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Interrogating the Archicture and Utility of the Universality Principle in International Criminal Justice System

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Abstract

The universality principle constitutes one of the most debated doctrines in international criminal law, premised on the recognition that certain offences are *hostis humani generis* and thus of concern to the entire international community. This article interrogates the essence of the principle by tracing to its codification in contemporary international criminal law. It argues that universality reflects both a moral imperative and a jurisdictional device for combating impunity, particularly in relation to genocide, crimes against humanity, war crimes, torture, and other crimes that shock the conscience of humanity. Nonetheless, its exercise raises significant legal and political dilemmas, including tensions with state sovereignty, jurisdictional overreach, immunities of state officials, and the risk of politicisation in its selective invocation. By critically engaging with jurisprudence, and treaty practice, the article demonstrates that the universality principle remains indispensable to the architecture of international criminal justice, while underscoring the necessity for its principled, consistent, and non-selective application. The study concludes that a nuanced understanding of universality is essential not only for strengthening accountability but also for preserving the legitimacy and coherence of the international criminal justice system.

Keywords: Interrogating, Archicture, Universality Principle, International Criminal Justice System, Utility

Introduction

Universality principle denotes the capacity of a state to assume jurisdiction to try an individual (national or non-national) over crimes committed in another state. The crimes under this banner include crimes against humanity, war crimes, piracy, and genocide. The philosophy behind this principle is the fact that such crimes are considered as crimes against the entire humanity and which offend the conscience, dignity and morality of the mankind. The present chapter evaluates the characteristics and principles of universal jurisdiction with its attendant state practice.

Meaning and Characteristics of Universal Jurisdiction

At the onset, it is instructive to state here that as Judge Van den Wyngaert noted in her dissenting judgment in the Arrest Warrant Case,[1] "There is no generally accepted definition of universal jurisdiction in conventional or customary international law. Many views exist as to its legal meaning and uncertainties may exist concerning the definition of the concept". Recently, universal jurisdiction was defined as "the assertion of jurisdiction to prescribe in the absence of any other accepted jurisdictional nexus at the time of the relevant conduct".[2] Professor Randall, in his work posited that the theory of universal jurisdiction "provides every state with jurisdiction over a limited category of offences generally recognized as of universal concern, regardless of the *situs* of the offence and the nationalities of the offender and the offended".[3] In the same vein, the Princeton Principles on Universal Jurisdiction define universal jurisdiction as "criminal jurisdiction based solely on the nature of the crime, without regard to where the crime was committed, the nationality of the alleged or convicted perpetrator, the nationality of the victim, or any other connection to the state exercising such jurisdiction".[4]

However, a general understanding of the theory is essential to distinguish what universal jurisdiction is, especially with respect to an assessment of conventional law. Based on the notion that certain crimes are so grave that they affect the international community as a whole, the principle of universal jurisdiction, which entitles a State to prosecute offenders even in the absence of any link between the crime committed and the prosecuting state, is one means of facilitating and securing the repression of such crimes. The rationale of universal jurisdiction is to avoid impunity and to prevent those who commit serious crimes from finding a safe haven in third countries. Indeed, universality principle enables all states to fulfill their duty to prosecute and punish perpetrators of war crimes.

Under international customary law, any State has the right to exercise universal jurisdiction over war crimes, crimes against humanity

1 See, *Congo v Belgium*, ICJ 121, 2000 at 44. The Case Concerning the Arrest Warrant of 11 April, 2000

2 O'keefe, R., Universal Jurisdiction: Clarifying the Basic Concept, *Journal of International Criminal Justice*, 2003, 735, 745

3 Randall, K., Universal Jurisdiction Under International Law, *Texas Law Review*, 1988, 785, 788

4 Macedo, S., ed., Princeton Principle on Universal jurisdiction in Universal Jurisdiction: national Courts and the Prosecution of Serious Crimes under International Law, 2004

and genocide. There also other international law treaties which impose obligations on states parties to exercise universal jurisdiction over certain violations.[5] Universal jurisdiction or universality principle is a principle in public international law whereby States claim criminal jurisdiction over persons whose alleged crimes were committed outside the boundaries of the prosecuting state, regardless of nationality, country of residence, or any other relation with the prosecuting country.[6] The State back its claim on the ground that the crime is considered a crime against all, which any State is authorized to punish, as it is too serious to tolerate jurisdictional arbitrage.[7] This concept received a great deal of prominence in Belgium.[8] In Belgium people accused of war crimes, crimes against humanity or genocide are tried in their local courts. In 2001, four Rwandan citizens were convicted and given sentences from twelve to twenty years imprisonment for their involvement in 1994 Rwandan genocide.[9]

In 2005, a Belgian court indicted the Ex-President of Chad, Hissene Habre for crimes against humanity, torture, war crimes and other human rights violations. He was arrested in Senegal and placed under house arrest in that country. On the request by Belgium for extradition to face trial in their local court, the Senegalese authorities refused. The Belgian authorities sued Senegal at the International Court of Justice. On 20th July 2012, the Court ruled that Senegal has an obligation to try or order- wise extradite the man to face trial in Belgium under the universality principle.[10]

Universality principle relates to grave breaches of the Geneva Conventions and Additional Protocol I, and certain serious violations of the 1954 Hague Cultural Property Convention and its Second Protocol. In providing for universal jurisdiction in national legislation, it is important to make it clear that jurisdiction extends to all offenders, whatever their nationality and whether the offence was committed within the state's territory or abroad. The trial of offences committed abroad gives rise to particular problems in relation to the gathering of evidence and the defendant's right to test that evidence. In providing for universal jurisdiction, it is vital to address the issue of gathering and evaluating evidence and, where necessary to establish appropriate procedures. This may include, for example, provisions for taking evidence by video link, dispatching letters of request or conducting rogatory commissions abroad.[11] It may also require more effective arrangements for international judicial cooperation.

Universal jurisdiction is a principle in public international law whereby states can assume criminal jurisdiction over persons whose alleged crimes were committed outside the

5 See Geneva Conventions and Additional Protocol I and certain violations of the 1954 Hague Cultural Property Convention and its Second Protocol etc

6 Chukwumaeze, U.U., '*An Universal Jurisdiction Law and the Dynamics of International Crimes in Nigeria'*, in Beyond Bar Advocacy: Multidisciplinary Essay in Honour of Anthony Okoye Mogboh, SAN**.,** ed. 2011, 686-687

7 Vandermeersch, D., *Universal Jurisdiction For Repression of Crimes Under International Humanitarian Law,* ICRC, Geneva, 2000, 157

8 With the enactment of Law of Universal Jurisdiction 1993, also referred to as " Belgium's Genocide Law"

9 See, Vandermeersch, D., *supra.*

10 See, *Belgium V. Senegal*, 20/7/2012, Question Relating to the Obligation to Prosecute or Extradite.

11 See, for instance, *section 10* Australian Crimes (Duld Sex Tourism) Offenders Act 1994, which allows the court to take evidence by video link.

boundaries of the prosecuting state, regardless of nationality, country of residence, or any other relation with the prosecuting country.[12] The state backs its claim on the ground that the crime committed is considered a crime against all, which any state is authorized to punish, as it is too serious to tolerate jurisdictional arbitrage. For instance, slave trade, aircraft hijacking or attack on aircraft, the practice of apartheid, genocide and war crime[13].

A distinction can be made between the offences that states are obliged to investigate in application of universal jurisdiction,[14] and those with respect to which they may choose to do so,[15]. Universal jurisdiction may be provided for by a rule of customary or treaty based international law. In cases where it is established by treaty law, it is generally referred to as 'MUJ'.

To put into effect universal jurisdiction, it may take either enactment of national law,[16] or the investigation and trial of the alleged offenders.[17] The former is common in state practice and is a necessary basis for investigation and trial. It is feasible, in principle, for a court to base its jurisdiction directly on international law and to exercise adjudicative universal jurisdiction without any reference to national legislation.

Treaty Law

The four Geneva Conventions of 1949 was the first legal instruments to introduce the universality principle for the protection of war victims in relation to those violations of the Conventions defined as grave breaches.[18] Pursuant to *Articles 49, 50, 129 and 146*, states parties to the Conventions are mandatorily required to search for alleged offenders 'regardless of their nationality', and either bring them before their own courts or hand them over for trial by another state party which has made out a *prima facie* case. Granted that the Conventions did not specifically provide for universal jurisdiction, but these provisions have been interpreted as mandatory universal jurisdiction. Based on the maxim *aut dedere aut judicare*, states have no choice but to prosecute or extradite those who have allegedly committed grave breaches. This obligation imposes an active duty on the states, since they have to ensure that the person who has committed grave breaches be arrested and prosecuted. In doing and achieving this purpose, states must enact legislations that will enable them to have jurisdiction to try and punish offenders, regardless of their nationality or place of the offence.

12 Chukwumaeze, U.U., *'An Universal Jurisdiction Law and the Dynamics of International Crimes in Nigeria',* Beyond Bar Advocacy, *supra*

13 See, The Hague Convention of 1899 and 1907 on the Conduct of War; Convention on the Prevention and Punishment of the Crime of Genocide 1948; Hague Convention for Unlawful Seizure of Aircraft 1971; The Montreal Convention for the Suppression of Unlwful Acts against the Safety of Civil Aviation1973; Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons including Diplomatic Agents 1977etc, see, Umozurike, U.O., *Introduction To International Law*, *supra, 84*

14 Otherwise called "mandatory universal jurisdiction 'MUJ'"

15 Otherwise known as "permissive universal jurisdiction 'PUJ'"

16 Called 'legislative universal jurisdiction'

17 Called 'adjudicative universal jurisdiction'

Article 85 of Additional Protocol I qualify all grave breaches as war crimes as it extends universality principle to grave breaches relating to the conduct of hostilities. Similarly, the Convention against Torture of 1984 creates an obligation on states parties to exercise universal jurisdiction where necessary to repress the commission of the crime. In the same vein, the Convention for the Protection of all Persons from Enforced Disappearance requires states to take measures in order to exercise universal jurisdiction over offences of enforced disappearance, when the alleged offender is present in their territory and they do not extradite him.

It must be re-emphasized that the principle of universal jurisdiction of national courts is reflected in Article VI of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. Thus, according to the legal provision, persons charged with genocide shall be tried by a competent tribunal of the state in the territory of which the act was committed, or the principle of *aut judicare aut dedere*[19] shall be applied. Most of the UN treaties provide for this '*aut judicare aut dedere*' obligations. These treaties include the following:

a. Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft of 1963;
b. Hague Convention for Unlawful Seizure of Aircraft of 1970;
c. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, of 1973;
d. International Convention for the Suppression of Terrorist Bombing, of 1997

The application of this treaty obligation was at the center of the dispute between the US and Libya in the Lockerbie case, where the US demanded the extradition of the suspect on the basis of the Tokyo Convention of Offences and Certain Other Acts Committed on Board Aircraft of 1963, where Libya said that it would not extradite its own nationals but would rather try them in their local courts pursuant to the issue of sovereignty.

The implementation of universal jurisdiction to the cases considered as core crimes in Rome Statute of the International Criminal Court, such as genocide, crimes against humanity and war crimes is widely recognized. The crimes within the jurisdiction of the International Criminal Court (ICC) are listed in *Article 5*:

a. Crime of genocide;
b. Crimes against humanity;
c. War crimes; and
d. Crime of aggression

Member states ratifying the Geneva Conventions are liable to implement the provisions of these Conventions. The liability related to the actions described in these articles arises irrespective of the circumstances of international or interstate conflicts.

19 This principle means that states where the suspect is have the choice between extraditing and judging him.

Customary International Law

Treaty law provisions are strictly restricted to grave breaches, universal jurisdiction in customary international law are regarded as extending to all violations of the laws and customs of war which constitute war crimes. This includes serious violations of applicable law including Common Article 3 to the Geneva Conventions and Additional Protocol II of 1977, committed in non-international armed conflict.

In another development, with respect to treaty law, there is no basis for concluding that customary international law requires states to exercise jurisdiction. However, *Rule 157* of ICRC Customary International Humanitarian Law Study provides that states have the right to vest universal jurisdiction in their national courts over war crimes.

Legislative Arrangement

Various States Parties to international treaties in compliance with their treaty obligations have adopted different arrangements to provide for universal jurisdiction under their national law.

Constitutional provisions are of central importance in determining the status of international customary or treaty law in the domestic legal system. It is conceivable that courts might rely directly on such provisions or on international law to exercise universal jurisdiction where permitted or required. However, because the relevant provisions of international law are not self-executing, it is preferable to specify in national law the jurisdiction applicable to war crimes. States should therefore ensure that there exists a specific ground for exercising the jurisdiction, a clear definition of the crime and its constitutive elements, and proper sanctions.

States practicing the code-based civil law system provide for universal jurisdiction within their ordinary law and military penal code. The said code defines the jurisdictional and material scope of the offence in the same section. The provisions on universal jurisdiction are included in the general section of the code and refer to substantive offences defined elsewhere in the same instrument. Universal jurisdiction may also be laid down in criminal procedure law or in a law on the organization of the court. States have granted their courts universal jurisdiction with regard to certain offences by means of a special stand-alone law. However, in common law states, the practice is to provide for universal jurisdiction in primary legislation defining both the jurisdictional and material scope of the offence.

Whatever the method adopted, a number of issue need to be addressed in providing for universal jurisdiction in national law:

a. In order to prevent impunity, all war crimes, whether committed in connection with international or non-international armed conflict, should be subject to universal jurisdiction.
b. It is important to make clear that jurisdiction extends to all persons directly or indirectly responsible for committing the offences concerned, whatever their nationality and regardless of whether the offence was committed within the state's territory or abroad.

c. The conditions for opening criminal proceedings, or for justifying a refusal to do so, must be set forth in a clear and precise manner. However, such conditioning factors should be aimed at increasing the effectiveness and predictability of universal jurisdiction and should not unnecessarily restrict the possibility of prosecuting suspected offenders.
d. Given that the jurisdiction of states may be concurrent, the exercise of jurisdiction by one state may be subject to certain conditions, such as respecting the principle of *ne bis in idem*,[20] and taking into account penalties already imposed abroad, previous exercise of jurisdiction by another state of by an international tribunal, and the defendant's presence, even temporary, in the territory of the prosecuting state.

Historically, universal jurisdiction can be traced back to the writings of early scholars, such as Grotius,[21] and the prosecution and punishment of the crime of piracy.[22] However, after the World War II, the idea gained ground through the establishment of the International Military Tribunal[23] and the adoption of new conventions containing explicit or implicit clauses on universal jurisdiction. The Geneva Conventions of 1949 are paramount in this regard, providing in unmistakable terms for universal jurisdiction over grave breaches of those Conventions.[24] International crimes were no longer to remain unpunished. The idea that in certain circumstances sovereignty could be limited for such heinous crimes was accepted as a general principle.[25] Later on, other international conventions nd, to some extent, rules of customary law enlarged the principle's scope of application. This was confirmed by a number of cases, starting with the *Eichmann case* in 1961, the *Demanjuk* case in 1985,[26] and more recently the *Pinochet* case in 1999[27] and the *Butare Four* case in 2001,[28] emphasizing that universal jurisdiction could lead to the trial of perpetrators of international crimes. International law empowered and in certain cases mandated states to prosecute crimes that were regarded as harming the whole international community.[29]

Evidentiary Challenges in Universal Jurisdiction

Mass crimes, remote locations, protection of victims and witnesses, procedural obstacles are some of the challenges that beset the effective application of universality principle. From

20 Meaning that "no legal action can be instituted twice for the same cause of action"

21 See, Grotius, *De jure Belli ac Pacis*, 1625, Vol. II, Book II, Chap.XXI, para. 3, 1-2

22 See, United States v Smith, 18 US (5 Weat.), 1820, 153 at 161-162

23 Under the London Agreement of 8 August 1945, Article 1 provided for the jurisdiction of the Tribunal for crimes having no precise geographical location and Article 4, for the jurisdiction of national courts over other war criminals.

24 Grave breaches, see, GC I, *Articles 49*; GC II, *Article 50*; GC III, *Article 129*; GC IV, *Article 146* and AP I, *Article 85*

25 See, Supreme Court of Israel, *Eichmann case* at 298-300; Supreme Court of Canada, *Finta,* 24 March 1994, ILR, 104 at 305

26 Demanjuk v Petrovsky, US Court of Appeal, 6th Cir., 31.10 1985, ILR 79, 546

27 House of Lords, 24 March 1999, [1999] 2 WLR 827 (HL)

28 Cour d'Assises de Bruxelles, 8 June 2001, available at <http://www.asf.be/AssisesRwanda'/fr/fr_VE, visited last 10/04/2020

29 Phillippe, X., The Principles of Universal Jurisdiction and Complementarity: how do the Two principles Intermesh?, IRRC, Vol. 88, No. 862, June 2006

gathering evidence to tracking down suspects, each step of the process is long, complex, sometimes frustrating and even dangerous.

The nature and scale of international crimes, such as genocide, crimes against humanity and war crimes, make them among the most complex to prosecute. These difficulties are multiplied when investigations or trials take place far away from where the crimes were committed. Be it for political, legal or security reasons, holding accountable alleged criminals may only be possible remotely: that is when universal jurisdiction kicks in.

As indicated earlier, under this principle states are allowed to prosecute criminals present on their territory, regardless of the criminal's nationality. Based on the concept that certain crimes endanger the very essence of mankind, this tool was developed to give power to whole world to punish these crimes. However, universal jurisdiction comes with huge challenges. States prosecuting the crimes are unable to enter the states where atrocities were committed; witnesses are hard to find and may also afraid to testify; evidence may be hard to collect; geographical distance makes it financially costly for investigation of the crime. Additionally, crime scenes are the traditional starting point for any criminal investigations. But in universal jurisdiction cases, they are by definition situated abroad. Collaboration with national authorities is always difficult from the point of view of the offender.

For the trial of the case, prosecuting authorities are bound by the same standards when they investigate abroad as when they build domestic cases: independence and confidentiality. Likewise, the standard of proof to be presented in court by them remains unaltered by the great difficulties to investigating abroad. Again, because of the difficulty of accessing crime scenes, forensic evidence is often scarce in universal jurisdiction cases. Therefore, a case is often heavily reliant on witnesses' statements, which there is difficulty in identifying and meeting with them.

In the midst of the above hurdles in universal jurisdiction, one of the greatest tasks is that of tracking the suspects themselves. The increasing permeability of frontiers has made movements easier and swifter than before, more especially for fleeing criminals. Locating them can be difficult as the *Carmel passing through the eye of a needle*. The reason for these difficulties is that in most cases, states only open cases when a suspect enters their territory. Sometimes, the criminal's entry or passage could only be limited to a simple transit through the airport and then varnishes.

The highly problematic nature of the exercise of universal jurisdiction was noticed in the framework of the *ad hoc* judicial tribunals. This is owing to the fact that the 'temptations of victor's justice', inherent in these tribunals following armed conflicts in the past, whether international or domestic in character. The evidence can be gleaned from the various tribunals established by the United Nations Security Council, which are purely controlled by 'victorious power' and occupying power in relation to Iraq.

In all these cases, the doctrine of universal jurisdiction has been evoked in different variations, while in reality the respective arrangements of criminal justice have amounted to settling of scores by the victorious parties with the vanquished, something which has also been the case

with Security Council's constituted *ad hoc* tribunals. This predicament has been eloquently articulated over six decades ago by Judge Radhabinod Pal in his dissenting opinion in the Tokyo tribunal:

> It has been said that a victor can dispense to the vanquished everything from mercy to vindictiveness; but the one thing the victor cannot give to the vanquished is justice.

These developments correspond with the characterization and increasing importance of peremptory rules in international law, the distinction between international delicts and international crimes in the context of the international responsibility of states, and the extension and fleshing out of the principle that states have a responsibility for activities originating on their territory and encroaching on the security of other states.

Similarly, these developments raise difficult questions and meet with considerable obstacles in the area of criminal law, and states cannot minimize the difficulties by referring to outdated concepts of sovereignty. The question of international implementation of criminal law was approached from that of the need for coordinated struggle and cooperation in the fight against international crimes. Thus, states either cited the sovereignty principle as justification for objecting to the extension of universal criminal jurisdiction or as justification for rejecting the establishment of an international criminal court.

Presently, it is indubitable that industrialized powers have strongly opposed universal criminal jurisdiction in the context of a code of offences against the peace and security of mankind fearing that they might lose rights of diplomatic protection for their citizens or be forced to recognize criminal judgments of states whose legal systems they do not wish to respect as being of equivalent right. These powerful states hinge their argument on the principle of sovereignty *vis-à-vis* the criminal jurisdiction of other states. This principle is called upon to justify their non-recognition of foreign criminal judgments, their refusal to extradite their own citizens, and their attempts to claim immunity for persons who were acting as state agents when they committed international crimes. These powers do not wish that national courts should be empowered to judicially try the conduct of foreign governments. This technically means the removal of the recognition of international nature of the crimes defined in the code. Individuals with diplomatic immunity can use the criminal legislation jurisdiction. The immunity of a diplomatic representative from the criminal jurisdiction of the receiving state was regarded as indistinct from his personal inviolability. At the time when the principle of personal inviolability was first established, it was unusual for criminal proceedings to take place without prior arrest and detention of the accused. But as time passed and the arrest and detention of the accused was not essential for criminal proceedings, diplomatic immunity from criminal jurisdiction emerged as a separate principle of diplomatic law. As such, the decision of the ICJ on the case of *Congo Democratic Republic v Belgium* becomes important. The court held *inter alia*:

> On 11 April 2000, an investigating judge of the Brussels Tribunal de Premiere Instance issued 'an international arrest warrant in absentia' against Mr. Abdulaye Yerodia Ndombasi, charging him, as perpetrator or co-perpetrator, with offences constituting grave breaches of the Geneva Conventions of 1949 and of the Additional Protocols thereto, and with crimes against humanity. The arrest warrant was circulated on an international level via Interpol. On 17 October 2000, Congo filed in the Registry an application instituting the present proceedings, in which the Court was requested "to declare that the Kingdom of Belgium shall annul the international arrest warrant issued on 11 April 2000". From the beginning, the Court declared that the international law accepts the immunity of State Officials like diplomatic and consulate agents, including heads of state, heads of government and ministers of foreign affairs from civil and criminal jurisdiction of other countries. The Court indicated that the parties referred to number of Protocols, including Vienna Conventions on Diplomatic relations of 1961 and New York Convention on Special Missions of 1969. Referring to few existing decisions of national high courts, such as the Great Britain House of Lords (Pinochet case, 24 March 1999) and the Court of Cassation in France (Qaddafi case, 13 March 2001), the Court concluded that immunity was not granted to state officials for their own benefit, but ensure the effective performance of their functions on behalf of their respective States; and when abroad that they enjoy full immunity from arrest in another state on a criminal charge including war crimes or crimes against humanity. In its judgment, the Court found, by 13 votes to 3, "that the issue against Mr. Abdulaye Yerodia Ndombasi of the arrest warrant of 11 April 2000, and its international circulation, constituted violations of a legal obligation of the Kingdom of Belgium towards the Democratic Republic of Congo, in that they failed to respect the immunity from criminal jurisdiction and the inviolability which the incumbent Minister for Foreign Affairs of the DRC enjoyed under international law".

Therefore, the Court found by 10 votes to 6 thus:

> That the Kingdom of Belgium must, by means of its own choosing, cancel the arrest warrant of 11 April 2000 and so inform the authorities to whom that warrant was circulated.[30]

It must be noted that international court in its cases refers to customary norms. The Statutes of the International Court of Justice interprets international customs as 'evidence of a general

30 Hesenov, R., Universal Jurisdiction for International Crimes- A Case Study, *European Journal of Criminal Policy and Research*, 19, 275-283, 2013

practice accepted as law'. In order to become an international custom, the norm must be consists of two components: state practice and the belief that, from the objective legal point of view, the practice is obligatory, forbidden or permitted depending on the character of the norm.[31]

It is a known fact that all countries have the jurisdiction over the foreign citizens committing any action affecting the security of the state. This concept includes, but not limited to different political crimes, Currency, immigration and economic crimes are punished according to this rule.

APPLICATION OF UNIVERSAL JURISDICTION IN DOMESTIC COURTS (STATE PRACTICE)

BELGIUM

The concept received a great deal of prominence in Belgium with the enactment of *"Law of Universal Jurisdiction 1993",* sometime referred to as "Belgium's Genocide Law", allowing it to bring people accused of war crimes, crimes against humanity or genocide, to trial in their local courts. In 2001, four Rwandan citizens were convicted and given sentences from twelve to twenty years imprisonment for their involvement in 1994 Rwandan Genocide. [32] Also, in 2000 an arrest warrant was issued under same Belgium law against the Minister of Foreign Affairs of the Democratic People's Republic of Congo. This warrant of arrest was challenged before the International Court of Justice entitled ICJ Arrest Warrant case between Democratic Republic of Congo and Belgium.[33] That country also filed a complaint against Chadian ex-President Hissene Habre (dubbed the "African Pinochet").[34] In September, 2005 Habre was indicted for crimes against humanity, torture, war crimes and other human rights violations by a Belgium court. He was arrested in Senegal following requests from Senegalese courts; he is now under house arrest awaiting extradition to Belgium.[35] The Senegalese authorities have refused to prosecute him and have also refused to extradite him. On this score, the Belgian authorities sued the Senegalese Government at the International Court of Justice (ICJ). On the 20th day of July 2012, the ICJ ruled that Senegal has an obligation to try or otherwise extradite President Hissene Habre to Belgium to face trial.[36]

CANADA

To implement the Rome Statute, Canada passed the Crimes Against Humanity and War crimes Act. It states that for offences within Canada,

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31 *Opinio juris sive necessitates* (an opinion of law or necessity); see, Statute of the ICJ, *Article 38(1)b*

32 Vandermeersch, D., *Universal Jurisdiction for Repression of Crimes Under International Humanitarian Law*, *supra*, p.157; see also, Chukwumaeze, U.U., '*An Universal Jurisdiction and the Dynamics of International Crimes in Nigeria',* Beyond Bar Advocacy, *op. cit*., 694

33 ICJ 11/4/2000

34 Vandermeersch, *D., op. cit. 158*

35 *Ibid.*

36 *Belgium and Senegal* 20/July/2012, Question Relating to the Obligation to Prosecute or Extradite.

> every person is guilty of an indictable offence who commits (a) genocide; (b) a crime against humanity; or (c) a war crime".[37] It also states that "every person who, either before or after coming into force of this section, commits outside Canada genocide, a crime against humanity or a war crime is guilty of an indictable offence and may be prosecuted". [38] "war crimes means an act or omission committed during an armed conflict that…constitutes a war crime according to customary international law or conventional international law applicable to armed conflict. Crimes described in Articles 6,7 and 8(2) of the 1998 ICC Statute are crimes according to customary international law[39]

It became the first country to pass a law implementing the Rome Statute and establish the jurisdiction of its municipal courts over these crimes.[40] Michael Byers, a University of British Columbia Law Professor, has argued that these laws go further than the Rome Statute, providing Canadian courts with jurisdiction over acts pre-dating the International Criminal Court and occurring in territories outside the court's member states, as a result, anyone who is present in Canada and alleges to have committed genocide, torture… anywhere at any time, can be prosecuted in Canada.[41] Also Canada's Laws Of Armed Conflict Manual (LOAC) states that

> heads of states as well as members of the administration may be held personally and criminally responsible for illegalities committed in the performance of their official duties"[42]
>
> "any person who planned, instigated,…committed or otherwise aided and abetted In the planning, preparation or execution of a war crime…may be held criminally responsible for the crime".[43]
>
> "the official position of any accused person, whether as Head of State or as a responsible government official does not relieve such person of criminal responsibility nor mitigate punishment.[44]

ISRAEL

The moral philosopher Peter Singer, along with Kenneth Roth has cited Israel's prosecution of Adolf Eichmann in 1961 as an assertion of universal jurisdiction. He claims that while Israel

37 *Art.4(1)* Canada, Crimes against Humanity and War Crimes Act 2000

38 See *art. 6 ibid*

39 *Article 4(3) and (4) ibid*

40 Chukwumaeze, U.U., '*An Universal Jurisdiction Law'*, *supra*, p.694

41 *Section 8*, Crimes Against Humanity and War Crimes Act. See also, Hand, Kochler; *'The Judgement of the ICJ and its Implications for the Exercise of Universal Jurisdiction by National Courts: The Case of Belgium'* in Vienna Journal of International Law Springer, 2003, 85-101

42 Para. 10 LOAC Manual Canada 1999

43 Para. 24 *ibid*

44 Para. 25 *ibid*

did invoke a statute specific to Nazi crimes against Jews, its supreme court claimed universal jurisdiction over crimes against humanity.[45] Israel's Nazis and Nazi Collaborators (Punishment) Law provides that:

A person who has committed one of the following offences-

1. done during the period of the Nazi regime, in an enemy country, an act constituting a crime against the Jewish people;
2. done during the period of the Nazi regime, in an enemy country, an act constituting a crime against humanity;
3. done during the period of Second World War in an enemy country an act constituting a war crime, is liable to the death penalty.[46]

In its judgment in the Eichmann case in 1961, Israel's District Court of Jerusalem rejected arguments that the acts of which Eichmann was accused constituted acts of state for which Germany alone was responsible. The Court relied on the repudiation of the doctrine of act of state, stating that this had been acknowledged by, *inter alia*, the 1945 IMT Charter (Nuremburg) and the Nuremburg judgments, by the US Military Tribunal's decision in the Altstotter (The Justice Trial) case, by UN General Assembly Resolution 96(1) and by Article 4 of the 1948 Genocide Convention.[47] The Court quoted the US Supreme Court judgment in the Quirin case, stating that "the principle of international law which, under certain circumstances protects the representatives of a state, cannot be applied to acts which are condemned as criminal by international law"[48]

SPAIN

Spanish law recognizes the principles of the universal Jurisdiction. *Article 23.4 o*f the Judicial Power Organization Act (LOPJ), enacted on 1 July 1985, establishes that Spanish courts have jurisdiction over crimes committed by Spaniards or foreign citizens outside Spain when such crimes can be described according to Spanish Criminal Law as genocide, terrorism, or some other, as well as any other crime that, according to international treaties or conventions, must be prosecuted in Spain.[49] In 1999, Nobel Peace Prize Winner, Rigoberta Menchu brought a case against the Guatemalan military leadership in a Spanish Court. Six officials among them Effraim Rios Montt and Oscar Mejih were charged in 2006 to appear in the Spanish National Court.[50] In 2003, Spanish Judge Baltascar Garzon jailed Richardo Miguel Carallo, a former Argentine naval officer, who was extradited from England to Spain pending his trial on charges of genocide and terrorism relating to the years of Argentina's military dictatorship.[51]

45 Kenneth, R., *'The Case for Universal Jurisdiction'* in University of Aberdeen Law Journal**,** 2012, vol. 10, 35

46 Section1(a) Nazis and Nazi Collaborators (Punishment) Law 1950

47 See District Court of Jerusalem, Eichmann Case, Judgment, 12 December 1961

48 *Ibid*

49 Prieto, J., *Punishment of War Crimes Under Spanish Law***,** Red Cross Spain Publications, Madrid, 1995, p. 256

50 These men were leaders and political officials in Guatemala who callously ordered the wicked slaughtering of innocent Guatemalans, see *ibid.*

51 *Ibid.*

AUSTRALIA

The High Court of Australia confirmed the authority of the Australian Parliament under the Australian Constitution, to exercise universal jurisdiction over war crimes in *Polyukhorich Vs. Commonwealth of Australia and Anor.* [52] in 1991. In this case, the court declared that it was illegal for any Australian Citizen or resident to engage in sexual relations with anyone less than 16 years of age anywhere in the world and such an act is treated as an instance of child sex tourism, a severe crime punishable by a term of imprisonment up to 17 years.[53]

UNITED STATES OF AMERICA

The United States of America assumes universal jurisdiction over serious crimes as murder and torture committed outside its territory[54]. However, such when obtained can only be enforced when the accused enters into the US. In the Abdusalami Abubakar's case, the US Supreme Court held that the defendant has no immunity and that the US court can assume jurisdiction and try him. The Plaintiffs, Chief Anthony Enahoro, Chief Gani Fawehinmi, Hafsat Abiola, Dr. Arthur Nwankwo and Owens Wiwa filed a civil law suit at the Federal Court in Detroit, Michigan against Generals Muhammadu Buhari, Ibrahim Babangida, Abdulsalami Abubakar and Chief Ernest Shonekon for torture, wrongful death, arbitrary arrest and detention without trial, inhuman degrading treatment, violation of right to life, liberty and security of person and peaceful assembly and association. This case is a watershed as this is the first time a head of state in Nigeria was sued in a foreign country. This US Supreme Court ruling is a legal authority many Nigerians now have to combat impunity in whatever form it may come in Nigeria. This case will also be a reminder to Nigerian leaders that even if they get away with their misdeeds, violations and even corruption at home, that it is possible that they may face prosecution in US and in fact other countries that have embodied universality principle in their constitution. The American Re-statement of the Law paragraph 404 provides:

A state may exercise jurisdiction to define and punish certain offences recognized by the community of nations as of universal concern, such as piracy, slave trade, attacks on or hijacking of aircraft, genocide, war crimes, and perhaps terrorism (even when the other bases of jurisdiction are not present)[55]

It is instructive to note that in US the Alien Torts Claim Act or otherwise called Alien Torts Statute of 1789 permits foreign victims of serious international crimes and international human rights violations and the violation of the laws of nations (torture, extrajudicial killing, genocide etc) to sue in US federal court the person or entity that committed the crime or helped to make

52 (1991) 172 CLR 501; [1991] HCA 32

53 See, Advisory Service, *Punishing Violations of IHL at the National Level, A Guide for Common Law States, supra*, pp. 66-67. Polykhorich was notorious for being a serial sexist with girls below 16 years. He was also involved in procuring such girls for his clients. He practiced his trade both at home and abroad. He was convicted and sentenced to ten (10) years in jail. The conviction is for the offence he committed abroad and at home. This is an example of universal jurisdiction in practice in Australia.

54 See, *Abdulsalami Abubakar and Chief Anthony Enahoro and 4 Ors*, US Sup. Ct. 2006

55 See, Umozurike, U.O., *Introduction To International Law*, *op. cit*

it happen. It was under this law that Ken Saro Wiwa and the Ogoni Nine approached the US court against the Royal Dutch Petroleum (Shell)[56]. In *US V. Manuel Antonio Noriega and Lt. Col. Luis Del Cid,* the federal grand jury sitting in Miami, Florida returned a twelve-count indictment for international conspiracy to import cocaine and materials used in producing cocaine into the US and thereby contributing to the worsening social menace, violence and deaths on the streets. Here the court assumed jurisdiction and tried the defendants who indeed were not nationals nor committed the said offence in the US. This is also an example of the principles of universal jurisdiction in the US

In *Salim Ahmed Hamdam v. Donald H. Rumsfeld*, the petitioner challenged the US government (through a writ of *certiorari)* on the constitution of a military commission to try him. On appeal to the Supreme court, the court held that the military commission constituted by the executive cannot try the petitioner being one not established by an act of the congress and asked the executive to comply with the rule of law prevalent in the jurisdiction. The court could assume jurisdiction by virtue of the principles of universality.

Also, in *Shafiq Rasul, et al. v. George Bush*[57] and *Fawzi Khalid Abdullah Fahad Al Odah, et al. v. US et al*.[58], the US Supreme court held that the US courts have jurisdiction to consider challenges to the legality of the detention of foreign nationals captured abroad in connection with hostilities and incarceration at Guantanamo Bay by virtue of 28 U.S.C. paragraph 2241. Also in Boumediene v. Bush[59] the Supreme Court held that detainees held at Guantanamo Bay have the rights to challenge their detention in US civilian courts under the constitution's habeas corpus provisions. These are instances of US state practice of universal jurisdiction and indeed a great one.

Conclusion

The universality principle occupies a unique and indispensable space within the architecture of international criminal justice. Its essence lies in the recognition that certain offences—genocide, war crimes, crimes against humanity, torture, and other egregious violations—constitute attacks not merely against individual victims or states, but against the international community as a whole. By detaching jurisdiction from territorial or nationality links, universality affirms that these crimes implicate a collective interest in their suppression and punishment. Historically rooted in the prosecution of piracy as *hostis humani generis*, and later extended to the slave trade and war crimes, the doctrine now provides one of the few mechanisms capable of ensuring accountability where territorial states are unwilling or unable to act.

Yet the universality principle is far from uncontested. Its implementation raises profound questions concerning the balance between the imperatives of justice and the prerogatives of

56 See, *Kiobel V. Royal Dutch Petroleum(Shell***)** (2009) US Supreme Court.

57 542 US. 466(2004)

58 *ibid*

59 553 US. 723 (2008)

state sovereignty. The debates surrounding the *Pinochet* litigation, the Belgian universal jurisdiction cases, and subsequent restrictive reforms underscore the inherent tensions between universal accountability and political realities. Concerns of judicial overreach, abuse of process, and the selective invocation of universal jurisdiction—often by powerful states against weaker ones—have further complicated its legitimacy. Moreover, the interaction of universality with doctrines of state and diplomatic immunity highlights the fragile line between the moral aspirations of international criminal law and the entrenched structures of international relations.

Despite these difficulties, abandoning the universality principle would represent a retreat from the foundational values of international criminal justice. It remains one of the few legal tools capable of bridging impunity gaps left by the limitations of domestic jurisdictions and the structural constraints of international tribunals such as the International Criminal Court, which operates on the principle of complementarity and remains subject to the consent of states. In this respect, universality not only reinforces the normative claim that some crimes offend the conscience of humanity but also operationalises the collective responsibility of states to ensure that perpetrators do not find safe havens.

Moving forward, the challenge lies in refining the universality principle to safeguard it against abuse while preserving its essential function. This requires clearer normative boundaries—through treaty law, judicial interpretation, and state practice—that reconcile universality with respect for sovereign equality and procedural fairness. Enhanced international cooperation, greater uniformity in national implementing legislation, and the depoliticisation of prosecutions are necessary to maintain the legitimacy of the doctrine.

In conclusion, interrogating the essence of the universality principle reveals both its enduring promise and its persistent contestations. It is neither a panacea nor a purely symbolic ideal, but a doctrine that embodies the tension between international law's aspirational universality and the realities of state practice. Properly understood and applied, it strengthens the global fight against impunity, ensures that the gravest crimes do not go unpunished, and affirms the indivisibility of justice as a cornerstone of the international legal order. The universality principle, therefore, remains not only relevant but indispensable to the coherence and legitimacy of the international criminal justice system.