



Studies and Researches

Universal Criminal Jurisdiction as a Last Resort

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Universal jurisdiction is 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⁽¹⁾. Universal jurisdiction may be exercised by a competent and ordinary judicial body of any state in order to prosecute a person duly accused of committing serious crimes under international law provided that the person is present before such judicial body⁽²⁾. Therefore, the principle of universal criminal jurisdiction is justified by the fact that it is one of the most important legal means to put an end to impunity and in the solidarity of States to confront the most heinous international crimes against fundamental human rights.

The commitment to the principle of universal criminal jurisdiction in prosecuting the perpetrators of the most serious international crimes can be genuinely driven from two main sources:

- 1) International conventions, especially the conventions of international humanitarian law against acts that constitute international crimes in the concept of international criminal law:

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1. In its pure form, universal jurisdiction enables prosecution of core international crimes committed in a foreign state, by a foreign citizen, against foreign victims, when neither has a personal link to the forum state.
 2. Serious crimes under international law include: (1) piracy; (2) slavery; (3) war crimes; (4) crimes against peace; (5) crimes against humanity; (6) genocide; and (7) torture ...



- The Four Geneva Conventions of 1949
 - International conventions for combating international terrorism
 - The United Nations convention against Torture of 1984
- 2) International custom: customary international law also recognizes the authority of States to suppress serious international crimes that threaten the common interests of humanity by prosecuting perpetrators, regardless of the nationality of the offender, the victim or the place of commission of the crime.

However, the principal of universal criminal jurisdiction has been subject to significant problems and objections, the most important of which is the violation of national sovereignty through interference by the national judiciary of a particular State in the internal affairs of other sovereign States, as well as international relations when the accused person enjoys diplomatic immunity in other countries. Further, the principle of universal jurisdiction is criticized since it does not necessarily ensure respect for fair and equitable trial guarantees provided for by the domestic laws of the accused person; it might also exposes the accused to trial more than once for the same incident if there is no international convention that prevents this with the State which has decided to adopt universal jurisdiction.

In our view, the solution lies in the principle of complementarity, which is closely linked to the principle of universal criminal jurisdiction, from which it is concluded that the jurisdiction to prosecute the most serious crimes of international concern shall be originally exercised by national (domestic) jurisdiction. Consequently, universal criminal jurisdiction does not take place as long as the national judiciary is able and willing to fulfil its international legal obligations and prosecute the perpetrators of such serious international crimes. Thus, universal criminal jurisdiction is considered as a complementary jurisdiction, which is not exercised unless it is found that the national judiciary already competent to deal with such grave crimes is unwilling or unable to carry out the task of investigation and prosecution of the aforementioned crimes. In other words, universal jurisdiction is a jurisdictional basis of last resort which might be exercised, when core international



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crimes cannot be prosecuted on the basis of the principle of territoriality (in the state where the crimes occurred), active nationality (in the state of the alleged perpetrator) or passive nationality (in the state of the victim).

Accordingly, States keen on their sovereignty and maintaining the primacy of their national jurisdiction to investigate and prosecute the most serious crimes of international concern must harmonize their national legislation and judicial systems with their international obligations stemming from the conventions and treaties which they have ratified as well as their obligations under international law to enable them to investigate and prosecute the perpetrators of such heinous crimes and thus preventing the exercise of the universal criminal jurisdiction.