

Factsheet: Universal Jurisdiction

The principle of universal jurisdiction allows the national authorities of any state to investigate and prosecute people for serious international crimes even if they were committed in another country. For example, this means that the German government could, if it chose to do so, prosecute U.S. officials for crimes committed in Iraq and Afghanistan.

Universal jurisdiction is based on the notion that some crimes – such as genocide, crimes against humanity, war crimes, and torture – are of such exceptional gravity that they affect the fundamental interests of the international community as a whole. Accordingly, there is no condition that the suspect or victim be a citizen of the state exercising universal jurisdiction or that the crime directly harmed the state's own national interests. The only condition for exercising universal jurisdiction is therefore not – as in traditional doctrines of jurisdiction nationality – location or national interests, but rather the nature of the crime. Recent years have seen a rising number of universal jurisdiction cases filed before national courts in Europe, North America, Latin America, and Africa—this increase in cases can be attributed to a rising interest of the international community to hold accountable those responsible for the worst crimes: genocide, crimes against humanity, war crimes, and torture.

The development of universal jurisdiction was kicked off with the establishment of the ad-hoc tribunals for the former Yugoslavia and Rwanda in 1993 and 1994, respectively, and extended to the establishment of the internationalized courts such as the Special Court for Sierra Leone and the Extraordinary Chambers in the Courts for Cambodia. The efforts to ensure individual criminal accountability culminated in the establishment of the International Criminal Court on July 1, 2002.

Why Universal Jurisdiction is Necessary: A Brief History

Originally applied to hold pirates and slave traders accountable for their crimes, the principle of universal jurisdiction today extends to all human rights abusers. The International Military Tribunal (IMT) at Nuremberg extended the principle to include war crimes and crimes against humanity. The idea of universal jurisdiction was key in establishing accountability in several post-World War II trials following the IMT. Additionally, the obligation on states to seek out and prosecute those said to be responsible for grave breaches of international humanitarian law is a key aspect of the four Geneva Conventions of 1949.

While the courts of the country in which the crime took place would appear to be the preferred jurisdiction to obtain justice for victims of gross human rights violations, there are two central reasons why a system of universal jurisdiction is necessary in many instances:

1) *Universal jurisdiction provides victims of international crimes with access to justice.*

Courts in the “territorial state” are often inaccessible for victims for a variety of reasons, including the availability of domestic immunities or self-imposed amnesties and de facto impunity and security risks, especially when the crimes were state-sponsored. For instance, a domestic amnesty law in Chile protected former dictator Augusto Pinochet and other government officials in Chile, but the law was not able to stop proceedings filed against him in Spain using the doctrine of universal jurisdiction by victims who managed to escape his dictatorship.

2) *Universal jurisdiction bridges the impunity gap.*

While in some cases victims may obtain justice through international tribunals and courts or the ICC, these courts are constrained by a mandate that is limited to a specific territory and a specific conflict. Example are the two ad-hoc tribunals for Yugoslavia and Rwanda or the Special Court for Sierra Leone. The ICC is limited also in that it can only prosecute crimes committed after July 1, 2002. Additionally, neither the ICC

nor the international courts and tribunals have sufficient resources to investigate or prosecute all alleged perpetrators.

Indeed, the Office of the Prosecutor of the ICC indicated there's a "risk of an impunity gap," meaning some human rights violators may fall through the legal cracks, unless "national authorities, the international community, and the ICC work together to ensure that all appropriate means for bringing other perpetrators to justice are used." Similarly, the preamble of the Rome Statute of the ICC expressly provides that it "is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes" and emphasizes that "the International Criminal Court established under this Statute shall be complementary to national criminal jurisdictions."

Universal jurisdiction is therefore an important complement to traditional jurisdictions as well as to international justice mechanisms.

Universal Jurisdiction in Practice

While the increase of universal jurisdiction proceedings is a testament to the fact that universal jurisdiction is no longer a mere legal theory, there are still necessary components to ensure that cases are successful. These include, first and foremost, political will as well as dedicated individuals. An international framework that provides for cooperation and exchange and that guarantees effective and efficient investigation and prosecution is equally important. While the number of states applying the principle in practice is increasing, it still remains low. To be truly universal, the commitment to universal jurisdiction will need to expand to countries outside of the European Union or North America.

The ongoing proceedings against former Chadian dictator Hissène Habré in Senegal on the basis of universal jurisdiction and the extradition of former Peruvian President Alberto Fujimori from Chile to Peru are two promising examples for an expansion.

And CCR's case against former Secretary of Defense Donald Rumsfeld, previously filed in Germany, is one avenue the Center is pursuing to ensure that U.S. officials can also be held accountable for torture, war crimes, and crimes against humanity under the principle of universal jurisdiction.