

What is Universal Jurisdiction?

Jurisdiction

Jurisdiction means the competence of a court system to hear certain kinds of cases.

Domestic jurisdiction

Domestic jurisdiction applies to crimes where the accused or the victim is a national of that country, or where a crime was committed or had its effects in that country.

Extraterritorial jurisdiction

Extraterritorial jurisdiction applies in certain circumstances to allow a country's courts to exercise jurisdiction over crimes that were committed beyond the country's borders.

Universal jurisdiction

Universal jurisdiction is a specific form of extraterritorial jurisdiction. It is based on the idea that some crimes are so serious that all states have the obligation to prosecute offenders, even if the offender is not a national of that state and even if the crime was committed elsewhere. The concept of universal jurisdiction became more developed after the trials at the end of World War II of German Nazi leaders in Nuremberg and of Japanese military leaders in Tokyo. These tribunals prosecuted crimes against peace, war crimes, and crimes against humanity, which had not been specifically prosecuted before. While these tribunals had other bases for their jurisdiction, it is now generally accepted that they were applying a form of universal jurisdiction.

After the war, the Geneva Conventions were adopted in 1949 to clarify the laws of war and the definitions of war crimes. The Geneva Conventions specify that all states parties to the Conventions must prosecute perpetrators of war crimes in their own courts or hand them over to another state that will prosecute them.

Since the Geneva Conventions, several other human rights instruments have followed this example and require states to criminalize and prosecute violations. For example, the 1984 Convention Against Torture clearly states that states parties are obligated to prosecute or extradite anyone who is alleged to have committed torture.¹

Today, many states have adopted laws to allow their courts to prosecute international crimes including war crimes, crimes against humanity, torture, and genocide whenever a perpetrator is found in that state's territory. For example, in 2022 a German court convicted a Syrian national of crimes against humanity, including torture, that were committed in Syria. The perpetrator was a former intelligence official who was accused of overseeing torture, murder, rapes, and sexual assaults in a detention facility in Damascus, Syria. He later came to Germany from Syria and was granted asylum. He was sentenced to life in prison, subject to appeal.

¹ However, under the Convention Against Torture, states may not extradite a person to a country where there is a risk that he or she will be subjected to torture or other serious human rights violations, even if that person is accused of committing torture. Although states have an obligation to prosecute torture, they must also prevent torture.

NGO Amnesty International reported in 2012 that 163 states could exercise universal jurisdiction over one or more crimes.² NGO Trial International reported that in 2021 globally, 125 international criminal charges were brought under universal jurisdiction, including 34 charges for war crimes, 66 for crimes against humanity, 25 for genocide, and 17 for conflict-related sexual violence. These cases covered 22 countries of commission and 16 countries of prosecution.³

The main advantage of using universal jurisdiction to prosecute serious human rights violations, including crimes against humanity, is that it promotes accountability where it might otherwise be absent. For example, this might happen where the relevant state is not a party to the Rome Statute of the International Criminal Court and a referral of the situation by the Security Council is unlikely, or where there is little possibility of a specialized tribunal or domestic judicial process in the state where the crimes occurred. Universal jurisdiction can also be used to seek justice where states do not have the political will to investigate and prosecute serious human rights violations or are unable to prosecute crimes, for example due to instability or a lack of resources or the absence of an independent judiciary that upholds the rule of law.

OHCHR and other human rights actors have repeatedly called on UN Member States to exercise their jurisdiction to bring to justice perpetrators of serious human rights violations, including crimes against humanity, by applying accepted principles of extraterritorial or universal jurisdiction.

² Universal Jurisdiction, Strengthening this Essential Tool of International Justice, Amnesty International, 2012 <https://www.amnesty.org/en/wp-content/uploads/2021/06/ior530202012en.pdf>

³ Universal Jurisdiction Annual Review 2022, Trial International, https://trialinternational.org/wp-content/uploads/2022/03/TRIAL_International_UJAR-2022.pdf