**COMPARING UNIVERSAL JURISDICTION IN EUROPE AND IN LATIN AMERICA: RESURGENCE AND RENEWAL OR RELUCTANCE AND RETREAT?**

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# Introduction

International criminal law depends to a large degree on nation States being primarily responsible for seeking and carrying out justice for the most serious international crimes. The availability of universal jurisdiction (‘UJ’) in the law of nation States is crucial in the fight against impunity, as the idea that war-torn States would or could hold independent and credible trials - 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 such offences beyond their reach.

UJ allows a forum State to bring to trial accused who are neither nationals of the forum in circumstances, when the victim is 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]](#endnote-1), genocide (as per the *Genocide Convention*[[2]](#endnote-2)), and torture (as per the *Torture Convention*[[3]](#endnote-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]](#endnote-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]](#endnote-5)

At its base is the notion that UJ is appropriate due to 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]](#endnote-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]](#endnote-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 offering the State of nationality the chance to prosecute instead and ensuring there is independence of the prosecuting authority from the political arm of the State.[[8]](#endnote-8) Adanan notes that

‘[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 from State to State.’[[9]](#endnote-9)

There is also variation in the crimes covered. Amongst European States, 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 Ireland and 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.[[10]](#endnote-10) A couple of other States in the European and Latin American spheres have provided for UJ for acts not yet widely regarded as international crimes, such as ecocide – for example, Belarus and Colombia.[[11]](#endnote-11) Costa Rica’s law allows UJ for terrorism and its financing as well as for other international crimes, including genocide, crimes against human rights and crimes against international humanitarian law.[[12]](#endnote-12)

All that said, Principle 1 of the *Princeton Principles on Universal Jurisdiction* (2001)[[13]](#endnote-13) makes clear that the person needs to be present before the competent judicial body. This clearly eschews cases of UJ *in absentia,* thus reflecting UJ in less than its ‘pure’ form. 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 always 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. Adanan makes the point that in some (European) jurisdictions (Belgium and others) some of the most prominent examples of UJ were launched by individuals or victims’ groups, but this mechanism has since for the most part been closed off under political pressure. The decision to launch a case now lies most commonly with the chief prosecutor, who may not be independent from his/her government, and thus influenced by bilateral or other political imperatives.[[14]](#endnote-14) Another example is in the UK, where 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*.[[15]](#endnote-15)

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[[16]](#endnote-16) –torture, war crimes, crimes against humanity, genocide (or the traditional one, piracy) – although doubt has been cast over this figure on the basis that membership of the *Rome Statute of the International Criminal Court* or the enactment of implementing legislation in accordance with this membership does not equate to UJ *per se*.[[17]](#endnote-17)

# Defining UJ in Europe

## 2.1 Review and 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.[[18]](#endnote-18) 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 colonial one) exists.[[19]](#endnote-19)

For instance, Spain has long been concerned with bringing the perpetrators of atrocities in some of its former colonies to justice. Yet it was Spain’s own marginalisation of indigenous communities in pre-independence societies that laid the seeds for later political repression. 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 from Spanish colonial times.[[20]](#endnote-20) This clearly suggests Spain’s responsibility at least in moral terms. To this extent, Spain prosecuting Latin American crimes could be viewed as an attempt to remedy in part its own past failings - or less charitably, to police those post-colonial governments.

Spain’s UJ law, *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.[[21]](#endnote-21) The first use of this liberal law was in 2005 with the prosecution of Adolfo Scilingo, a former Argentinian naval officer known for his participation in death squads (who notoriously drugged political opponents and then threw them to their deaths from government planes), amounting to 30 counts of murder, 93 of causing injury, 255 of terrorism and 286 of torture. Scilingo travelled to Spain voluntarily to give evidence at the trial. Each of the murder charges carried a 21-year sentence, with the resulting cumulative sentence amounting to 640 years. The Spanish Supreme Court revised the sentence to 1084 years in 2007 and reaffirmed that the crimes were crimes against humanity according to international law.[[22]](#endnote-22) The result was notable for the fact that the Argentinian officer’s trial proceeded while Argentina was still burdened by its own amnesty laws, thus making the exercise of UJ necessary. It also ‘… marked the first time in history a national court had processed and convicted an individual for crimes against humanity committed in another country.’[[23]](#endnote-23) Following this case, Spain went on to successfully prosecute Christian von Wernich, a former Argentinian police chaplain, also for his role in ‘Dirty War’ disappearances, torture and killings.[[24]](#endnote-24) Encouraged by these successes, victims groups pushed for the assertion of jurisdiction over Pinochet for (*inter alia*) crimes against humanity against Peruvian indigenous communities during the 1960s and 1970s (UK courts eventually upheld the legal authority of Spain’s arrest warrant which had relied on UJ).[[25]](#endnote-25)

Spain’s UJ law has also considered crimes in Guatemala. The early case of *Menchu Tum v Montt* (known informally as 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 the *Pinochet* case, in the *Guatemalan Genocide Case* the Spanish Audiencia Nacional and then the Tribunal Superior construed the same provision of the LOPJ as had been at issue in *Pinochet* much more narrowly. They ruled that it could only be enlivened if it could be shown that Guatemalan authorities had refused to act (and not enough time had passed to come to that conclusion).[[26]](#endnote-26) The main reason for the decision however, was the majority’s view that Spanish law refused jurisdiction when crimes were committed on foreign territory without a link to Spain (hence all complaints except those that had to do with Spanish victims or possibly those of Spanish ancestry were dismissed).[[27]](#endnote-27) This view, the majority opined, created legitimacy and rationality in international relations and respect for the non-intervention principle.[[28]](#endnote-28)

On appeal to the Spanish Constitutional Court, judges rejected the notion that a connecting link was needed between the crime and the prosecuting State. Rather, the Court fully endorsed the principle of UJ and stated that international justice was ‘a shared interest of all States.’[[29]](#endnote-29) Even so, this was not enough to prevent the Court rejecting the extradition request and holding that Guatemala, not Spain, was responsible for prosecuting the accused given that the 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.[[30]](#endnote-30) By not recognizing the Audiencia Nacional’s jurisdiction to prosecute international crimes, the Court in fact impliedly rejected UJ in practice.[[31]](#endnote-31)

In a more recent case (2020), Spain was able to secure the extradition of former El Salvadoran Army Colonel Inocente Montano Morales (who was in a US prison on fraud charges) to stand trial for the 1989 killings of five Spanish Jesuit priests while he was El Salvador’s Deputy Minister for Public Security.[[32]](#endnote-32) This prosecution was not one on the basis of UJ *per se* as it proceeded instead on the basis of passive personality, which reflected the view of the Tribunal Superior in the *Guatemalan Genocide case* and nowadays a generally more parochial Spanish approach to UJ.

Italy conducted its own prosecutions in the wake of the 1992 discovery in a police station in Asunción of detailed archives describing the fate 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* (a U.S. counterinsurgency strategy implemented in Latin America during the 1970s and 1980s). The ‘Archives of Terror’ (as it came to be known) counted 50,000 people murdered, 30,000 disappeared and 400,000 imprisoned.[[33]](#endnote-33) Catalysed by the example of Pinochet’s arrest and trial in the UK for extradition to Spain, Italian prosecutors initiated a criminal investigation into the deaths of dozens of Italians who had been among the Condor victims. 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 who were charged with the disappearance and murder of the Italians.[[34]](#endnote-34) Another case of passive personality, but a bold case nevertheless as the prosecution was conducted *in absentia* for all the accused, with the exception of Uruguayan ex-military officer Jorge Troccoli (found guilty of torture) who had settled in Italy in 2007.[[35]](#endnote-35)

## 2.2 Retreat

As noted above, cases of UJ in its ‘pure’ form have been rare. Belgium’s 1993 law on UJ was however one example. The law, one of the most liberal in the world at the time, saw a slew of human rights cases launched by private parties against various world figures. These included former U.S. President George W. Bush, Defense [sic] Minister Donald Rumsfeld and General Tommy Franks for the 2003 invasion of Iraq, and former Israeli Prime Minister Ariel Sharon and General Amos Yaron for a 1982 massacre of Palestinians.[[36]](#endnote-36) Facing intense political pressure from the U.S. - which included a threatened withdrawal of the NATO headquarters from Brussels - as well as from Israel, Belgian legislators repealed the liberal provisions and passed new legislation requiring either the victim or the suspect be a Belgian citizen or long-term resident, or a decision to proceed be made by the Federal Prosecutor in accordance with Article 16(2) of Belgium’s *Law on Grave Breaches of International Humanitarian Law* (2003). This effectively ended the practice of prosecutions *in absentia*. As a result, Belgium’s highest court tossed out the Israeli cases citing a lack of jurisdiction, and the other cases were also dropped.[[37]](#endnote-37) The former Belgian Foreign Minister Louis Michel spoke approvingly of the court’s decision, saying that ‘As long as complaints based on the [UJ] law were not thrown out, we cannot resume (high level) official contacts with the United States.’[[38]](#endnote-38)

Similarly, in 2010 the UK government, embarrassed over the potential prosecution of then Israeli Foreign Minister Tzipi Livni and Defence Minister Ehud Barak during their then upcoming visit to London, legislated so that it is no longer open to private individuals to seek an arrest warrant to commence a prosecution on the basis of UJ.[[39]](#endnote-39) Then Prime Minister Gordon Brown was explicit that avoiding the use of UJ ‘motivated purely as political gesture’ was the reason.[[40]](#endnote-40)

In 2014 Spain followed by adopting legislation curtailing its previously liberal law on UJ (the LOPJ, above) by excluding the possibility of conducting trials in absentia. This meant that the suspect now had to be present in the territory of Spain.[[41]](#endnote-41) The context for the amendment was the earlier indictment by a Spanish court of three U.S. soldiers for the death of a Spanish cameraman in Iraq, which had resulted in political pressure from the U.S. at the highest level.[[42]](#endnote-42) Similarly to Belgium a decade earlier, US pressure prompted this change to a restricted form of UJ.[[43]](#endnote-43) It should be noted that other European States (such as Germany[[44]](#endnote-44) and Sweden[[45]](#endnote-45)) also had expansive views on legal reach in their domestic law, but in the years in the wake of the Belgian example they either saw no motivation to use them, or found other grounds to cut back on prosecutions, such as requiring prior government approval or the suspect’s presence in the forum.[[46]](#endnote-46)

Accordingly, as a result of such amendments to domestic law and practice it appears that a number of European States have now deferred to foreign policy priorities in restricting the application of UJ.[[47]](#endnote-47) 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. As Adanan puts it, ‘These legislative changes are the result of the deterioration in international relations with [S]tates whose nationals were the subject of [UJ] proceedings.’[[48]](#endnote-48) Considering this evidence, over the first two decades of the 21st century the practice of UJ in Europe, it would seem, evolved steadily into a more conservative, different entity altogether.

## 2.3 Resurgence?

There has however been a push to reverse this apparent decline in international justice by European States eager to prosecute war crimes and other atrocities committed around the world. Since 2009 Langer and Eason have noted that the geographical distribution of UJ complaints within Europe has shifted. The number of complaints filed in Belgium and Spain has dropped sharply, but Germany and France have continued to host significant numbers of UJ cases. The Nordic States –Denmark, Finland, Iceland, Norway and Sweden – have also quietly assumed a more significant role.[[49]](#endnote-49)

Overall, in 2019 a large number of cases was at various stages in European courts, ranging from Germany to Belgium, Austria, Finland, Hungary, Italy, Netherlands, Norway, Spain, Sweden, Switzerland, France, as well as former EU member, the UK. All alleged crimes covered those of non-State actors, former Syrian government officials, and African figures (government and militia) allegedly involved in atrocities in Liberia, the Gambia and others. In 2019 there were 22 countries of commission, 16 countries of prosecution and at least 207 persons under investigation. The charges were predominantly crimes against humanity or war crimes. Eleven accused were on trial, and 16 had been convicted. These numbers represented an increase of 40% over the figures in 2018.[[50]](#endnote-50) In 2020, there were 25 ongoing UJ cases against Syrian officials in Austria, France, Hungary, the Netherlands, Norway, Spain and Sweden, and four had resulted in convictions, and another three were at the trial stage.[[51]](#endnote-51)

While these figures relate to international crimes committed by foreign nationals, many convictions in recent years in European courts of suspects bearing the nationality of the forum State have in fact been for *terrorism*, not for international crimes.[[52]](#endnote-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]](#endnote-53)

The same fact circumstances may be insufficient to prove international crimes but may lead to a conviction for terrorism-related offences. 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.’

Such a phenomenon has been noted in both Germany and France over the last few years.[[54]](#endnote-54)

There are significant problems with this approach – 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.

Given the apparent propensity of States for charging their own nationals and residents with terrorism, it might be open to prosecutors to add international crimes to existing charges of terrorism in a practice known as ‘cumulative charging’ (this occurred in the recent *Jennifer W* trial in Germany[[55]](#endnote-55), and apparently is being considered also in prosecutions of nationals in France and the Netherlands). This would ensure States remained true to their international obligation to pursue international crimes.

On the other hand, Germany’s prosecution of non-nationals and non-residents has been particularly proactive in recent years.[[56]](#endnote-56) As noted already, the German Code allows for international criminal cases to be brought even if the alleged crimes were not committed in Germany, potentially opening the door to prosecutions by private parties from all over the world (the presence in the forum criterion has been the key difference between the German and Belgian regimes). Germany’s interest in flexing its UJ muscle has been heightened in recent years 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. Thus a slew of low-level cases have made it into German courts (reflected in the figures cited above). Prosecutors have charged a number of former Assad-regime officials for their roles in committing torture, and there have been several convictions, such as in the case against Eyad al-Gharib, who was found guilty of aiding and abetting the torture of political prisoners while he was a Syrian secret police officer.[[57]](#endnote-57) Anwar Raslan, the overseer of torture and prison conditions within one of Syria’s notorious interrogation centres, has also been convicted and sentenced to life imprisonment.[[58]](#endnote-58)

These investigations have been assisted by the fact that in 2011, German authorities began a ‘structural investigation’ into State-sponsored war crimes in Syria. This meant resources were tasked to constantly collect evidence during the war, including testimony, which contributed to a large base of evidence that could be used in individual prosecutions or could assist in investigations by other States.[[59]](#endnote-59) Part of this involved German law enforcement establishing a joint investigation with French authorities in order to share information and interview witnesses in France. Sweden and Norway have hosted their own ‘structural investigations’ into the same crimes, and consequently have helped facilitate access to witnesses resident there. Germany launched a similar investigation into alleged crimes by Islamic State militants, which has resulted in several convictions, such as that of Iraqi national Taha al-Jumailly for genocide.[[60]](#endnote-60)

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 involves ‘extraordinary rendition.’[[61]](#endnote-61) 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 Khaled el-Masri (a German national) in Skopje, Macedonia, and in Afghanistan.[[62]](#endnote-62) Bucking this trend is a rare case filed in March 2021 in German courts by Reporters Without Borders. This case against Saudi Crown Prince Mohammed bin Salman alleges crimes against humanity for the murder of Jamal Khashoggi and the detention of dozens of other journalists. As Morris notes, ‘[most] trials implicating Islamic State militants for genocide or the Syrian government for torture carry low or no stakes politically. That’s not the case with Saudi Arabia, the world’s biggest oil exporter and a Western ally.’[[63]](#endnote-63) Clearly the agreement of the Federal Prosecutor to proceed with this case was due to a perception that Germany had ‘safety in numbers’ with other governments (unlike for the prosecution of Rumsfeld or others in ‘extraordinary rendition’ cases). That said, the forum requirement must still be met, thus making the Crown Prince’s actual prosecution unlikely.

Overall, a modest renaissance for UJ in Europe in terms of numbers may be indicated[[64]](#endnote-64), but it is clear that European UJ in recent years has often lacked a clear focus on international crimes (except for low-level foreign nationals for whom prosecution does not indicate adverse political implications), operates within limited circumstances, and plays it safe. 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.[[65]](#endnote-65) Alternatively, they have exercised nationality or passive personality jurisdiction, not UJ.

# 3 Latin American Perceptions and Practice of UJ

## 3.1 Renewal?

However, in their 2019 paper Langer and Eason documented ‘a quiet expansion’ in the use of UJ. They concede that 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.’[[66]](#endnote-66) 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.[[67]](#endnote-67)

Latin America has its own 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.[[68]](#endnote-68) 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. Although this moral and legal void led the region to experience extreme political violence involving forced disappearances, torture, and mass summary and extra-judicial executions, most Latin American countries have made significant effort to break with their autocratic pasts and are now firmly committed to democratic ideals and the protection of human rights.[[69]](#endnote-69) Even so, making headway on justice, peace and reconciliation has been difficult due to a range of post-conflict intractabilities.[[70]](#endnote-70)

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. In addition, the Inter-American Commission on Human Rights has also 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.[[71]](#endnote-71) As such, countries previously unwilling to address past human rights violations have now committed themselves to the *Rome Statute of the ICC*[[72]](#endnote-72) and to international justice. However, there are a number of issues inhibiting full adherence to the 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 countries 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.[[73]](#endnote-73) Although UJ exists separately from ICC jurisdiction, this has also been the case for UJ cases in domestic courts.[[74]](#endnote-74) Mendez and Tinajero-Esquivel note this schizophrenic 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.’[[75]](#endnote-75)

However, 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]](#endnote-76) Additionally, the Inter-American Commission on Human Rights (an autonomous organ of the OAS) has been increasingly active (albeit from a low base) in support of human rights in the region.

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.[[77]](#endnote-77)

Yet Latin America’s nouveau internationalist motivation has occasionally been accompanied with the caveat that the past be hidden behind a veil of immunity. It is against this backdrop that it should be noted 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.[[78]](#endnote-78) However, as indicated above, 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.[[79]](#endnote-79)

The 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.[[80]](#endnote-80) 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.[[81]](#endnote-81) 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.[[82]](#endnote-82) 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 under Article 1 of Argentina’s Criminal Code. However, the Court of Appeal reversed that decision, citing Article 25(1) of the *Inter-American Convention on Human Rights* which provides for access to justice for victims, as well as s118 of the Constitution.[[83]](#endnote-83) Accordingly, Judge Maria Servini de Cubria, sitting in Buenos Aires, indicted Rodolfo Martín Villa, Spain’s Interior Minister from 1976-1979, on four counts of aggravated homicide. However, efforts since to have the accused detained in Madrid and extradited to Argentina have been fruitless, again due to Spain’s amnesty law. As such, Judge Servini de Cubria reportedly considers it 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.[[84]](#endnote-84) It is notable also that 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.[[85]](#endnote-85) The request came after a four-year long investigation into allegations of torture and genocide. 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.[[86]](#endnote-86) 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.[[87]](#endnote-87) The Argentinian prosecutor apparently agreed to proceed in relation to war crimes in Yemen[[88]](#endnote-88) (there was however no mention of the allegations relating to the torture of Saudi nationals and Khashoggi’s murder), but the judge ruled that Argentina’s UJ could only be exercised as a subsidiary mechanism, meaning the same facts should not be under investigation before other tribunals. As such, he issued requests through the Argentine Foreign Affairs Ministry to Turkey, Yemen and Saudi Arabia (among others) to ascertain whether relevant investigations were taking place in these jurisdictions. In the meantime, the Crown Prince left Argentina. Argentinian prosecuting authorities sent a rogatory commission to Turkey in September 2021, but there has been no further information on the case.

The most recent case in Argentina has concerned the persecution of the Rohingya people in Myanmar. The Burmese Rohingya Organisation UK (BROUK) filed a lawsuit in November 2019 before Argentinian courts against senior Myanmar officials (including former State Councillor Aung San Suu Kyi) for alleged genocide and crimes against humanity.[[89]](#endnote-89) The case was rejected by the Court of First Instance mainly over concerns that it would overlap with an ICC investigation already underway, but the ICC’s Office of the Prosecutor later clarified that the ICC investigation did not include crimes committed by the Tatmadaw inside Rakhine State.[[90]](#endnote-90) Thus BROUK was able to successfully appeal to the Federal Criminal Appeal Court in Buenos Aires, and testimony has since been taken remotely from six survivors of sexual assault.[[91]](#endnote-91) The decision allows the Argentine investigation to proceed 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.[[92]](#endnote-92)

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 Latin America’s recent affiliation with ICC and IACHR ideals. Or perhaps it is about strengthening Latin America’s own internal processes by using its domestic processes to realise justice for atrocities elsewhere: as Roht-Arriaza has observed, ‘[t]ransnational prosecutions can catalyse domestic prosecutions’[[93]](#endnote-93), which could mean Argentina’s usage of UJ could also benefit other Latin American States by helping to build a region intolerant of future abuse.

## 3.2 Reluctance

All that said, and perhaps reflecting its geopolitical position, Argentina’s 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 recolonization. In the 20th 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), and in the 21st century the U.S. has made it its policy to thwart the ICC wherever it has attempted to grow roots.[[94]](#endnote-94) This has been no more apparent than in the U.S.’ approach toward Latin America and the OAS[[95]](#endnote-95), and despite the fact that past case law of the U.S. itself has on occasion invoked UJ.[[96]](#endnote-96) 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.[[97]](#endnote-97)

That said, 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).[[98]](#endnote-98) 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, which have all been particularly influential.[[99]](#endnote-99) 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).[[100]](#endnote-100) 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).[[101]](#endnote-101) This 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.’[[102]](#endnote-102)

Even so, considering the text of the laws extending their jurisdiction externally on the basis of nationality and/or passive personality, Latin American States appear to have embraced extraterritoriality with ‘remarkable enthusiasm’, despite most States subjecting their extraterritorial reach to a number of different, self-imposed limitations.[[103]](#endnote-103) This has led to a number of extraditions within the region as different States have attempted reckonings with their ‘Dirty War’ pasts. 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.[[104]](#endnote-104) More recently, in 2006 Peru was able to secure the extradition of former Peruvian President Alberto Fujimori from Chile.[[105]](#endnote-105) Extradition has also occurred to European States, such as in the *Cavallo case* where a Mexican court decided that Mexico’s incorporation of international law, including the concept of UJ[[106]](#endnote-106), required the extradition of Cavallo to Spain which had called for his arrest and prosecution for a ream of international crimes committed while a senior officer in ESMA[[107]](#endnote-107) during Argentina’s ‘Dirty War’ of the 1970s. Interestingly, the judge in that case applied international law using the same rationale as the British House of Lords had in the *Pinochet* case, relying on treaties ratified by Spain, Mexico and Argentina including the *International Covenant on Civil and Political Rights* (ICCPR).[[108]](#endnote-108)

Leaving aside extraditions however, the ambitious provisions on UJ throughout the region have rarely been invoked. Apart from Argentina, by 2021 there had only ever been five investigations initiated on the grounds of UJ: three in Chile[[109]](#endnote-109), one in Brazil, and one in Colombia. This indicates that despite their enthusiasm on paper, Latin American [S]tates have ‘followed a much more cautious, even indifferent approach towards exercising their normative powers abroad.’[[110]](#endnote-110)

# 4 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.[[111]](#endnote-111) The most recent conviction was of Claude Muhayimana in 2021, who received a 14-year sentence.[[112]](#endnote-112) The African Union’s Peace and Security Council (PSC)[[113]](#endnote-113) has sharply criticised the application of UJ by European States across Africa.[[114]](#endnote-114) 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.’[[115]](#endnote-115)

As noted also 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.’[[116]](#endnote-116) 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.’[[117]](#endnote-117) 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.’[[118]](#endnote-118)

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 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 UJ trials have been far less concentrated on African defendants than the cases thus far pursued by the ICC.[[119]](#endnote-119) This might suggest that African sensitivities over the use of UJ to bring atrocities to account may be less.

To be sure, the 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. 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].’[[120]](#endnote-120) However, Latin American practice regarding African atrocities 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.’[[121]](#endnote-121)

Whatever the case, it should be noted that between the various European and Latin American usages of UJ, there has been a general lack of prosecutions for sexual and gender-based violence. In 2021, 17 accused worldwide were on trial for a total of 125 international criminal charges brought under UJ, including 34 charges for war crimes, 66 for crimes against humanity, and 25 for genocide. Only 17 of these charges were for conflict-related sexual violence *per se*, as many instances were categorised as torture rather than sexual crimes. Further, investigative and trial procedure has left a great deal to be desired, as many war crimes units and investigative teams have lacked female staff and interpreters, and there have been a number of instances where victims testifying have been flown into the foreign country where the investigation or trial was taking place and sent to a hearing or to court mere hours after their arrival, with no psychological support. Rather than indicating that UJ is generally unsuitable to prosecute such crimes, these figures show how far both regions have yet to go both in ensuring that these crimes are not overlooked as they have been so often in the past, and that they are pursued robustly but sensitively.[[122]](#endnote-122)

# 5 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 politicize its use. Despite the *Pinochet* ruling apparently clarifying officials’ lack of functional immunity for the most serious international crimes[[123]](#endnote-123), 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).[[124]](#endnote-124) The large number of investigations and prosecutions underway in 2021 is testament to this political confluence.

European States have 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.[[125]](#endnote-125) Europe has however 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 yet 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. In this light, 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 the impact will be of the 2023 Argentinian elections on the usages of Argentina’s UJ law; given the new government’s foreign policy priorities (particularly its affinity for U.S. norms),[[126]](#endnote-126) it is possible that a new domestic scepticism toward UJ may supplant Argentina’s past 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 U.S. exercises of) UJ 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.

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   *Geneva Conventions I-IV*, adopted by the Diplomatic Conference of Geneva on 12 August 1949, with entry into force on 21 October 1950. [↑](#endnote-ref-1)
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 9 December 1948. It entered into force on 12 January 1951 after it had been ratified by 20 States. [↑](#endnote-ref-2)
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 10 December 1984. It entered into force on 26 June 1987 after it had been ratified by 20 States. [↑](#endnote-ref-3)
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]. [↑](#endnote-ref-4)
5. *Id*, [52], citing *Oppenheim’s International Law* (9th ed.), 998. [↑](#endnote-ref-5)
6. See the Joint Separate Opinion of Judges Higgins, Kooijmans and Buergenthal in the *Arrest Warrant Case supra* (note4),[45]. [↑](#endnote-ref-6)
7. *Lotus Case*, P.C.I.J., Series A, No. 10, pp. 18-19. [↑](#endnote-ref-7)
8. See the Joint Separate Opinion of Judges Higgins, Kooijmans and Buergenthal in the *Arrest Warrant Case supra* (note4),[59]. [↑](#endnote-ref-8)
9. A. Adanan, ‘Emerging Voices: Domestic Regulation of Universal Jurisdiction – the Role of Domestic Prosecutors’, *Opinio Juris* (29 August 2016), <http://opiniojuris.org/2016/08/29/emerging-voices-2/>. [↑](#endnote-ref-9)
10. 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). [↑](#endnote-ref-10)
11. *Ibid*. Re Colombia, see Act 2111/2021, Art. 333 (available at <https://www.minambiente.gov.co/wp-content/uploads/2021/06/ley-2111-2021.pdf>). [↑](#endnote-ref-11)
12. CP, Art. 7 (Costa Rica); see Chehtman *supra* (note10). [↑](#endnote-ref-12)
13. *Princeton Principles on Universal Jurisdiction* 28 (2001), Princeton University Program in Law and Public Affairs, <http://hrlibrary.umn.edu/instree/princeton.html>. [↑](#endnote-ref-13)
14. Adanan *supra* (note9). [↑](#endnote-ref-14)
15. In accordance with the *Police Reform and Social Responsibility Act 2011* (UK) s153. [↑](#endnote-ref-15)
16. Amnesty International webpage, <https://www.amnesty.org/en/what-we-do/international-justice/> (accessed 13 December 2023). [↑](#endnote-ref-16)
17. R. Goodman, ‘Counting Universal Jurisdiction States: What’s Wrong with Amnesty International’s Numbers [updated]’, *Just Security* (13 December 2013), <https://www.justsecurity.org/4581/amnesty-international-universal-jurisdiction-preliminary-survey-legislation-world/>. [↑](#endnote-ref-17)
18. E. Kontorovich, ‘The Parochial Uses of Universal Jurisdiction’ 94 *Notre Dame Law Review* 1417 (2019), <https://scholarship.law.nd.edu/ndlr/vol94/iss3/8/>. [↑](#endnote-ref-18)
19. *Ibid*. [↑](#endnote-ref-19)
20. A. Walsh, ‘The Indigenous People Genocide Case in Guatemala: Justice delayed, Justice Denied?’, *Open Democracy* (11 October 2018), <https://www.opendemocracy.net/en/democraciaabierta/ixil-indigenous-people-genocide-case-in-guatemala-justice-delayed-ju/>. [↑](#endnote-ref-20)
21. P. Scott, ‘The Guatemala Genocide Cases: Universal Jurisdiction and its Limits’ 9 *Chi-Kent J. Int’l & Comp. L.* 100. [↑](#endnote-ref-21)
22. B. Garzon, ‘Argentina: Scilingo Case’, <https://baltasargarzon.org/en/universal-jurisdiction/argentina-scilingo-case/>. [↑](#endnote-ref-22)
23. M. M. Marquez Velasquez, ‘The Argentinian Exercise of Universal Jurisdiction 12 Years After its Opening’, *Opinio Juris* (4 February 2022), <https://opiniojuris.org/2022/02/04/the-argentinian-exercise-of-universal-jurisdiction-12-years-after-its-opening/>. [↑](#endnote-ref-23)
24. Staff and agencies, ‘’Dirty War’ Priest Sentenced to Life for Murder, Kidnapping and Torture’, *The Guardian* (10 October 2007), <https://www.theguardian.com/world/2007/oct/10/argentina>. [↑](#endnote-ref-24)
25. *R ex parte Pinochet v Bartle and ors*, *Appeal*, [1999] UKHL 17. [↑](#endnote-ref-25)
26. Scott *supra* (note21), 112-114. [↑](#endnote-ref-26)
27. *Id*., 116. [↑](#endnote-ref-27)
28. N. Roht-Ariazza, *Guatemala Genocide Case*. Judgment no. STC 237/2005, 100 *American Journal of International Law* 207-213, 209 (2006). [↑](#endnote-ref-28)
29. *Id*., 211; Scott *supra* (note21), 120. [↑](#endnote-ref-29)
30. Guatemala, Memory of Silence, Art. V, V.1.5. [↑](#endnote-ref-30)
31. Scott *supra* (note21), 124. A case was also brought within the IACtHR system, but it was frustrated by Guatamalan law exonerating senior officials for their crimes. Then after a more than 10-year delay in getting a prosecution off the ground, in 2013 Efrain Rios Montt was tried and convicted in a Guatemalan court for genocide and crimes against humanity and sentenced to 80 years in prison. His co-accused former director of military intelligence José Mauricio Rodríguez Sánchez was acquitted on the same charges. However, a retrial was ordered for both men, and after much obstruction and delay this commenced in 2016. Rios Montt died in early 2018 before the case could be concluded. In the retrial of Rodríguez Sánchez, the court ruled in late 2018 that he be acquitted of the specific charges levelled against him (command responsibility for the ‘Victoria 82’ massacre in which over 1770 people were killed), although it found again that the Guatemalan army had committed acts of genocide and other extreme brutalised violence amounting to crimes against humanity against the Mayan Ixil community. See J.-M. Burt and P. Estrada, ‘Court Finds Guatemalan Army Commits Genocide, but Acquits Military Intelligence Chief’, *International Justice Monitor* (28 September 2018), <https://www.ijmonitor.org/2018/09/court-finds-guatemalan-army-committed-genocide-but-acquits-military-intelligence-chief/> ; A. Walsh, ‘The Indigenous People Genocide Case in Guatemala: Justice delayed, Justice Denied?’, *Open Democracy* (11 October 2018), <https://www.opendemocracy.net/en/democraciaabierta/ixil-indigenous-people-genocide-case-in-guatemala-justice-delayed-ju/>; ‘Guatemala Recognises Mayan Ixil Genocide, but Absolves General’, *TeleSUR* (26 September 2018), [https://www.telesurenglish.net/news/Guatemala-Recognizes-Mayan-Ixil-Genocide-But-Absolves-General-, 20180926-0031.html](https://www.telesurenglish.net/news/Guatemala-Recognizes-Mayan-Ixil-Genocide-But-Absolves-General-,%2020180926-0031.html). [↑](#endnote-ref-31)
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33. ‘The Disappeared: Operation Condor Trial: 21 Former Top Officials Indicted in Rome’, *la Repubblica* (13 October 2021), <https://www.repubblica.it/cronaca/2014/10/13/news/desaparecidos_rinvio_giudizio-97993047/>. [↑](#endnote-ref-33)
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36. M. Halberstam, ‘Belgium’s Universal Jurisdiction Law: Vindication of International Justice or Pursuit of Politics?’ 25 *Cardozo Law Review* (2003) 247. [↑](#endnote-ref-36)
37. ‘Belgium Drops War Crimes Cases’, *Deutsche Welle* (25 September 2003), <https://www.dw.com/en/belgium-drops-war-crimes-cases/a-978973>. [↑](#endnote-ref-37)
38. *Ibid*. [↑](#endnote-ref-38)
39. See *supra* (note25). [↑](#endnote-ref-39)
40. J. Ku, ‘Britain to Limit Arrest Warrants Under its Universal Jurisdiction Law’, *Opinio Juris*, 4 March 2010, <http://opiniojuris.org/2010/03/04/britain-to-limit-arrest-warrants-under-its-universal-jurisdiction-law/>. 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) (February 2019), <https://researchportal.port.ac.uk/files/14319800/S.Watts_Thesis_Final_Mar_2019_1_.pdf>. [↑](#endnote-ref-40)
41. LO1/2014 (Spain). [↑](#endnote-ref-41)
42. Although again this was not an exercise of actual UJ (as there was a Spanish victim), the legislative reaction clearly impacted on its exercise. See A. Goodman, ‘3 US Soldiers Indicted in Death of Spanish Journalist’, *CNN online* (5 October 2011), <https://edition.cnn.com/2011/10/05/world/europe/spain-us-troops/index.html>. [↑](#endnote-ref-42)
43. Spanish Supreme Court, Criminal Division, Judgement No. 797/2016 (25 October 2016), <https://vlex.es/vid/652491549>. [↑](#endnote-ref-43)
44. See the *German Code of Crimes Against International Law*, which came into force in 2002. [↑](#endnote-ref-44)
45. Prop. 2013/14:146, p. 2, see Chapter 2 Section 3(6) Swedish Criminal Code. [↑](#endnote-ref-45)
46. 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>. [↑](#endnote-ref-46)
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48. Adanan *supra* (note9). [↑](#endnote-ref-48)
49. M. Langer and M. Eason, ‘The Quiet Expansion of Universal Jurisdiction’, *European Journal of International Law* Vol 30(3) (2019), 799. [↑](#endnote-ref-49)
50. 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](https://trialinternational.org/wp-content/uploads/2020/03/TRIAL-International_UJAR-%202020_DIGITAL.pdf). [↑](#endnote-ref-50)
51. TRIAL International, ‘Applying Universal Jurisdiction to Prosecute International Crimes and the Implications for Syrian Victims’, 23 December 2020. [↑](#endnote-ref-51)
52. Paulet *supra* (note50), 6. [↑](#endnote-ref-52)
53. *Ibid*. [↑](#endnote-ref-53)
54. Paulet *supra* (note50), 11. [↑](#endnote-ref-54)
55. See Paulet *supra* (note50), 49. The accused, an ISIS member, was found guilty of crimes against humanity for her abuse of Yazidi individuals. This was not a case of UJ as the accused was a German national, but the principle is easily applicable to prosecutions on the basis of UJ. [↑](#endnote-ref-55)
56. L. Morris, ‘Why Germany is Becoming a Go-To Destination for Trials on the World’s Crimes’, *The Washington Post* (6 March 2021), <https://www.washingtonpost.com/world/europe/germany-war-crimes-justice/2021/03/05/b45372f4-7b78-11eb-8c5e-32e47b42b51b_story.html>. [↑](#endnote-ref-56)
57. See C. Otto *et al*, ‘In World First, Germany Convicts Syrian Regime Officer of Crimes Against Humanity’, *CNN onlin*e (24 February 2021), <https://edition.cnn.com/2021/02/24/middleeast/syria-germany-officer-convicted-intl/index.html>. Also A. Vohra, ‘Assad’s Horrible War Crimes are Finally Coming to Light under Oath’, *Foreign Policy* (16 October 2020), <https://foreignpolicy.com/2020/10/16/assads-horrible-war-crimes-are-finally-coming-to-light/>. Also R. Gladstone, ‘An Old Doctrine that puts War Criminals in Reach of Justice’, *New York Times online* (28 February 2021), <https://www.nytimes.com/2021/02/28/world/europe/universal-jurisdiction-war-crimes.html>. [↑](#endnote-ref-57)
58. Human Rights Watch, ‘Seeking Justice for Syria: How an Alleged Syrian Intelligence Officer was Put on Trial in Germany’ (6 January 2022), <https://www.hrw.org/feature/2022/01/06/seeking-justice-for-syria/how-an-alleged-intelligence-officer-was-put-on-trial-in-germany>. [↑](#endnote-ref-58)
59. Vohra *supra* (note57). [↑](#endnote-ref-59)
60. See ‘Yazidi Genocide: IS Member Found Guilty in German Landmark Trial’, *BBC online* (30 November 2021), <https://www.bbc.co.uk/news/world-europe-59474616>. Also see A. Clooney, ‘Fifth Conviction of an ISIS Member in Germany for Crimes Against Humanity Against the Yazidis’, Doughty Street Chambers (25 October 2021), <https://www.doughtystreet.co.uk/news/fifth-conviction-isis-member-germany-crimes-against-humanity-committed-against-yazidis>. [↑](#endnote-ref-60)
61. ‘Factsheet: Universal Jurisdiction’, Center [sic] for Constitutional Rights (7 December 2015), <https://ccrjustice.org/home/get-involved/tools-resources/fact-sheets-and-faqs/factsheet-universal-jurisdiction>. [↑](#endnote-ref-61)
62. See ‘Guantanamos in Europe?’, *Spiegel International* (11 July 2005, accessed 9 January 2023). The report ‘CIA Secret Detention and Torture’ by *opensocietyfoundations.org* claimed Germany was complicit in the CIA black site programme. [↑](#endnote-ref-62)
63. Morris *supra* (note56). [↑](#endnote-ref-63)
64. K. Rapp, ‘Universal Jurisdiction is making a Comeback’, *World Politics Review* (27 July 2021), <https://www.worldpoliticsreview.com/universal-jurisdiction-offers-a-backstop-to-human-rights-tribunals/>. [↑](#endnote-ref-64)
65. M. Langer, ‘Universal Jurisdiction Is Not Disappearing: The Shift from ‘Global Enforcer’ to ‘No Safe Haven’ Universal Jurisdiction’, 13 *JICJ* (2015) 245. See also W. Kaleck and A. Schuller, *Universal Jurisdiction Gains New Momentum* (FICHL Policy Brief Series No.96 (2019). [↑](#endnote-ref-65)
66. Langer and Eason *supra* (note49). [↑](#endnote-ref-66)
67. *Ibid*. [↑](#endnote-ref-67)
68. 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>. [↑](#endnote-ref-68)
69. M. Delagrange, ‘Latin America: The Next Frontier for the ICC?’ (2009) 5 *University of Florida Law Review* 293. [↑](#endnote-ref-69)
70. *Id*, 296-304. [↑](#endnote-ref-70)
71. *Garay Hermosilla* et al *v Chile*, Case 10.843, Inter-Am. C.H.R., Report 36/96 (1996), para 57; *Juan Aniceto Meneses Reyes* et al *v Chile*, Case 11.228, Inter-Am. C.H.R., Report 34/96 (1996), paras 56, 109; *Ignacio* Ellacuria et al *v El Salvador*, Case 10.488, Inter-Am. C.H.R., Report No. 136/99, paras 229-30. [↑](#endnote-ref-71)
72. Delagrange *supra* (note69), 293-4. [↑](#endnote-ref-72)
73. *Ibid*. [↑](#endnote-ref-73)
74. 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. [↑](#endnote-ref-74)
75. *Ibid*. [↑](#endnote-ref-75)
76. Inter-American Democratic Charter, Sept. 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, 152 (2007), available at [http://www.cidh.oas.org/Basicos/English/Basic. TOC.htm](http://www.cidh.oas.org/Basicos/English/Basic.%20TOC.htm). [↑](#endnote-ref-76)
77. Delagrange *supra* (note69), 309-310 (see footnotes therein). [↑](#endnote-ref-77)
78. See *supra* (note10). [↑](#endnote-ref-78)
79. Delagrange *supra* (note69), 322. [↑](#endnote-ref-79)
80. 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’ (2007) 5 *Oxford Journal of International Criminal Justice* 480. [↑](#endnote-ref-80)
81. 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 (17 April 2017), <https://www.icc-cpi.int/news/icc-signs-enforcement-agreement-argentina#:~:text=The%20International%20Criminal%20Court%20(ICC,Court%20and%20accepted%20by%20Argentina>. [↑](#endnote-ref-81)
82. Constitution of the Argentine Nation, <http://www.biblioteca.jus.gov.ar/Argentina-Constitution.pdf>. [↑](#endnote-ref-82)
83. 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* (note50), 17-18. [↑](#endnote-ref-83)
84. ‘Argentinian Judge Indicts Franco-Era Spanish Minister on Homicide Charges’, *The Guardian online* (17 October 2021), <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>. [↑](#endnote-ref-84)
85. A Spanish judge also issued arrest warrants; see ‘China Criticises Argentina for Arrest Request of Jiang Zemin, Falun Gong Support’, *Voice of America - VoA* (24 December 2009), <https://www.voanews.com/a/china-criticizes-argentina-for-arrest-request-of-jiang-zemin-support-of-falun-gong--80053822/416662.html> [↑](#endnote-ref-85)
86. *Ibid*. [↑](#endnote-ref-86)
87. Paulet *supra* (note50), 20. See also H. Smith, ‘Argentina Urged to Arrest Saudi Prince MBS at G20 Summit Over Khashoggi Killing’, *The Times* (28 November 2018), <https://www.thetimes.co.uk/article/argentina-urged-to-arrest-saudi-prince-mbs-at-g20-summit-over-khashoggi-killing-8h0m85s5v>. [↑](#endnote-ref-87)
88. S. Osborne and B. Daragahi, ‘Argentina ‘Proceeds with Prosecution’ Against Saudi Crown Prince Mohammad bin Salman over Yemen War’, *The Independent* (28 November 2018), <https://www.independent.co.uk/news/world/americas/saudi-arabia-argentina-argentina-proceeds-with-prosecution-against-saudi-crown-prince-mohammad-bin-salman-crown-prince-mbs-yemen-g20-a8656691.html>. [↑](#endnote-ref-88)
89. ‘Argentina Lawsuit Seeks to Hold Aung San Suu Kyi Accountable for Atrocities Against Rohingya’, *Radio Free Asia online* (14 November 2019), <https://www.rfa.org/english/news/myanmar/argentina-lawsuit-11142019163937.html>. [↑](#endnote-ref-89)
90. 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* (30 September 2021), <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/>. Also BROUK, ‘Argentinean Courts Urged to Prosecute Senior Myanmar Military and Government Officials for the Rohingya Genocide’, 13 November 2019, <https://www.brouk.org.uk/argentinean-courts-urged-to-prosecute-senior-myanmar-military-and-government-officials-for-the-rohingya-genocide/>. [↑](#endnote-ref-90)
91. ‘Argentina Court to Investigate Myanmar War Crimes Against Rohingya Muslims’, *Agence France-Presse* (29 November 2021), <https://www.theguardian.com/world/2021/nov/29/argentina-court-myanmar-war-crimes-rohingya>; ‘Argentina’s Justice System to Probe Myanmar War Crimes Claims’, *Buenos Aires Times* (30 November 2021), <https://www.batimes.com.ar/news/argentina/argentinas-justice-system-to-probe-myanmar-war-crimes-claims.phtml>. Also ‘The Buenos Aires Federal Chamber Ordered to Investigate the Complaint about Crimes Against Humanity in Myanmar’, *fiscales.gob.ar* (29 November 2021), <https://www.fiscales.gob.ar/fiscalias/la-camara-federal-portena-ordeno-investigar-la-denuncia-sobre-crimenes-de-lesa-humanidad-en-myanmar/>. [↑](#endnote-ref-91)
92. Report of the Detailed Findings of the Independent Fact-Finding Mission on Myanmar, Human Rights Council, A/HRC/39/CRP.2 (17 September 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 (9-27 September 2019), para 102 (15). [↑](#endnote-ref-92)
93. N. Roht-Arriaza, ‘The Pinochet Precedent and Universal Jurisdiction’ (2001) 35 *New England Law Review* 311, 315. [↑](#endnote-ref-93)
94. Chehtman *supra* (note10). [↑](#endnote-ref-94)
95. See Delagrange *supra* (note69), 312-314 and 317-320. [↑](#endnote-ref-95)
96. 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* (note4), [24]. [↑](#endnote-ref-96)
97. 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. [↑](#endnote-ref-97)
98. 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 (11 October 2022), <https://www.un.org/en/ga/sixth/77/pdfs/statements/universal_jurisdiction/12mtg_brazil.pdf>. [↑](#endnote-ref-98)
99. K. Davis, *Between Impunity and Imperialism: The Regulation of Transnational Bribery* (OUP 2019). [↑](#endnote-ref-99)
100. Chehtman *supra* (note10). [↑](#endnote-ref-100)
101. Such as double criminality, health issues, constitutional prohibition on the extradition of nationals; *ibid*. [↑](#endnote-ref-101)
102. Chehtman *supra* (note10). [↑](#endnote-ref-102)
103. 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* (note10). [↑](#endnote-ref-103)
104. Firmenich was sentenced to 30 years in prison but served only six before his pardon in 1990. 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/>. [↑](#endnote-ref-104)
105. Peruvian courts then convicted Fujimori of extensive human rights abuses, including the infamous Barrios Altos and La Cantuta episodes, and sentenced him to 25 years in prison - see J. E. Mendez, ‘Significance of the *Fujimori* Trial’, 25 *American University International Law Review* 649, 650-652, <https://www.corteidh.or.cr/tablas/r29316.pdf>. [↑](#endnote-ref-105)
106. Articles 29 and 30 of the *Ley de Extradición Internacional* (International Extradition Law), Mexico. [↑](#endnote-ref-106)
107. Escuela de Mecanica de la Armada, ESMA – 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. [↑](#endnote-ref-107)
108. 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, where he was tried. [↑](#endnote-ref-108)
109. Including the *López and Ceballos case* in 2015, where Chile considered protection of the human rights of two Venezuelan political opposition figures. [↑](#endnote-ref-109)
110. Chehtman *supra* (note10). [↑](#endnote-ref-110)
111. AFP, ‘France Court Jails Rwanda Driver for 14 Years over Genocide’, *justiceinfo.net* (16 December 2021), <https://www.justiceinfo.net/en/85656-france-court-jails-rwanda-driver-for-14-years-over-genocide.html>. [↑](#endnote-ref-111)
112. *Ibid*. [↑](#endnote-ref-112)
113. ISS PSC Report, ‘The Strong Reaction of the PSC Following the Arrest of Rwanda’s Intelligence Chief in London has Far-Reaching Implications’ (10 July 2015), <https://issafrica.org/pscreport/psc-insights/psc-stands-with-rwanda-on-universal-jurisdiction>. [↑](#endnote-ref-113)
114. Communique of the 519th PSC Meeting on Universal Jurisdiction (26 June 2015), <http://www.peaceau.org/en/article/communique-of-the-519th-psc-meeting-on-universal-jurisdiction-26-june-2015>. [↑](#endnote-ref-114)
115. *Id.* [↑](#endnote-ref-115)
116. J. Lee, ‘Opinion: Selective Justice’, *ABC online* (16 March 2009, updated 5 Feb 2020), <https://www.abc.net.au/news/2009-03-17/30320>. [↑](#endnote-ref-116)
117. Communique of the 519th PSC Meeting on Universal Jurisdiction, *supra* (note114), para 2. [↑](#endnote-ref-117)
118. *Id*, para 5. [↑](#endnote-ref-118)
119. Langer and Eason *supra* (note49), 783. [↑](#endnote-ref-119)
120. B. McGonigle Leyh, ‘Using Strategic Litigation and Universal Jurisdiction to Advance Accountability for Serious International Crimes’, 16(3) International Journal of Transitional Justice (2022), 363. [↑](#endnote-ref-120)
121. Communique of the 519th PSC Meeting on Universal Jurisdiction, *supra* (note114), para 6. [↑](#endnote-ref-121)
122. TRIAL International, *Universal Jurisdiction Annual Review 2022*, 11-12, <https://trialinternational.org/wp-content/uploads/2022/03/TRIAL_International_UJAR-2022.pdf>. [↑](#endnote-ref-122)
123. *Pinochet Appeal*, *supra* (note25). [↑](#endnote-ref-123)
124. 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* (15 April 2013), <https://www.aljazeera.com/opinions/2013/4/15/why-thatchers-shadow-still-lingers-over-latin-america> [↑](#endnote-ref-124)
125. Rapp *supra* (note64). [↑](#endnote-ref-125)
126. L. Grinspan, ‘Changing Course: How Javier Milei Will Transform Argentina’s Foreign Policy’, *Al Jazeera online* (8 December 2023), <https://www.aljazeera.com/news/2023/12/8/changing-course-how-javier-milei-will-transform-argentinas-foreign-policy>. [↑](#endnote-ref-126)