

Committee: Legal Committee

Issue: The scope and application of the principle of universal jurisdiction

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Position: Co-Chair

PERSONAL INFORMATION

Esteemed delegates,

My name is Christopher Foteinelis, and I am a 10th Grade student at Pierce-The American College of Greece. It is my great honor to serve as a co-chair at this year's Legal Committee (GA6) of the 4th ACGMUN. I am really looking forward to our cooperation and I ultimately hope it will be a fruitful, entertaining, and not-so-tense committee experience for all of you. I will make a sincere effort to assist you gradually in both the lobbying and the debating procedure and I aim to make this an unforgettable MUN conference.

The following study guide will help you understand the core of the assigned topic and all the information and key facts necessary for you to do your own research and adapt to your contextual country's policy. Therefore, please bear in mind that this study guide should not replace your individual research regarding the topic of "Universal Jurisdiction". It only provides you with an introduction to the subject and includes the fundamental information for you to understand it thoroughly and act as a starting point to engage in more research of your own.

Admittedly, this specific topic is slightly difficult to comprehend and write sufficient solutions on. Thus, if you encounter any difficulties while reading it and need further explanation, do not hesitate to contact me on my school e-mail (c.foteinelis@acg.edu).

I wish you good luck with your preparation and I cannot wait to meet you all at the conference!

Sincerely,

Christopher Foteinelis

TOPIC INTRODUCTION

Before analyzing what the core topic is about, it is crucial to mention the importance of justice in the global community. Justice, in the form of law, is a critical aspect of society. It can ensure public safety and prosecute and rehabilitate individuals who have already committed law violations. By having a stable and impartial justice system, a nation can flourish without meeting any heavy obstacles and avoid impunity, meaning the usually unjustified freedom from prosecution and punishment.

After the atrocities that occurred during World War II, the international community realized the fact that there should be punishment on a global level towards people who commit such crimes. Therefore, the International Criminal Court was created in order to punish the so-called enemies of humanity and one way to prosecute them could be through a principle called Universal Jurisdiction.

If we were to imagine the aforementioned idea, the base would be a term called *Hostis humani generis* or “enemy of mankind”. It is the legal term mainly used to describe a person whose actions go against the international law regardless of their nationality, race, and cultural background. In essence, the enemy of mankind is what universal jurisdiction aims to prosecute and rehabilitate.

It is now clear that International Criminal Law violations can be characterized as critical criminal attacks against the global community. The perpetrators of such actions should be punished through universal jurisdiction mainly in order to combat impunity. Ergo, the principle of the Universal Jurisdiction, having already been adopted by some countries, provides a way to ensure international safety and just trials against enemies of humanity.

Last but not least, some countries on an international level have applied the principle of universal jurisdiction to their national courts. These countries have changed their national legislation in accordance with the universal jurisdiction standards and practice law outside their own territory. Currently, lots of other countries could still apply it or further enhance their existing legislation. On the contrary, a noticeable obstacle is the fact that there are countries which are reluctant to the idea and do not wish to adopt the principle. This major problem prohibits the international community from combating impunity for serious violations of international law.

DEFINITION OF KEY TERMS

Crimes Against Humanity (CAH)¹

Acts committed as part of a widespread or systematic attack directed against any civilian population.

Criminal Justice System

The system in a contextual society by which people who are accused of crimes are judged in court.

Extradition²

The formal process of one state surrendering an individual to another state for prosecution or punishment for crimes committed in the requesting country's jurisdiction.

Extraterritorial Jurisdiction³

Extraterritorial jurisdiction is the situation when a state extends its legal power beyond its territorial boundaries.

International Law

A set of laws that all member states agree upon, establishing guidelines to ensure diplomacy and strong international relations.

Sovereignty

The power and ability of a country to control its own government and systems, including the Criminal Justice System.

Tribunal

A special court or group of people who are officially chosen, especially by the government, to examine legal problems of a particular type.

Universal Jurisdiction (U.J.)⁴

¹"United Nations Office on Genocide Prevention and the Responsibility to Protect." *United Nations*, United Nations, www.un.org/en/genocideprevention/crimes-against-humanity.shtml.

²"What Is Extradition?" *Council on Foreign Relations*, Council on Foreign Relations, www.cfr.org/background/what-extradition.

³"Extraterritorial Jurisdiction." *National Action Plans on Business and Human Rights*, 20 Nov. 2019, globalnaps.org/issue/extraterritorial-jurisdiction/.

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 and may be exercised by a competent and ordinary judicial body of any state in order to try a person duly accused of committing serious crimes under international law such as (1) piracy (2)slavery (3)war crimes (4)crimes against peace (5)crimes against humanity (6)genocide and (7)torture.

BACKGROUND INFORMATION

The catastrophic events of World War II and the conviction of the ones responsible for all the atrocities made, had a major influence on how judicial systems function today. Universal jurisdiction is a principle that the atrocities committed during the Word War II brought to the surface and is applied both by member states and international judicial organs. The International Criminal Court, established by the Rome Statute, is a characteristic example of a Court which practices universal jurisdiction. Nevertheless, some countries raise concerns regarding the potential abuse of this principle, which leads to the reluctance of certain member states to adopt it.

Nuremberg Trials

The Nuremberg Trials were a set of trials which occurred in Nurnberg, Germany after the end of the World War II, between 1945 and 1949, and were supervised by an American chief prosecutor. One of the main outcomes of the trials was the declaration of the Nazi Party as a criminal organization and its leaders being prosecuted, which signaled the complete end of the third Reich. This part of history is a milestone towards the recognition of crimes against humanity and war crimes and the formation of universal standards in regard to criminal law. The Nuremberg trials set the basis for the application of the principle of universal jurisdiction for severe violations of international law, as the prosecutors and the judges did not come from Germany, but from other countries such as the USA, France, the UK and Russia. They were one of the first trials which made clear that, for severe violations

⁴ “The Princeton Principles on Universal Jurisdiction” *Princeton University*, Princeton University,
lpa.princeton.edu/hosteddocs/unive_jur.pdf

of international law, individuals should be tried despite the place where the crime was committed or the nationality of the accused. Thus, it is heavily important to mention and interpret them as a significant step before the introduction of the scope and application of universal jurisdiction.

Rome Statute of the International Criminal Court

Historically speaking, the Rome Statute was a treaty initially drafted in 1998 and put into action on 1st July 2002. The United Nations General Assembly adopted the treaty after a diplomatic conference in Rome, Italy and its primary purpose was the creation of an International Tribunal, namely the International Criminal Court (ICC), and the recognition of the core crimes the court would have jurisdiction over. It was also the ultimate result of a myriad attempts since the Nuremberg Trials to create and put into action an International Tribunal which prosecuted criminals regardless of their country of origin and where the crime was committed. Currently, over 60 member states have ratified the aforementioned treaty and almost 140 have signed it.

International Criminal Court

The International Criminal Court is by definition an international tribunal, headquartered in The Hague, Netherlands and began to function on 1st July 2002, after the ratification of the Rome Statute of the International Criminal Court.

This tribunal, as an international court, practices jurisdiction with the primary purpose of prosecuting criminals who committed crimes that fall under the four core crimes the court has jurisdiction over, which are the crime of genocide, crimes against humanity, war crimes and crimes of aggression. Although it is characterized as “international”, the ICC can neither investigate nor prosecute accused individuals who come from countries that have not signed or have withdrawn their signatures from the Rome Statute. Therefore, the absolute boundaries the ICC faces are the borders of countries that are not willing to sign the treaty.

The Court’s jurisdiction is based on the principle of universal jurisdiction and as a result it is a very important aspect of the topic. The formation of the ICC and the application of the principle of universal jurisdiction by it paved the way for the end of impunity for

severe violations of international criminal law and showed to the global community the benefits of universal jurisdiction.

Difference between the ICJ and ICC

The International Criminal Court and the International Court of Justice (ICJ) are two of the most important international tribunals. Nevertheless, the two tribunals have many differences.

The ICJ's purpose is to settle conflicts between countries arising from the interpretation of international law and give advice to states and UN organs on legal questions.⁵ Nevertheless, the ICJ has no jurisdiction over trying individuals and thus it does not exercise universal jurisdiction. However, the rulings of the International Court of Justice have an impact on the way that the principle of universal jurisdiction is applied. For example, a ruling of the ICJ in the so-called 'Arrest Warrant Case' showed that the principle of universal jurisdiction cannot violate diplomatic immunities.

On the contrary, the ICC's purpose is to prosecute individuals in accordance with the Rome Statute international criminal law, regardless of their origin and the place where the crime was committed. As mentioned before, the ICC prosecutes and punishes individuals only for crimes against humanity, war crimes, genocide and crimes of aggression and it does not solve disputes between countries.

Aut Dedere Aut Judicare

The Latin phrase "aut dedere aut judicare" translates to "either extradite or prosecute". This phrase refers to a principle initially introduced by the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1984 and entered into force on June 26, 1987⁶. Essentially, this law principle suggests that when an individual commits a serious violation against International Law, then

⁵United Nations, United Nations, research.un.org/en/docs/icj.

⁶Convention against Torture. (n.d.). Retrieved January 10, 2021, from <https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>

the state responsible for the extraditing or prosecuting the individual must try him under international standards or request an extradition, so that another country can try him.

The principle “either prosecute or extradite” is densely interconnected with universal jurisdiction. More specifically, referring to the definition of universal jurisdiction, all signatory countries to the UN Convention against Torture could prosecute a criminal in their own territory or prosecute a criminal with alien nationality in their own territory, if the contextual country requests the extradition.

In essence, it primarily deals with the fact that if international law is violated then the perpetrator must be punished in accordance with international law either in the country the crime was committed or in another country.

Abuse of the principle

Although the principle of universal jurisdiction is a way to seek justice against enemies of the human race, it can potentially be abused. Some of the main concerns regarding its violation are either being charged for the same crime twice or ignore and violate the immunity government and generally national officials.

First and foremost, with the application of the principle, individuals could potentially get charged for the same crime more than once. More specifically, the problem lies in the fact that different countries which have adopted universal jurisdiction might prosecute and try someone for the same crime. For this exact reason, International Law has created a legal doctrine, called “Non bis in idem” which translates to “not twice against the same thing”. The abuse of the principle occurs mainly because international law does not provide a clear definition as to who is going to prosecute and judge the perpetrators. Therefore, interpretations could conflict with each other leading to the arrest and prosecution of a person twice for the same offense by different authorities.

Second of all, another potential abuse of the principle of U.J. is the violations of immunities of official persons from the contextual country. A characteristic example of this abuse is the case: “Case Concerning the Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v Belgium)”. In essence, Belgium accused the Democratic Republic of the Congo and the perpetrator, a government official (minister of foreign affairs Mr. Abdoulaye Yerodia Ndombasi) and the case was brought before the International Court of

Justice. Mr. Yerodia's diplomatic immunity was abused and he was prosecuted and removed from his governmental position through the adoption of universal jurisdiction.

International Status

The principle of universal jurisdiction is a current and global matter and can be characterized as a pressing legal topic. The main points raised mainly pertain to the extent of the scope, the potential to be abused and whether or not it could possibly harm a nation's sovereignty, since being able to try your individuals and try criminals at the place where they committed the crime is considered a part of a state's sovereignty.

Furthermore, there are two sides of the debate. The one side supports the concept, wants to invest in it and make changes to the domestic legislation to match with the standards required. The other side disagrees by supporting the fact that the principle can be abused by violating officials' immunities if deemed necessary by other member states. The unsupportive side additionally defends the fact that national courts practicing universal jurisdiction can be biased and thus not prosecute criminals accordingly.

MAJOR COUNTRIES AND ORGANIZATIONS INVOLVED

International Criminal Tribunal of Rwanda

The International Criminal Tribunal of Rwanda was established in 1994, after the events of the Rwandan genocide occurred. Its fundamental purpose was to prosecute people responsible for the aforementioned genocide and generally to prosecute people responsible for the Rwandan genocide, which constitutes a severe violation of international criminal law. Its role was firmly based upon universal jurisdiction for the following reasons: Initially, its creation was due to the authorization of UNSC Resolution 955 making it an international attempt to combat the situation in Rwanda. Moreover, it was located outside of Rwanda and particularly in Arusha, Tanzania and lastly, its judges were foreigners practicing jurisdiction outside their country's borders. Eventually, it was dissolved in 2015 after all trials against the perpetrators concluded.

International Criminal Tribunal of Former Yugoslavia

The International Criminal Tribunal of Former Yugoslavia was established in 1993 during the Yugoslav wars. The Court's main purpose was to prosecute criminals who harmed the Yugoslavian community, violated serious criminal laws and committed crimes against humanity. We can also see the fact that the members of the Court came from different countries and thus practiced universal jurisdiction. The Court was eventually dissolved in 2017 after all the trials concluded.

European Union

The European Union and its members play a significant role in this topic. More specifically, after the workshop regarding Universal Jurisdiction took place in cooperation with the European Parliament Subcommittee on Human Rights (DROI), the Committee on Legal Affairs (JURI) and the Committee on Civil Liberties, Justice and Home Affairs (LIBE), the EU recommended investment into investigations, prosecutions and judgment and suggested a treaty on legal borderless assistance and extradition among the member states, which is in essence what universal jurisdiction is all about.

Belgium

As a country with a passed legislation in regard to universal jurisdiction in 1993, Belgium took on the case of the Rwandan Genocide (1994) and successfully conducted a trial in cooperation with the International Criminal Tribunal of Rwanda and prosecuted the alleged "enemies of the human race". After the law was repealed in 2003, there was a new published legislation similar to the first but more restrictive regarding the legal boundaries of decisions, meaning the extraterritorial jurisdiction.

United States of America

The USA withdrew its signature from the Rome Statute and is not willing to change its legislation regarding universal jurisdiction. The country also seems uncertain based solely on the fact that this principle can be abused. Also, the USA raised concerns as to the potential violation of diplomatic immunity and the potential violation of the state sovereignty, if it becomes a member of the ICC.

China

The People’s Republic of China’s (PRC) domestic legislation explicitly states on Article 9 of Criminal Law of the PRC: “This Law shall be applicable to crimes which are stipulated in international treaties concluded or acceded to by the People's Republic of China and over which the People's Republic of China exercises criminal jurisdiction within the scope of obligations, prescribed in these treaties, it agrees to perform”⁷. Essentially, China can exercise its jurisdiction when it comes to the violation of International Treaties ratified by the country.

TIMELINE OF EVENTS

September 30, 1946	First adoption and application of the U.J. principles in the Nuremberg Trials
February 4, 1985	The UNCAT was signed
1993	Belgium’s genocide law passed (first adoption of universal jurisdiction)
May 25, 1993	Creation of the International Criminal Tribunal for the former Yugoslavia
November 8, 1994	Creation of the International Criminal Tribunal for Rwanda
July 17, 1998	Roman Statute adopted
July 1, 2002	Initiation of the International Criminal Court
April 28, 2006	Publishing of UNSC Resolution 1674

⁷ “Information from and observations by China on the scope and application of the principle of universal jurisdiction”, *People’s Republic of China*, United Nations www.un.org/en/ga/sixth/65/ScopeAppUniJuri_StatesComments/China_E.pdf

RELEVANT RESOLUTIONS, TREATIES AND EVENTS

Rome Conference

One major event that left a huge mark on the history of the principle of the universal jurisdiction was the Rome Conference in 2002, when UN member states assembled and signed a treaty, named “Rome Statute of the International Criminal Court”. This treaty, as already mentioned, essentially created an intergovernmental organization, namely the International Criminal Court (ICC), which could investigate and prosecute criminals on the grounds of the countries that ratified it. The Rome Statute of the International Criminal Court also publicized the definitions of the 4 major international crimes: Genocide; Crimes Against Humanity; War Crimes; Crimes of Aggression.

UNSC Resolution 1674

The United Nations Security Council on April 28, 2006, unanimously adopted a resolution, namely the UNSC Resolution 1674. In essence, this resolution’s main subject was the protection of citizens while on armed conflict. More specifically, operative clauses 2 and 3 recognized the fact that there should be borderless protection of populations on a global level regardless of their country of origin when their government is going through an armed conflict either domestically or with another nation.

International Convention on the Suppression and Punishment of the Crime of Apartheid

The International Convention on the Suppression and Punishment of the Crime of Apartheid was a treaty signed by over 100 parties and was the first convention to declare the crime of apartheid as a violation of International Law. More specifically, Article IV describes the fact that countries that participated in the convention would adopt measures to prosecute criminals with their own jurisdiction for crimes such as genocide, slavery (illegal imprisonment) and torture.

PREVIOUS ATTEMPTS TO SOLVE THE ISSUE

Inter-American Convention to prevent and punish torture

The “Inter-American Convention to prevent and punish torture” is essentially a convention among nations in the Americas (excluding the United States and Canada). It was entered into force in 1987 and it ultimately supported Human Rights in the American territories. More specifically, Article 14 of the Convention describes the fact that when a state requests the extradition of a case, then the state, in whose jurisdiction the crime was committed, should submit the case to its authorities and after proper investigation, the authorities must inform the requesting state.

POSSIBLE SOLUTIONS

If we take all of the above into consideration, we can acknowledge that the main problem in our case is the abuse of the principle of the U.J. by either double conviction on the same crime or violation of an official’s immunity. This exact problem lies in the unwillingness of several countries to adopt the principle of universal jurisdiction due to that fact that it might be abused. Thus, the international community must take measures to ensure that there is no abuse of the principle and that more countries adopt the principle.

With that being mentioned, if there is better cooperation and communication among the states that have U.J. related legislations, double conviction for the same offense by different authorities could potentially be avoided and thus have only one prosecution for the violations committed.

One additional solution to the aforementioned problem could be the reconsideration and discussion among member states in regard to governmental immunities. There should be negotiations so as to firstly declare which crimes need prosecution regardless of status so as to avoid international danger and secondly declare which violations of criminal law could the immunity fall under so as to ensure national stability.

In order to prevent the abuse of the principle, countries which have already applied universal jurisdiction should meet their obligations. More specifically, after applying the U.J. to their domestic courts, their judges and prosecutors have to be in accordance with

international law and firmly unbiased. Moreover, countries have to be alert in order to take on extradition cases or domestic cases and also advocate in any prosecution or investigation taking place either in the country's territory or abroad. Lastly, those countries are obliged to keep governmental disputes and legal conflicts aside in order to avoid unfair decisions and judgments.

Furthermore, another aspect of the topic is the participation of countries in international tribunals. On that note, they should be encouraged to sign treaties and statutes such as the Rome Statute, so that even more members join Courts and organs which practice universal jurisdiction.

Last but not least, it is a fact that problems might arise with the collection of evidence from different countries. For instance, a question that may be raised is: How will the contextual country's authorities collect sufficient evidence to try a person accordingly? Therefore, there should be worldwide cooperation among member states for trustworthy investigation in the country where the crime was committed. If this could be achieved, then the reliability of a contextual country's court could be ensured and thus a fair trial would be conducted.

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