REVIEW OF HUMAN RIGHTS
Vol. 10, No. 1, Winter 2024, 01-25
DOI: 10.35994/rhr.v10i1.255

RHR

Balancing the Legitimate Interests of States: Exploring the Connection between the Principles of Universal Jurisdiction and Complementarity under the Rome Statute

Mazhar Ali Khan*

Abstract

This study explores the principles of domestic criminal jurisdiction under international law, focusing on universal jurisdiction. It analyzes the contentious nature of universal jurisdiction, particularly its application by international judicial organs post-human rights and international criminal law developments. The research scrutinizes the Rome Statute's provisions, debating whether it implicitly or explicitly endorses universal jurisdiction over non-party state nationals. It also examines the complementarity principle within the Statute, arguing that it safeguards state interests by prioritizing national jurisdiction. The findings affirm universal jurisdiction's recognition under international law and its potential activation under the Rome Statute, while complementarity balances states' interests against the jurisdiction of international courts.

Key Words: (jurisdiction, criminal, universal jurisdiction, international crimes, Rome Statute, ICC, public international law, complementarity).

Introduction

Universal Jurisdiction (UJ) for international judicial organs is not well recognized explicitly under international law. However, the ardent proponents of UJ assert that international judicial organs such as the International Criminal Court (ICC) may exercise jurisdiction against the foreign nationals or the nationals of non-party states on two premises: first, that the state parties have delegated the extra-territorial jurisdiction to ICC through express consent; secondly, that the state parties have conferred universal criminal jurisdiction on ICC through its treaty against the

* Mazhar Ali Khan has a PhD in Law from the International Islamic University Islamabad. He is a Civil Judge-cum-Judicial Magistrate in Khyber Pakhtunkhwa and is currently serving as a Research Officer at the Supreme Court of Pakistan Research Centre. C-Email: mazhar.khujari@gmail.com

Published Online: April 1, 2024.
ISSN (Print): 2520-7024; ISSN (Online): 2520-7032.
https://reviewhumanrights.com

nationals of non-party states. In both cases, there is an element of the implied form of jurisdiction. However, UJ itself is based upon express recognition through state practices.

The first argument is based on the assumption of delegation, while in the second case, the universality principle of jurisdiction is relied upon for exercising jurisdiction over core international crimes. Although article 12 of the Rome Statute (the Statute) is clear regarding the territorial jurisdiction of the Court, legal scholars dispute this type of jurisdiction on the premise that it violates the essence of the law of treaties and that no such jurisdiction can be delegated unless the state of nationality has given consent.[1] As far the second argument is concerned, generally UJ is not well recognized for international judicial organs but it is argued that the shift in the paradigm of public International law (PIL) especially after the creation of ICC coupled with the progressive developments in human rights law, it has now procured enough attention of international community.[2]

Universal jurisdiction according to Bassiouni, "…is not as well established in conventional and customary international law as its ardent proponents, including major human rights organizations, profess it to be".[3] The very notion of UJ is founded in national legal frameworks and its relation with international legal issues is not yet clear.[4] Any abrupt claim of exercising UJ by international organs would not be easily justified. Therefore, this work aims to analyze what are the legal basis of UJ and whether it is recognized for international legal organs.

The most notable obstacle to the UJ of international judicial organs is the issue of immunities of certain officials in criminal matters. Based on the principle of state sovereignty, immunity for officials is a protective shield for escaping the law and procedure at international level. On the contrary, since the Nuremberg trials.[5] the notion of immunity has stood excluded from the sphere of special defenses in criminal prosecution.[6] Likewise, under article 4, 3 and 12 of the 1948 Genocide Convention, 1973 Apartheid Convention, and 1984 Torture Convention, respectively, the head of state and other public official's immunity is no more a ground of defense in criminal prosecution.[7]

In the near past, the International Criminal Tribunals for both Yugoslavia (ICTY) and Rwanda (ICTR) also known as *ad hoc* tribunals were established by the United Nations Security Council (UNSC). Article 7(2) of the ICTY and 6(2) of the ICTR statutes specifically provides for the removal of head of state immunity in criminal prosecutions. Moreover, article 27 of

the ICC's Statute deals with the irrelevancy of official capacity and immunity in criminal prosecution. Generally, International Criminal Law (ICL) removes both substantial and temporal immunity for all public officials. On the contrary, the International Court of Justice (ICJ) in "*Congo v. Belgium*" (2002) recognized the temporal immunity of the incumbent officials.[8] This irrelevancy of official immunity is actually the extraneousness of the corporate body of state so that the powerful individuals could face justice as well as to remove the impression that immunities are shield against the universal jurisdiction of national and international courts. In other words, it is intended to pierce the veil of corporate fictions behind which the powerful individual would hide.

By incapacitating the traditional defense of immunity, UJ at international level has now become more of a reality than myth. In practice, the guiding principle of UJ, *aut dedere aut judicare* (either prosecute or extradite), has often remained purely theoretical in the general practices of states.[9] On the contrary, some states have made very bold efforts to implement the 'principles of UJ and complementarity', but unfortunately, these efforts have often been unsuccessful due to politics and diplomacy.[10] This is because political priorities of states have always prevailed over legal reasoning in matters of implementation at the international level.[11]

For all practical purposes, universal jurisdiction, which, according to Randall, is: "a legal principle allowing or requiring a state to bring criminal proceedings in respect of certain crimes irrespective of the location of the crime and the nationality of the perpetrator or the victim."[12] It thus implies that an offender may be prosecuted by the state or international judicial body regardless of their nationality or place of occurrence. Following the above definition, the theory of UJ is based on the idea that certain crimes are so heinous and detrimental to the interests of the international community that states are entitled to initiate proceedings against the offenders.[13] Hence, to answer the key question of which provisions in the Rome Statute can form the basis for the ICC's universal jurisdiction over nationals of non-party states, this article explores the ICC's universal jurisdiction over individuals, regardless of nationality or crime location, focusing on crimes that shock the international community. It analyzes domestic jurisdiction under international law, the legal basis of UJ in treaty and customary law, and specific ICC Statute provisions. It also examines the principle of complementarity's role in safeguarding state jurisdiction.

The deployed research methodology in this article is doctrinal because it examines the preamble and provisions of ICC Statute, UN Charter and other international treaties and legal documents. Doctrinal research has been defined as "a detailed and highly technical commentary upon, and systematic exposition of, the context of legal doctrine". This approach is applicable because international treaties and conventions are largely a black letter law subject which is based on interpretation of treaties.

Jurisdiction under International Law

International criminal law is a newly developed branch of PIL aiming to bring the perpetrators of international crimes to justice. The birth of modern ICL has significantly altered the scope of PIL, especially by including individuals within its operational ambit.[14] Traditionally, it was the state that was deemed to be the only subject of PIL.[15] However, after the emergence of post-UN international legal order the states were recognized as sovereign equal under the UN Charter. Moreover, the Charter also laid down the principles dealing with exercising domestic jurisdiction by the states.[16] Historically, states have always claimed an occasion in their international affairs where they can exercise legitimate power and authority without any foreign interference.[17] In broader terms, such an occasion is referred to as jurisdiction, or more specifically, domestic jurisdiction.[18]

Jurisdiction has different meanings in international law and domestic law. However, in PIL, jurisdiction is commonly understood as the legal powers and authority of states to set and enforce rules.[20] Jurisdiction reflects the sovereignty of state when a certain legal authority is exercised within the physical boundaries of the state over its subjects.[21] Professor Shaw defined jurisdiction as follows, "Jurisdiction concerns the power of the state under international law to regulate or otherwise impact upon people, property and circumstances and reflects the basic principles of state sovereignty, equality of states and non-interference in domestic affairs."[22] Consequently, jurisdiction is the indivisible power of states as defined by international law, reflecting their sovereign prerogatives in domestic affairs.[23]

Domestic jurisdiction of states can be categorized into legislative, judicial, and executive jurisdiction.[24] Legislative jurisdiction allows a state to create laws, while judicial jurisdiction empowers state courts to resolve legal and factual disputes. Executive jurisdiction enables the state to

enforce legal actions, such as arrests or searches.[25] Extraterritorial judicial jurisdiction is often controversial, but certain instances of its acceptance will be discussed later.[26] Generally, a state's exercise of extraterritorial executive jurisdiction infringes upon the sovereignty of other states.[27] At the national level, courts typically assert two types of jurisdiction: criminal and civil. In civil matters, each state has its own laws and judicial forums for original and appellate cases.[28] When civil disputes involve nationals from different states, they are addressed using principles of private international law[29], although no international treaty governs these issues. National courts also exercise criminal jurisdiction based on their state's penal laws.[30]

Similarly, national courts' jurisdiction is generally determined by municipal laws, though international law imposes certain constraints, particularly on criminal jurisdiction.[31] Apart from sovereign and diplomatic immunity, PIL does not prescribe any restriction for the jurisdiction of municipal courts pertaining to civil matters.[32] In civil matters, international law does not restrict the jurisdiction of municipal courts, and criminal sanctions are used as a last resort to enforce civil awards.[33] Therefore, this work will focus on examining various principles of domestic criminal jurisdiction.

Criminal Jurisdiction

There are several heads of jurisdiction that provide material grounds for the municipal courts to exercise criminal jurisdiction.[34] However, there are no obligations on the part of states to exercise jurisdiction in accordance with any particular head of jurisdiction.[35] Rather, it is up to the states to decide how to exercise jurisdiction.[36] These jurisdictional principles are accepted by the international community and are consistent with the rules of PIL. Thus, exercising jurisdiction on any other ground involves the risk of rejection by other states.[37]

1. Territorial Principle

Traditionally, every state exercises jurisdiction over the crimes occurring within its territory.[38] Exercising jurisdiction on territorial basis reflects the sovereignty of states on their territory.[39] According to this principle, states claim exclusive jurisdiction over crimes committed within their borders, even when committed by foreign nationals, except those who come under the heads of sovereign and diplomatic immunities.[40] Thus, under the territorial principle, all the crimes committed on the territory of the state are tried by the municipal courts.[41] The territorial principle prohibits a

state from applying and enforcing its criminal laws within another state's territory without explicit consent.[42] The nature of territorial sovereignty in respect of criminal acts was briefly examined by the Permanent Court of International Justice in the *Lotus* case.[43]

Crimes that begin in one state and end in another may see jurisdiction claimed by both states: the originating state under the 'subjective territorial principle' and the state where the crime's effects are felt under the 'objective territorial principle.'[44] Jurisdiction may depend on the offender's residence, but both states have valid claims. The 'subjective territorial principle' is exemplified by Article 14 of the Armenian Criminal Code.[45] Cesare Beccaria discussed territoriality in his 1764 work *"Dei delitti e delle pene"* as:

> There are those who think, that an act of cruelty committed, for example, at Constantinople, may be punished at Paris; for this abstracted reason, that he who offends humanity, should have enemies in all mankind, and be the object of universal execration; as if the judges were to be the knights errant of human nature in general, rather than guardians of particular conventions between men. The place of punishment can certainly be no other, than that where the crime was committed; for the necessity of punishing an individual for the general good subsists there, and there only.[46]

2. Nationality Principle

After the territorial principle, the nationality principle is the second-most accepted basis for jurisdiction in PIL.[47] It allows a state to exercise jurisdiction over its nationals for crimes committed anywhere, serving as an exception to the territorial principle.[48] The 'active nationality principle' refers to a state's jurisdictional claim over its nationals' offenses committed abroad.[49] International law permits states to define criteria for nationality, but the obligation of other states to recognize such nationality is guided by the ICJ's *Nottebohm* case ruling.[50] Some states assert criminal jurisdiction based on the 'passive personality principle'[51] to try foreigners for crimes against their nationals abroad.[52] The *Cutting* case (1886)[53] is a leading example, where Mexico tried a US national for defamation published in a US newspaper.[54] Initially opposed by the US, the case was unresolved due to the complainant's withdrawal. Although once opposed by the US and UK, the US has now accepted the principle.[55] However, the passive personality principle is controversial for potentially subjecting individuals to multiple jurisdictions and violating the principle of '*nullum crimen sine lege*.'[56]

3. Protective Principle

This principle allows states to punish the acts prejudicial to state security committed abroad even by foreigners, such as plotting to overthrow a government, counterfeiting currency or seals, and selling state secrets.[57] The protective principle is justifiable in those circumstances when extradition is refused.[58] Regarding protective principle, there are concerns that it could be abused by states interpreting their security too broadly.[59] Ayatollah Khomeini's 1989 fatwa against Salman Rushdie was issued under the protective principle.[60] Similarly, Israel's jurisdiction in the Eichmann case was too based on the protective principle.[61]

4. Universality Principle or Universal Jurisdiction (UJ)

Universality principle or UJ is obviously the most discussed and disputed principle of jurisdiction under PIL.[62] Under this principle, states claim jurisdiction over particularly heinous crimes. Robert Cryer defines universal jurisdiction (UJ) as jurisdiction over a crime regardless of where it was committed, the nationalities of the suspect or victim, or any other link between the crime and the prosecuting state.[63] Thus, the universality principle is an extraterritorial jurisdictional claim over certain crimes, irrespective of the place or nationality of the perpetrators.[64] Initially, UJ was only recognized for piracy,[65]however, as more crimes like war crimes, hijacking, and crimes against humanity emerged, offending the international community, they too became subject to UJ.[66] National courts assert UJ because some crimes are so heinous they are considered offenses against the entire international community, or *erga omnes*. Historically, the universality principle traces back to the Nuremberg Trial, where the tribunal first exercised jurisdiction over international crimes regardless of the crime’s place or the accused's nationality.[67]

i. Legal Basis of Universal Jurisdiction

The legal foundations of universal jurisdiction (UJ) are found in treaties, customary international law (CIL), and domestic legislation. The principle is grounded in the maxim '*aut dedere aut judicare'* (extradite or prosecute), a modern iteration of the 17th-century Grotian *'aut dedere aut punier*' (extradite or punish).[68] This was first explicitly stated in Article 7 of the 1970 Hague Convention and reiterated in Article 11 of the 2005 International Convention for the Suppression of Acts of Nuclear Terrorism.[69]

ii. Universal Jurisdiction under the Treaty Law

Under treaty law, universal jurisdiction (UJ) was first recognized in the 1949 Geneva Conventions, which classified certain violations as 'grave breaches'.[70] Articles 49, 50, 129, and 146 of each Convention respectively allow states to exercise UJ over these grave breaches.[71] Similarly, Article 28 of the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict and Article 16(2)(a) of its 1999 Second Protocol mandate state parties to suppress violations based on UJ. Article 5 of the 1984 Convention against Torture mandates that States exercise UJ to suppress crimes outlined in the Convention when necessary. The 2006 International Convention for the Protection of All Persons from Enforced Disappearance also requires States to use UJ to suppress enforced disappearances when the accused is within their territory and not extradited. Essentially, a State must be a party to the relevant treaty to exercise UJ over certain international crimes

iii. Universal Jurisdiction in Customary International Law

Universal jurisdiction based on CIL applies to all states due to the universal application of international customs.[72] Unlike treaty law which addresses the state parties, CIL has a broader scope. International custom has been recognized as a "source of international law" under article 38(1) (b) of the Statute of the ICJ which states: "international custom, as evidence of a general practice accepted as law".[73] According to this provision international custom has two elements: State practice (material element) and *opnio juris* (psychological element).[74] Besides, international custom has been broadly accepted by states as "source of international law". Most states consider international law as part of their national laws.

The characteristic of jurisdiction based on international custom is clearly reflected in article 105 of the UNCLOS which states:

> On the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The courts of the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships, aircraft or property, subject to the rights of third parties acting in good faith.[75]

The provisions use 'every state' rather than 'state parties,' indicating that under CIL, any state can prosecute piracy, irrespective of the

perpetrators' nationality or crime place. The 'Princeton Principles on Universal Jurisdiction' also define this concept in Principle I as follow:

> For purposes of these Principles, 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.[76]

Some scholars argue that the UJ outlined in the 'Princeton Principles' is based on CIL.[77] Princeton Principle II of UJ provides for serious crimes under international law, which include: "(1) piracy; (2) slavery; (3) war crimes; (4) crimes against peace; (5) crimes against humanity; (6) genocide; and (7) torture." When comparing the crimes listed in the Princeton Principles with those identified by Antonio Cassese, the sole difference is that Cassese includes terrorism, excluding slavery.[78] In summary, piracy, slavery, war crimes, aggression, crimes against humanity, genocide, and torture all contain both material and psychological elements, making them crimes under CIL.[79] In this way, international customary rules serve as a defense for global values by allowing the repression of certain crimes.[80] States can universally prosecute such crimes, irrespective of the accused's nationality or where the crime occurred. Universal jurisdiction is grounded in both treaty and customary law, with the latter often being codified. In the absence of treaty provisions, universal jurisdiction can be exercised based on CIL.

iv. Universal Jurisdiction under Domestic Law

Domestic laws subject UJ to the principle of either extraditing or prosecuting foreign individuals for crimes committed abroad.[81] If extradition is not possible and the individual is present within the state, domestic legislation allows the state to exercise jurisdiction.[82] Domestic legislation is the source of UJ under national law.[83] For instance, the German Criminal Code in section 7(2) provides for UJ of the German Courts as follows:

> German criminal law shall apply to other offences committed abroad if the act is a criminal offence at the locality of its commission or if that locality is not subject to any criminal law jurisdiction, and if the offender:
>
> 1. Was German at the time of the offence or became German after the commission; or

> 2. Was a foreigner at the time of the offence, is discovered in Germany and, although the Extradition Act would permit extradition for such an offence, is not extradited because a request for extradition within a reasonable period of time is not made, is rejected, or the extradition is not feasible.[84]

In the above provisions, German courts have universal jurisdiction (UJ) over foreigners. Similarly, article 12(3) & (4) of the Turkish Criminal Code of 2004 empowers the Turkish Courts to exercise jurisdiction over foreigners.[85] Article 8 of the Greek Penal Code of 1950 grants Greek courts UJ over certain international crimes such as piracy, slave trade, and illegal trade of narcotic drugs.[86] Likewise, Belgium's Parliament passed a Law of Universal Jurisdiction in 1993, which authorized Belgian courts to try offenders accused of "genocide, crimes against humanity, and war crimes" without regard to nationality or territoriality.[87] Belgium's law was considered by international civil society as a landmark achievement in the struggle for international justice. However, in 2003, due to political pressure from the United States, Belgium repealed the Universal Jurisdiction clauses from the law by amending it.[88]

At the domestic level, the *Pinochet* case and the *Adolf Eichmann* trial are widely regarded as quintessential examples of national courts exercising UJ.[89] Following the Nuremberg Trials, the Pinochet case is seen as a high-profile instance where national courts relied on the principle of universality.[90] Although British authorities exercised UJ over Pinochet, a foreign national, for crimes against non-British nationals, his arrest occurred in the UK.[91] Similarly, the Israeli prosecution of Adolf Eichmann is another notable case of UJ, with the District Court of Israel affirming the country's right to prosecute Eichmann and held as follows:

> The abhorrent crimes defined under this Law are not crimes under Israeli law alone. These crimes, which struck at the whole of mankind and shocked the conscience of nations, are grave offences against the law of nations itself (*delicta juris gentium*). Therefore, so far from international law negating or limiting the jurisdiction of countries with respect to such crimes, international law is, in the absence of an international court, in need of the judicial and legislative organs of every country to give effect to its criminal interdictions and to bring the criminals to trial. The jurisdiction to try crimes under international law is universal.[92]

In the *Eichmann* trial, the Israeli Court invoked UJ based on the customary international status of Eichmann's alleged crimes. The verdict

confirmed the right to apply UJ to international offenses. Similarly, Australia's War Crimes Amendment Act of 1988 and the UK's War Crimes Act of 1991 dealt with “offences committed in the Second World War” by individuals who subsequently settled in these countries. Thus it may be said, that the legal foundations of UJ are established in treaty law, CIL, and domestic law. Originally limited to piracy, UJ has expanded to include other grave crimes. The focus of UJ is on the severity and heinousness of the offenses, rather than the offender's nationality or the place of crime, underscoring the global imperative to prosecute such egregious acts.

Universal Criminal Jurisdiction under the Rome Statute

Since the Nuremberg and Tokyo trials, UJ has been recognized as an important means to address serious international crimes.[93] The creation of the ICTY and ICTR, as well as the ICC, has intensified scrutiny over war crimes, crimes against humanity, and genocide.[94] However, UJ typically refers to national jurisdiction over international crimes, rather than jurisdiction by international courts, unless specifically established.[95] In this way, UJ allows states to prosecute serious international crimes irrespective of where they occurred or the nationality of the perpetrators. The ICC's jurisdiction over certain crimes, as outlined in the Rome Statute, complements state jurisdiction. These crimes are recognized as *jus cogens* in both treaty and customary international law, enabling states to exercise UJ over them.[96] Thus, crimes defined by the ICC and other legal instruments due to their heinous elements and invoking contents are eligible for UJ.[97] Some scholars argue that the ICC can exercise UJ over crimes of a *jus cogens* nature listed in its Statute, even for individuals from non-party states.[98] Bassiouni describes two positions on UJ: the idealistic Universalist view, which prioritizes shared international values over national interests, and the pragmatic policy-oriented view, which supports an enforcement mechanism for the international community's shared interests that overrides individual state sovereignty.[99]

The above two positions refer to share common elements (i) the existence of commonly shared values of International community; (ii) a strong enforcement mechanism is needed for the protection of these common values; and (iii) that the expanded enforcement mechanism would possibly lead to the maintenance of peace and order in the world. Theoretically, the above positions reveals that a state or international organs can either individually or collectively take measures to suppress

international crimes. Moreover, Article 2(4) of the UN Charter prohibits the use of force, and the obligations of peaceful international cooperation greatly influence state sovereignty. This is due to the interdependency of states. Thus, an international enforcement mechanism is necessary to address international crimes and protect the norms of peaceful coexistence.[100] Graefrath argues that universal criminal jurisdiction is increasingly recognized for offenses threatening international order, and that such offenses are punishable even if not considered crimes under national law. Additionally, official positions, including government officials or heads of state, do not exempt individuals from criminal responsibility, and immunity cannot be claimed.[101]

Some states oppose the ICC's universal jurisdiction, fearing loss of diplomatic protection for their citizens, but such concerns are based on sovereign immunity principles, which are not applicable to international crimes.[102] Moreover, number of international treaties support UJ for crimes threatening global peace, and for this reason ICC was established to address serious crimes. Thus, UJ overrides state domestic jurisdiction in cases of grave international crimes. Theoretically, the right to exercise UJ over international crimes stems from their heinous nature. The crimes listed in the Rome Statute are not only egregious but also recognized as *jus cogens* under both treaty and customary law, making them eligible for UJ. Following this rationale, the Rome Statute's crimes qualify to be the subject crimes of UJ. While national courts traditionally have jurisdiction over international crimes, their *jus cogens* status also allows international bodies to assert UJ. For this reason, the ICC enjoys a separate international legal personality, granted by a large number of states that have delegated UJ over grave international crimes.[103]

Balancing the States' Legitimate Interest through the Jurisdictional Principle of Complementarity

Philippe defines the principle of complementarity as allowing a subsidiary body to assume jurisdiction when the primary body does not act.[104] This principle balances state sovereignty with the need to prosecute international crimes, enabling international legal organs to step in when states are unable or unwilling to do so. The issue arises for crimes under Articles 5 to 8 of the ICC Statute, and hinges on the absence of genuine domestic investigation and prosecution, which then permits the ICC to take over jurisdiction.[105]

Before the ICC was established, the ICTY and ICTR Statutes incorporated the principle of complementarity differently[106], granting these Tribunals precedence over national courts.[107] This was due to doubts about the domestic courts' willingness and capability to hold fair trials.[108] The ICTY Appeals Chamber confirmed this primacy in the *Tadić* case as:

> [W]hen an international tribunal such as the present one is created, it must be endowed with primacy over national courts. Otherwise, human nature being what it is, there would be a perennial danger of international crimes being characterized as 'ordinary crimes'..., or proceedings being 'designed to shield the accused', or cases not being diligently prosecuted. If not effectively countered by the principle of primacy, any one of those strategies might be used to defeat the very purpose of the creation of an international criminal jurisdiction, to the benefit of the very people whom it has been designed to prosecute.[109]

The Rome Statute in 1998 introduced complementarity to replace primacy, promoting domestic legal reforms to fulfill states' obligations to prosecute international crimes. This principle ensures the ICC serves as a secondary recourse, bridging jurisdictional gaps and maintaining ICC's rights when states fail to act against serious international crime perpetrators.[110] Complementarity speaks for two functioning principles of international law: "the principle of state sovereignty and the principle of primacy of action in respect of criminal prosecution".[111] Therefore, this principle balances state sovereignty with the primacy of domestic criminal prosecution, allowing states to exercise UJ over international crimes per their laws. It aims to facilitate effective UJ enforcement by states, address jurisdictional overlaps between national and international courts, and affirm state sovereignty by defining the ICC's subsidiary role.

Conclusion

Jurisdiction under PIL refers to the power and authority of states to legislate, adjudicate and enforce the laws on domestic level. Public international law recognizes different principles of domestic criminal jurisdiction and these principles are: territorial principle, nationality principle, protective principle and universality principle. Except universality principle, all other principles of domestic criminal jurisdiction are limited to the nationality of offenders or boundaries of states. Universality principle of jurisdiction or UJ is the most controversial area of PIL. However, the legal basis of UJ are well established in treaty law, customary law and domestic laws. Initially, UJ was only recognized for

piracy but after the emergence of few more heinous crimes the scope of UJ was extended to those crimes as well.

Although the principle of universal criminal jurisdiction was originally recognized for national courts over international crimes but the *jus cogens* character of international crimes those falling under the jurisdiction of ICC entitles it to exercise universal criminal jurisdiction. In addition to, the ICC possess an international legal personality conferred by large number of states which thus brings the Court on same footings to that of states for exercising UJ. This jurisdiction of Court is based on two premises: first, the crimes enlisted in the Rome Statute are not only heinous but have attained the status of *jus cogens*; second, a large number of states have delegated the universal as well as extra-territorial jurisdiction to the ICC to exercise it against the nationals of non-party states. Lastly, the jurisdictional principle of complementarity safeguards the domestic jurisdiction of states, where the ICC's jurisdiction can be triggered as an alternative if the states are not willing or unable to prosecute.

End Notes

1. See for this opposite view M. Morris, "High Crimes and Misconceptions: The ICC and Non-party States," Law & Contemporary Problems 64 (2001): 13- 66.
2. See e.g. Ademola Abass, "The International Criminal Court and Universal Jurisdiction," International Criminal Law Review 6 (2006): 349-385.
3. M. Cherif Bassiouni, "Universal Jurisdiction for International Crimes: Historical Perspectives and Contemporary Practice," Virginia Journal of International Law Association 42, no. 1 (Fall 2001), 84 in 81-162.
4. Ibid, 85, 85.
5. Article 7 of the Nuremburg Charter removed the immunity of the heads of state from criminal prosecution.
6. Bassiouni, International Criminal Law, 75.
7. See e.g. Regina v. Bartle and the Commissioner of Police for the Metropolis and Others Ex Parte Pinochet (1999), 177, https://publications.parliament.uk/pa/ld199899/ldjudgmt/jd990324/pino8.htm.
8. Congo v. Belgium, ICJ Reports, 2002.
9. The principle of *aut dedere aut judicare* underpins universal jurisdiction by obligating states to either extradite or prosecute accused individuals.
10. Xavier "Principle of Complementarity," 376.
11. See e.g. on this point Louis Henkin, "Law and Politics in International Relations: State and Human Values," Journal of International Affairs 44, no. 1 (1990): 183-208, https://www.jstor.org/stable/24357230.
12. Kenneth Randall, "Universal Jurisdiction under International Law," Texas Law Review, no. 66 (1988), 785-8.
13. Xavier "Principle of Complementarity," 378.

14. Michal Wladimiroff, "The individual within international law" in From sovereign impunity to international accountability: The search for justice in a world, eds., Ramesh Thakur and Peter Malcontent (Tokyo: United Nations University Press, 2004), 103.
15. See M. W. Janis, "Individuals as Subjects of International Law," Cornell International Law Journal 17, no. 1 (1984): 61-78, http://scholarship.law.cornell.edu/cilj/vol17/iss1/2. Before positivism, it was believed that international law applied not just to states but also to individuals, as argued by naturalist William Blackstone. He differentiated between the broader 'law of nations' and the more narrowly defined 'international law' coined by positivists, based on sources rather than subjects. See e.g. William Blackstone, Commentaries on the Laws of England, vol. 4, facsimile of 1st ed. 1765-1769 (Chicago: University of Chicago, 1979). Jeremy Bentham coined 'International law' in 1789, viewing it as governing state interactions, with internal laws handling inter-individual transactions across states. John Austin and later positivists like H.L.A. Hart echoed this, seeing international law as guiding states, not individuals. In contrast, the law of nations applies to both states and individuals universally.
16. See e.g. Kawser Ahmed, "The Domestic Jurisdiction Clause in the United Nations Charter: A Historical View," Singapore Year Book of International Law and Contributors 10 (2006): 175-197.
17. Sir Robert Jennings and Sir Arthur Watts, Oppenheim's International Law, 9th ed., Vol 1, (U.K: Longman Group Limited, 1992), chapter 1. Oppenheim argues that "The Law of Nations is a law for the intercourse of States with one another … As, however, there cannot be a sovereign authority above the single sovereign states, the Law of Nations is a law between, not above, the single States, and is, therefore, since Bentham, also called 'International Law.'"
18. See e.g. Michael Akehurst, "Jurisdiction in International Law," British Yearbook of International Law 46 (1975): 145–257; Jennings and Watts, Oppenheim's, 456.
19. See generally Cedric Ryngaert, Jurisdiction in International Law, 2nd ed, (Oxford: Oxford University Press, 2015).
20. Robert Cryer et al, An Introduction to International Criminal Law and Procedure, 2nd ed. (Cambridge University Press, 2010), 37.
21. Ibid.
22. Malcom N. Shaw, International Law, 6th ed., (USA New York: Cambridge University Press, 2008), 645.
23. Article 2(7) of the UN Charter enshrines the principle of domestic jurisdiction, covering legislative, enforcement, and adjudicative state powers. Previously, this principle was in article 15(8) of the League of Nations Covenant, barring Council intervention in disputes within a state's domestic jurisdiction.
24. Peter Malanczuk, Akehurst's Modern Introduction to International Law, 7th Rev. ed., (USA New York: Routledge Publishers, 1997), 109-110; Cryer et al, International Criminal Law, 37-38; Shaw, International Law, 645-646.

25. The current international law on executive jurisdiction is well explained by the Permanent Court of International Justice in the famous Lotus case which states, “The first and foremost restriction imposed by international law upon a State is that – failing the existence of a permissive rule to the contrary – it may not exercise its power in any form in the territory of another State. In this sense jurisdiction is certainly territorial; it cannot be exercised by a State outside its territory….” SS Lotus (France v. Turkey) (1927) PCIJ. Ser. A, No. 10, at 18.
26. In Lotus judgment the PCIJ laid down the ratio that, “Far from laying down a general prohibition to the effect that States may not extend the application of their laws, and the jurisdiction of their courts to persons, property and acts outside their territory, [international law] leaves them in this respect a wide measure of discretion which is only limited in certain cases by prohibitive rules.” SS Lotus, at 19.
27. See for example Anthony J. Colangelo, “What Is Extraterritorial Jurisdiction,” Cornell Law Revive 99, no. 6 (2014): 1303-1352.
28. Shaw, International Law, 651-652; Mann, “Doctrine of Jurisdiction”, 49-51; Akehurst, “Jurisdiction”, 177; Brownlie, “Principles”, 298; Bowett, “Jurisdiction”, 3–4.
29. Jason Chuah and Alina Kaczorowska, Q & A Series Conflict of Laws, 2nd ed. (London: Cavendish Publishing Limited, 2000), ix. “Private international law, or conflict of laws, is a body of rules tends to determine whether national or foreign law is to be applied when a national court is faced with a claim that contains a foreign element.”
30. See generally on private international law J. G. Collier, Conflict of Laws, 3rd ed. (Cambridge: Cambridge University Press, 2001).
31. Malanczuk, Akehurst’s Modern, 110.
32. See Arthur Lenhoff, “International Law and Rules on International Jurisdiction,” Cornell Law Revive 50, no. 1(1964), 7. http://scholarship.law.cornell.edu/clr/vol50/iss1/2. For instance, Article 14 of the French Civil Code allows for jurisdiction over aliens in civil matters based on obligations involving French nationals, regardless of the defendant's residence. As a general rule, where municipal laws lack such provisions, private international law guides jurisdiction in civil cases.
33. See Ian Brownlie, Principles of Public International Law, 3rd ed. (Oxford: Oxford University Press, 1979), 299. Brownlie argues that “there is no difference between exercising civil and criminal jurisdiction over foreigner, because the enforcement of civil jurisdiction ultimately involves criminal sanctions”.
34. See for example Shaw, International Law, 652; Malanczuk, Akehurst’s Modern, 110; Cryer et al, International Criminal Law, 40; Akehurst, “Jurisdiction”, 152; Mann, “Doctrine of Jurisdiction”, 82.
35. It was observed in the Wood Pulp case that territoriality and nationality are the two undisputed of states’ jurisdiction in international law. A. Ahlström Osakeyhtiö and others v Commission of the European Communities, Judgment of the European Court of 27 September 1988 (European Court Reports 1988 -05193), http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61985CJ0089.

36. Shaw, International Law, 652.
37. Ibid.
38. See for example Wendell Berge, “Criminal Jurisdiction and the Territorial Principle,” Michigan Law Review 30, no. 2 (1931): 238-69. doi:10.2307/1281282; Shaw, International Law, 652-658; Malanczuk, Akehurst’s Modern, 110-111; Cryer et al, International Criminal Law, 40-41; Akehurst, “Jurisdiction”, 152-153.
39. Lassa Oppenheim, International Law, ed., H. Lauterpacht, 8th ed. (London: Longsman, Green & Co., 1955), 263, 286. Oppenheim recognizes the territorial principle as stemming from territorial sovereignty and state equality, granting states the right to govern within their territory without breaching international law, encapsulating the concept as a state's supreme authority over its domain.
40. The only exceptions under international law to the territorial principle are those of immunities: sovereign immunity and diplomatic and consular immunity. The immunities of certain persons are well recognized both under customary and treaty law. See United Nations Convention on Jurisdictional Immunities of States and Their Property, New York, 2 December 2004; Vienna Convention on Diplomatic Relations, 1961; the Vienna Convention on Consular Relations, 1963.
41. See U.S. v. Rodriguez, 182 F. Supp. 479, United States District Court S. D. California (1960), 488, The Court observed as“[t]he basic philosophy behind the territorial theory is that a government, in order to maintain its essential sovereignty, must be the only power capable of effecting the maintenance of peace and order within its own boundaries. Therefore, no other nation can enact extraterritorial legislation which would interfere with the operation of such laws”.
42. See The Apollon., 22 U.S. 362 Supreme Court of United States (1824), 370, the Court held that “[t]he laws of no nation can justly extend beyond its own territories, except so far as regards its own citizens. They can have no force to control the sovereignty or rights of any other nation, within its own jurisdiction.”
43. See for example the Lotus case, PCIJ, series A, no. 10. The court held that “all that can be required of a State is that it should not overstep the limits which international law places upon its jurisdiction; within these limits, its title to exercise jurisdiction rests in its sovereignty.”, at 19.
44. Tim Hillier, Sourcebook on Public International Law (London: Cavendish Publishing, 1988), 254-257; John O'Brien, International Law (London: Cavendish Publishing, 2001), 234-238; Shaw, International Law, 652-658; Malanczuk, Akehurst’s Modern, 110-111; Cryer et al, International Criminal Law, 40-41; Akehurst, “Jurisdiction”, 152-153.
45. Article 14 of the Armenian Code: “1. [T]he person who committed a crime in the territory of the Republic of Armenia is subject to liability under the Criminal Code of the Republic of Armenia… 2. The crime is considered committed in the territory of the Republic of Armenia when: 1) it started, continued or finished in the territory of the Republic of Armenia; 2) it was committed in complicity with the persons who committed crimes in other countries.”

46. Cesare Beccaria, "Of Sanctuaries" in On crimes and punishments (Indianapolis: Hackett Pub. Co., 1986).
47. See generally Harvard Research Draft Convention on Jurisdiction with Respect to Crime, American Journal of International Law 29 (1935), 439; Ian Brownlie, "The Relations of Nationality in Public International Law," British Yearbook of International Law (1963), 284; Shaw, International Law, 659-660; Malanczuk, Akehurst's Modern, 111; Cryer et al, International Criminal Law, 41-42; Akehurst, "Jurisdiction", 156-157; O'Brien, International Law, 240-241; Sarkar, "The Proper Law", 456-462.
48. See for instance Section 4 of the Pakistan Penal Code, 1860: "…The provisions of this Code apply also apply to any offence committed by:- (1) any citizen of Pakistan or any person in the service of Pakistan in any place without and beyond Pakistan…"; Article 12(2) of the Bosnia and Herzegovina Criminal Code states: "(2) The criminal legislation in the Federation shall apply to anyone who perpetrates a criminal offence aboard a domestic vessel, regardless of its location at the time of perpetration of the criminal offence." Both the Pakistani and Bosnian municipal laws recognize nationality as jurisdictional basis for prosecution of certain offences.
49. Kai Ambos, Treatise on International Criminal Law, Vol. III (UK: Oxford University Press, 2016), 217-219. Ambos distinguishes between absolute and limited active nationality principles: the absolute form allows states to prosecute their nationals for crimes committed abroad, irrespective of foreign law, while the limited form requires the act to be punishable in both jurisdictions, adhering to the double criminality requirement and aligning with international law.
50. Nottebohm case Liechtenstein v. Guatemala (1955) ICJ Reports 4. In Nottebohm case the Court observed that in state practices, nationality is, "a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties." at 23.
51. See generally William R. Slomanson, Fundamental Perspectives on International Law, 6th ed. (USA: Wardsworth Cenage Learning, 2011), 251; Cryer et al, International Criminal Law, 42-43; Akehurst, "Jurisdiction", 162-166; Mann, "Doctrine of Jurisdiction", 40-41.
52. In the Lotus case, the passive personality principle was rejected, despite Turkey's reliance on it. Yet, this principle has gained acceptance among states, particularly for terrorism and war crimes cases.See for example Washio Awochi trial, wherein, the Netherlands Temporary Court Marshall prosecuted Japanese national for forcing a Dutch women to prostitution. https://www.legal-tools.org/en/doc/34df8e/. See also Velpke Baby Home case 1946, wherein, UK prosecuted the German nationals for mistreating Polish children.
53. John Bassett Moore, A Digest of International Law, Vol. II (Washington: U.S. Government Printing Office, 1906), 228.
54. Shaw, International Law, 664; Malanczuk, Akehurst's Modern, 111.
55. See US v. Yunis (No. 3) 924 F.2d 1086 (1991). The Court recognized the universality and passive personality principles as valid for jurisdiction

over a Lebanese citizen in a hijacking case involving American nationals. However, it noted that the passive personality principle often conflicts with customary international law, and the USA has only recently accepted its use. See also Third US Restatement of Foreign Relations Law (1987) para. 402, vol. I, p. 240, which states that, "passive personality is increasingly accepted as applied to terrorist and other organized attacks on a state's nationals by reason of their nationality, or to assassinations of a state's diplomatic representatives or other officials".

56. Cryer et al, International Criminal Law, 42.

57. See generally Iain Cameron, The Protective Principle of International Criminal Jurisdiction (England: Dartmouth Pub. Co., 1994); Danielle Ireland-Piper, "Extraterritorial Criminal Jurisdiction: Does the Long Arm Of The Law Undermine The Rule Of Law?," Melbourne Journal of International Law 13 (2012), 16; Cryer et al, International Criminal Law, 43; Shaw, International Law, 666-668; Malanczuk, Akehurst's Modern, 111-112; Geoff Gilbert, Responding to International Crime (The Netherlands: Martinus Nijhoff Publishers, 2006), 85-90.

58. Shaw, International Law, 667.

59. The principle of protective jurisdiction is recognized in international law, with state security defined by national laws due to the absence of universal standards in international law, allowing states to set their own criteria based on various grounds. See for example Christopher L. Blakesley, "United States Jurisdiction over Extraterritorial Crime," The Journal of Criminal Law & Criminology 73, no. 3 (1982): 1109-1163.

60. It is generally argued that the issuance of Fatwa against the writer and publisher of the satanic verses is not covered by any sense of the protective principle. See e.g. Anthony Chase, "Legal Guardians: Islamic Law, International Law, Human Rights Law, and the Salman Rushdie Affair," American University International Law Review 11, no. 3 (1996): 375-435.

61. See Attorney General v. Adolf Eichmann, District Court of Jerusalem, Israel, Criminal Case No. 40/61 (1961), http://www.internationalcrimesdatabase.org/Case/192/Eichmann/. The court held at para. 35 of the judgment that, "Indeed, this crime very deeply concerns the vital interests of the State of Israel, and pursuant to the 'protective principle', this State has the right to punish the criminals. In terms of Dahm's thesis, the acts in question referred to in this Law of the State of Israel 'concern Israel more than they concern other states,' and therefore, according to this author's thesis, too, there exists a 'linking point'. The punishment of Nazi criminals does not derive from the arbitrariness of a country 'abusing' its sovereignty, but is a legitimate and reasonable exercise of a right in penal jurisdiction".

62. See for the vast range of publications and scholarly writings on UJ: Cryer et al, International Criminal Law, 44; Shaw, International Law, 668; Malanczuk, Akehurst's Modern, 112; Geoff Gilbert, Responding, 91; Akehurst, "Jurisdiction", 160–166; Bowett, "Jurisdiction", 11–14; Mitsue Inazumi, Universal Jurisdiction in Modern International Law: Expansion of National Jurisdiction for Prosecuting Serious Crimes under International Law (Oxford: Intersentia, 2005); M. Cherif Bassiouni, "Universal

Jurisdiction For International Crimes: Historical Perspectives And Contemporary Practice," Virginia Journal Of International Law Association 42, no. 1 (Fall 2001): 81-162; Dr. Mehmet Zülfü ÖNER, "The Principle of 'Universal Jurisdiction' in International Criminal Law," Law & Justice Review 7, no. 12, (2016): 173-220; Ademola Abass, "The International Criminal Court and Universal Jurisdiction," International Criminal Law Review 6 (2006): 349-385; Gabriel Bottini, "Universal Jurisdiction after the Creation of the International Criminal Court," New York University Journal of International Law & Politics 36 (2004): 503-562; Bruce Broomhall, "Towards the Development of an Effective System of Universal Jurisdiction for Crimes under International Law," New England Law Review 35, no. 2 (2001): 399-420; Britta Lisa Krings, "The Principles of 'Complementarity' and Universal Jurisdiction in International Criminal Law: Antagonists or Perfect Match?," Goettingen Journal of International Law 4, no. 3 (2012): 737-763;; Hesenov Rahim, "Universal Jurisdiction for International Crimes - A Case Study," European Journal on Criminal Policy and Research 19 (2013): 275-283; Hasanov Rahim Tashakkul, "The Problem of Universal Jurisdiction in Curbing International Crimes," Acta Universitatis Danubius Juridica, no. 1 (2011): 110-125; Kenneth Randall, "Universal Jurisdiction under International Law," Texas Law Review, no. 66 (1988): 785-842; Cedric Ryngaert "The International Criminal Court and Universal Jurisdiction: A Fraught Relationship?," New Criminal Law Review: An International and Interdisciplinary Journal 12, no.4 (2009): 498-512; Michael P. Scharf, "Application of Treaty-Based Universal Jurisdiction to Nationals of Non-Party States," New England Law Review 35, (2001): 363-382; Nicolaos Strapatsas, "Universal Jurisdiction and the International Criminal Court," Manitoba Law Journal 29, no.1 (2003): 1-32; Sienho Yee, "Universal Jurisdiction: Concept, Logic, and Reality," Chinese Journal of International Law (2011): 503-530; Roger O'Keefe, "Universal jurisdiction: Clarifying the basic concept," Journal of International Criminal Justice 2, (2004): 735-760; A. H. Butler, "The Doctrine of Universal Jurisdiction: A Review of the Literature," Criminal Law Forum 11 (2001), 353.

63. Cryer et al, International Criminal Law, 43.

64. Defining the concept of universal jurisdiction has always been remained a controversial topic, however, attempts are made by the legal scholars to clarifying the basic concept. For instance, Judge ad hoc van den Wyngaert in her dissenting opinion in the Arrest Warrant case, stated that "There is no generally accepted definition of universal jurisdiction in conventional or customary international law ... Much has been written in legal doctrine about universal jurisdiction. Many views exist as to its legal meaning and its legal status under international law". See International Court of Justice, Arrest Warrant Case of 11 April 2000 (Democratic Republic of the Congo v. Belgium), February 14, 2002, at para. 44, http://www.legaltools.org/doc/23d1ec/. On the other hand an attempt has been made by legal scholars to resolve the controversy, such as Kenneth Randall defined the concept of universal jurisdiction as "a legal principle allowing or requiring a state to bring criminal proceedings in respect of certain crimes irrespective of the location of the crime and the

nationality of the perpetrator or the victim." Randall, "Universal Jurisdiction", 785-786. Similarly, according to Lord Millet in the third Pincohet judgment, "In my opinion, crimes prohibited by international law attract universal jurisdiction under customary international law if two criteria are satisfied. First, they must be contrary to a peremptory norm of international law so as to infringe a jus cogens. Secondly, they must be so serious and on such a scale that they can justly be regarded as an attack on the international legal order. Isolated offences, even if committed by public officials, would not satisfy these criteria". See Regina v. Bartle and the Commissioner of Police for the Metropolis and Others Ex Parte Pinochet (1999), at 177, https://publications.parliament.uk/pa/ld199899/ldjudgmt/jd990324/pino8.htm.

65. See generally on piracy Konrad Marciniak, "International Law on Piracy and Some Current Challenges Related to its Definition," Polish Review of International and European Law 1, no. 3-4 (2012): 97-140.
66. Bassiouni argued that, "In the exercise of universal jurisdiction, a state acts on behalf of the international community in a manner equivalent to the Roman concept of actio popularis." Bassiouni, "Universal Jurisdiction", 88.
67. Kourula, "Universal Jurisdiction for Core International Crimes" in State Sovereignty and International Criminal Law eds., Morten Bergsmo and LING Yan (Beijing: Torkel Opsahl Academic EPublisher, 2012), 129-148.
68. See for example Michael D. Biddiss, "From the Nuremberg Charter to the Rome Statute: A Historical Analysis of the Limits of International Criminal Accountability" in From Sovereign Impunity to International Accountability: the Search for Justice in a World, eds., Ramesh Thakur and Peter Malcontent (Tokyo: United Nations University Press, 2004), 42-60.
69. M. Cheriff Bassiouni, Introduction To International Criminal Law: Second Revised Edition, (The Netherland: Martinus Nijhoff Publishers, 2012), 488; see also M. Cherif Bassiouni and Edward Martin Wise, Aut Dedere Aut Judicare: The Duty to Extradite Or Prosecute in International Law (Dordrecht, Boston, London: Martinus Nijhoff Publishers, 1995).
70. See for example Roger O'Keefe, "The Grave Breaches Regime and Universal Jurisdiction," Journal of International Criminal Justice 7 (2009): 811-831, doi:10.1093/jicj/mqp051.
71. The common wording of articles 49, 50, 129 and 146 of the four Geneva Conventions obligate High Contracting Parties to seek out and prosecute individuals accused of grave breaches, irrespective of nationality, or extradite them if another concerned High Contracting Party presents a prima facie case.
72. Bassiouni enumerated twenty seven categories of international crimes, not all of them come under the jurisdiction of ICC. These categories of international crimes are evidenced by 276 conventions concluded between 1815 and 1999. "These international crimes are: aggression, genocide, crimes against humanity, war crimes, crimes against the UN and associated personnel, unlawful possession and/or use of weapons, theft of nuclear materials, mercenarism, apartheid, slavery and slave-related practices, torture, unlawful human experimentation, piracy, aircraft hijacking,

unlawful acts against civil maritime navigation, unlawful acts against internationally protected persons, taking of civilian hostages, unlawful use of the mail, nuclear terrorism, financing of international terrorism, unlawful traffic in drugs and dangerous substances, destruction and/or theft of national treasures and cultural heritage, unlawful acts against the environment, international traffic in obscene materials, falsification and counterfeiting of currency, unlawful interference with submarine cables, and bribery of foreign public officials…" Bassiouni, "Universal Jurisdiction," 106-107.

73. LIU Daqun, "Universal Jurisdiction in International Criminal Law," Peking University Comparative and International Law Review 4, no. 2 (2006), 12.
74. See e.g. Brian D. Lepard, Customary International Law. A New Theory with Practical Applications (Cambridge: Cambridge University Press, 2010); Roozbeh (Rudy) B. Baker, "Customary International Law in the 21st Century: Old Challenges and New Debates," European Journal of International Law 21, no. 1, (February 2010): 173–204, https://doi.org/10.1093/ejil/chq015.
75. See generally Andre da Rocha Ferriera et al. "Formation and Evidence of Customary International Law," UFRGS Model United Nations Journal 1 (2013): 182-201.
76. See Martin Lishexian Lee, "The Interrelation between the Law of the Sea Convention and Customary International Law," San Diego International Law Journal 7 (2005): 405.
77. The 'Princeton Principles on Universal Jurisdiction' a document prepared under Princeton University project on universal jurisdiction in 2001, http://hrlibrary.umn.edu/instree/princeton.html.
78. Stephen Macedo, ed, Universal Jurisdiction: National Courts and the Prosecution of Serious Crimes under International Law (Philadelphia: University of Pennsylvania Press, 2004), 26.
79. Antonio Cassese, International Law, (New York: Oxford University Press, 2001), 246.
80. See generally Gideon Boas et al., "An overview of crimes under international law" in Elements Of Crimes Under International Law, Vol. II (Cambridge: Cambridge University Press, 2008).
81. See for example Dr. Dan Plesch and Shanti Sattler, "A New Paradigm of Customary International Criminal Law: The UN War Crimes Commission of 1943–1948 and its Associated Courts and Tribunals," Criminal Law Forum 25, no. 1-2 (2014): 17-43; see for the opposite view Larissa van den Herik, "The Decline of Customary International Law as a Source of International Criminal Law," Grotius Centre Working Paper 2014/038-ICL (2015).
82. See generally Dr. Usman Hameed, "Aut Dedere Aut Judicare (Extradite or Prosecute) Obligation- Whether a Duty Rooted in Customary International Law?," International Journal of Humanities and Social Science 5, no. 9(1) (2015): 239-248; Colleen Enache-Brown and Ari Fried, "Universal Crime, Jurisdiction and Duty: The Obligation of Aut Dedere Aut Judicare in International Law," McGill Law Journal 43 (1998): 613-633.
83. MA Chengyuan, "The Connotation of Universal Jurisdiction and its Application in the Criminal Law of China" in State Sovereignty and

International Criminal Law eds., Morten Bergsmo and LING Yan (Beijing: Torkel Opsahl Academic EPublisher, 2012), 174.

84. See for example Christiane Wilke, "A Particular Universality: Universal Jurisdiction for Crimes Against Humanity in Domestic Courts," Constellations 12, no. 1 (2005): 83-102. See also Amnesty International, Universal Jurisdiction: A preliminary survey of legislation around the world (United Kingdom: Amnesty International Publications, 2011) According to survey report, 85% of UN member states have incorporated international crimes such as war crimes, genocide, crimes against humanity, and torture into their domestic laws, while 75.1% allow for universal jurisdiction over these crimes. In total, 84.46% of states can exercise universal jurisdiction for these offenses, whether as international or ordinary crimes.

85. German Criminal Code promulgated on November 13, 1993, trans. Prof. Dr. Michael Bohlander. https://ec.europa.eu/antitrafficking/sites/antitrafficking/files/criminal_code_germany_en_1.pdf.

86. Article 12: "(3) If the aggrieved party is a foreigner, he is tried upon request of the Ministry of Justice in case of existence of the following conditions; a) Where the offence requires punishment with a minimum limit of less than three years imprisonment according to the Turkish Laws; b) Where there is no extradition agreement or the demand of extradition is rejected by the nation where the crime is committed or the person accused of a crime holds citizenship. (4) A foreigner who is convicted of an offence in a foreign country within the scope of first subsection, or the action filed against him is extinguished or the punishment is abated, or the offence committed is not qualified for the prosecution, then a new trial can be filed in Turkey upon request of the Ministry of Justice."

87. "Article 8 - Crimes abroad that are always punishable by Greek law-The Greek penal laws apply to nationals and foreigners regardless of the laws of the place of commission, for the following acts committed abroad: f) Piracy h) slave trade, human trafficking, trafficking or sexual abuse of a minor for a fee, conducting trips to commit fornication or other indecent acts against a minor or child pornography i) illegal trade of narcotic drugs k) any other crime for which special provisions or international conventions signed and ratified by the Greek state provide for the application of the Greek Penal laws."

88. See for example Luc Reydams, "Belgium's First Application of Universal Jurisdiction: the Butare Four Case," Journal of International Criminal Justice 1, no. 2, (2003): 428–436, https://doi.org/10.1093/jicj/1.2.428;

89. Kai Ambos, "Prosecuting Guantanamo in Europe: Can and Shall the Masterminds of the Torture Memos Be Held Criminally Responsible on the Basis of Universal Jurisdiction," Case Western Reserve Journal of International Law 42, no. 1 (2009), 415.

90. See generally Leora Bilsky, "The Eichmann Trial and the Legacy of Jurisdiction" in Politics in Dark Times: Encounters with Hannah Arendt, eds, Seyla Benhabib (Cambridge: Cambridge University Press, 2010): 198-218.

91. See for example Jamison G. White, “Nowhere to Run, Nowhere to Hide: Augusto Pinochet, Universal Jurisdiction, the ICC, and a Wake-Up Call for Former Heads of State,” Case Western Reserve Law Review 50, no. 1 (1999): 127-176.
92. Attorney General v. Adolf Eichmann, Case No. 40/61 (1961), at para. 12, available at: http://www.internationalcrimesdatabase.org/Case/192/Eichmann/.
93. Kourula, “Universal Jurisdiction”, 129.
94. Zülfü, “The Principle”, 175; see also Rahim Hesenov, “Universal Jurisdiction for International Crimes – A Case Study,” European Journal on Criminal Policy and Research 19, no. 3 (2013): 275-283; William A. Schabas, The Un International Criminal Tribunals: The Former Yugoslavia, Rwanda and Sierra Leone (UK: Cambridge University Press, 2006).
95. For example the European Court of Human Rights in Jorgic v. Germany (Judgment of July 12, 2007), at para. 68 recognized the *erga omnes* obligation of states to prevent and punish genocide, a *jus cogens* norm, and deemed national courts' extraterritorial jurisdiction for punishing genocide as reasonable under the Genocide Convention.
96. See for example the ICTY findings on universal jurisdiction based on the prohibition of torture as jus cogens norm in Prosecutor v. Anto Furundzija (Trial Judgement), IT-95-17/1-T, whereby the tribunal held at para. 156 as: “[I]t would seem that one of the consequences of the jus cogens character bestowed by the international community upon the prohibition of torture is that every State is entitled to investigate, prosecute and punish or extradite individuals accused of torture, who are present in a territory under its jurisdiction.”
97. See generally Dapo Akande, “The Jurisdiction of the International Criminal Court over Nationals of Non-Parties: Legal Basis and Limits,” Journal of International Criminal Justice 1 (2003): 618-650.
98. Bassiouni, “Universal Jurisdiction,” 96-97. Bassiouni suggests that Universalists align with early natural law and theology from Judaism, Christianity, and Islam, emphasizing divine sovereignty with universal scope. Conversely, pragmatic policy views are akin to positivism.
99. Bernhard Graefrath, “Universal Criminal Jurisdiction and an International Criminal Court”, European Journal of International Law 1, no. 1 (1990): 72, http://www.ejil.org/pdfs/1/1/1146.pdf.
100. Graefrath, “Criminal Jurisdiction”, 72-73.
101. Ibid., 73.
102. The legal personality of ICC is defined in article 4 of the Rome Statute which states: “Legal status and powers of the Court: 1. The Court shall have international legal personality. It shall also have such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes.”
103. Xavier Philippe, “The Principles Universal Jurisdiction And Complementarity: How Do The Two Principles Intermish?” International Review of the Red Cross 88, no. 862, (2006), 380.
104. See generally Lisa Krings Britta, “The Principles of ‘Complementarity’ and Universal Jurisdiction in International Criminal Law: Antagonists or

Perfect Match?," Goettingen Journal of International Law 4, no. 3 (2012): 737-763.

105. See generally Bartram S. Brown, "Primacy or complementarity: Reconciling the jurisdiction of national courts and international criminal tribunals," Yale Journal of International Law 23, no. 3 (1998): 383-436.
106. Mohamed M. El Zeidy, The Principle of Complementarity in International Criminal Law (The Netherlands: Leiden, Martinus Nijhoff Publishers, 2008), 138-139.
107. William A. Schabas, The UN International Criminal Tribunal, The Former Yugoslavia, Rwanda and Sierra Leone (Cambridge: Cambridge University Press, 2006), 126.
108. Prosecutor v. Duško Tadić, Case No. (IT-94-1-AR72), Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2/10/1995, para. 58.
109. Zeidy, Complementarity, 150.
110. Philippe, "Universal Jurisdiction", 388; Kriangsag Kittichaisaree, International Criminal Law (Oxford: Oxford University Press, 2001), 25.
111. Philippe, "Universal Jurisdiction", 397.