, a country may intentionally fail or refuse to prosecute a crime that occurred within its territory for one reason or another. For instance, the crimes and conduct subject to prosecution may have been sanctioned or supported by the state, or the perpetrators of such crimes may be serving as government officials or have allies within the ruling regime. Thus, there may be a lack of political will within the government to pursue investigations, thus preventing the prosecution of alleged crimes. In the absence of accountability, other states may seek to initiate prosecutions on the basis of universal jurisdiction in order to prevent impunity and provide justice to victims.

Why do states exercise universal jurisdiction?

Many states feel that they have a common interest, if not obligation, to punish perpetrators of serious crimes subject to universal jurisdiction. States may also be under pressure to pursue prosecutions due the presence of a perpetrator within the state and by the desire for a nation's territory not to be a safe haven for criminals.

What are examples of universal jurisdiction cases?

Examples of universal jurisdiction cases include: an extradition request by a Spanish Court seeking to try former Chilean President Augusto Pinochet for crimes such as torture, murder, illegal detention, and forced disappearances (1998); the prosecution and conviction of two Rwandan nuns, Sister Maria Kisito and Sister Gertrude, by a court in Belgium for war crimes committed during the 1994 Rwandan genocide (2001); the prosecution and conviction of Nikola Jorgic, a former leader of a paramilitary Serb group, and Novislav Djajic, a Serbian soldier, by German courts for acts of genocide committed in Bosnia and Herzegovina (1997); and the investigation and indictment of former president of Chad Hissène Habré by a Belgium court for crimes against humanity, torture, war crimes and other human rights violations committed during his presidency in Chad (2005).





What is the US position on universal jurisdiction?

The US does not exercise universal criminal jurisdiction, however the Alien Tort Claim Act provides US courts with jurisdiction to seek civil damages for specific crimes, such as human rights violations, committed anywhere in the world. The US is concerned that the exercise of universal jurisdiction by other states may result in politically motivated prosecutions of US citizens by foreign courts. In support of this concern, opponents of universal jurisdiction have pointed to recent cases brought under universal jurisdiction in several countries against US government officials to litigate controversial US policies and actions. For example, a criminal complaint was filed in Germany against former Secretary of Defense Donald Rumsfeld, former Director of Central intelligence George Tenet, and others for alleged war crimes committed at Abu Ghraib prison in Iraq and the Guantanamo Bay prison camp. However, the German prosecutor ultimately decided against pursuing an investigation in this case.

Does the ICC have universal jurisdiction?

No. The ICC does not have universal jurisdiction. The Court has a limited jurisdiction that is carefully described in its founding treaty, the Rome Statute.

Is there overlap between the ICC and universal jurisdiction?

No. There is no overlap between the Court and universal jurisdiction, although it may appear so because both systems deal with similar crimes. The Court exercises jurisdiction over a limited class of perpetrators and crimes under a particular set of circumstances as defined by the Rome Statute. Moreover, universal jurisdiction is exercised unilaterally by a state; whereas, the jurisdiction of an international court, such as the ICC, is exercised by an international organization to which states delegate the authority to enforce international law. Nevertheless, if the jurisdictional requirements of both are met, the ICC and national courts may have jurisdiction over the same cases.

Does the establishment of the ICC eliminate the utility of universal jurisdiction?

No. The ICC is not intended to be a substitute for the prosecution of international crimes at a national level nor does it eliminate the ability of nations to pursue prosecutions based on universal jurisdiction. States may continue to exercise universal jurisdiction, especially to prosecute cases that do not fall within the competence of the Court. The Court cannot prosecute crimes that occurred prior to July 1, 2002 and tries only a small category of individuals who bear the greatest responsibility for the most serious crimes.

How does the ICC complement national efforts to prosecute serious international crimes?

As stated in the Rome Statute, the ICC is “complementary to national criminal jurisdictions.” Under the principle of complementarity, national courts have priority over the jurisdiction of the ICC, and the Court may act only when national legal systems are unable or unwilling to exercise jurisdiction. Universal jurisdiction is one way that national courts could undertake trials which would satisfy complementarity.

How will the ICC affect the use of universal jurisdiction?

In some cases, the existence of the ICC may result in fewer uses of universal jurisdiction. States lacking necessary resources and sufficiently capable legal systems may be inclined to hand over cases to the ICC rather than try such cases in their own courts. However, the Court will increase awareness of atrocities and thus may stimulate greater usage of universal jurisdiction. States with well developed judiciaries and laws providing for





universal jurisdiction may be encouraged to exercise their jurisdiction more frequently, preferring to control the prosecutorial process rather than giving the task to the Court. Other states may be motivated to take the necessary steps to allow them to try cases within the ICC's jurisdiction and thus enact implementing legislation that incorporates aspects of the Rome Statute. Overall, the Court can provide an example and encouragement to states for their own exercise of jurisdiction to prosecute serious international crimes, and states will likely continue to exercise universal jurisdiction to prosecute cases not addressed by the Court.

What advantages does the Court have over universal jurisdiction?

The ICC has a single set of developed, uniform standards for the application of its jurisdiction. By contrast, there is no uniformity among states' universal jurisdiction laws with respect to the definitions of crimes and the circumstances in which jurisdiction may be exercised. Additionally, the Court is an independent international institution, thus it is not limited or influenced by the political considerations and interests that affect states. As a specialized institution, the Court also is better equipped to pursue investigations and prosecutions due to its resources, expertise, and international support.

How is international justice served by having both systems?

Proponents of universal jurisdiction believe that both systems will serve international justice by providing states with more choices. In that way, the Court and universal jurisdiction, each operating where the other may not, may be said to be separate pieces of a comprehensive approach to ending impunity for perpetrators of serious international crimes.

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