Committee: Legal Committee (GA6)

Issue: Reevaluating the customary legal principle: “aut dedere aut judicare”

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Position: Chair

PERSONAL INTRODUCTION

My name is Valentina El Kadi and I have the utmost honor of serving as the Chair of GA6 (Legal committee) at this year's ACGMUN. I am an IB1 student at St Catherine's British School.

As a person who is keen on learning new things, being the expert chair on the topic of “Reevaluating the customary legal principle aut dedere aut judicare” is something truly exciting for me as I will be carrying out research and composing a study guide regarding a legal concept that is quite complicated but vastly interesting and a vital component of International Law and international cooperation.

Having participated in Model United Nations conferences in Athens, London, The Hague, Ankara, Cambridge, Thessaloniki, and Patra, I can say with confidence that ACGMUN is one that I value highly and has a GA6 agenda that I promise you will thoroughly enjoy and learn a lot from. It is a committee that covers topics and intricate legal concepts on an international scale that range from social, economic, and political aspects.

The point of this study guide is for you to develop a thorough understanding of this topic, and hopefully provide you with enough information to come up with your own solutions. It is highly encouraged that you also carry out your own research in terms of your country's policies, although somewhat challenging, as well as their political relations with other countries, and any other additional information you may require.

If at any time during your conference preparation any issues arise regarding your research, please do not hesitate to contact me at valentina.elkadi@gmail.com in order to clarify any issues.

I wish you the best of luck with your preparation and I’m looking forward to meeting you all.

Best regards,

Valentina El Kadi

TOPIC INTRODUCTION

To begin to understand the legal principle "aut dedere aut judicare", one must briefly address what international law is, as well as its sources. International law is a vital mechanism in withstanding international crimes and disputes, making it very important in international cooperation. Other legal experts argue that International law is not always seen to be enforced by some bodies due to the intricate complications that may arise with varying legal systems that is why there are some legal principles, like universal jurisdiction, that minimize such complications. The four main sources of international law are outlined in Article 38 (1) of the statute of the International Court of Justice (ICJ), the first being in the form of treaties and conventions. Conventions and treaties are legally binding to all parties who have signed and ratified it, and conventions that are ratified by a adequate amount of members becomes a legally binding agreement, with "legislative changes taking place within a member state to adhere to the agreement at the domestic level"[1]. Other sources of international law are general principles of law, custom, and case precedent and teachings. Intergovernmental organizations, like the United Nations, normally facilitate a forum in which such conventions can be discussed and drawn up, examples such as the Vienna Convention of Diplomatic Relations, the Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment, the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons and the international Convention for the Suppression and Punishment of the Crime of Apartheid are some of the most relevant international conventions related to this topic and have been signed and ratified.

The legal principle of "aut dedere aut judicare" essentially refers to the right to extradite or prosecute. Extradition specifically refers to a process where one state facilitates the return of a person, as per the request of another state, and "effects the return for trial for a crime punishable by the laws of the requesting state and committed outside the state of refuge"[2]. It is stated that there is a legal obligation of states under international law to prosecute people who commit serious international crimes if the country in which the crime was committed has requested extradition. For example, if country A has caught someone that has committed a crime in country B. This means that country A has to either prosecute or extradite them to the country that has asked for their extradition and/or the country that this person has committed the crime in. This principle aims to combat international crimes by ensuring there are

[1] *Conventions and declarations*. DagDok. (n.d.). Retrieved February 21, 2022, from http://dagdok.org/un-by-subject/international-law/conventions-and-declarations/

[2] Encyclopædia Britannica, inc. (n.d.). *Extradition*. Encyclopædia Britannica. Retrieved February 14, 2022, from https://www.britannica.com/topic/extradition

no jurisdictional issues. Universal jurisdiction, once adopted in national legislation, allows for countries to exercise this principle with no jurisdictional issues barricading crimes being brought to justice.

This principle, although in theory seeming ideal, in practice has several complications with regards to its actual enforcement. To some extent, a state cannot act on this principle if there is no universal jurisdiction involved hence the adoption of universal jurisdiction in national legislation is essential. Also, immunity that protects certain officials, either in the form of ratione personae or ratione materiae, is an important factor in the prosecution or extradition of an alleged offender as there are certain laws that have to be adhered to in enforcing this law or there could be a breach of international law.

Throughout history, there have been examples of criminals that have been protected by immunity and the outcomes vary. Nevertheless, crimes against humanity, genocide, torture, hostages, terrorism, war crimes and financing of terrorism, international crimes rings, apartheid and bombings are some of the biggest offences. The main debate is whether or not this principle is biased, if it correlates with other principles of international law and if it is a mechanism in fighting impunity.

Various cases relating to this principle, as well as immunity, will be referred to throughout this guide. Cases such as Belgium vs. Senegal will be used as legal precedent, the ICJ Arrest Warrant case, where it will be shown how other courts dealt with domestic courts wanting to exercise universal jurisdiction against diplomatic immunity.

DEFINITION OF KEY TERMS

Ad Hoc Tribunals

Their purpose is to "settle disputes in-between states and sometimes other international actors. It is mainly with the Nuremberg trials after World War II, however, that the ad hoc tribunals dealing with criminal cases against individuals have been created to deal with the core international crimes, namely genocide, war crimes and crimes against humanity"[3].

Crimes Against Humanity

"Crimes against humanity refer to specific crimes committed in the context of a large-scale attack targeting civilians, regardless of their nationality. These crimes include

[3] *Ad hoc tribunals*. International Committee of the Red Cross. (2017, February 9). Retrieved February 19, 2022, from https://www.icrc.org/en/document/ad-hoc-tribunals

murder, torture, sexual violence, enslavement, persecution and enforced disappearance.[4]

Extradition

"Extradition is the process by which one state, upon the request of another, effects the return of a person for trial for a crime punishable by the laws of the requesting state and committed outside the state of refuge"[5].

Genocide

As defined in article II of the Convention on the Prevention and Punishment of the Crime of Genocide, the crime of genocide refers to "killing members of the group, causing serious bodily or mental harm to members of the group, deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part, imposing measures intended to prevent births within the group and forcibly transferring children of the group to another group"[6].

International Humanitarian Law

"International humanitarian law (IHL) is a set of rules that seek to limit the effects of armed conflict. It lays out the responsibilities of states and non-state armed groups during an armed conflict. It defines, among others: the rapid and unimpeded passage of humanitarian aid in armed conflict, the freedom of movement of humanitarian workers, the protection of civilians (including medical and humanitarian workers), the protection of refugees, prisoners, the wounded and sick"[7].

Impunity

"Freedom from punishment or from the unpleasant results of something that has been done"[8]. This guide will tackle this issue of impunity in relation to international crimes, specifically with regards to immunity, categorized as: diplomatic, states and states officials, ratione materiae and ratione personae, which will be analyzed further.

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[4] *Crimes against humanity*. TRIAL International. (2021, March 19). Retrieved February 19, 2022, from https://trialinternational.org/topics-post/crimes-against-humanity/

[5] Encyclopædia Britannica, inc. (n.d.). *Extradition*. Encyclopædia Britannica. Retrieved February 22, 2022, from https://www.britannica.com/topic/extradition

[6] United Nations. (n.d.). *United Nations Office on Genocide Prevention and the responsibility to protect*. United Nations. Retrieved February 22, 2022, from https://www.un.org/en/genocideprevention/genocide.shtml

[7] *International humanitarian law*. European Civil Protection and Humanitarian Aid Operations. (n.d.). Retrieved February 19, 2022, from https://ec.europa.eu/echo/what/humanitarian-aid/international-humanitarian-law_en

[8] *Impunity*. Cambridge Dictionary. (n.d.). Retrieved February 19, 2022, from https://dictionary.cambridge.org/dictionary/english/impunity

International Customary Law

It derives from "a general practice accepted as law". It is included in official documents, such as "national legislation and case law"[9]. This law is required to be accepted as law and is related to "opinio juris" oftentimes. "This characteristic sets practices required by law apart from practices followed as a matter of policy, for example"[10].

Opinio juris

It means an opinion of law and is the "belief that an action was carried out as a legal obligation. This is in contrast to an action resulting from cognitive reaction or behaviors habitual to an individual. This term is frequently used in legal proceedings such as a defense for a case"[11].

Public International Law

"Public international law is the body of rules that is legally binding on States and international organizations in their interactions with other States, international organizations, individuals, and other entities. It covers a range of activities; such as, diplomatic relations, conduct of war, trade, human rights and sharing of oceanic resources" [12]

Sovereignty

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

Universal Jurisdiction

Universal jurisdiction is "a principle of international law that allows national courts to prosecute the most serious crimes even when committed abroad, by a foreigner and against foreign victims"[13]. For example, the Pinochet case and the ICJ case between Belgium and Senegal, which will be analyzed in the background information.

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[9] *Customary law*. International Committee of the Red Cross. (2021, November 22). Retrieved February 22, 2022, from https://www.icrc.org/en/war-and-law/treaties-customary-law/customary-law

[10] *Customary law*. International Committee of the Red Cross. (2021, November 22). Retrieved February 22, 2022, from https://www.icrc.org/en/war-and-law/treaties-customary-law/customary-law

[11] Wikimedia Foundation. (2021, July 9). *Opinio juris sive necessitatis*. Wikipedia. Retrieved February 21, 2022, from https://en.wikipedia.org/wiki/Opinio_juris_sive_necessitatis

[12] Gunaratne, P. byD. R. (2018, July 29). *What is public international law?* Public International law. Retrieved January 28, 2022, from https://ruwanthikagunaratne.wordpress.com/2011/03/26/lesson-1-what-is-public-international-law/

[13]https://www.hrw.org/news/2016/05/03/qa-case-hissene-habre-extraordinary-african-chambers-senegal

BACKGROUND INFORMATION

Outline of the principle

A simple definition as to understand this principle is provided in the Final Report of the International Law Commission about the principle, essentially referring to it as the "jurisdiction with regard to crimes committed outside national territory". A principle possibly procured by multiple obligation related multilateral conventions, the Draft Code of Crimes Against the Peace and Security of Mankind of 1996 addresses in articles 8 and 9, where article 9 in particular is specific to the obligation to extradite or prosecute. This is where the obligation with regards to crimes against humanity, genocide, war crimes and crimes against the United Nations should be implemented in order to establish an effective and efficient legal "criminalisation" and "prosecution" system, where the aforementioned crimes are brought to justice. Article 9, according to Amnesty International, states that: "Without prejudice to the jurisdiction of an international criminal court, the State Party in the territory of which an individual alleged to have committed a crime set out in article 17 [genocide], 18 [crimes against humanity], 19 [crimes against United Nations and associated personnel] or 20 [war crimes] is found shall extradite or prosecute that individual"[14].

Multilateral and international sources of the obligation in the form of treaties and conventions

The principle has appeared in various multilateral treaties and instruments. Treaty law is one of the main sources of international law, the first being the Geneva Conventions of 1949 which codify rules of international relevance to all binding parties. Ratification is when a country consents to be bound by rules of the treaties.

The treaties will be covered in the Relevant UN Resolutions, Treaties and Events and analyzed separately. The Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels, the Draft Code of Crimes against the Peace and Security of Mankind, the Vienna Convention of Diplomatic Relations, the Geneva Conventions, the Convention on the Prevention and Punishment of the Crime of Genocide, the Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment, the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons - 1973, and the International Convention on the Suppression of the Financing of Terrorism.

[14] Draft Code of Crimes, Article 9, Obligation to extradite or prosecute. Available, with commentaries at http://untreaty.un.org/ilc/texts/instruments/english/commentaries/7_4_1996.pdf

The International Court of Justice (ICJ) Statute and International Customary Law as a source of the principle

General consensus on whether or not customary international law is a source of the principle "aut dedere aut judicare" has not been reached. This guide will not provide an analysis on if this principle is part of customary international law, but will analyze what customary international law is, and if in fact this principle is part of customary international law, what the acceptance and implementation of it looks like.

The ICJ plays a vital role in the principle of "aut deter aut judicare". It has undertaken many cases where this principle, as well as immunity, is involved, such as the Lockerbie case, the Arrest Warrant cas and the Bosnian Genocide Case, to name a few. The ICJ statute, particularly focusing on article 38(1), recognises international custom as a general practice that must be accepted as law and general principles of law recognised by civilized nations, while also referring to international conventions as legally binding to all members who have ratified it.

National and international courts and tribunals adopt customary international law effectively, making it a binding law. It derives from "a general practice accepted as law". Additionally, it generally refers to it being "accepted as law". With regards to the principle to extradite or prosecute, if it is accepted as customary law, the notion would set out for every country to accept this principle, either by enforcing it or allow it, in combination with universal jurisdiction, to be exercised without interference.

Universal Jurisdiction, National Legislation and International Courts

Now part of customary international law, universal jurisdiction is a vital mechanism in the prosecution of alleged offenders regarding crimes of international relevance, like crimes against humanity, genocide and war crimes. Especially in cases in which a prosecution does not occur in the territory the crime was committed in, and allows for any national court to prosecute and try that person without links to that country through nationality. National courts may "exercise jurisdiction under international law over crimes of such exceptional gravity that they affect the fundamental interests of the international community as a whole"[15]. Undoubtedly, the indictment would follow commonly internationally accepted and respected methods. As universal jurisdiction sets out to combat despicable crimes under international law, the concept of having the ability to try and possibly punish the offender allows national courts to prosecute an alleged offender through the jurisprudence of universal jurisdiction to fight against impunity. It also allows for crimes of international relevance to be brought to justice, rather than a state acting on its own interests. The aforementioned expectation is

[15] *Universal jurisdiction - princeton university*. (n.d.). Retrieved February 23, 2022, from https://lapa.princeton.edu/hosteddocs/unive_jur.pdf

critical in ensuring fairness to all parties involved and no racial, religious and regional biases ramify in the victims nor offenders justice. Although the national court is essentially acting as an "agent of the international community enforcing international law"[16], this principle is often misunderstood, and potential affliction with uneven justice and incoherence severely impacts the proper implementation of universal jurisdiction.

About 163 United Nations Member States have made relevant adjustments to national legislation, enabled by agreements like the Convention against Torture, allows national courts to exercise such universal jurisdiction. National courts have powers to investigate or prosecute alleged offenders of crimes of international relevance and a violation of international law. Several states have also implemented the Rome Statute in order to enable them to hand the case over to the ICC when it is unable or unwilling to do so itself.

The principle to extradite or prosecute sets out to codify that a state shall not be complicit in providing the alleged offender of specific crimes of safe haven, but should act on the principle to extradite or prosecute, which involves universal jurisdiction sometimes, to either prosecute them in a national court or extradite them the an international criminal court that has the jurisdiction to carry out the trial. The state the alleged offender is in must examine the capacity of its courts with regards to if it can exercise geographic jurisdiction, including universal jurisdiction. In cases where it is "not in a position to extradite the suspect to another state or to surrender that person to an international criminal court"[17].

In relation to the third alternative, "the state surrendering the alleged offender to a competent international criminal tribunal or court whose jurisdiction the State concerned has recognised". Under the Rome Statute, the International Criminal Court shall not exercise jurisdiction unless the state is unable or unwilling to carry out the trial, and its jurisdiction applies for cases referred to in the Rome Statute, which are crimes against humanity, genocide, war crimes and crimes of agreession. "The primary burden of prosecuting the alleged perpetrators of these crimes will continue to reside with national legal systems''[18].

[16] *Universal jurisdiction - princeton university*. (n.d.). Retrieved February 23, 2022, from https://lapa.princeton.edu/hosteddocs/unive_jur.pdf

[17] *International Law Commission: The obligation ... - amnesty.org*. (n.d.). Retrieved February 23, 2022, from https://www.amnesty.org/fr/wp-content/uploads/2021/07/ior400012009en.pdf

[18] *Universal jurisdiction - princeton university*. (n.d.). Retrieved February 23, 2022, from https://lapa.princeton.edu/hosteddocs/unive_jur.pdf

The Third Alternative

The International Law Commission has stated that it "further acknowledges that some States have inquired about the link between the obligation to extradite or prosecute and the transfer of a suspect to an international or special court or tribunal, whereas other States treat such a transfer differently from extradition"[19]. International Criminal Tribunals can take on cases relating to the obligation to extradite or prosecute once a state has surrendered the alleged offender to them.

Article 11(1) of the International Convention for the Protection of All Persons from Enforced Disappearance states that: "The State party in the territory under whose jurisdiction a person alleged to have committed [an act of genocide/a crime against humanity/a war crime] is found shall, if it does not extradite that person or surrender him or her to another State in accordance with its international obligations or surrender him or her to a competent international criminal tribunal or any other competent court whose jurisdiction it has recognized, submit the case to its competent authorities for the purpose of prosecution."[20] Under such a provision, the obligation to extradite or prosecute may be satisfied by a "third alternative", which would consist of the State surrendering the alleged offender to a competent international criminal tribunal or a competent court whose jurisdiction the State concerned has recognized[21].

Immunity in Relation to the Principle[22]

The relationship between the acceptance of immunity with regards to crimes against humanity, genocide, war crimes and crimes of international relevance, universal jurisdiction, the legal obligation to extradite or prosecute, as well as the international criminal court and international criminal tribunals is an interesting relationship which

[19] Kriangsak, K. (2018). Part I prologue, 2 the International Law Commission's work on the obligation to extradite or prosecute (aut dedere aut judicare). *The Obligation to Extradite or Prosecute*. https://doi.org/10.1093/law/9780198823292.003.0002

[20] Kriangsak, K. (2018). Part I prologue, 2 the International Law Commission's work on the obligation to extradite or prosecute (aut dedere aut judicare). *The Obligation to Extradite or Prosecute*. https://doi.org/10.1093/law/9780198823292.003.0002

[21] Kriangsak, K. (2018). Part I prologue, 2 the International Law Commission's work on the obligation to extradite or prosecute (aut dedere aut judicare). *The Obligation to Extradite or Prosecute*. https://doi.org/10.1093/law/9780198823292.003.0002

[22] Akande, D. (2004). International law immunities and the International Criminal Court. *American Journal of International Law*, *98*(3), 407–433. https://doi.org/10.2307/3181639 and Akande, D., & Shah, S. (2010, November 1). *Immunities of state officials, international crimes, and foreign domestic courts*. OUP Academic. Retrieved February 27, 2022, from https://academic.oup.com/ejil/article/21/4/815/418198

will be examined in order to see if the customary legal principle "aut dedere aut judicare" shall prevail.

In ordinary cases, the fight against impunity is copiously enabled through the principle to extradite or prosecute, as International Criminal Court and some International criminal tribunals have jurisdiction, however, only when a national court is unwilling or perhaps unable to prosecute crimes under international law, does the international court supplement the national jurisdiction and unwillingness.

Notions of state equality are what diplomatic and state immunities are taken from. They essentially protect certain individuals from prosecution in foreign nations, directly clashing with universal jurisdiction and the principle to extradite or prosecute.

Taking into consideration that the International Criminal Court cannot directly arrest an alleged offender, a national court has the ability to do so. In cases which involve the offender possessing immunity provided to them due to their position, since the International Criminal Court cannot directly arrest an alleged offender, a national court does. Nevertheless, some legal scholars have established that this immunity protects the individual from the jurisdiction from the prosecuting state. Hence, the International Criminal Courts', and sometimes (depending on the case), other international criminal tribunals' jurisdiction is exercised once the state who initiated the prosecution has examined if they have the jurisdiction to arrest and surrender them to the International Court, a jurisdiction instituted under the Rome Statute of the ICC.

Immunity Ratione Personae, translating to Immunity Attaching to an Office or Status, is a part of customary international law and as stated in article 31 of the Vienna Convention on Diplomatic Relations, it protects Heads of government, Heads of state, diplomats and some officials who are undergoing a special mission abroad from civil and criminal jurisdiction from foreign states, a notion also recognised in the ICJ Arrest Warrant case. Intended for the smooth conduct or carrying out international relations of each state, immunities such as these allow for coexistence and cooperation amongst states, and apply for private acts too. If a person who possesses this immunity is suspected to have committed a crime against humanity, genocide or a war crime, the ICJ has confirmed that "the absolute nature of the immunity from criminal process accorded to a serving foreign minister subsists even when it is allied that he or she has committed an international crime and applies even when the foreign minister is abroad on a private visit"[23], and has been "unable to deduce if this immunity stands in cases where the aforementioned crimes are brought, and if under

[23] Akande, D. (2004). International law immunities and the International Criminal Court. *American Journal of International Law*, *98*(3), 407–433. https://doi.org/10.2307/3181639

customary international law, there is an exception to immunity from criminal jurisdiction and inviolability to incumbent Ministers of Foreign Affairs, where they are suspect of having committed car crimes or crimes against humanity"[24]. Nevertheless, the European Journal of International Law states that "the principle that immunity ratione personae extends even to cases involving allegations of international crimes must be taken as applying to all those serving state officials and diplomats possessing this type of immunity"[25]. This immunity applies regardless of when the alleged crime was committed and the immunity is valid only while the person is in the position the immunity is granted for. Additionally, the UN Convention on Special Missions of 1969, mentions in article 31 that 'the representatives of the sending State in special mission and the members of its diplomatic staff are immune from the criminal jurisdiction of the receiving State"[26].

Immunity ratione materiae is an immunity that translates to immunity attaching to official acts. As this type of immunity attaches to the official act rather than the status of the official, it may be relied on by all who have acted on behalf of the state with respect to their official acts, as well as by former officials in respect of official acts performed while in office and by serving state officials[27]. Essentially, "this immunity operates as a jurisdictional or procedural bar and prevents courts from indirectly exercising control over acts of the foreign state through proceedings against the official who carried out the act"[28]. It is important to acknowledge that with regards to foreign domestic criminal jurisdictions, this immunity is not recognised in relation to international crimes. This type of immunity constitutes a substantive defense in that it indicates that the individual official is not to be held legally responsible for acts that,

[24] Akande, D. (2004). International law immunities and the International Criminal Court. *American Journal of International Law*, *98*(3), 407–433. https://doi.org/10.2307/3181639

[25] See, generally, A. Cassese, *International Criminal Law* (2nd edn, 2008), at 309–310; Gaeta, 'Official Capacities and Immunities', in A. Cassese *et al.* (eds), *Commentary on the International Criminal Court* (2002), at 975, 983–989; Zappalà, 'Do Heads of State in Office Enjoy Immunity from Jurisdiction for International Crimes? The *Ghaddafi* Case before the French *Cour de Cassation'*, 12 *EJIL* (2001) 595; Fox, 'The Resolution of the Institute of International Law on the Immunities of Heads of State and Government', 51 *ICLQ* (2002) 119.

[26] See Arts 29 and 31 UN Convention on Special Missions 1969, *supra* note 5.

[27]Wickremasinghe, *supra* note 1, at 383. See also Art. 39(2) VCDR, *supra* note 4, and the discussion *infra* in relation to former diplomats, and Art. 43(1) Vienna Convention on Consular Relations (1963) (VCCR), 596 UNTS 261, in relation to consular officials. Some have doubted whether the immunity *ratione materiae* applicable to former diplomats is of the same nature as the general immunity applicable to other official acts of other state officials: see, e.g., Dinstein, 'Diplomatic Immunity from Jurisdiction *Ratione Materiae*', 15 *ICLQ* (1966) 76, at 86–89, who argues that diplomatic immunity *ratione materiae* is broader than that accorded to other state officials. Tomonori, *supra* note 1, at 281, questions whether other state officials possess immunity *ratione materiae* in criminal proceedings and in relation to *ultra vires* acts.

[28] Akande, D. (2004). International law immunities and the International Criminal Court. *American Journal of International Law*, *98*(3), 407–433. https://doi.org/10.2307/3181639

in effect, are those of the state[29]. Moreover, the immunity of state officials in foreign courts prevents circumvention of the immunity of the state through proceedings brought against those acting on behalf of the state[30]. There are restrictions with regards to circumstances in which “aut dedere aut judicare” can be exercised in. For instance, in times of war hostilities, international humanitarian law protects officials when they act in response to an aggressor. Simply put, although a consensus generally is complicated to reach, the ICC does not accept immunities in crimes against humanity, genocide and war crimes, which fall under the courts jurisdiction. For example, the Arrest Warrant case sees that "the immunities enjoyed under international law... do not represent a bar to criminal prosecution in certain circumstances.... [A]n incumbent or former Minister for Foreign Affairs may be subject to criminal proceedings before certain international criminal courts, where they have jurisdiction”[31]. It is not only the Arrest Warrant case of the ICJ, however, that has put this into practice. The Special Court for Sierra Leone is also of a similar tactic, that of case precedent from ad hoc tribunals, such as the Nuremberg, and the Pinochet and Arrest Warrant cases, decided that "the principle seems now established that the sovereign equality of states does not prevent a Head of State from being prosecuted before an international criminal tribunal or court”[32].

There is conflict within the ICC statute, particularly articles 27 and 98, in dealing with cases involving immunity. A detailed analysis of these articles is provided in various academic articles, but what is important to note here is that “those provisions direct the Court not to request the arrest or surrender of a person where such a request would require the requested state to violate either the immunities that international law accords to that person on an international agreement precluding surrender to the Court”[33].

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[29] 42 SeeCASSESE, INTERNATIONAL CRIMINAL LAW, supra note 2, at 266; Fox, supra note 1, at 510-13. In Attorney General of Israel v. Eichmann, 36 ILR 277, 308-09 (Sup. Ct. 1962), the Israeli Supreme Court stated - See also the correspondence in the McLeod case, supra note

→ all info from Akande, D. (2004). International law immunities and the International Criminal Court. *American Journal of International Law*, *98*(3), 407–433. https://doi.org/10.2307/3181639

[30] 43 See Fox, supra note 1, at 353-54; Wickremasinghe, supra note 10, at 403; see also Propend Fin. Pty Ltd v. Sing, 111 ILR 611, 669 (C.A. 1997) (Eng.); Chuidian v. Philippine Nat'l Bank, 912 F.2d 1095, 1101 (9th Cir. 1990); Zoernsch v. Waldock, [1964] 1 W.L.R. 675, 692 (C.A., per Diplock, LJ.).

[31] 9 Arrest Warrant, supra note 4, para. 61.

[32] 5 Prosecutor v. Charles Taylor, supra note 61, para. 52. The Court's judgment drew from and approved the submissions of amici curiae Philippe Sands and Alison McDonald, and Diane Orentl

[33] International law immunities and the International Criminal Court. *American Journal of International Law*, *98*(3), 407–433. https://doi.org/10.2307/3181639

International Human Rights Law

Once a state becomes a binding party to an international human rights treaty, each state is bound by a legal obligation, in accordance with International Law, to respect, protect and fulfill human rights to all its citizens. There is an obligation for changes to be made within each state's legal system in order to adapt its domestic legislation in accordance with the measures the treaty agrees on. Once a treaty has been ratified, states must have the corresponding domestic combat mechanisms in order to protect its citizens from abuses of their human rights outlined by the Universal Declaration of Human rights in all 30 articles. If a state fails to adhere to measures through legal proceedings, international and regional mechanisms are expected to be implemented for proper function of human rights.

Related Court Cases

Questions relating to the Obligation to Prosecute or Extradite (Belgium v Senegal)[34]

A valuable case that has been referred to often in relation to aut dedere aut judicare is the ICJ case between Belgium and Senegal, which landed on a verdict on the 20th July 2012. It has examined the principles of immunity and its relationship with "aut dedere aut judicare".

The former President of Chad, Hissène Habré, was an alleged offender of tortutre and crimes against humanity during his tenure, and since 1990, has been a resident of Senegal. Belgium issued proceedings to the ICJ claiming that not prosecuting him was in violation of Article 7 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and customary international law, which cover the principle of "aut dedere aut judicare".

Moreover, Belgium's proceedings against Senegal at the ICJ stated for "Senegal to take all the steps within its power to keep Mr. H. Habré under the control and surveillance of the judicial authorities of Senegal so that the rules of international law with which Belgium requests compliance may be correctly applied". Senegal claimed that immunity protected him from foreign prosecution and without harassment by another state, taking into consideration that he was a former Head of State, meaning that he would supposedly be exempt from foreign prosecution.

[34] https://www.icj-cij.org/en/case/144 - see information on the ICJ case proceedings can be read further through this link

Additionally, the Convention against Torture proved to be a valubale asset to the case as the obligation to extradite or prosecute was implemented against Habré. Article 7(1) was used to invoke the principle of "aut dedere aut judicare", where the ICJ found that states should prosecute an alleged offender, where possible further proceedings are subject to evidence.

Furthermore, following the court procedure, the ICJ ruled that "Senegal was indeed in breach of its obligations under the Convention and should proceed without further delay to the prosecution of Habré. It cannot rely on its internal law or financial difficulties to evade the implementation of this obligation"[35]. Additionally, the ICJ also concluded that Senegal was "required to cease that continuing wrongful act and to take, without further delay, the necessary measures to submit the case to its competent authorities for the purpose of prosecution, if it did not extradite Mr. Habré'.

The Convention against Torture was used as a mechanism to prove Habré's immunity should not stand as he was blamed for crimes against humanity, genocide and war crimes.

Arrest Warrant of 11 April 2000 case[36]

The proceedings to the ICJ on the 17th of October 2000 by the Democratic Republic of Congo (DR Congo) against Belgium arose following an Arrest Warrant for Mr. Abdulaye Yerodia Ndombasi, the incumbent Congolese Minister for Foreign Affairs, on the 11th of April 2000. The Arrest Warrant

[35] *Belgium v. Senegal*. ICD - Belgium v. Senegal - Asser Institute. (n.d.). Retrieved February 27, 2022, from https://www.internationalcrimesdatabase.org/Case/750

[36] https://www.icj-cij.org/en/case/121 - information on the ICJ case proceedings can be read further through this link

sought "his detention and subsequent extradition to Belgium for alleged crimes constituting "grave violations of international humanitarian law"[37].

Furthermore, the DRC claimed that the Vienna Convention on Diplomatic Rights was violated by Belgium in an attempt to extradite Mr Yerodia to Belgium in order to try him. He was blamed for crimes against humanity and Belgium was concerned with the fact that they wanted to try him in their domestic courts, claiming that they had the right to do so. While the DRC claimed their sovereignty was being breached and that he was protected by immunity from foreign prosecution, Belgium claimed that because of their universal jurisdiction, deriving from the Geneva Conventions and the Convention against Torture.

Moreover, the ICJ found that "in customary international law, the immunities accorded to Ministers for Foreign Affairs are not granted for their personal benefit, but to ensure the effective performance of their functions on behalf of their respective States. The Court held that the functions exercised by a Minister for Foreign Affairs were such that, throughout the duration of his or her office, a Minister for Foreign Affairs when abroad enjoyed full immunity from criminal jurisdiction and inviolability. Inasmuch as the purpose of that immunity and inviolability was to prevent another State from hindering the Minister in the performance of his or her duties, no distinction could be drawn between acts performed by the latter in an "official" capacity and those claimed to have been performed in a "private capacity" or, for that matter, between acts performed before assuming office as Minister for Foreign Affairs and acts committed during the period of office. The Court then observed that, contrary to Belgium's arguments, it had been unable to deduce from its examination of State practice that there existed under customary international law any form of exception to the rule according immunity from criminal jurisdiction and inviolability to incumbent Ministers for Foreign Affairs when they were suspected of having committed war crimes or crimes against humanity"[38].

In addition, the court also stated that circumstances in which the criminal prosecution could be allowed to be carried out would be "prosecution (i) in the

[37] *Latest developments: Arrest warrant of 11 April 2000 (Democratic Republic of the Congo V. Belgium): International Court of Justice*. Latest developments | Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium) | International Court of Justice. (n.d.). Retrieved February 27, 2022, from https://www.icj-cij.org/en/case/121

[38] *Latest developments: Arrest warrant of 11 April 2000 (Democratic Republic of the Congo V. Belgium): International Court of Justice*. Latest developments | Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium) | International Court of Justice. (n.d.). Retrieved February 27, 2022, from https://www.icj-cij.org/en/case/121

home country of the Foreign Minister; (ii) where the immunity has been waived by the state of the Foreign Minister; (iii) of a former Foreign Minister in the courts of another state 'in respect of acts committed prior or subsequent to his or her period of office, as well as in respect of acts committed during that period of office in a private capacity'; and (iv) before certain international criminal tribunals which have jurisdiction. The third circumstance in this list deals with immunity *ratione materiae* and makes clear that state officials possess immunity in relation to official acts committed whilst in office"[39].

Finally, after additional analysis, the court concluded, amongst other things, that Belgium violated Mr Yerodias immunity and the arrest warrant to be canceled.

R (Pinochet Ugarte) v Bow St Magistrate[40]

Primarily, English authorities arrested Augusto Pinochet, the Former President of Chile, in London on October 16, 1998 following a Spanish arrest warrant during a visit of his. The arrest warrant came from allegations of major human rights crimes, including torture, during his tenure, and exercised universal jurisdiction from Spain in order to do so. The initial aim was for him to be extradited to Spain, but Pinochet resisted on the grounds that he was protected by immunity due to his former position.

Furthermore, on the 25th November, 1998, the House of Lords voted on a ⅔ majority that immunity from international crimes against humanity and torture are not to be exempt from being brought to justice as the core principle of immunity as a head of state would be for "acts committed in his functions"[41]. Nevertheless, the aforementioned acts evidently do not constitute acts in his official functions. In turn, his immunity was not to be pleaded in the face of criminal proceedings and the extradition was permitted.

Overall, this case exemplifies another application of the The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the House of Lords found that both Britan and Chile were parties who had ratified the aforementioned convention. Hence, since the categories

[39] Academic.oup.com. (n.d.). Retrieved February 27, 2022, from https://academic.oup.com/ejil/article/21/4/815/418198

[40] https://www.internationalcrimesdatabase.org/Case/855/Pinochet/ and https://www.hrw.org/report/1998/11/01/pinochet-precedent/how-victims-can-pursue-human-rights-criminals-abroad - information on the ICJ case proceedings can be read further through this link

[41] *The Pinochet precedent*. Human Rights Watch. (2020, November 16). Retrieved February 27, 2022, from https://www.hrw.org/report/1998/11/01/pinochet-precedent/how-victims-can-pursue-human-rights-criminals-abroad

of crimes he was blamed for fell under the categories of crimes referred to in the convention.

Case Studies from Historical Events

Some of the biggest Crimes Against Humanity have been committed throughout the 20th century, implicating communities, generations, countries and whole systems. Humanitarian atrocities such as the Holocaust or the Rwandan Genocide, or war crimes like the ones committed in the Yugoslav wars, are of utmost importance in shaping todays international humanitarian and criminal legal system in the form of a plethora of conventions, treaties and tribunals, which are the source of international law by all binding parties.

The Nuremberg Trials

Perhaps the most significant and pivotal trial following one of the most, if not, most atrocious genocide, was the Holocaust and the subsequent Nuremberg trials. The holocaust was an antisemetic fueled genocide by the Nazis during the years of World War Two that is respinsible for the entire reconsideration of the international legal system. At a time when World War Two was declared over, 6 million Jews and a large number of Roma communities were separated from their families, tortured, forced into labour camps, murdered and ruined. The Nuremberg trials were created as an ad hoc tribunal to convict the Nazi's of war crimes in 13 trials. Historically, there are various debates on whether or not these trials were justified, and controversy surrounding the prosecutors vs. the defendants were prevalent at the time, nevertheless, the Nuremberg trials "are now regarded as a milestone toward the establishment of a permanent international court, and an important precedent for dealing with later instances of genocide and other crimes against humanity"[42].

[42] History.com Editors. (2010, January 29). *Nuremberg Trials*. History.com. Retrieved February 19, 2022, from https://www.history.com/topics/world-war-ii/nuremberg-trials

In relation to the Statute of the International Criminal Court, article 27(1) applies in the founding of the Nuremberg trials.

International Criminal Tribunal for Rwanda (ICTR)

Established in 1994, the International Criminal Tribunal for Rwanda was created to bring to justice the crimes committed during the travesty of the Rwandan genocide. Due to the Security Council's Resolution 955, which was created in order to fight against the genocide, this tribunal was created. Universal jurisdiction was exercised due to the fact that judges came from foreign countries. It is a major mechanism in the fight against impunity for crimes against humanity and genocide committed in Rwanda from April 7, 1994 – July 15, 1994.

International Criminal Tribunal for the Former Yugoslavia (ICTY)

Established in 1993, the purpose of the International Criminal Tribunal for the Former Yugoslavia was to bring to justice all the crimes against humanity and war crimes committed against the Yugoslavian community during the Yugoslav wars. Universal jurisdiction was also exercised here due to the fact that foreign court members were involved.

Advantages and disadvantages for International Cooperation: an Analysis

The establishment of certain mechanisms in order to ensure the proper international crimes against humanity, genocide, war crimes, and violations of certain treaties and conventions, customs, previous case judgements and general widely recognised principles of law are brought to justice.

The principle “aut deter aut judicare” is a vital component in the preservation of such an international cooperation when different countries and nationalities are involved. It allows for situations in which these various components are intertwined for the crime to be brought to justice. It is principles such as these that provide “cooperation procedures in matters of extradition and transfer of prisoners, interna-tional judicial cooperation, and cooperation with the ad hoc international criminal tribunals and the International Criminal Court”[43]. Criminal offenses are a matter of national, and oftentimes international security. Any sort of criminal case is considered public law

[43] International Committee of the Red Cross. (2021, May 21). *Cooperation in extradition and judicial assistance in criminal matters – factsheet*. International Committee of the Red Cross. Retrieved February 19, 2022, from https://www.icrc.org/en/document/cooperation-extradition-and-judicial-assistance-criminal-matters-factsheet

and automatically involves the state. With that being stated, there are several advantages and disadvantages to the existence of such a principle.

The advantages include the fact that offenders of horrendous crimes, for instance Augusto Pinochet, can be prosecuted through international cooperation. In this particular example, Spain cooperated with England in order to catch him where he was and be tried in the Spanish domestic court for his crimes of torture via extradition. Principles of universal jurisdiction and “aut dedere aut judicare” were put forth against his immunity for the greater good of justice and human rights. There are various examples where the fight against impunity for crimes against humanity, genocide and war crimes were brought to justice through such mechanisms.

Nevertheless, there are certain setbacks regarding this principle. Since the customary nature of the principle to extradite or prosecute is not entirely defined yet, some states may not recognise or want to implement such an obligation. Other states may not want to implement universal jurisdiction in their national legislation that would facilitate this obligation to be carried out. As a result, it can be considered that criminals may not be prosecuted. In cases where this alleged offender is still committing crimes, it may be inferred that the crimes will continue implicating more lives and violating international law further.

Another setback can be that this principle may be exploited by a country who has universal jurisdiction. For instance, there may be prejudice to the alleged offender's nationality and in order to exert some sort of authority, a host country may enact such a principle against the state of which the alleged offender is from.

Moreover, irrespective of examples, the principle is not very coherent with other international legal principles. Although it is vital as to how much this principle can be linked to international conventions, like the Convention against Torture, it also conflicts with the circumstances in which it can be applied and if the alleged offender has immunity due to their position.

MAJOR COUNTRIES AND ORGANIZATIONS INVOLVED

Azerbaijan

Azerbaijan's criminal codifies the punishment procedure for crimes against peace and mankind, terrorism, hostage-taking, war crimes, torture and more, regardless of where the crime is committed and relating to nationals and foreigners.

Belgium

Belgium has implemented universal jurisdiction through its Act "concerning Punishment for Grave Breaches of International Humanitarian Law" in 1993. There was an amendment in 1999 that included crimes against humanity, genocide and war crimes.

It has been part of two very crucial and defining ICJ cases, one as the Applicant Party in the Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal) and as the Respondent Party in the Arrest Warrant case.

Canada

Canada has made alterations to its national legislation in order to exercise universal jurisdiction through the Crimes Against Humanity and War Crimes Act of 2000. More specifically, "section 9(1) provides that proceedings may commence in any territorial division in Canada for those offenses alleged to have been committed outside Canada for which a person may be prosecuted under this Act […], whether or not the person is in Canada"[44].

Cape Verde

The Penal Code of Cape Verde addresses the obligation to extradite or prosecute to be exercised when crimes are committed by Cape Verde citizens abroad or against Cape Verde citizens by foreigners. Additionally, the obligation to prosecute shall be implemented "with regard to crimes that Cape Verde has undertaken to prosecute through international conventions, when the extraction of the alleged offender is not granted"[45].

Estonia

Estonia's Penal Code addresses the obligation for an alleged foreign offender to be held accountable before national courts if they are not extradited, stating that "if such

[44] *Universal jurisdiction*. International Justice Resource Center. (2021, February 27). Retrieved February 24, 2022, from https://ijrcenter.org/cases-before-national-courts/domestic-exercise-of-universal-jurisdiction/

[45] *International Law Commission: The obligation ... - amnesty.org*. (n.d.). Retrieved February 24, 2022, from https://www.amnesty.org/fr/wp-content/uploads/2021/07/ior400012009en.pdf

act constitutes a criminal offense pursuant to the penal law of Estonia and is punishable at the place of commission of the act, or if no penal power is applicable at the place of commission of the act". The provision appears to apply to all crimes, without exception"[46].

Brazil

Brazil has implemented the Rome Statute by which any foreign citizen is an alleged offender of crimes against humanity, genocide or war crime, and sets foot in Brazilian territory, national legislation is implemented. The only scenario in which Brazilian legislation is not applied is when there is a request for extradition by another state or there is a surrender to the International Criminal Court is granted[47].

France

It has adopted the Rome Statute in June 2008 through the Project de Loi, including the third alternative for crimes against humanity, genocide and war crimes.

New Zealand

They have passed an act called the International Crimes and International Criminal Court Act of 2000, where section 8 (1)(c) states how prosecution will be permitted regardless of "(i) the nationality or citizenship of the person accused; or (ii) whether or not any act forming part of the offense occurred in New Zealand; or (iii) whether or not the person accused was in New Zealand at the time that the act constituting the offense occurred or at the time a decision was made to charge the person with an offense[48]". This applies to crimes against humanity, genocide and war crimes, as defined by the Geneva Conventions and the Rome Statute.

International Criminal Court (ICC)

Article 27(1) of the ICC Statute outlines provisions that have been a founding mechanism in the Nuremberg trials, the ICTY and the ICTR. Under the Rome Statute, it does not have independent powers of arrest, the ICC has the jurisdiction to undertake cases relating to crimes against humanity, genocide and war crimes once a

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[46] Penal Code, of 6 June 2001, as amended (19 May 2004, entered into force 1 July 2004 - RT I 2004, 46, 329), art. 7 (1). Available at:www.legislationline.org/upload/legislations/07/6a/4d16963509db70c09d23e52cb8df.htm.

[47] Projeto de Lei, Dispõe sobre o crime de genocídio, define os crimes contra a humanidade, os crimes de guerra e os crimes contra a administração da justiça do Tribunal Penal Internacional(2008). Art. 128. O art. 7o do Decreto-Lei no 2.848, de 7 de dezembro de 1940 (Código Penal, Parte Geral), passa a ter a seguinte redação:

[48] *Universal jurisdiction*. International Justice Resource Center. (2021, February 27). Retrieved February 24, 2022, from https://ijrcenter.org/cases-before-national-courts/domestic-exercise-of-universal-jurisdiction/

national court that has exercised their universal jurisdiction to either extradite or prosecute.

International Law Commission

The ILC has provided many reports and information on the principle of "aut dedere aut judicare", which helps academics and students to learn more about this principle. More importantly, it has contributed to the 1996 Draft Code of Crimes against the Peace and Security of Mankind by adding a role about the principle, describing its primary purpose, as well as having adopted it.

International Criminal Tribunal for Rwanda (ICTR)

Established in 1994, the International Criminal Tribunal for Rwanda was created to bring to justice the crimes committed during the travesty of the Rwandan genocide. Due to the Security Council's Resolution 955, which was created in order to fight against the genocide, this tribunal was created. Universal jurisdiction was exercised due to the fact that judges came from foreign countries.

International Criminal Tribunal for the Former Yugoslavia (ICTY)

Established in 1993, the purpose of the International Criminal Tribunal for the Former Yugoslavia was to bring to justice all the crimes against humanity and war crimes committed against the Yugoslavian community during the Yugoslav wars. Universal jurisdiction was also exercised here due to the fact that foreign court members were involved.

International Court of Justice

The International Court of Justice is the main judicial organ of the United Nations, to which its judgements are legally binding to the member states it addresses. Furthermore, the ICJ plays a crucial role in settling international disputes that cover all types of cases. It uses international conventions to establish "rules expressly recognized by the contesting states"[49]. It also includes the four main sources of law in its Statute.

[49] *Statute of the International Court of Justice*. Statute of the Court | International Court of Justice. (n.d.). Retrieved February 21, 2022, from https://www.icj-cij.org/en/statute

TIMELINE OF EVENTS

Date	Description of event
20 April 1929	The Convention for the Suppression of Counterfeiting Currency is signed at Geneva
20 November 1945 - 1 October 1946	The Nuremberg Trials occurred
9 December 1948	Convention on the Prevention and Punishment of the Crime of Genocide is signed
1949	Geneva Conventions take place
18 April 1961	The Vienna Convention of Diplomatic Relations was signed
30 November 1973	The International Convention for the Suppression and Punishment of the Crime of Apartheid was adopted by the General Assembly
26 June 1987	The Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment entered into force following its ratification
25 May 1993	Establishment of the International Criminal Tribunal for the Former Yugoslavia (ICTY)
8 November 1994	Establishment of the International Criminal Tribunal for Rwanda (ICTR)
25 November 1998	R v Bow Street Metropolitan Stipendiary Magistrate, ex parte Pinochet Ugarte decided

14 February 2002	ICJ case regarding the Arrest Warrant of 11 April 2000 (DR Congo v Belgium) verdict decided
20 July 2012	Decision reached in the Belgium v Senegal case
September 24th, 2012	The Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels

RELEVANT UN RESOLUTIONS, TREATIES AND EVENTS

The Geneva Conventions[50]

Perhaps one of the most important international conventions stands as the core of international humanitarian law, which has to do with situations of armed conflicts. "The First Geneva Convention protects wounded and sick soldiers on land during war. The Second Geneva Convention protects wounded, sick and shipwrecked military personnel at sea during war. The Third Geneva Convention applies to prisoners of war. The Fourth Geneva Convention protects civilians, including those in occupied territory"[51].

The Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels

Held on September 24th, 2012, the Heads of State and Government and heads of delegation present "committed themselves to ensuring that impunity is not tolerated for genocide, war crimes, crimes against humanity and for violations of international humanitarian law and gross violations of human rights law, and that such violations are properly investigated and appropriately sanctioned including by bringing the perpetrators of any crimes to justice, through national mechanisms or, where

[50] https://www.icrc.org/en/document/geneva-conventions-1949-additional-protocols - please refer to this link to read more about the Geneva Conventions

[51] International Committee of the Red Cross. (2020, November 30). *The Geneva Conventions of 1949 and their additional Protocols*. International Committee of the Red Cross. Retrieved February 27, 2022, from https://www.icrc.org/en/document/geneva-conventions-1949-additional-protocols

appropriate, regional or international mechanisms, in accordance with international law"[52]

Draft Code of Crimes against the Peace and Security of Mankind

The draft Code of Crimes against the Peace and Security of Mankind of 1996 addresses the principle of "aut deter aut judicare" in articles 8 and 9, where the principle is related to universal jurisdiction and "was largely a codification exercise of customary international law"[53].

Vienna Convention of Diplomatic Relations

A convention signed on April 18, 1961 by 61 states, and ratified by 22, that set out for "the development of friendly relations among nations, irrespective of their differing constitutional and social systems"[54] by the creation of immunity for diplomats in order to prevent any threat or obstacles to the individual while conducting diplomatic duties in a foreign land. It is stated that "such privileges and immunities are not to benefit individuals"[55], but only ensure efficiency in the work done. The convention also stresses the fact that such immunities provided to certain people in society should not be exploited for personal usage and advantages, nevertheless, as evidence and prime examples have shown, this is undoubtedly a phenomenon that has not entirely been adhered to.

It is a source of international law that introduces, outlines and analyzes the concept of diplomatic immunity, making diplomatic immunity a legal concept binding by signatory parties.

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[52] See Part 3 below. In the case concerning Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), the International Court of Justice states: "... Extradition and prosecution are alternative ways to combat impunity in accordance with Art. 7, para 1 [of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984]. ...." (Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), Judgment, I.C.J. Reports 2012, p. 422, at p. 443, para. 50). The Court adds that the States parties to the Convention against Torture have "a common interest to ensure, in view of their shared values, that acts of torture are prevented and that, if they occur, their authors do not enjoy impunity" (ibid., p. 449, para. 68). The Court reiterates that the object and purpose of the Convention are "to make more effective the struggle against torture by avoiding impunity for the perpetrators of such acts" (ibid., p. 451, para. 74 and cf. also para. 75). and

[53] THE OBLIGATION TO EXTRADITE OR PROSECUTE - DOCUMENT A/CN.4/571 - page 261

[54] Done at Vienna on 18 April 1961. Entered into force on 24 April 1964. United Nations, Treaty Series, vol. 500, p. 95.

[55] Done at Vienna on 18 April 1961. Entered into force on 24 April 1964. United Nations, Treaty Series, vol. 500, p. 95.

Convention on the Prevention and Punishment of the Crime of Genocide

Recognised to embody the "principles that are part of general customary international law"[56] by the ICJ, the Convention has been ratified by about 149 States. Nevertheless, regardless of ratification, because of the customary status of the conventions articles, under international law, genocide is a crimes that shall not be tolerated and binds every single state.

Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment

A notion covered in article 5 of the Universal Declaration of Human Rights, the convention ratified by 20 states, adopted on the 10th December 1984 and enforced on the 26th June 1987 following the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in December 1975[57]. Its articles 5, 6 and 7 were applied to the judgment made in the ICJ case of Questions relating to the Obligation to Prosecute or Extradite (Belgium v Senegal) through analyzing the mechanisms by which impunity could be fought under this convention. Additionally, various aspects of this convention are used in the judgment of the verdict for Belgium v Senegal.

Rome Statute of the ICC

The Rome Statute states that the jurisdiction of the International Criminal Court falls under crimes against humanity, genocide, war crimes and crimes of aggression.

The Rome statute provides complimentary provisions regarding the jurisdiction of the International Criminal Court (ICC). It refers to the prosecution of alleged offenders prosecuted of international crimes being predominantly tried in domestic courts. Essentially, the country in which the principle of "aut deter aut judicare" has been implemented has to examine if in cases of immunity, they have the jurisdiction to try them, or in non-immunity related cases, if the offender is guilty of an international crime. In cases where the prosecuting state has decided to undergo the prosecution, the ICC, under the Rome statute, shall not exercise their jurisdiction as it is "only a

[56]United Nations. (n.d.). *United Nations Office on Genocide Prevention and the responsibility to protect*. United Nations. Retrieved February 27, 2022, from https://www.un.org/en/genocideprevention/genocide.shtml

[57] United Nations. (n.d.). *Convention against torture and other cruel, inhuman or degrading treatment or punishment - main page*. United Nations. Retrieved February 17, 2022, from https://legal.un.org/avl/ha/catcidtp/catcidtp.html

supplement for national jurisdiction"[58]. In cases where the state is unable or unwilling to do so, following the third alternative, the ICC shall carry out the trial.

International Criminal Court Statute - Article 27

Article 27 of the ICC Statute, a mechanism with which international criminal tribunals have been established upon, outlines the relationship between possessors of immunity and the ICC, where Article 27 (1) states that "This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence"[59]. Amongst other provisions, simply put, state officials, even when in office, are not immune from the ICC's prosecution.

POSSIBLE SOLUTIONS

As a committee, several solutions can be proposed in order to not only combat the inequality and unfairness such a principle exerts, but also to make sure it is legally enforced.

A thorough reevaluation of immunities and universal jurisdiction is essential in order for the obligation to be exercised in cooperation with both.

Furthermore, taking into consideration that one source of international law is through conventions and treaties, the encouragement of the ratification of a convention or treaty that benefits the international community and each country's domestic policy should be further evaluated.

The UN should ensure that not only this principle should be encouraged to be used impartially, that whenever it is implemented and there is an issue, fair measures are taken place in order for justice to prevail. The establishment of a UN task force or commission could ensure it' s proper implementation and further understanding of it.

It is also suggested that the legal commission could draft a convention or treaty itself, in which UN member states would be encouraged to sign and ratify it, making each states obligation to extradite or prosecute under international law clearly outlined, as

[58] International Law Immunities and the International Criminal Court by Dapo Akande - page 408
[59] Akande, D. (2004). International law immunities and the International Criminal Court. *American Journal of International Law*, *98*(3), 407–433. https://doi.org/10.2307/3181639

well as stressing the implications for countries who choose not to abide by such a principle.

Moreover, universal jurisdiction could also be re-evaluated as to codify when it can or cannot be exercised, e.g. when immunity or special circumstances are present.

BIBLIOGRAPHY

Gunaratne, P. byD. R. (2018, July 29). *What is public international law?* Public International law. Retrieved January 28, 2022, from https://ruwanthikagunaratne.wordpress.com/2011/03/26/lesson-1-what-is-public-international-law/

Encyclopædia Britannica, inc. (n.d.). *Diplomatic immunity*. Encyclopædia Britannica. Retrieved January 28, 2022, from https://www.britannica.com/topic/diplomatic-immunity

Ad hoc tribunals. International Committee of the Red Cross. (2017, February 9). Retrieved February 19, 2022, from https://www.icrc.org/en/document/ad-hoc-tribunals

Encyclopædia Britannica, inc. (n.d.). *Extradition*. Encyclopædia Britannica. Retrieved February 14, 2022, from https://www.britannica.com/topic/extradition

History.com Editors. (2009, November 9). *Augusto Pinochet*. History.com. Retrieved February 19, 2022, from https://www.history.com/topics/south-america/augusto-pinochet

History.com Editors. (2010, January 29). *Nuremberg Trials*. History.com. Retrieved February 19, 2022, from https://www.history.com/topics/world-war-ii/nuremberg-trials

Impunity. Cambridge Dictionary. (n.d.). Retrieved February 19, 2022, from https://dictionary.cambridge.org/dictionary/english/impunity

International Committee of the Red Cross. (2021, May 21). *Cooperation in extradition and judicial assistance in criminal matters – factsheet*. International Committee of the Red Cross. Retrieved February 19, 2022, from https://www.icrc.org/en/document/cooperation-extradition-and-judicial-assistance-criminal-matters-factsheet

International humanitarian law. European Civil Protection and Humanitarian Aid Operations. (n.d.). Retrieved February 19, 2022, from

https://ec.europa.eu/echo/what/humanitarian-aid/international-humanitarian-law_en

United Nations. (n.d.). *Convention against torture and other cruel, inhuman or degrading treatment or punishment - main page*. United Nations. Retrieved February 17, 2022, from https://legal.un.org/avl/ha/catcidtp/catcidtp.html

Wikimedia Foundation. (2021, June 2). *Aut dedere aut judicare*. Wikipedia. Retrieved February 19, 2022, from https://en.wikipedia.org/wiki/Aut_dedere_aut_judicare

Gaddafi case. Welcome to the International Criminal Court. (n.d.). Retrieved February 19, 2022, from https://www.icc-cpi.int/libya/gaddafi

Crimes against humanity. TRIAL International. (2021, March 19). Retrieved February 19, 2022, from https://trialinternational.org/topics-post/crimes-against-humanity/

Petallides, C. J. (2012, December 1). *International law reconsidered: Is international law actually law?* Inquiries Journal. Retrieved February 21, 2022, from http://www.inquiriesjournal.com/articles/715/international-law-reconsidered-is-international-law-actually-law

Conventions and declarations. DagDok. (n.d.). Retrieved February 21, 2022, from http://dagdok.org/un-by-subject/international-law/conventions-and-declarations/

Kriangsak, K. (2018). Part I prologue, 2 the International Law Commission's work on the obligation to extradite or prosecute (aut dedere aut judicare). *The Obligation to Extradite or Prosecute*. https://doi.org/10.1093/law/9780198823292.003.0002

Mitchell, C. (1970, January 1). *1. sources of the "aut dedere aut judicare" obligation*. Aut Dedere, aut Judicare: The Extradite or Prosecute Clause in International Law - 1. Sources of the "aut dedere aut judicare" obligation. Retrieved February 22, 2022, from https://books.openedition.org/iheid/301?lang=en#tocfrom2n1

Statute of the International Court of Justice. Statute of the Court | International Court of Justice. (n.d.). Retrieved February 21, 2022, from https://www.icj-cij.org/en/statute

Steve Charnovitz (2006), 'nongovernmental organizations and international law', American Journal of International Law, 100, pp. 348–72. (2017). *Non-State Actors and International Law*, 177–202. https://doi.org/10.4324/9781315247885-16

United Nations. (n.d.). *The foundation of International Human Rights Law*. United Nations. Retrieved February 22, 2022, from https://www.un.org/en/about-us/udhr/foundation-of-international-human-rights-law

Wikimedia Foundation. (2021, July 9). *Opinio juris sive necessitatis*. Wikipedia. Retrieved February 21, 2022, from https://en.wikipedia.org/wiki/Opinio_juris_sive_necessitatis

https://www.un.org/en/genocideprevention/genocide.shtml

Akande, D. (2004). International law immunities and the International Criminal Court. *American Journal of International Law*, *98*(3), 407–433. https://doi.org/10.2307/3181639

Belgium v. Senegal. ICD - Belgium v. Senegal - Asser Institute. (n.d.). Retrieved February 24, 2022, from https://www.internationalcrimesdatabase.org/Case/750

Customary law. International Committee of the Red Cross. (2021, November 22). Retrieved February 22, 2022, from https://www.icrc.org/en/war-and-law/treaties-customary-law/customary-law

Encyclopædia Britannica, inc. (n.d.). *Extradition*. Encyclopædia Britannica. Retrieved February 22, 2022, from https://www.britannica.com/topic/extradition

Extraterritorial jurisdiction. National Action Plans on Business and Human Rights. (2019, November 20). Retrieved February 22, 2022, from https://globalnaps.org/issue/extraterritorial-jurisdiction/

International Law Commission: The obligation ... - amnesty.org. (n.d.). Retrieved February 22, 2022, from https://www.amnesty.org/fr/wp-content/uploads/2021/07/ior400012009en.pdf

Rome Statute International Criminal. (n.d.). Retrieved February 24, 2022, from https://www.icc-cpi.int/resource-library/Documents/RS-Eng.pdf

United Nations. (n.d.). *United Nations Office on Genocide Prevention and the responsibility to protect*. United Nations. Retrieved February 22, 2022, from https://www.un.org/en/genocideprevention/genocide.shtml

Universal jurisdiction - princeton university. (n.d.). Retrieved February 22, 2022, from https://lapa.princeton.edu/hosteddocs/unive_jur.pdf

Universal jurisdiction. International Justice Resource Center. (2021, February 27). Retrieved February 24, 2022, from https://ijrcenter.org/cases-before-national-courts/domestic-exercise-of-universal-jurisdiction/

Academic.oup.com. (n.d.). Retrieved February 27, 2022, from https://academic.oup.com/ejil/article/21/4/815/418198

Akande, D., & Shah, S. (2010, November 1). *Immunities of state officials, international crimes, and foreign domestic courts*. OUP Academic. Retrieved February 27, 2022, from https://academic.oup.com/ejil/article/21/4/815/418198

Belgium v. Senegal. ICD - Belgium v. Senegal - Asser Institute. (n.d.). Retrieved February 27, 2022, from https://www.internationalcrimesdatabase.org/Case/750

International Committee of the Red Cross. (2020, November 30). *The Geneva Conventions of 1949 and their additional Protocols*. International Committee of the Red Cross. Retrieved February 27, 2022, from https://www.icrc.org/en/document/geneva-conventions-1949-additional-protocols

Kriangsak, K. (2018). Part I prologue, 2 the International Law Commission's work on the obligation to extradite or prosecute (aut dedere aut judicare). *The Obligation to Extradite or Prosecute*. https://doi.org/10.1093/law/9780198823292.003.0002

Latest developments: Arrest warrant of 11 April 2000 (Democratic Republic of the Congo V. Belgium): International Court of Justice. Latest developments | Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium) | International Court of Justice. (n.d.). Retrieved February 27, 2022, from https://www.icj-cij.org/en/case/121

The Pinochet precedent. Human Rights Watch. (2020, November 16). Retrieved February 27, 2022, from https://www.hrw.org/report/1998/11/01/pinochet-precedent/how-victims-can-pursue-human-rights-criminals-abroad

Regina v. Bartle and the commissioner of police for the metropolis and others ex parte pinochet / Regina v. Evans and another and the commissioner of police for the metropolis and others ex parte pinochet. ICD - Pinochet - Asser Institute. (n.d.). Retrieved February 27, 2022, from https://www.internationalcrimesdatabase.org/Case/855/Pinochet/

United Nations. (n.d.). *United Nations Office on Genocide Prevention and the responsibility to protect*. United Nations. Retrieved February 27, 2022, from https://www.un.org/en/genocideprevention/genocide.shtml