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From Hostis Humani Generis To Human Rights Violations - Rethinking Universal Jurisdiction Through Global Lens

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Abstract

This paper explores the development and current issues that face universal jurisdiction starting with the historical development of the concept of hostis humani generis as the prosecution of the crime of piracy to the modern day dealing with serious human rights abuses. Originally intended to face stateless acts of piracy beyond the territorial control of a nation, universal jurisdiction has grown and developed over time with such milestones as the Nuremberg and Tokyo Tribunals, the Geneva Conventions, and such cases as Pinochet, to include genocide, war crimes, crimes against humanity and torture. Although the expansion is a leap of one of the most innovative changes in the international law, it has been applied in an uneven way, politically selective and prone to the criticism of being a form of neo-colonial justice. The unequal application of universal jurisdiction, the authors of which are mostly actors of weaker states and escape penalties targeting the actors of powerful countries, plays into the discredit and mistrust of the article. It also examines the issue of sovereignty and accountability and how these two are in conflict, and therefore the principle of non-intervention and extraterritorial jurisdiction. To overcome these limitations, the paper proposes a universal reconsideration of universal jurisdiction that takes into account the duality between sovereignty and justice, enhancing more just allocation of cases, increasing cooperation between domestic and regional and international courts, and further supporting Global South jurisdictions. The article believes that by placing universal jurisdiction in a multilayered accountability framework, the doctrine can become a valid mechanism of international justice as opposed to a politically convenient tool. Finally, it argues that universal jurisdiction can only achieve its intended purpose of fighting impunity of the most heinous crimes by the representative and the universally inclusive method.

Keywords - Universal Jurisdiction, Human Rights Violations, International Criminal Law, Sovereignty, Hostis Humani Generis, Crimes Against Humanity, Global Justice, Political Selectivity

I. INTRODUCTION

It is the evolution of the doctrine of piracy, termed universal jurisdiction, that most epitomises change. From the pinpoint definition that described the act as the unfortunate overreach of one's national legal system, the jurisdiction is now sought to be extended to serious breaches of international humanitarian law. Treating pirates as hostis humani generis, and now framing state and non-state actors as purveyors of Crimes Against Humanity, is a radical Shift and evolution in public international law. This is why zeitgeist shifts in public international law are attributable

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to the international law of the coming decades. At the centre of it is one question: how much are sovereign states allowed, or perhaps required, to prosecute foreign crimes when the victims and the perpetrators are foreign nationals? This is in part a question of justice and accountability, and in part, about sovereignty, jurisdictional power, and the governance of the international system.¹⁴⁷

This article examines the history and principles of universal jurisdiction, its modern application to human rights violations, and the gap that calls for its implementation to be reframed with a truly global approach. Regrettably, the application of universal jurisdiction is described as an unfulfilled ambition to eradicate impunity for international crimes. The application is said to be politically selective and inconsistent with the principles of sovereign equality. The article connects the classical notion of *hostis humani generis* with contemporary human rights discourse to examine the position of universal jurisdiction within the international legal system.¹⁴⁸

II. CONCEPTUAL FOUNDATIONS OF UNIVERSAL JURISDICTION

The legal power of a state to prescribe, adjudicate and enforce laws within its territory is referred to as jurisdiction. The traditional bases of jurisdiction, territoriality, nationality, passive personality, and the protective principle, are tethered to the principle of sovereign equality. Universal jurisdiction is a departure from these when it permits any state to wield criminal jurisdiction over a crime, the offender, and the victim, regardless of any connection to the crime.¹⁴⁹

The document was first articulated because of piracy. Piracy was viewed as an act of stateless people engaging in *inter gente* activities (beyond the scope of the international legal framework), and so piracy was of interest to every country. From this emerged, the idea that pirates were the “common enemies of mankind.” Such a label meant that a pirate could be arrested and prosecuted anywhere in the world, and this was the first step to establishing a system of universal jurisdiction. This concept later on came to be associated with other crimes that were termed as “outrageous” or “*jus cogens* violations.” These are genocide, war crimes, crimes against humanity, torture, and enforced disappearances. The reason for this is twofold, the offense in question is of such a nature that it constitutes an affront to the entire international community, and there is no effective territorial or national jurisdiction to act, so there is a need for collective action.¹⁵⁰

III. THE TRANSITION FROM PIRACY TO PRINCIPAL INTERNATIONAL CRIMES

In the 17th and 18th centuries, the existential threat posed by piracy to state security and maritime commerce was profound. By assessing the works of Hugo Grotius and Cornelius van Bynkershoek, one can find the theoretical foundations for viewing pirates as outlaws. The continued repression of piracy in treaties such as the Geneva Convention on the High Seas and

¹⁴⁷ Jody Greene, ‘Hostis Humani Generis’ (2008) 34(4) Critical Inquiry 683, <<http://dx.doi.org/10.1086/592540>> accessed 24 September 2025.

¹⁴⁸ *ibid.*

¹⁴⁹ Elimma C Ezeani, ‘The 21st Century Terrorist: Hostis Humani Generis?’ (2012) 03(04) Beijing Law Review 158, <<http://dx.doi.org/10.4236/blr.2012.34022>> accessed 24 September 2025.

¹⁵⁰ *ibid.*

Article 101 of the UN Convention on the Law of the Sea confirms piracy's enduring status as the paradigmatic crime of universal jurisdiction.

The Nuremberg and Tokyo Tribunals were a watershed moment. While the Allies' military authority served as the foundation for these tribunals, there was a shift in perception away from the view that states were the only ones accountable for international crimes. It became clear that individuals were accountable for war crimes as well. This shift in perception constructed the rationale for the subsequent developments.

The additional protocols and the four Geneva Conventions, 1949 established “grave breaches” of international humanitarian law. The Conventions’ common provisions require state parties to “search for” and prosecute, or extradite, irrespective of the nationality of the perpetrator, persons of any nationality alleged to have committed grave breaches. The universal jurisdiction rests on the principle of “aut dedere aut judicare” that the convention provides.¹⁵¹

The 1971 case, perplexingly known solely as the ‘Pinochet case’, served as a luring bait for advocates of the cross-border prohibition of torture by a former head of state, as well as advocates for universal jurisdiction of crimes by former heads of state. They pivoted to effective demonstrations on the exercising of the doctrine described in Belgian jurisdiction’s universality restated in domestic law. The rise of hybrid tribunals such as the Special Court for Sierra Leone and the formation of the International Criminal Court in 2002 sustained the dissemination of the fact that accountability could rest within the reach of one’s frontiers.¹⁵²

IV. THE SCOPE OF ATROCITIES UNDER UNIVERSAL JURISDICTION

The encapsulation of abuses of human rights within the framework of universal jurisdiction is the product of the juxtaposition and intertwining of two normative sets international and intranational, of which the first is International Humanitarian Law (IHL of the bloody battlegrounds of war) and the second is International Human Rights Law, which is applicable throughout the globe. The evolution of crimes against humanity as one of the primary and pivotal categories in the legal framework of international criminal law is the result of this intertwining. Genocides and torture acts are not only war crimes but also blatant disregard to human rights as articulated in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. The Convention Against Torture and Other Cruel and Inhuman Degrading Treatment or Punishment has reached the autonomous status of *jus cogens*. Any internal legislation in conflict to this is null and void. This contemplation strengthens the scenario for universal jurisdiction as it offers *erga omnes*, obligations owed to the international community as a whole.¹⁵³

Nonetheless, the extension of universal jurisdiction to breaches of human rights comes with its own complications. Unlike acts of piracy, which occur in the unconquered territories of the high seas, breaches of human rights are often perpetrated within the delimiting boundary of a

¹⁵¹ Raymund T Yingling and Robert W Ginnane, ‘The Geneva Conventions of 1949’ (1952) 46(3) American Journal of International Law 393, <<http://dx.doi.org/10.2307/2194498>> accessed 24 September 2025.

¹⁵² ‘Regina v. Bartle and the Commissioner of Police for the Metropolis and others ex parte PINOCHET / Regina v. Evans and another and the Commissioner of Police for the Metropolis and others ex parte PINOCHET’ (ICD) <www.internationalcrimesdatabase.org/case/855/pinochet/> accessed 24 September 2025.

¹⁵³ ‘Convention against torture and other cruel, inhuman or degrading treatment or punishment’ (1985) 1(2) Medicine and War 161, <<http://dx.doi.org/10.1080/07488008508408634>> accessed 24 September 2025.

sovereign nation. The exercise of extraterritorial jurisdiction in such cases is bound to raise issues of intervention and political selectivity. Current Policies and Judicial Procedure

In their implementation, more states than one have shown positive and negative aspects toward universal jurisdiction. A few, Germany, Spain and South Africa, have laws on the books that allow the prosecution of genocide, war crimes, and crimes against humanity, without regard to the location in which these atrocities were committed. As an example, Germany's Code of Crimes against International Law (VStGB) was the basis for the one of the first Koblenz trials, which was for Syrian officials charged with torture.¹⁵⁴

V. NEED FOR GLOBAL APPROACH

The scattered use of universal jurisdiction demonstrates the need for an approach that is truly global. Enforcement, for example, is almost entirely within the domain of judicial procedures of the Western, well-resourced countries. International law, in those dominions, is disproportionately applied to officials of under-resourced or non-Western countries. Such disparity serves to justify the descriptors of “neo-colonial” justice in reference to the practice of universal jurisdiction.

A global approach would involve -

- A better-balanced global allocation of universal jurisdiction cases;
- Augmented support for the Global South in prosecuting international crimes; and
- Improved collaboration with international bodies, such as the ICC, to reduce duplication and facilitate forum shopping.

The application of universal jurisdiction is different from the presumption of territorial application of foreign criminal jurisdiction which is why the supranational nature of the criminal jurisdiction poses no element of undue transgression to basic principles of criminal law and its processes. The imposition of universal jurisdiction remains self-defeating unless it is confined within predetermined borders and adequately equipped with procedural safeguards which would address the risk of its application becoming a de facto avenue of equally unjust discriminative justice as it claims to uphold.¹⁵⁵

VI. CRITICAL ANALYSIS - UNIVERSAL JURISDICTION AND HUMAN RIGHTS VIOLATIONS

The leap from universal jurisdiction over pirates to violators of human rights is one of the most innovative changes in international law. Unfortunately, it also reveals the gap between what is desired and what is politically possible. While piracy occurs beyond the reach of any sovereign power, human rights violations take place within the boundaries of sovereignty. The assertion of universal jurisdiction, therefore, conflicts with the doctrine of non-intervention, the protections afforded to foreign officials, and the domestic legal order.

The unilateral action on these issues is of primary importance. The principle of complementarity, as set forth in the Rome Statute of the International Criminal Court (ICC), assumes primary

¹⁵⁴ Stefanie Bock, ‘The German Code of Crimes Against International Law at Twenty’ [2023] Journal of International Criminal Justice <<http://dx.doi.org/10.1093/jicj/mqad041>> accessed 24 September 2025.

¹⁵⁵ ‘Hostis Humani Generis’, *Legal Challenges in Maritime Security* (Brill | Nijhoff 2008) <<http://dx.doi.org/10.1163/ej.9789004164277.v-594.68>> accessed 24 September 2025.

prosecutorial jurisdiction rests with the national order. Universal jurisdiction may complement, but cannot replace, national or territorial jurisdiction. In practice, however, it is universal jurisdiction which states claim as their right, which is, in reality, the refusal by territorial states to prosecute. This creates an almost subsidiary arrangement, but is likely to be regarded as overreach if not buttressed by multilateral support. Selectivity undermines credibility. Many cases have focused on individuals from weaker states while ignoring others from much stronger states. This imbalance gives rise to the idea that universal jurisdiction is more about geopolitical dominance than the universal application of the law. This perception damages the prosecutions' credibility and the doctrine's on prosecuting such crimes.¹⁵⁶

SHIFT IN PROCEDURE

The setting of a universal jurisdiction should be anchored in and surrounding reliable and set legal structures. Universal jurisdiction should no longer be used as an extension of legal strategy and used opportunistically. There should be a prescribed legal framework related to the use of universal jurisdiction. The alignment of domestic laws to international laws should minimize jurisdictional shopping and arbitrary jurisdictional exercise.

Global and regional institutions, if working together, can reduce unilateralism and thereby boost legitimacy. They can, and should, collaborate on the coordination of investigations, intelligent sharing, and the adjudication of conflicts of jurisdiction for prosecutable crimes.

VII. UNIVERSAL JURISDICTION IN PRACTICE AND FUTURE DIRECTIONS

Unlike other legal principles, universal jurisdiction has poised itself on a thin line between principle and politics, rewarding its champions with accountability, while at the same time subjecting them to the risks of enforcement discretion. Unlike its classical period, which was dominated by the law of piracy, and its contemporary period, which, focuses on the law of humanity crimes, the doctrine of universal jurisdiction has been stretched and, at times, re-shaped to serve the requisite justice. Still, its patchy enforcement suggests that universal jurisdiction is far more than a legal tool; it's a political tool, a blunt one, that has to deal with issues of sovereignty, legitimacy, and fairness.

At the very minimum of its rationale, crimes which fall under universal jurisdiction are some of the odious in regards to humanity, such as genocide, war crimes, crimes against humanity, and torture. Each of which is a jus cogens violation, and imposes erga omnes obligations on all states. This means that universal jurisdiction resets, the idea that the undermining and absence of justice will be integral to the victims and the world. Yet, the application of international law and such principles is very distorted One of the characterizations of state response. Using the principle of universal jurisdiction to a state is very diverse and shaped by myriad obligations, especially in matters of violence, diplomacy, and geopolitics.¹⁵⁷

Examples from history help to explain the potential benefits and shortcomings of the doctrine. Piracy, the first global crime, took place in an open ocean the high seas, a legal void with no

¹⁵⁶ Vishal Surbun, 'The Pirate as Hostis Humani Generis: The Illegitimate Enemy' (2021) 27(2) Fundamina 67, <<http://dx.doi.org/10.47348/fund/v27/i2a3>> accessed 24 September 2025.

¹⁵⁷ Magdalena Matusiak-Frącczak, 'JUS COGENS REVISITED' (2016) 2627(34) Review of European and Comparative Law 55, <<http://dx.doi.org/10.31743/recl.4978>> accessed 25 September 2025.

sovereign ruler. In contrast, contemporary abuses of human rights almost always take place within the territorial jurisdiction of a state, and more often than not, a state which is both unwilling and incapable of prosecuting the perpetrators. In stark contrast to the pirates of the seventeenth century, today's offenders can possess formal power and international alliances which protect them from the consequences of their actions. This distinction is critical and illustrates the challenges of applying the piracy framework to contemporary atrocities.¹⁵⁸

One of the criticisms of universal jurisdiction that has lasted the longest is lack of balance. The courts of the West have been more willing to pursue cases against African leaders and officials, but much more disinterested in the potential violations of more powerful states and their allies. This imbalance strengthens the idea of “neo-colonial justice,” where law is used to dominate the weak rather than to protect them. The classic cases are the decline in enthusiasm of Spain and Belgium in pursuing universal jurisdiction when prosecutions started to include U.S. and Israeli officials, who retaliated diplomatically and curled back the law at home, but Germany has been much more consistent in the exercise of universal jurisdiction to The Code of Crimes against International law, especially in the Koblenz trials of Syrian officials. These cases suggest that while the political and legal will are there, universal jurisdiction is also within easy reach.

The complexity of issues is compounded by the interrelation of the International Criminal Court and universal jurisdiction. As set out in the Rome Statute, complementarity assigns primary prosecutorial responsibility to domestic jurisdictions, with the ICC filling in the gaps only when states fail to act. In principle, universal jurisdiction also reinforces this principle by offering an additional safety net. In reality, though, these two strategies are usually in conflict: states pursuing their political objectives may invoke universal jurisdiction, or, alternatively, ICC intervention may be avoided solely on the basis of sovereignty. The outcome is a disjointed framework of accountability that has an adverse impact on coherence and predictability in international justice.¹⁵⁹

To achieve its full potential, universal jurisdiction must move beyond the confines of the Western courtroom. Countries in the Global South, which often suffer the worst atrocities, require both support and inclusion in the development of the doctrine. Otherwise, universal jurisdiction runs the danger of deepening dependence on Western legal systems and sustaining the prevailing unequal relations of power. Asymmetrical mid-Range endeavors, like the African Union's Malabo Protocol to develop a sub-continental criminal jurisdiction, testify to an attempt to reclaim some control, even if such endeavors have their own expansive challenges. A truly global approach, however, would still require imposition of capacity and power, so that universal jurisdiction does not rest on an arbitrary configuration of endorsement.

The practical implementation of universal jurisdiction necessitates various changes. First, there is a need to define which crimes fall under which circumstances a state may claim jurisdiction of a said crime. Second, the unnecessary and politically motivated prosecutions must be avoided and safeguards need to be implemented. Third, there is a need to strengthen and improve cooperation between the ICC, regional courts, and domestic courts to improve multilayered cooperation. As a last point, there is a need to improve practice applicability not only for fairness

¹⁵⁸ *ibid.*

¹⁵⁹ Pope Pius XII, ‘*Humani generis*’ (2003) 3(3) The National Catholic Bioethics Quarterly 569, <<http://dx.doi.org/10.5840/ncbq20033335>> accessed 25 September 2025.

but also for the available analysis. The legal progress on its own will not be enough to strengthen jurisdiction if its practice is deemed selective and unjust.

A more integrated structure can be developed by shifting the tiers of jurisdiction, whereby primary prosecution happens at the national level, and each subsequent tier is added regionally, with universal jurisdiction as the last resort. In as much as as these frameworks provide a foundation to prosecute, the unnecessary sacrifices of state sovereignty to improve state accountability must be balanced. Technological advancement can be beneficial in the development of cross-border evidence repositories, platforms in the primary refuge system that are accessible to both victims and witnesses, and other innovative collaborative systems. Rather than remaining an the rare doctrine of reproachable practice, universal jurisdiction could thus be a fundamental aspect of international criminal law.

The transition from *hostis humani generis* to vio-la-tion of human rights shows the boldness as well as the fragility of universal jurisdiction. This doctrine is still burdened by the most noble aims of international law, which is the prevention of impunity, but is politically selective and unevenly practiced. The challenge is to move universal jurisdiction from the realm of hopes and dreams to the level of concrete realities by incorporating it into a system that is just, representative, and politically and economically equitable. Only then can such jurisdiction move beyond the suspicion of being merely a tool of political expedience to the attainment of its primary purpose - being a true mechanism of justice to the world.¹⁶⁰

VIII. CONCLUSION

To say that the slow shift from *hostis humani generis* to violations of human rights demonstrates a shift in the ethical and legal framework of international law would be an immense understatement. What started from an overly simplistic notion to curb piracy on the open seas has metamorphosed- albeit unevenly, into an audacious instrument used to address the most heinous acts against humanity. But still, the promise of universal jurisdiction remains an unfulfilled promise. Its reach has been severely constrained, and its legitimacy undermined, by selective enforcement, political backlash, and definitional ambiguities.

A way forward is to reconsider universal jurisdiction from a largely global perspective. The international community has the capacity to moderate controversial universal jurisdiction by clarifying its scope, bolstering its multilayered institutions, and democratizing its enforcement. In doing so, the commonly accepted principle of international jurisprudence will be fostered. Such an amendment would preserve the doctrine's origins, while to some extent fulfilling new obligations to be placed- the obligation to end the unrestrained silence on the most serious crimes, and to preserve the core ideological tenets of international human rights.

¹⁶⁰ *ibid.*