The International Journal of Human Rights

ISSN: (Print) (Online) Journal homepage: www.tandfonline.com/journals/fjhr20

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To cite this article: Alexandra Fowler (03 Oct 2024): Comparing universal jurisdiction in Europe and in Latin America: a vehicle for international justice or for colonial reckoning?, The International Journal of Human Rights, DOI: 10.1080/13642987.2024.2408591

To link to this article: https://doi.org/10.1080/13642987.2024.2408591

Published online: 03 Oct 2024.

THE INTERNATIONAL JOURNAL OF HUMAN RIGHTS
https://doi.org/10.1080/13642987.2024.2408591

Routledge
Taylor & Francis Group

Comparing universal jurisdiction in Europe and in Latin America: a vehicle for international justice or for colonial reckoning?

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ABSTRACT

A particular concern in recent years has been the limited options for prosecutions of persons responsible for atrocities in States not amenable to ICC jurisdiction. The need for accountability for atrocities builds on long histories of human rights and humanitarian law practice, both treaty-based and customary in nature, which has been driven also by the work of the ECtHR and the IACtHR mechanisms. At the domestic level, ever since the Pinochet decision, universal jurisdiction (UJ) has been considered a promising way to fill the lacuna. Indeed, some commentators have observed a resurgence in the use of UJ in recent years based on a number of trials of ex-ISIS and Syrian regime members in European courts. Yet UJ as it has been practised has serious limitations. While there are exceptions, many European states are steadily turning the exercise of UJ into the application of extraterritorial jurisdiction based on active or passive personality, especially in relation to their former colonies. In Latin America too, there have been some recent examples of investigations and prosecutions on the basis of 'pure' UJ, but the vast majority of exercises of jurisdiction are in furtherance of extraditions, particularly at the behest of former colonial powers. This article compares the recent uptick in European and Latin American usages of UJ, concluding that to date both regions still exhibit little appetite for pursuing 'pure' UJ. It warns that significant colonialist pressures in both regions threaten to limit this crucial mechanism for international justice.

ARTICLE HISTORY
Received 28 December 2023
Accepted 10 September 2024

1. Introduction

International criminal law depends to a large degree on nation States being primarily responsible for carrying out justice for the most serious international crimes. The availability of universal jurisdiction ('UJ') is crucial in the fight against impunity, as the idea

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that war-torn States would or could hold independent and credible trials to international standards – even of the worst perpetrators – is often quite fantastical. Furthermore, international criminal tribunals often lack the capacity to bring defendants to justice and have significant jurisdictional limitations, putting those responsible for offences beyond their reach.

Although a number of European States have exercised UJ against foreign accused and the number of cases has been on the rise, the practice of UJ has not blossomed as expected. UJ is still overwhelmingly exercised by a minority within Europe, and despite promising advances in recent years in which a variety of States have relied on a form of UJ to bring charges against foreign accused, UJ has generally been exercised by former colonial powers when the victims have been their nationals. Further, when the accused is a national of the forum State, the State has focused on bringing charges other than for international crimes. In Latin America too, a small minority of States has been active in bringing UJ cases and the colonial link is also apparent, as Latin American States have overwhelmingly been concerned with bringing charges against accused from their former colonial powers for atrocities committed against their nationals.

This article argues that although 'UJ' – albeit in many cases more correctly forms of extraterritorial jurisdiction – is on the rise in both Europe and Latin America, it risks continuing to become a form of colonial score-settling unless all States embrace the opportunity it affords to become a mechanism for truly universal justice. Part 2 of the article gives an introductory overview of the nature of UJ, while Part 3 examines the exercise of UJ in Europe, from Belgium's flagship legislation through to recent colonial exercises of UJ. Part 4 examines Latin America's practice of UJ, particularly that of Argentina which has been most active. Part 5 looks at both regions' recent approach toward using UJ to address atrocities in Africa, highlighting again the risks of being seen to dispense justice infused with colonialism. Part 6 concludes that UJ in both Europe and Latin America need a reset to avoid being characterised more often than not as exercises of parochialism.

2. An overview of universal jurisdiction

UJ in its pure form allows a forum State to bring to trial accused persons who are not its nationals in circumstances where the victim is also not a national and the alleged crime did not occur in the forum. The international crimes subject to UJ include grave breaches of the *Geneva Conventions* (war crimes),[1] genocide (as per the *Genocide Convention*[2]), and torture (as per the *Torture Convention*[3]). The requirement to investigate and, if appropriate, prosecute or to extradite to another State willing and able to do so (*aut dedere aut judicare)* has also entered into customary international humanitarian law. Although crimes against humanity are not yet the object of a distinct convention, those States and academic writers who claim the right to act unilaterally to assert UJ over persons committing such acts invoke the concept of acting as 'agents for the international community'.[4] As further noted in the Separate Opinion of Judges Higgins, Kooijmans and Buergenthal in the *Arrest Warrant case*,

> '[w]hile no general rule of positive international law can as yet be asserted which gives to States the right to punish foreign nationals for crimes against humanity in the same way

> as they are, for instance, entitled to punish acts of piracy, there are clear indications pointing to the gradual evolution of a significant principle of international law to that effect'.[5]

At the base of UJ is international agreement that some crimes are so heinous that the entire international community has an interest in their suppression. The Separate Opinion also stated that although there was no duty to extend national jurisdiction to cases where the alleged crime occurred outside its territory and its nationals were not involved, States may choose to do so. That is,

> '[t]hat there is no established practice in which States exercise universal jurisdiction, properly so called, is undeniable. As we have seen, virtually all national legislation envisages links of some sort to the forum State; and no case law exists in which pure universal jurisdiction has formed the basis of jurisdiction. This does not necessarily indicate, however, that such an exercise would be unlawful'.[6]

Additionally, there was nothing in national case law which evidenced an *opinio juris* on the illegality of UJ. The PCIJ in the *Lotus Case* had earlier confirmed that international law allowed States 'a wide measure of discretion' to extend their jurisdiction as far as they wish, providing they do not fall foul of any prohibitive rule.[7]

Further, the Separate Opinion stated that no territorial presence is required for the exercise of jurisdiction where the offence violates the fundamental interests of the international community. States may exercise UJ as long as procedural safeguards for the defendant are respected, which include first offering the State of nationality the chance to prosecute, and ensuring there is independence of the prosecuting authority from the political arm of the State.[8] Much lies within the discretion of Public Prosecutors;

> '[i]n common law and civil law legal systems it is the responsibility of the Public Prosecutor to determine whether the prosecution of an international crime is pursued. The level of this discretionary power and the considerations to be taken into account in making the decision vary [considerably] from State to State'.[9]

In the UK, for example, the consent of the Director of Public Prosecutions is required in order for an arrest warrant to be issued against persons accused of having committed grave breaches of the *Geneva Conventions*.[10] The decision to launch a case thus depends *inter alia* on to what extent the Public Prosecutor is independent from his/her government, as well as naturally being influenced by bilateral or other political imperatives.[11]

While membership of the *Rome Statute of the International Criminal Court* has seen all European States adopt (in the cases of Denmark and Italy, be in the process of adopting) legislation defining war crimes, crimes against humanity and genocide,[12] there is some variation in the crimes provided for. Belgium, Switzerland and the Netherlands are well known as having enacted legislation enabling the prosecution of international crimes committed during non-international armed conflict, while other European States have not. In Latin America, many States have dictated provisions on UJ mostly on the basis of conventional obligations, and sometimes over crimes under customary law, such as piracy or the slave trade.[13] A couple of States in the European and Latin American spheres have provided for UJ for acts not yet widely regarded as international crimes, such as ecocide (Belarus and Colombia),[14] while Costa Rica's law allows UJ for terrorism and its financing as well as for international crimes.[15]

All that said, Principle 1 of the *Princeton Principles on Universal Jurisdiction* (2001)[16] makes clear that the person needs to be present before the competent judicial body. This clearly eschews cases of UJ *in absentia*. Indeed, many States do require at least a custodial nexus to exercise UJ. Yet even if the State has the accused in custody, this does not mean that a prosecution will go ahead. In some States it is possible for an individual or a group to initiate proceedings in respect of an extraterritorial crime; indeed, some of the most prominent early examples of UJ cases commenced in this manner. In fact in some (European) jurisdictions (Belgium and others) some of the most prominent examples of UJ were launched by individuals or victims' groups. Unfortunately, however, this mechanism has now for the most part been closed off under political pressure.

Regardless of the clear existence of the principle in both customary and conventional international law, it is up to each individual State as to whether it legislates for UJ, whether it covers crimes committed only during international conflict or also crimes committed in non-international conflicts, or only certain crimes. This of course reflects the fact that domestic implementation is not necessary under international law. Although technically UJ does not depend on the enactment of national legislation, Principle 3 of the *Princeton Principles* reminds States that their national judicial organs may rely on UJ even if their national legislation does not specifically provide for it.

That said, having laws on the books is crucial so that the domestic prosecution and trial process can go ahead smoothly. Following a major international survey in 2012 Amnesty International concluded that 163 countries allowed UJ over at least one crime under international law[17] – torture, war crimes, crimes against humanity, genocide (or the traditional one, piracy) – although this figure includes States which have had to enact implementing legislation in accordance with their membership of the *Rome Statute,* which does not equate to UJ *per se*.[18]

3. Defining UJ in Europe

3.1. Revision

Critics have cautioned that UJ may be applied, not in the pursuit of international justice, but to serve the interests of powerful Western States. For example, Kontorovich writes that 'far from being used as a tool of global policing, the UJ doctrine is, in practice, used to protect the parochial domestic interests of the prosecuting [S]tate'; this being because despite the promise of justice for international crimes in unconnected jurisdictions, in 'the overwhelming majority of cases' the forum State actually has a direct, differentiable, parochial connection with the offense.[19] So while the nominal purpose of UJ is to allow States to prosecute crimes without any nexus to the offense – to enforce a truly global legal order – in practice it has often been used by States in cases where a nexus (particularly a parochial – even colonial – one) exists.[20]

This criticism is well-founded. For example, Italy has been concerned with bringing the perpetrators of Latin American atrocities to justice in exercises of jurisdiction on the basis of passive personality. In late 1992 there was the discovery in a police station in Asunción of the 'Archives of Terror', which described the fate of tens of thousands of Latin Americans secretly kidnapped, tortured and murdered by the armed forces and the secret services of Chile, Argentina, Uruguay, Paraguay, Bolivia and Brazil

during *Operation Condor* (the U.S. counterinsurgency strategy implemented in Latin America during the 1970s and 1980s). Italian prosecutors initiated a criminal investigation into the disappearance and murder of dozens of Italians who had been among the *Condor* victims,[21] and finally, in 2021 Italy's Supreme Court confirmed the conviction and life sentences of 14 former security officials and military personnel from Chile and Uruguay.[22]

Spain has also been active, but this has not been without a colonial context – it was Spain's own marginalisation of indigenous communities in pre-independence societies that laid the seeds for later political repression, thereby giving rise to future atrocities cases. Indeed, Guatemalan courts have reasoned that the extreme violence perpetrated on indigenous Mayans in Guatemala was the product of the racism that has marked relations with Guatemala's indigenous peoples dating from Spanish colonial times.[23] So while Spain is prominent in dispensing justice, this clearly suggests its responsibility at least in moral terms. To this extent, Spain prosecuting Latin American crimes could thus be viewed as an attempt to remedy in part its own past failings – or less charitably, to police those post-colonial governments.

Spain's liberal *Ley Orgánica del Poder Judicial* (LOPJ – Organic Law of the Judicial Power) was passed in 1985 and granted Spanish courts' jurisdiction over international crimes in *any* territory.[24] The first use of this law was the prosecution of Adolfo Scilingo – in 2007 the Spanish Supreme Court found Scilingo guilty of crimes against humanity and sentenced him to 1084 years in jail.[25] The case ' … marked the first time in history a national court had processed and convicted an individual for crimes against humanity committed in another country'.[26] Following this case, Spain went on to successfully prosecute another Argentinian, Christian von Wernich, a former police chaplain, for his role in 'Dirty War' disappearances, torture and killings.[27] Victims groups then pushed for Spain to assert jurisdiction over General Augusto Pinochet for (*inter alia*) crimes against humanity against Peruvian indigenous communities during the 1960s and 1970s.[28]

Spain's UJ law has also been used for crimes in Guatemala. The early case of *Menchu Tum v Montt* (the *Guatemalan Genocide Case*) was brought in Spanish courts against former Guatemalan Head of State Efrain Rios Montt, for international crimes committed against the indigenous Mayan Ixil community. In contrast to the successful outcome in *Pinochet*, the Spanish Audiencia Nacional and Tribunal Superior construed the LOPJ to require a link to Spain,[29] butthis stance was reversed on appeal to the Spanish Constitutional Court[30], which fully endorsed the principle of 'pure' UJ, stating that international justice was 'a shared interest of all States'.[31]

Notwithstanding the Spanish Constitutional Court's endorsement of UJ, in 2014 Spain adopted legislation curtailing the LOPJ by excluding the possibility of conducting trials *in absentia*.[32] In 2020, Spain was able to extradite former El Salvadoran Army Colonel Inocente Montano Morale, formerly El Salvador's Deputy Minister for Public Security, from the US to stand trial for the 1989 killings of five Spanish Jesuit priests.[33] This prosecution proceeded with the accused in custody and on the basis of passive personality, which reflected the more parochial Spanish approach to jurisdiction in recent years.

The fate of Belgium's formerly very liberal UJ law is well-known,[34] but it should also be noted that other European States (such as Germany[35] and Sweden[36]) as well as the UK[37] also used to have expansive views on legal reach in their domestic laws.

However, in the years in the wake of the Belgian example they either saw no motivation to use them or found grounds to cut back on prosecutions by adopting measures such as requiring the suspect's presence in the forum, requiring government approval[38] or other conditions to be satisfied,[39] or deferring to foreign policy priorities.[40] As such, many European States have enacted or amended their law to only the minimum required by international law to meet the requirements of the *Geneva Conventions*, which requires the prosecution of crimes committed on its own territory or by its own nationals in foreign fora. Adanan asserts that '[t]hese legislative changes are the result of the deterioration in international relations with [S]tates whose nationals were the subject of [UJ] proceedings'[41] – this is clearly the case for some high-profile examples, but it should be noted that the central obligation of the *Ljubljana-The Hague Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity, War Crimes and other International Crimes*, adopted in Slovenia in 2023, requires States to establish jurisdiction over defendants found on their territory (unless they extradite or surrender them to an international tribunal) – this is another indication that UJ is now only required in less than its 'pure' form.

For its part, the European Court of Human Rights (ECtHR) has assisted European states' application of their extraterritorial criminal laws. The main issue in contention in UJ cases in the ECtHR has been the principle of legality in Article 7 of the *European Convention on Human Rights and Fundamental Freedoms* (no retroactive application of criminal law, and criminal law and penalties are accessible and foreseeable), where the Court's rulings in such cases as *Kolk and Kislyiy v Estonia*[42] and *Kononov v Latvia*[43] have upheld the State's interpretation of its obligations. As far as genocide goes, in *Jorgic v Germany* the Court confirmed the State's position that it had the *erga omnes* obligation to punish genocide and could thus exercise its UJ on an extraterritorial basis and regardless of the nationality of the accused, thus confirming the position of other national and international courts.[44] This was a useful reaffirmation of the content of extraterritorial jurisdiction for genocide. Whilst many member States of the *Convention* now allow for UJ for genocide by foreigners of foreigners in foreign territory, at least if the accused is within the jurisdiction, only very few cases – such as those under Spain's previously liberal law (notably *Pinochet*) – have actually been brought.

Thus there is mounting evidence that over the first two decades of the twenty-first century the practice of UJ in Europe has evolved into a more conservative and limited form – one that has not taken advantage of the rich opportunity envisaged in the *Arrest Warrant Case*.

3.3. Resurgence?

In Europe there has however been a recent reversal of this apparent trend. Over the past 15 years Langer and Eason have noted that the geographical distribution of UJ complaints within Europe has shifted. They note that the number of complaints filed in Belgium and Spain has dropped sharply (this tallies with the introduction of legislation limiting the use of previously liberal laws in those two States). Interestingly however, Germany and France are now hosting significant numbers of cases, and the Nordic States –Denmark, Finland, Iceland, Norway and Sweden – have also quietly assumed a more significant role.[45]

Nearly all accused have been non-State actors, African figures (government and militia), and former Syrian government officials. In 2019 there were 22 countries of commission, 16 countries of prosecution and at least 207 persons under investigation. Eleven accused were on trial, and 16 had been convicted. These numbers represented an increase of 40% over the figures in 2018.[46] Just in relation to Syria, in 2020 there were 25 ongoing cases against former Syrian officials in Austria, France, Hungary, the Netherlands, Norway, Spain and Sweden, with four resulting in convictions and another three at the trial stage.[47] Overall, there has been an increase of roughly 500 cases in total between 2019 and 2022.[48] In 2023 trials or appeal hearings were to take place in Finland, France, Germany and Sweden for crimes allegedly committed in Rwanda, Sierra Leone, Sudan, and Syria.[49]

While these figures suggest a resurgence for UJ, the reality is more nuanced. For instance, many convictions in recent years in European courts, particularly those in Germany and France,[50] of suspects bearing the nationality of the forum State have in fact been for terrorism, not for international crimes.[51] For instance in Germany, it is reported that since 2015 there have been more than 32 convictions of female former ISIS members for terrorism, but only a tiny minority for international crimes of genocide or crimes against humanity.[52] Paulet gives a number of reasons for this:

> 'In many States [for instance the UK, Germany and Switzerland] the same units are in charge of prosecuting both types of crimes … In the context of scarce resources, it is a zero-sum game: prosecutions for terrorism multiply at the expense of prosecutions for international crimes'. After all, prosecutions for international crimes are long and complex, requiring significant expertise and resources – 'more elements must be proved, and prosecutors are usually required to find and interview witnesses and survivors abroad, collect evidence in a context with which they are unfamiliar – and sometimes even conduct their investigations without seeing the crime scenes at all'.[53]

The same fact circumstances may be insufficient to prove international crimes but may lead to a conviction for terrorism-related offences. This makes sense, as many States have a much lower threshold for terrorism than for war crimes or crimes against humanity. Again, as noted by Paulet:

> 'States have increasingly prosecuted suspects under charges of terrorism rather than international crimes. [This is an] apparently reasonable choice: suspects appear faster in court, after shorter investigations requiring fewer resources. And yet … terrorism and international crimes have fundamentally different legal bases and using the former to the detriment of the latter comes with significant drawbacks'.

The drawbacks are several – first, laws against terrorism do not cover atrocities committed by State agents. Similarly, charges of terrorism do not encompass the full scope of human rights violations entailed in international definitions of war crimes, crimes against humanity or genocide (for instance, the targeting of a particular ethnic group is not punished by terrorism charges *per se*). While obtaining terrorism convictions appears more attractive from a domestic political perspective, not prosecuting them *as international crimes* diminishes the importance of such crimes. Additionally, as terrorism is a threat to State security whereas international crimes often target individuals, this means a much-reduced role for victims (as initiators of prosecutions, and as providers of testimony) in the prosecution of such crimes, and less consideration of satisfaction

and justice for those harmed.[54] The exception is where 'cumulative charging' has been employed – where charges for international crimes are added to the existing principal charge of terrorism. This has been employed in a minority of cases to date – most recently in the Islamic State-related *Jennifer W*,[55] *Nadine K*[56] and *Taha al-Jumailly*[57] cases – and there is much scope for an increase in this practice.

As far as prosecutions of non-nationals and non-residents go, Germany has also been active.[58] Germany's interest in flexing its prosecutorial muscle has been heightened with the entry into the country of nearly one million migrants from conflict zones, especially Syria. Among the arrivals have been witnesses and victims as well as some perpetrators, making it much easier to prosecute cases. The result has been a slew of low-level cases in German courts, such as that of Eyad al-Gharib[59] and that of Anwar Raslan.[60] These investigations have been assisted by the fact that since 2011 German authorities have maintained a 'structural investigation' into State-sponsored war crimes in Syria,[61] as well as into alleged crimes by Islamic State.

While the German law is liberal on the face of it, it has (like the revised Belgian law and the French, Swiss and Spanish laws) been fettered by the requirements that firstly, the case cannot proceed without the suspect's presence in Germany, and secondly, the Federal Prosecutor must agree to open any UJ case. Regarding the latter, to date there has been great reluctance on the part of the Federal Prosecutor to investigate or bring cases targeting high-ranking foreign officials, particularly if the case may involve 'extraordinary rendition'.[62] This is so even in cases where Germany has had a direct interest (on the basis of passive personality), such as against former U.S. Defence Secretary Donald Rumsfeld for the bungled 2003 kidnapping and 'enhanced interrogation' of German national Khaled el-Masri in Skopje, Macedonia, and in Afghanistan.[63] Bucking this trend is a rare case filed in March 2021 by Reporters Without Borders against Saudi Crown Prince Mohammed bin Salman for the murder of reporter Jamal Khashoggi and the detention of dozens of other journalists; clearly the Federal Prosecutor's agreement to proceed was due to a perception that Germany had 'safety in numbers' with other governments. (that said, the forum requirement must still be met, thus making the Crown Prince's actual prosecution unlikely).

Apart from cooperation with other European powers, France has hosted its own UJ litigation against a range of Syrian figures found in France, the latest being the *Nema* and *Chaban* cases in the Cour de Cassation.[64] Although French UJ law is confusing and contains a number of restrictive pre-conditions to the exercise of jurisdiction, the law has also been flexed in recent years in bringing a range of suspects in its former African colonies to justice. Most recently, in July 2022 a French court found a former Rwandan prefect guilty of complicity in genocide and crimes against humanity committed during the Rwandan genocide in 1994. This was followed in November 2022 by the conviction of the former Liberian commander of the ULIMO rebel group for crimes against humanity and torture committed during the first Liberian civil war (1989–1996).[65]

Overall, a renaissance for UJ in Europe in terms of numbers may be indicated,[66] but it is clear that European UJ in recent years has often been focused on other crimes, operates within limited circumstances, and plays it safe with prosecutions of persons from former colonies – assuming they can be found in the forum. This dovetails with Langer's observation of Europe's general move away from an interventionist 'global enforcer' model of

UJ in which States have a role in preventing and punishing the commission of core international crimes committed anywhere in the world, towards a 'no safe haven' model as resources are devoted almost exclusively to prosecutions involving defendants who are residents, asylum seekers or people otherwise present in their territories.[67] That is, the exercise of nationality or passive personality jurisdiction, not UJ as such.

4. Latin American perceptions and practice of UJ

4.1. Renewal?

In their 2019 paper Langer and Eason however documented 'a quiet expansion' in the use of UJ globally – that is, there have been setbacks for UJ in parts of Western Europe, but 'this same period has seen breakthroughs in the use of this practice elsewhere in the world as a growing number of States – in both the developed and developing world – have hosted or undertaken UJ litigation'.[68] Moreover, these are not just initial complaints and investigations, but formal prosecutions and even trials. Part of the reason for this is a search by victims and NGOs for new venues to bring cases, and an 'extraterritorial backfire effect' against certain European States, Spain in particular.[69]

As mentioned already, Latin America has laboured under a lengthy history of colonial oppression and exploitation (three centuries of Spanish and Portuguese rule), the deficits of which in many respects set its societies up for long-term social and political conflict, such as the anti-revolutionary military regimes and civil conflict of the 1970s and 1980s.[70] During this era, many countries suffered mass civilian casualties from gross human rights abuses (torture, disappearances, crackdowns on dissent), which were followed by a slew of generous amnesty provisions for senior and even junior junta officials alike which appeared to put accountability for any of these atrocities out of reach. Since the brutal 'State terrorism' of '*Operation Condor*',[71] most Latin American countries have made significant efforts to break with their autocratic pasts and are now firmly committed to democratic ideals and the protection of human rights.[72] Even so, making headway on justice, peace and reconciliation has been difficult due to a range of post-conflict intractabilities.[73]

One indication of this about-face is that many countries in the region are embracing the ICC's complementarity scheme (to promote, progress, and buttress existing domestic legal institutions in order to prosecute/prevent international crimes), as well as the norms of the Inter-American legal system in-order to realign themselves with the international community. For its part, the Inter-American Commission on Human Rights (IACHR) has noted that only the proper utilisation of the domestic judicial system to investigate, prosecute, and (if necessary) punish, will suffice to achieve full and comprehensive justice for the domestic population.[74] As such, countries previously unwilling to address past human rights violations have now committed themselves to the *Rome Statute of the ICC*[75] and to international justice.

With the signing of the Inter-American Democratic Charter on 11 September 2001 Organisation of American States (OAS) member States (including all of Latin America except for Cuba) committed not only to maintaining and strengthening democracy, but also to enshrining the essential elements of a democracy. Examples include the respect for human rights and fundamental freedoms, the exercise of power on the

basis of the rule of law and popular will, and the transparency of government activities.[76] Additionally, the IACHR has been increasingly active (albeit from a low base) in support of human rights in the region, and the Inter-American Court of Human Rights (IACtHR) has reached a series of significant decisions on the State's obligations regarding fundamental human rights.[77]

This volume of activity has had an impact within individual States themselves, helping their own reckonings with the past and strengthening their internal justice and accountability systems. For example, the *Pinochet* trial in the UK was a significant external stimulus for Chile which, in the years since, has taken key steps toward accountability for crimes during the Pinochet era. Argentinian legislators have nullified their country's amnesty laws and judges have been emboldened to prosecute members of the former military junta, including those still serving. Delagrange notes that Chile and Argentina's monist constitutional structures (which allow international conventions to have constitutional weight and thus place a premium on international law) have assisted this process.[78] The discovery of the *Operation Condor* abuses has helped to catalyse a series of cases reckoning with the past, particularly in Chile and Argentina. In the IACtHR *Case of Goiburu et al v Paraguay* the State's acquiescence was considered as a 'positive contribution to these proceedings' which allowed the truth of the facts and merits of the case to be put on record, thus allowing a form of reparation and satisfaction for victims as well as a way of helping to prevent similar acts from occurring.[79]

Yet Latin America's nouveau internationalist motivation has often been accompanied by bureaucratic inefficiencies in particular and/or the caveat that the past be hidden behind a veil of immunity. Passing legislation that will effectively implement obligations regarding international crimes and requirements regarding privileges and immunities has been a difficult process for many Latin American States.[80] This is despite the fact that the IACtHR affirmed in *Goiburu* the *jus cogens* nature of full jurisdictional assistance in bringing such crimes to justice.[81] There are a number of issues inhibiting Latin American States' full adherence to the *Rome Statute*, among them issues regarding compatibility with domestic constitutions on issues such as life sentences, extradition of nationals, and of course, amnesty laws. Even Latin American States which have ratified the *Rome Statute* have been slow to adopt implementing legislation due to strong hegemonic pressure from the U.S., as well as internal pressure from domestic factions fearing prosecution.[82] Although UJ exists separately from ICC jurisdiction,[83] this has also been so for UJ cases in domestic courts. Mendez and Tinajero-Esquivel note this two-faced approach as follows:

> 'Many [Latin American] countries have proclaimed their adherence to international human rights treaties, and some have even included these principles in their constitutions. Many Latin American countries have taken other important steps toward taking their international human rights obligations seriously. Yet when … Pinochet was arrested in London on October 16, 1998, Latin America rallied behind Chile in public opposition to any notion of extra-territorial criminal jurisdiction'.[84]

It is against this backdrop that a number of Latin American States have taken tentative steps forward with the passage of legislation allowing UJ over war crimes and crimes against humanity.[85] The clear standout is Argentina. Historically, Argentina has applied the territoriality principle of jurisdiction, even 'though it has long been party

to treaties that include extraterritorial provisions.[86] Argentina was one of the 'like-minded' States that pressed for the creation of the ICC and it was one of the most active during the drafting and negotiation phase in Rome. Argentina signed and ratified the *Rome Statute* early and passed domestic implementing legislation, although it has had limited dealings with the ICC since.[87] Despite this internationalist bent, Argentina has no domestic legislation explicitly providing for UJ; rather, it relies on s118 of its Constitution which envisages trials for crimes 'committed outside the territory of the Nation against public international law' (*crímenes contra el derecho de gentes*), irrespective of where the crimes are committed.[88] Up until 2021, Argentina had conducted 96 investigations on the basis of UJ.

The first was when a group of victims of Franco-era crimes in Spain initiated proceedings before the Argentine courts. The first instance judge at the time closed the case on the basis of a lack of jurisdiction, but the Court of Appeal reversed that decision.[89] Accordingly, Rodolfo Martín Villa, Spain's Interior Minister from 1976-1979, was indicted on four counts of aggravated homicide. However, efforts since to have the accused detained in Madrid and extradited to Argentina have been fruitless due to Spain's amnesty law. It is reportedly unlikely that the case will proceed, which is a deeply disappointing outcome considering the 'hundreds' of Franco-era Spanish victims who had placed their hopes in this fledgling attempt at UJ[90] (even 'though the indictment was not for international crimes *per se*).

There have been other notable cases. In 2009 an Argentinian judge asked for Interpol arrest warrants to be issued for former Chinese President Jiang Zemin and former State Security chief Luo Gan for crimes against humanity in relation to the persecution of the Falun Gong movement.[91] China was of course critical of the move, and requested it be 'properly handled' in advance of the then upcoming visit of Argentina's President to China.[92] Indeed, it appears that the case has been dropped as there has been no progress since.

In late 2018 Human Rights Watch lodged a case with Argentinian authorities against Saudi Crown Prince Mohammed bin Salman for alleged war crimes in Yemen, for the torture of Saudi nationals and for the murder of reporter Jamal Khashoggi. The case was apparently motivated by the opportunity afforded by the Crown Prince's then imminent visit to Buenos Aires for the G20 summit.[93] However, while inquiries were being made of Turkey, Yemen and Saudi Arabia (among others) to ascertain whether investigations were taking place there, the Crown Prince left Argentina. Argentinian prosecuting authorities sent a rogatory commission to Turkey in September 2021, but there has been little further progress on the case.

The most recent Argentinian case has concerned the persecution of the Rohingya people in Myanmar. In 2019 the Burmese Rohingya Organisation UK (BROUK) filed a lawsuit before Argentinian courts against senior Myanmar officials (including former State Councillor Aung San Suu Kyi) for alleged genocide and crimes against humanity.[94] After initial uncertainties about overlap with the ICC investigation,[95] testimony has since been taken remotely from six survivors of sexual assault.[96] The Argentine investigation is proceeding in parallel with the ICC's work, which actualises the call by the UN Fact-Finding Mission on Myanmar for UN member States to exercise jurisdiction (including UJ) to investigate and prosecute serious international crimes as part of wider efforts to bring the Myanmar officials responsible to justice.[97]

It might be said that going after international crimes is a way of deflecting political attention from Argentina's own unfinished reckonings with the past. It may be a case of judges using liberal forum laws to go after low-hanging fruit. Perhaps it is a way of fulfilling justice and democratic longings, as expressed through Argentina's affiliation with ICC and IACHR ideals. Or perhaps it is about strengthening Argentina's own internal processes by using domestic processes to realise justice for atrocities elsewhere; as Roht-Arriaza has observed, '[t]ransnational prosecutions can catalyse domestic prosecutions'.[98] This may mean Argentina's usage of UJ could also benefit other Latin American States by helping to build a region intolerant of future abuse.

4.2. Reluctance

All that said, and perhaps reflecting its geopolitical position, Argentina's relatively regular flexing of its UJ muscles have not yet resulted in any substantive trials, much less convictions. Further, it is clear that there has not been any invocation of UJ by other Latin American States to anywhere near the same extent as has occurred in Argentina.

Chehtman notes that Latin American States have constantly had to face different forms of imperialistic influences and interventions – at first it was European conquest, then the threat of recolonisation. In the twentieth century there was an increasingly interventionist U.S. (the Monroe doctrine and the Roosevelt corollary, as well as direct and indirect interventions in Latin America during the Cold War, including *Operation Condor*), and in the twenty-first century the U.S. has made it its policy to thwart the ICC wherever it has attempted to grow roots.[99] This has been no more apparent than in the U.S.' approach toward Latin America and the OAS,[100] and despite the fact that past case law of the U.S. itself has on occasion invoked UJ.[101] At the same time, Latin American States have faced serious challenges from within their borders by radical dissident political groups and criminal organisations. All these influences have shaped Latin American States in similar ways, such as prompting them to be historically strong defenders of the principle of non-intervention in their internal affairs.[102]

While many Latin American States have introduced provisions on UJ into their Criminal Codes, mostly on the basis of treaty obligations and sometimes over crimes under customary law (such as piracy or the slave trade),[103] several of these extensions are connected (predictably) to U.S. policy such as its 'war on drugs', its 'war on terror', and its fight against corruption.[104] Indeed, there are a number of instances in recent years where the U.S. has managed to pressure different Latin American States to extradite defendants to stand trial in U.S. courts in pursuit of these agendas, although in many of these instances the relevant Latin American government has used the U.S.' hegemonic reach for its own interests (domestically to neutralise rival political influences or cover up scandals, or bilaterally to win favours such as trade agreements or economic aid).[105] There are also instances where Latin American States have managed to thwart U.S. efforts through 'covert blocking' (that is, utilising arguments which seek to minimise political confrontation with the U.S. administration, while not complying with US extradition requests).[106] Although Latin American States keenly reject outside pressure, their resistance to U.S. efforts 'seems largely based on the economic or political capital of individual defendants, rather than on some form of anti-imperialist or regionalist sensibilities'.[107]

Even so, on paper Latin American States appear to have embraced extraterritoriality (on the basis of active and passive personality) with 'remarkable enthusiasm', despite most States subjecting their extraterritorial reach to a number of different, self-imposed limitations.[108] This has led to a significant number of extraditions within the region as different States have attempted reckonings with their 'Dirty War' pasts.[109] Extradition has also occurred on occasion to and from former colonial powers on the basis of active or passive personality.[110] However, leaving aside extraditions (including those to or from Europe), the ambitious provisions on UJ throughout the region have rarely been invoked. Apart from Argentina (whose UJ investigations (above) have yet to bear any fruit), by 2021 there had only ever been five other investigations in the region initiated on the grounds of UJ *per se*.[111] This indicates that despite their tacit enthusiasm, Latin American [S]tates have generally 'followed a much more cautious, even indifferent approach towards exercising their normative powers abroad'.[112]

Moreover, it should be noted that the contribution of the Inter-American human rights system to UJ in the region has differed from the contribution of the European system to UJ in Europe. Whilst proceedings in the IACtHR have helped catalyse Latin American States' reckonings with the past, this has not been the case in the ECtHR where there have been few cases and far less evidence of the same effect on member States. Further, in the Inter-American system it is to be noted that access to justice issues more often than not have involved the claimants' attempt to access information about what happened to their relatives, whereas in the European Court access to justice has overwhelmingly been about whether the State has exceeded its power in charging and convicting, or approving the extradition of, the defendant. Whatever their differences however, many UJ cases tend to be characterised by long and complex arguments about whether national law and international law have both criminalised the conduct at issue in the same way, which goes to the concept of *nullum crimen nulla poena sine lege* (no crime, no punishment without law) – a fundamental tenet of both systems.

5. Comparing Europe and Latin America's UJ over crimes in Africa

Like their former colonies in Latin America, the concept of UJ has allowed European powers to target their former African colonies with investigations. France has been particularly proactive, with more than 14 investigations and/or trials currently on foot covering Liberia, the CAR, Sudan and in particular, Rwanda.[113] Its most recent conviction was of Claude Muhayimana in 2021, who received a 14-year sentence.[114] The African Union's Peace and Security Council (PSC)[115] has sharply criticised the application of UJ by European States across Africa.[116] It notes:

> '[the] need for international justice to be conducted in a transparent and fair manner, in line with the principles of international law, and … the abuse of the principle of [UJ] poses a threat to the efforts aimed at promoting the rule of law and stability, as well as at building strong national and regional institutions'.[117]

As noted by Lee, '[v]ery few Western leaders are ever called to account for violating international law, while a steady stream of indictments have been issued by Western courts for nationals of other countries, predominantly Africans'.[118] These concerns are well-known.

The African Union and individual African States have argued that it does not allow African States to build their own responses to such crimes – rather, UJ has presented a 'threat to the efforts aimed at promoting the rule of law and stability, as well as at building strong national and regional institutions'.[119] In relation to Spain's 2015 exercise of UJ over former Rwandan Head of Intelligence Karenzi Karake, the PSC argued 'this abuse threatens to reverse the hard-won security and stability in Rwanda and in Africa as a whole'.[120]

Clearly in post-conflict societies such as Rwanda very difficult decisions have had to be made in the transitional justice process, and it is not often clear that there has been accountability at the most senior political and military levels to the satisfaction of the international community. In this light the large number of French prosecutions of persons in such societies assume a cogency they might otherwise lack.

Yet Langer and Eason note that even in those trials in Europe that have involved African defendants, most defendants had become citizens or residents of the prosecuting States prior to the initiation of proceedings against them. Given this, domestic European UJ trials have been far less concentrated on African defendants than the cases thus far pursued by the ICC.[121] This may suggest that African sensitivities over Europe's use of UJ (at least its active personality) to bring atrocities to account would be less in such circumstances.

Contrastingly, a colonial dimension is absent in Latin American discussions and practice on UJ with regard to Africa, perhaps suggesting there is the potential to expand its application in appropriate cases without attracting criticism that colonialism is at play. It is possible that Latin American States, with their experience in prosecutions of their own nationals for crimes committed during their 'Dirty Wars', and with the appropriate legislative and judicial framework in place and tested (including in human rights cases heard in the IACtHR), might be able to prosecute atrocities in Africa without the historical baggage many European States carry. Indeed, without further practice on UJ in other areas of the world, there is a 'risk of further entrenching Eurocentrism of international criminal justice resulting from the dominance of European domestic courts for the prosecution of international crimes under [UJ]'.[122] In this sense, Latin American prosecutions of African atrocities would be welcome. However, practice is scant to date.

Should former African leaders or senior security officials be arrested for trial in a Latin American court, some of the same general arguments regarding the use of UJ would remain. For instance, African States might again claim a 'clear violation of [their] sovereignty and territorial integrity' and an 'attempt to subordinate African legal systems to those of non-African States'.[123] Such criticism might be an unfortunate but unavoidable consequence of spreading the prosecution of UJ cases to non-African courts, but it is still likely to be less than the blowback from a European prosecution.

6. Conclusions

There is no doubt that some of the challenges regarding UJ afflict all States and are caused by a lack of legal clarity on its scope and definition, which opens the way for States to politicise its use. Despite the *Pinochet* ruling apparently clarifying officials' lack of functional immunity for the most serious international crimes,[124] there remain questions

about the relationship between UJ and immunity for current heads of State and for diplomats. Domestic law on the matter differs between States, adding to the confusion.

UJ undoubtedly faces steep challenges. In just about every jurisdiction the decision to pursue a case depends on political will, meaning prosecutors and courts must be willing to take on the challenge of pursuing justice for crimes committed far afield. Further, States must be willing to allow prosecutions knowing that they could provoke a political backlash from the government on trial. Still, politics doesn't interfere with every UJ case; it is possible, after all, that a government's political goals align with those of the prosecution (for instance, there is considerable evidence that the *Pinochet* case only went forward because the Labour government in power in the UK at the time was not opposed).[125] The large number of investigations and prosecutions underway in 2021 is testament to this political confluence.

European States have however proven themselves to be hesitant to apply UJ principles broadly, apparently fearing that pursuit of anyone other than of low-level rank (and associated with terrorism) may endanger their foreign policy interests.[126] It is clear on the other hand that Europe has not held back in pursuing high-level Latin American defendants. Without a more global range of defendants, including at high levels, European exercises of UJ regarding Latin American States carry the risk of being seen in reductive terms as another form of imperialism.

Much remains to be done to bring Latin America's dictatorial/military regimes to account, and an external focus can assist that difficult reckoning with the past. However, to date the region's use of UJ laws is largely confined to extraditions, or for bringing charges against accused persons from former colonial powers for atrocities committed against their nationals. It is only Argentina which has begun to use its law more consistently with the universalist spirit underlying UJ; Argentina's activist flurry in recent years in investigating and prosecuting international crimes in its courts is commendable, but cases need to be driven forward more decisively. It remains to be seen what effect the election of the Milei government will be on the usages of Argentina's UJ law; given the new government's foreign policy priorities (particularly its affinity for U.S. norms),[127] it is possible that a new domestic scepticism toward UJ may supplant Argentina's recent activism. The availability of UJ as an avenue for justice where otherwise it may not be obtained would ill-suffer such a development – this is particularly because there is much room for Argentina's Latin American peers to share that activism, rather than their general preference to date to invoke (or agree to exercises of) jurisdiction for their own domestic political or economic gain.

The fight against impunity is a global one which requires the commitment of the whole international community, thus both Europe and Latin American States need to put their UJ promises and commitments to more robust use. If these regions will not do so, the practice of UJ risks being relegated further to an occasional politicised exception rather than a robust means for attaining justice that would otherwise be unattainable, and for dissuading future atrocities.

Notes

1. *Geneva Conventions I-IV*, adopted by the Diplomatic Conference of Geneva on August 12, 1949, with entry into force on October 21, 1950.

2. The *Convention on the Prevention and Punishment of the Crime of Genocide ('Genocide Convention')* was adopted by the UN General Assembly in Resolution 260 A (III) on December 9, 1948. It entered into force on January 12, 1951 after it had been ratified by 20 States.
3. The *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (the '*Torture Convention*') was adopted by the UN General Assembly in Resolution 39/46 on December 10, 1984. It entered into force on June 26, 1987 after it had been ratified by 20 States.
4. See the Joint Separate Opinion of Judges Higgins, Kooijmans and Buergenthal in *Case Concerning* the *Arrest Warrant* of 11 April 2000; Democratic Republic of the Congo v Belgium (2002) ICJ 1 ('*the Arrest Warrant Case*'), [51].
5. *Id*, [52], citing *Oppenheim's International Law,* 9th ed. 998.
6. See the Joint Separate Opinion of Judges Higgins, Kooijmans and Buergenthal in the *Arrest Warrant Case supra* (note 4), [45].
7. *Lotus Case*, P.C.I.J., Series A, No. 10, 18–9.
8. See the Joint Separate Opinion of Judges Higgins, Kooijmans and Buergenthal in the *Arrest Warrant Case supra* (note 4), [59].
9. A. Adanan, 'Emerging Voices: Domestic Regulation of Universal Jurisdiction – the Role of Domestic Prosecutors', *Opinio Juris*, http://opiniojuris.org/2016/08/29/emerging-voices-2/ (accessed August 29, 2016).
10. In accordance with the *Police Reform and Social Responsibility Act 2011* (UK) s153.
11. Adanan *supra* (note 9).
12. EUROJUST, 'At A Glance: Universal Jurisdiction in EU Member States' (2023), 2, https://www.eurojust.europa.eu/sites/default/files/assets/at-a-glance-universal-jurisdiction-in-eu-member-states.pdf.
13. Bolivia (CP, Art. 1(7)), Chile (Código Orgánico de Tribunales, Art. 6(7) and 6(8)), Costa Rica (CP, Art. 7), Cuba (CP, Art. 5(3)), Ecuador (CP, Art. 5(5)), El Salvador (CP, Art. 10), Honduras (CP, Art. 5(5)), Mexico (CP, Art. 2) Nicaragua (CP, Art. 16(3)(f)), Panama (CP, Art. 19), Paraguay (CP, Art. 8(1)(6) and 8(1)(7)), Venezuela (CP, Art. 4(9), 4(10)). See further See A. Chehtman, 'Strategic Approaches to Extraterritorial Jurisdiction in Latin America', Chapter 11 in A. Parrish and C. Ryngaert (eds.) *Extraterritoriality in International Law* (Edward Elgar, 2023).
14. *Ibid*. Re Colombia, see Act 2111/2021, Art. 333 (https://www.minambiente.gov.co/wp-content/uploads/2021/06/ley-2111-2021.pdf).
15. CP, Art. 7 (Costa Rica); see Chehtman *supra* (note 13).
16. *Princeton Principles on Universal Jurisdiction* 28 (2001), Princeton University Program in Law and Public Affairs, http://hrlibrary.umn.edu/instree/princeton.html.
17. Amnesty International, https://www.amnesty.org/en/what-we-do/international-justice/ (accessed December 13, 2023).
18. R. Goodman, 'Counting Universal Jurisdiction States: What's Wrong with Amnesty International's Numbers [updated]', *Just Security*, https://www.justsecurity.org/4581/amnesty-international-universal-jurisdiction-preliminary-survey-legislation-world/ (accessed December 13, 2013).
19. E. Kontorovich, 'The Parochial Uses of Universal Jurisdiction' 94 *Notre Dame Law Review* 1417 (2019), https://scholarship.law.nd.edu/ndlr/vol94/iss3/8/.
20. *Ibid*.
21. 'The Disappeared: Operation Condor Trial: 21 Former Top Officials Indicted in Rome', *la Repubblica*, https://www.repubblica.it/cronaca/2014/10/13/news/desaparecidos_rinvio_giudizio-97993047/ (accessed October 13, 2021).
22. 'Italy Confirms 14 Life Sentences for Operation Condor Killers', *TeleSUR*, https://www.telesurenglish.net/news/Italy-Confirms-14-Life-Sentences-for-Operation-Condor-Killers-20210709-0010.html (accessed July 9, 2021).
23. A. Walsh, 'The Indigenous People Genocide Case in Guatemala: Justice delayed, Justice Denied?', *Open Democracy*, https://www.opendemocracy.net/en/democraciaabierta/ixil-

indigenous-people-genocide-case-in-guatemala-justice-delayed-ju/ (accessed October 11, 2018).

24. P. Scott, 'The Guatemala Genocide Cases: Universal Jurisdiction and its Limits' 9 *Chi-Kent J. Int'l & Comp. L.* 100.
25. B. Garzon, 'Argentina: Scilingo Case', https://baltasargarzon.org/en/universal-jurisdiction/argentina-scilingo-case/.
26. M. M. Marquez Velasquez, 'The Argentinian Exercise of Universal Jurisdiction 12 Years After its Opening', *Opinio Juris*, https://opiniojuris.org/2022/02/04/the-argentinian-exercise-of-universal-jurisdiction-12-years-after-its-opening/ (accessed February 4, 2022).
27. Staff and agencies, ''Dirty War' Priest Sentenced to Life for Murder, Kidnapping and Torture', *The Guardian*, https://www.theguardian.com/world/2007/oct/10/argentina (accessed October 10, 2007).
28. UK courts eventually upheld the legal authority of Spain's arrest warrant which had relied on UJ; *R ex parte Pinochet v Bartle and ors (Appeal)*, (1999) UKHL 17.
29. N. Roht-Ariazza, '*Guatemala Genocide Case*. Judgment no. STC 237/2005', 100 *American Journal of International Law*, 209 (2006): 207–213.
30. Scott *supra* (note 24), 124. After a more than 10-year delay in getting a prosecution off the ground, in 2013 Rios Montt was tried and convicted for genocide and crimes against humanity and sentenced to 80 years in prison. A retrial was however ordered, but he died before the case could be concluded. See J.-M. Burt and P. Estrada, 'Court Finds Guatemalan Army Commits Genocide, but Acquits Military Intelligence Chief', *International Justice Monitor*, https://www.ijmonitor.org/2018/09/court-finds-guatemalan-army-committed-genocide-but-acquits-military-intelligence-chief/ (accessed September 28, 2018).; Walsh *supra* (note 23); 'Guatemala Recognises Mayan Ixil Genocide, but Absolves General', *TeleSUR*, https://www.telesurenglish.net/news/Guatemala-Recognizes-Mayan-Ixil-Genocide-But-Absolves-General-, 20180926-0031.html (accessed September 26, 2018).
31. Roht-Ariazza *supra* (note 29), 211; Scott *supra* (note 24), 120. Even so, this was not enough to prevent the Court rejecting the extradition request for Rios Montt and holding that Guatemala, not Spain, was responsible for prosecuting him given that his crimes were political offences. This was despite the fact that a UN Committee had already concluded that genocide and other crimes against humanity had taken place in Guatemala; Memory of Silence, Art. V, V.1.5.
32. LO1/2014 (Spain).
33. 'Justice Prevailed: Salvadoran ex-Colonel gets 133 Years for Priest Slayings', *Reuters*, https://www.reuters.com/article/us-spain-el-salvador-massacre-idUSKBN2621QP (accessed September 11, 2020).
34. M. Halberstam, 'Belgium's Universal Jurisdiction Law: Vindication of International Justice or Pursuit of Politics?' 25 *Cardozo Law Review* (2003): 247; 'Belgium Drops War Crimes Cases', *Deutsche Welle*, https://www.dw.com/en/belgium-drops-war-crimes-cases/a-978973 (accessed September 25, 2003).
35. See the *German Code of Crimes Against International Law*, which came into force in 2002.
36. Prop. 2013/14:146, 2, see Chapter 2 Section 3(6) Swedish Criminal Code.
37. J. Ku, 'Britain to Limit Arrest Warrants Under its Universal Jurisdiction Law', *Opinio Juris*, http://opiniojuris.org/2010/03/04/britain-to-limit-arrest-warrants-under-its-universal-jurisdiction-law/ (accessed March 4, 2010). See also S.A. Watts, ''Yes Prime Minister: Early Indications of the Impact of a Change in Policing Governance and the Introduction of Police and Crime Commissioners across England and Wales', University of Portsmouth (PhD thesis), https://researchportal.port.ac.uk/files/14319800/S.Watts_Thesis_Final_Mar_2019_1_.pdf (accessed February 2019).
38. For example France: Art. 689 of the *French Code of Criminal Procedure*, as discussed in Appeals No. 22-80.057 and 22-84.468, Cour de Cassation Plenary Assembly, https://www.courdecassation.fr/en/toutes-les-actualites/2023/05/12/press-release-universal-jurisdiction-french-justice-crimes.
39. EUROJUST *supra* (note 12), 3.

40. See also 'Belgium: Universal Jurisdiction Law Repealed' *Human Rights Watch* (August 1, 2003), https://www.hrw.org/news/2003/08/02/belgium-universal-jurisdiction-law-repealed (accessed January 2, 2023).
41. Adanan *supra* (note 9).
42. *Kolk and Kislyiy v Estonia (Judgement),* ECHR, Nos. 23052/04 and 24018/04, 2006-I.
43. *Kononov v Latvia (Judgement),* ECHR, May 17, 2010.
44. *Jorgic v Germany (Judgement (Merits)),* ECHR July 12, 2007, 50–51, 53–54.
45. M. Langer and M. Eason, 'The Quiet Expansion of Universal Jurisdiction', *European Journal of International Law* 30, no. 3 (2019): 799.
46. V. Paulet (TRIAL International), 'Universal Jurisdiction Annual Review 2020' (report in collaboration with REDRESS, and the European Centre for Constitutional and Human Rights), 13, https://trialinternational.org/wp-content/uploads/2020/03/TRIAL-International_UJAR-2020_DIGITAL.pdf.
47. TRIAL International, 'Applying Universal Jurisdiction to Prosecute International Crimes and the Implications for Syrian Victims', December 23, 2020.
48. This covers cases under investigation, closed, or newly opened; EUROJUST *supra* (note 12), 2.
49. Id, 4.
50. Paulet *supra* (note 46), 11.
51. Paulet *supra* (note 46), 6.
52. S. Koller, 'ISIS Women in Court: Monika K. – Crowdfunding for the Islamic State?', *Counter-Extremism Project* , https://www.counterextremism.com/blog/isis-women-court-monika-k-crowdfunding-islamic-state (accessed February 16, 2023).
53. *Ibid*.
54. See Paulet *supra* (note 46), 49.
55. R. Greenall, 'Jennifer Wenisch: German IS Woman Faces Tougher Sentence for Girl's Death', *BBC online*, https://www.bbc.com/news/world-europe-64901603 (accessed March 9, 2023).
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57. See 'Yazidi Genocide: IS Member Found Guilty in German Landmark Trial', *BBC online*, https://www.bbc.co.uk/news/world-europe-59474616 (accessed November 30, 2021). Also see A. Clooney, 'Fifth Conviction of an ISIS Member in Germany for Crimes Against Humanity Against the Yazidis', *Doughty Street Chambers* (accessed October 25, 2021), https://www.doughtystreet.co.uk/news/fifth-conviction-isis-member-germany-crimes-against-humanity-committed-against-yazidis.
58. L. Morris, 'Why Germany is Becoming a Go-To Destination for Trials on the World's Crimes', *The Washington Post*, https://www.washingtonpost.com/world/europe/germany-war-crimes-justice/2021/03/05/b45372f4-7b78-11eb-8c5e-32e47b42b51b_story.html (accessed March 6, 2021).
59. See C. Otto *et al*, 'In World First, Germany Convicts Syrian Regime Officer of Crimes Against Humanity', *CNN online*, https://edition.cnn.com/2021/02/24/middleeast/syria-germany-officer-convicted-intl/index.html (accessed February 24, 2021). Also A. Vohra, 'Assad's Horrible War Crimes are Finally Coming to Light under Oath', *Foreign Policy*, https://foreignpolicy.com/2020/10/16/assads-horrible-war-crimes-are-finally-coming-to-light/ (accessed October 16, 2020). Also R. Gladstone, 'An Old Doctrine that puts War Criminals in Reach of Justice', *New York Times online*, https://www.nytimes.com/2021/02/28/world/europe/universal-jurisdiction-war-crimes.html (accessed February 28, 2021).
60. Human Rights Watch, 'Seeking Justice for Syria: How an Alleged Syrian Intelligence Officer was Put on Trial in Germany', https://www.hrw.org/feature/2022/01/06/seeking-justice-for-syria/how-an-alleged-intelligence-officer-was-put-on-trial-in-germany (accessed January 6, 2022).

61. Vohra *supra* (note 59).
62. 'Factsheet: Universal Jurisdiction', Center [sic] for Constitutional Rights, https://ccrjustice.org/home/get-involved/tools-resources/fact-sheets-and-faqs/factsheet-universal-jurisdiction (accessed December 7, 2015).
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69. *Ibid*.
70. See T. Rosenberg (Council on Foreign Relations), 'Overcoming the Legacies of Dictatorship', *Foreign Affairs* (May/June 1995), https://www.foreignaffairs.com/articles/south-america/1995-05-01/overcoming-legacies-dictatorship.
71. See the *Case of Goiburú et al v Paraguay (Merits, Reparations and Costs),* Judgment of September 22, 2006, Series C No. 153, paras 66 and 72, https://www.refworld.org/jurisprudence/caselaw/iacrthr/2006/en/87619.
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73. *Id*, 296–304.
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75. Delagrange *supra* (note 72), 293–4.
76. Inter-American Democratic Charter, September 11, 2001, 40 I.L.M. 1289, 1291–92, reprinted in Organization of American States, Basic Documents Pertaining to Human Rights in the Inter-American System 149, no. 152 (2007), http://www.cidh.oas.org/Basicos/English/Basic. TOC.htm.
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78. Delagrange *supra* (note 72), 309–310 (see footnotes therein).
79. *Case of Goiburú et al v Paraguay supra* (note 71), 52–3.
80. Delagrange *supra* (note 72), 322.
81. *Case of Goiburú et al v Paraguay supra* (note 71), Separate Judgement of Judge Antonio Cancado Trindade, 66–8.
82. *Ibid*.
83. M. Cherif Bassiouni, 'The History of Universal Jurisdiction and its Place in International Law', in S. Macedo ed., Universal Jurisdiction: National Courts and the Prosecution of Serious Crimes under International Law (University of Pennsylvania Press, 2004), 39, 46.
84. *Ibid*.
85. See *supra* (note 5).
86. Such as the International Convention Against Torture, the Inter American Convention to Prevent and Punish Torture, and the Inter-American Convention on Forced Disappearance

of Persons; see A. E. Alvarez, 'The Implementation of the ICC Statute in Argentina' *Oxford Journal of International Criminal Justice* 480 (2007): 5.

87. The most recent dealings culminated in the conclusion of an enforcement agreement whereby persons convicted by the ICC may serve their sentences of imprisonment in Argentina upon a ruling by the Court and agreement by the Argentinian government – see ICC Press Release, 'ICC Signs Enforcement Agreement with Argentina', ICC-CPI-20170419-PR1297, https://www.icc-cpi.int/news/icc-signs-enforcement-agreement-argentina#:~:text=The%20International%20Criminal%20Court%20(ICC,Court%20and%20accepted%20by%20Argentina.
88. Constitution of the Argentine Nation, http://www.biblioteca.jus.gov.ar/Argentina-Constitution.pdf (accessed April 17, 2017).
89. It further mentioned Article 118 of the Argentine Constitution which provides tribunals with jurisdiction over crimes against the law of peoples (*crímenes contra el derecho de gentes*), irrespective of where they were perpetrated. See Paulet *supra* (note 46), 17–8.
90. 'Argentinian Judge Indicts Franco-Era Spanish Minister on Homicide Charges', *The Guardian online*, https://www.theguardian.com/world/2021/oct/16/argentine-judge-indicts-franco-era-spanish-minister-on-homicide-charges#:~:text=An%20Argentinian%20judge%20investigating%20cases,minister%20between%201976%20and%201979 (accessed October 17, 2021).
91. A Spanish judge also issued arrest warrants; see 'China Criticises Argentina for Arrest Request of Jiang Zemin, Falun Gong Support', *Voice of America – VoA*, https://www.voanews.com/a/china-criticizes-argentina-for-arrest-request-of-jiang-zemin-support-of-falun-gong--80053822/416662.html (December 24, 2009).
92. *Ibid*.
93. Paulet *supra* (note 46), 20. See also H. Smith, 'Argentina Urged to Arrest Saudi Prince MBS at G20 Summit Over Khashoggi Killing', *The Times*, https://www.thetimes.co.uk/article/argentina-urged-to-arrest-saudi-prince-mbs-at-g20-summit-over-khashoggi-killing-8h0m85s5v (accessed November 28, 2018).
94. 'Argentina Lawsuit Seeks to Hold Aung San Suu Kyi Accountable for Atrocities Against Rohingya', *Radio Free Asia online* , https://www.rfa.org/english/news/myanmar/argentina-lawsuit-11142019163937.html (accessed November 14, 2019).
95. Due to jurisdictional issues, the ICC is only investigating crimes which have been at least partially committed on Bangladeshi territory. See T. Khin and T. Ojea Quintana, 'Symposium on the Current Crisis in Myanmar: Inching Closer to a Historic Universal Jurisdiction Case in Argentina on the Rohingya Genocide', *Opinio Juris*, http://opiniojuris.org/2021/09/30/symposium-on-the-current-crisis-in-myanmar-inching-closer-to-a-historic-universal-jurisdiction-case-in-argentina-on-the-rohingya-genocide/ (September 30, 2021). Also BROUK, 'Argentinean Courts Urged to Prosecute Senior Myanmar Military and Government Officials for the Rohingya Genocide', https://www.brouk.org.uk/argentinean-courts-urged-to-prosecute-senior-myanmar-military-and-government-officials-for-the-rohingya-genocide/ (accessed November 13, 2019).
96. 'Argentina Court to Investigate Myanmar War Crimes Against Rohingya Muslims', *Agence France-Presse*, https://www.theguardian.com/world/2021/nov/29/argentina-court-myanmar-war-crimes-rohingya (accessed November 29, 2021); 'Argentina's Justice System to Probe Myanmar War Crimes Claims', Buenos Aires Times, https://www.batimes.-com.ar/news/argentina/argentinas-justice-system-to-probe-myanmar-war-crimes-claims.phtml (accessed November 30, 2021). Also 'The Buenos Aires Federal Chamber Ordered to Investigate the Complaint about Crimes Against Humanity in Myanmar', *fiscales.gob.ar*, https://www.fiscales.gob.ar/fiscalias/la-camara-federal-portena-ordeno-investigar-la-denuncia-sobre-crimenes-de-lesa-humanidad-en-myanmar/ (accessed November 29, 2021).
97. Report of the Detailed Findings of the Independent Fact-Finding Mission on Myanmar, Human Rights Council, A/HRC/39/CRP.2 (September 17, 2018), particularly para 1711 (430). Also, Compilation of all Recommendations made by the Independent International

Fact-Finding Mission on Myanmar, to the Government of Myanmar, armed organisations, the UN Security Council, Member States, UN agencies, the business community and others, A/HRC/42/CRP.6, Human Rights Council 42nd Session (September 9–27, 2019), 102 (15).

98. N. Roht-Arriaza, 'The Pinochet Precedent and Universal Jurisdiction' *New England Law Review* 35 (2001): 311, 315.
99. Chehtman *supra* (note 13).
100. See Delagrange *supra* (note 72), 312–4 and 317–20.
101. Considerations of passive personality have also been of key importance – such as in *Yunis* (1988), and *Bin Laden* (2000). See the *Arrest Warrant Case supra* (note 4), [24].
102. See A. Becker-Lorca, *Mestizo International Law. A Global Intellectual History 1842–1933* (CUP 2014). Indeed, the *Montevideo Convention on the Rights and Duties of States* (1933) with its defence of the principles of non-intervention, sovereign equality, and the 'objective' requirements for statehood is an apposite illustration of this sentiment.
103. Bolivia (Code Penale (CP), Art. 1(7)), Chile (Código Orgánico de Tribunales, Art. 6(7) and 6 (8)), Costa Rica (CP, Art. 7), Cuba (CP, Art. 5(3)), Ecuador (CP, Art. 5(5)), El Salvador (CP, Art. 10), Honduras (CP, Art. 5(5)), Mexico (CP, Art. 2) Nicaragua (CP, Art. 16(3)(f)), Panama (CP, Art. 19), Paraguay (CP, Art. 8(1)(6) and 8(1)(7)), Venezuela (CP, Art. 4(9), 4(10)). Costa Rica further provides for UJ for terrorism and its financing, as well as for other international crimes including genocide and crimes against human rights and international humanitarian law (CP, Art. 7). Colombia does not have a specific provision on UJ, but directly applies provisions in different treaties to which it is a party: see, for example, Colombia's Constitutional Court, C-621 (2001). Brazil has laws on UJ for genocide (where the defendant or victim is Brazilian) and torture (pursuant to treaty obligations) committed abroad; Statement of the Mission of Brazil to the UN General Assembly's Sixth Committee on UJ, https://www.un.org/en/ga/sixth/77/pdfs/statements/universal_jurisdiction/12mtg_brazil.pdf (accessed October 11, 2022).
104. K. Davis, *Between Impunity and Imperialism: The Regulation of Transnational Bribery* (OUP 2019).
105. Chehtman *supra* (note 13).
106. Such as double criminality, health issues, constitutional prohibition on the extradition of nationals; *ibid*.
107. Chehtman *supra* (note 13).
108. These include a requirement that the accused be found on their territory, that the conduct be criminalised in the [S]tate in which the offence was perpetrated, that the offender not be already convicted or exonerated by the relevant [S]tate or that the crime is not yet subject to statutes of limitations, and that the accused is not requested by the authorities of the State where the offence was committed or that the offence not be deemed political or connected with a political offence. See Chehtman *supra* (note 13).
109. One early case was the Brazilian Supreme Court's agreement in 1984 to the extradition to Argentina of Mario Eduardo Firmenich, the former head of Argentina's Montoneros guerrillas. See 'Mario Firmenich, a Former Guerilla Member from Argentina, on Daniel Ortega's Payroll', *connectas.org*, https://www.connectas.org/mario-firmenich-former-guerrilla-memeber-from-argentina-daniel-ortega/. More recently, in 2006 Peru was able to secure the extradition of former Peruvian President Alberto Fujimori from Chile to stand trial for extensive human rights abuses – see J. E. Mendez, 'Significance of the *Fujimori* Trial', *American University International Law Review* 25,no. 649, 650–2, https://www.corteidh.or.cr/tablas/r29316.pdf.
110. An example was the *Cavallo case* where a Mexican court agreed to the extradition of Cavallo to Spain for a ream of international crimes committed while a senior officer in Argentina's ESMA (Escuela de Mecanica de la Armada – a notorious detention centre on the outskirts of Buenos Aires run by the navy for the purpose of interrogating, torturing and disposing of political opponents); J. E. Méndez and S. Tinajero-Esquivel, 'The *Cavallo Case*: A New Test for Universal Jurisdiction.' *Human Rights Brief* 8, no. 3 (2001): 5–8. Spain ultimately extradited Cavallo back to Argentina.

111. Three in Chile, one in Brazil and one in Colombia.
112. Chehtman *supra* (note 13).
113. AFP, 'France Court Jails Rwanda Driver for 14 Years over Genocide', *justiceinfo.net*, https://www.justiceinfo.net/en/85656-france-court-jails-rwanda-driver-for-14-years-over-genocide.html (accessed 16 December 2021).
114. *Ibid*.
115. ISS PSC Report, 'The Strong Reaction of the PSC Following the Arrest of Rwanda's Intelligence Chief in London has Far-Reaching Implications', https://issafrica.org/pscreport/psc-insights/psc-stands-with-rwanda-on-universal-jurisdiction (accessed July 10, 2015).
116. Communique of the 519th PSC Meeting on Universal Jurisdiction, http://www.peaceau.org/en/article/communique-of-the-519th-psc-meeting-on-universal-jurisdiction-26-june-2015 (accessed June 26, 2015).
117. *Id.*
118. J. Lee, 'Opinion: Selective Justice', *ABC online* (March 16, 2009, updated February 5, 2020), https://www.abc.net.au/news/2009-03-17/30320.
119. Communique of the 519th PSC Meeting on Universal Jurisdiction, *supra* (note 116), 2.
120. *Id*, 5.
121. Langer and Eason *supra* (note 45), 783.
122. B. McGonigle Leyh, 'Using Strategic Litigation and Universal Jurisdiction to Advance Accountability for Serious International Crimes', *International Journal of Transitional Justice* 16, no. 3(2022), 363.
123. Communique of the 519th PSC Meeting on Universal Jurisdiction, *supra* (note 116), 6.
124. *Pinochet Appeal*, *supra* (note 28).
125. Margaret Thatcher was famously scathing in her opposition to the whole process; see C. Levey and M. Barcia, 'Why Thatcher's Shadow Still Hangs over Latin America', *Al Jazeera*, https://www.aljazeera.com/opinions/2013/4/15/why-thatchers-shadow-still-lingers-over-latin-america (accessed April 15, 2013).
126. Rapp *supra* (note 66).
127. L. Grinspan, 'Changing Course: How Javier Milei Will Transform Argentina's Foreign Policy', *Al Jazeera online*, https://www.aljazeera.com/news/2023/12/8/changing-course-how-javier-milei-will-transform-argentinas-foreign-policy (accessed December 8, 2023).

Disclosure statement

No potential conflict of interest was reported by the author(s).

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