Universal jurisdiction

Universal jurisdiction or universality principle allows states or International organizations to claim criminal jurisdiction over an accused person regardless of where the alleged crime was committed, and regardless of the accused's nationality, country of residence, or any other relation with the prosecuting entity. Crimes prosecuted under Universal Jurisdiction are considered crimes against all, too serious to tolerate jurisdictional arbitrage.

The concept of universal jurisdiction is therefore closely linked to the idea that some international norms are erga omnes, or owed to the entire world community, as well as the concept of jus cogens – that certain international law obligations are binding on all states and cannot be modified by treaty. [1]

According to critics[who?], the principle justifies a unilateral act of wanton disregard of the sovereignty of a nation or the freedom of an individual concomitant to the pursuit of a vendetta or other ulterior motives, with the obvious assumption that the person or state thus disenfranchised is not in a position to bring retaliation to the state applying this principle. [citation needed]

The concept received a great deal of prominence with Belgium's 1993 "law of universal jurisdiction", which was amended in 2003 in order to reduce its scope following a case before the International Court of Justice regarding an arrest warrant issued under the law, entitled Case Concerning the Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium). [2] The creation of the International Criminal Court (ICC) in 2002 reduced the perceived need to create universal jurisdiction laws, although the ICC is not entitled to judge crimes committed before 2002.

According to Amnesty International, a proponent of universal jurisdiction, certain crimes pose so serious a threat to the international community as a whole, that states have a logical and moral duty to prosecute an individual responsible for it; no place should be a safe haven for those who have committed genocide, [3] crimes against humanity, extrajudicial executions, war crimes, torture and forced disappearances. [4]

Opponents, such as Henry Kissinger, argue that universal jurisdiction is a breach on each state's sovereignty: all states being equal in sovereignty, as affirmed by the United Nations Charter, "Widespread agreement that human rights violations and crimes against humanity must be prosecuted has hindered active consideration of the proper role of international courts. Universal jurisdiction risks creating universal tyranny – that of judges." [5][6] According to Kissinger, as a practical matter, since any number of states could set up such universal jurisdiction tribunals, the process could quickly degenerate into politically driven show trials to attempt to place a quasi-judicial stamp on a state's enemies or opponents.

protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity" and commits the Security Council to action to protect civilians in armed conflict.[7][8]

**History**

- Perhaps the most notable and influential precedent for Universal Jurisdiction were the mid-20th century Nuremberg Trials. U.S. Justice Robert H. Jackson then chief prosecutor, famously stated that the International Military Tribunal could prosecute Nazi "crimes against the peace of the world" even though the acts might have been perfectly legal at the time in Fascist Germany (indeed one charge was the Nazis distorted the law itself into an instrument of oppression.)[11] Kenneth Roth, the executive director of Human Rights Watch, argues that universal jurisdiction allowed Israel to try Adolf Eichmann in Jerusalem in 1961. Roth also argues that clauses in treaties such as the Geneva Conventions of 1949 and the United Nations Convention Against Torture of 1984, which requires signatory states to pass municipal laws that are based on the concept of universal jurisdiction, indicate widespread international acceptance of the concept. [6]

**International tribunals**

Universal jurisdiction asserted by a particular nation is analogous to the jurisdiction of an international tribunal, such as the International Criminal Court, established in 2002, the International Criminal Tribunal for Rwanda (1994) and International Criminal Tribunal for the Former Yugoslavia (1993), or the Nuremberg Trials (1945–49). Whether criminal jurisdiction is exercised by an international organization or by a state, the result is the same: individuals become answerable for crimes defined and prosecuted outside of their home jurisdiction, and regardless of where the conduct occurred.

States parties to the Statute of the International Criminal Court (light green means ratification or accession deposited but not yet in force, brown means signed but not yet ratified).

Established in The Hague in 2002, the International Criminal Court (ICC) is an international tribunal empowered with the right to prosecute state-members' citizens for genocide, crimes against humanity, and war crimes, as defined by several international agreements, most prominently the Rome Statute of the International Criminal Court signed in 1998. It provides for ICC jurisdiction over-state party or on the territory of a non-state party where that non-state party has entered into an agreement with the court providing for it to have such jurisdiction in a particular case.[citation needed]

However, Amnesty International argues that since the end of the Second World War more than a dozen states have conducted investigations, commenced prosecutions and completed trials based on universal jurisdiction for the crimes or arrested people with a view to extraditing the persons to a state seeking to prosecute them. These states include: Australia, Austria, Belgium, Canada, Denmark, France, Germany, Israel, Mexico, Netherlands, Senegal, Spain, Switzerland, the United Kingdom and the United States.[4]
All states parties to the [Convention against Torture](https://www.un.org/rights/conventions/law torture.html) and the [Inter-American Convention](https://www.oas.org/juridico/conventions/texts/cab/art10.asp) are obliged whenever a person suspected of torture is found in their territory to submit the case to their prosecuting authorities for the purposes of prosecution, or to extradite that person. In addition, it is now widely recognized that states, even those that are not states parties to these treaties, may exercise universal jurisdiction over torture under customary international law.[17]

### Indictment and arrest of Augusto Pinochet

**General Augusto Pinochet** was indicted for human rights violations committed in his native [Chile](https://en.wikipedia.org/wiki/Chile) by Spanish magistrate Baltasar Garzón on 10 October 1998. He was arrested in [London](https://en.wikipedia.org/wiki/London) six days later and finally released by the British government in March 2000. Authorized to freely return to Chile, Pinochet was there first indicted by judge Juan Guzmán Tapia, and charged with a number of crimes, before dying on 10 December 2006, without having been convicted in any case. His arrest in London made the front-page of newspapers worldwide as not only did it involve the head of the military dictatorship that ruled [Chile between 1973 and 1990](https://en.wikipedia.org/wiki/Chilean_dictatorship#1973), but it was the first time that several European judges applied the principle of universal jurisdiction, declaring themselves competent to judge crimes committed by former heads of state, despite local amnesty laws.

Pinochet came to power in a violent [11 September 1973 coup](https://en.wikipedia.org/wiki/September_11_Coup) which deposed [Socialist President Salvador Allende](https://en.wikipedia.org/wiki/Salvador_Allende). His 17-year regime was responsible for numerous human rights violations, a number of which committed as part of [Operation Condor](https://en.wikipedia.org/wiki/Operation_Condor), an illegal effort to suppress political opponents in Chile and abroad in coordination with foreign intelligence agencies. Pinochet was also accused of using his position to pursue personal enrichment through embezzlement of government funds, the [illegal drug trade](https://en.wikipedia.org/wiki/Drug_trade) and illegal arms trade. The [Rettig Report](https://en.wikipedia.org/wiki/Rettig_Report) found that at least 2,279 persons were conclusively murdered by the Chilean government for political reasons during Pinochet's regime, and the [Valech Report](https://en.wikipedia.org/wiki/Valech_Report) found that at least 30,000 persons were tortured by the government for political reasons.

Pinochet's attorneys, headed by Pablo Rodríguez Grez (former leader of the far-right group [Fatherland and Liberty](https://en.wikipedia.org/wiki/Fatherland_and_Freedom)), argued that he was entitled to immunity from prosecution first as a former head of state, then under the 1978 amnesty law passed by the military junta. They furthermore claimed that his alleged poor health made him unfit to stand trial. A succession of judgments by various [Courts of Appeal](https://en.wikipedia.org/wiki/Supreme_Court_of_Chile), the Supreme Court, medical experts, etc., led to Pinochet's successive house arrest and liberation, before he finally died on 10 December 2006, just after having been again put under house arrest on 28 November 2006 in the [Caravan of Death](https://en.wikipedia.org/wiki/Caravan_of_Death) case.[1]