

## The Rebirth of Universal Jurisdiction: How the Syrian Conflict Has Led to the Expansion of the Use of Universal Jurisdiction

*Under the principle of universal jurisdiction, any national court may prosecute an individual accused of committing a serious international crime, regardless of the nationalities of the perpetrator and the victim, or the location of the crime. At the turn of the twenty-first century, amendments to the universal jurisdiction laws of several European countries led to a decline in the use of universal jurisdiction and the narrative of the downfall of the principle. However, as Máximo Langer argues, the use of universal jurisdiction has actually been quietly expanding during this time period. In this Note, I argue that the rise in the use of universal jurisdiction to prosecute perpetrators related to the conflict in Syria has significantly contributed to the expansion of the overall use of universal jurisdiction. I collected data on ongoing and just-initiated universal jurisdiction cases from the past seven years and conducted statistical analysis to show that, first, the number of Syria-related universal jurisdiction cases significantly contributed to the overall number of universal jurisdiction cases and, second, the number of Syria universal jurisdiction cases initiated significantly contributed to the overall number of universal jurisdiction cases initiated. Further, I contend that several factors underpin this relationship between Syria universal jurisdiction cases and overall universal jurisdiction cases, including: migration waves, the initiation of structural investigations in several European countries, and domestic and international political pressure. Finally, I conclude that these findings show that the principle of universal jurisdiction is far from its deathbed and, instead, has undergone a rebirth.*

INTRODUCTION .....	87
I. THE SYRIAN CONFLICT.....	89
A. Background.....	89
B. Accountability Efforts and Mechanisms for Syria .....	91
1. Syrian Domestic Courts.....	92
2. The International Criminal Court (ICC).....	93
3. Ad hoc Court or Tribunal .....	94
4. Hybrid Tribunal .....	95
II. THE PRINCIPLE OF UNIVERSAL JURISDICTION .....	95
A. Universal Jurisdiction: Defined .....	95
1. Types of Crimes Covered.....	96
2. Justifications for Use .....	97
3. Objections and Challenges to Use.....	97
B. The Rise and Fall (and Rise Again) of Universal Jurisdiction .....	98
1. Historical Roots and Development of Modern Universal Jurisdiction .....	98
2. The “Zeitgeist” of the 1990s.....	100
3. The Contraction of Universal Jurisdiction .....	101
4. Langer’s “Quiet Expansion” of Universal Jurisdiction .....	103
III. UNIVERSAL JURISDICTION AND SYRIA.....	104
A. France .....	105
B. Germany.....	107
C. The Netherlands.....	108
D. Sweden.....	109
E. Switzerland.....	110
F. Use of Universal Jurisdiction: The Big Picture.....	111
IV. IMPACT OF THE SYRIAN CONFLICT ON THE USE OF THE PRINCIPLE OF UNIVERSAL JURISDICTION .....	112
A. Methodology.....	112
B. Analysis .....	114
1. Ongoing Cases.....	114
2. Cases Newly Initiated.....	116
3. Countries Included.....	118
4. Conclusions .....	119
C. Explanations for the Rebirth of Universal Jurisdiction ..	120

1. Migration Waves to Europe.....	120
2. Initiation of Structural Investigations.....	121
3. International (External) Political Pressure.....	121
4. Domestic (Internal) Political Pressure.....	122
CONCLUSION .....	123

## INTRODUCTION

On February 24, 2021, Eyad al-Gharib, a former Syrian intelligence officer, was convicted by a German court of complicity in crimes against humanity perpetrated in Syria and sentenced to four and a half years in prison.<sup>1</sup> Before defecting from the regime in 2012, Gharib arrested protesters and delivered them to a detention center in Damascus, where the detainees were subjected to systematic torture.<sup>2</sup> Gharib's conviction, ten years after the start of the Syrian war, is the first conviction of a former Syrian official and has been hailed as "a landmark in the effort to ensure justice for violations committed during Syria's civil war."<sup>3</sup>

Less than one year later, on January 13, 2022, Anwar Raslan, a high-ranking former Syrian intelligence officer, was convicted by a German court of crimes against humanity perpetrated in Syria and sentenced to life in prison.<sup>4</sup> Raslan, who was in charge of the infamous

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1. Claudia Otto, Tamara Qiblawi & Stephanie Halasz, *In World First, Germany Convicts Syrian Regime Officer of Crimes Against Humanity*, CNN (Feb. 24, 2021), <https://www.cnn.com/2021/02/24/middleeast/syria-germany-officer-convicted-intl/index.html> [<https://perma.cc/25MC-JTWW>].

2. *German Court Convicts Ex-Syrian Agent in Landmark Trial*, AL JAZEERA (Feb. 24, 2021), <https://www.aljazeera.com/news/2021/2/24/first-verdict-expected-in-germanys-landmark-syria-torture-trial> [<https://perma.cc/KYQ2-TWFE>].

3. Rick Gladstone, *An Old Legal Doctrine That Puts War Criminals in the Reach of Justice*, N.Y. TIMES (Feb. 28, 2021), <https://www.nytimes.com/2021/02/28/world/europe/universal-jurisdiction-war-crimes.html> [<https://perma.cc/45NJ-K2AT>]; Ben Hubbard, *German Court Convicts Former Syrian Official of Crimes Against Humanity*, N.Y. TIMES (Feb. 24, 2021), <https://www.nytimes.com/2021/02/24/world/middleeast/germany-court-syria-war-crimes.html> [<https://perma.cc/M8H2-DE96>].

4. Ben Hubbard & Katrin Bennhold, *Syria War Crimes Verdict: Former Syrian Colonel Guilty in War Crimes Trial in Germany*, N.Y. TIMES (Jan. 13, 2022), <https://www.nytimes.com/live/2022/01/13/world/syria-war-crimes-germany-verdict> [<https://perma.cc/VC9A-E687>].

al-Khatib prison in Damascus,<sup>5</sup> oversaw the torture and killing of prisoners, as well as the sexual assault and rape of detainees.<sup>6</sup> This watershed verdict marks the first time that a high ranking Syrian official has stood trial and been sentenced.<sup>7</sup>

Both al-Gharib and Raslan fled Syria and were granted asylum in Germany, where they were arrested in 2019.<sup>8</sup> Neither man is a German citizen, nor did their alleged crimes take place in Germany. However, German prosecutors were able to bring claims against both in German courts under the international law principle of universal jurisdiction.<sup>9</sup>

Under universal jurisdiction, a national court may prosecute individuals accused of committing serious international crimes, regardless of the nationality of the perpetrator and the victim, or the location of the crime.<sup>10</sup> Although the principle of universal jurisdiction was once thought to be on its deathbed,<sup>11</sup> the number of cases prosecuted under universal jurisdiction has been increasing in recent years.<sup>12</sup> At the same time, the number of cases *related to the conflict in Syria* prosecuted under universal jurisdiction has also been increasing in recent years.<sup>13</sup>

In this Note, I argue that the Syrian conflict—and the prosecution of perpetrators related to the Syrian conflict under the principle of universal jurisdiction—has led to an expansion in the use of universal jurisdiction. This expansion includes a significant increase in the number of ongoing and newly initiated universal jurisdiction cases, and an

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5. Al-Khatib (or “Al-Khateeb”), formally known as State Security branch 251, is infamous for “the brutal torture inflicted on the prisoners who crowd its cells.” For an in-depth look at life in al-Khatib prison, see Will Christou & Walid Al Nofal, *Torture and Death: Life in Al-Khateeb Detention Center*, SYRIA DIRECT (Apr. 29, 2020), <https://syriadirect.org/torture-and-death-life-in-al-khateeb-detention-center/> [<https://perma.cc/3DL6-RMHK>].

6. Hubbard & Bennhold, *supra* note 4.

7. *Id.*

8. *German Court Convicts Ex-Syrian Agent in Landmark Trial*, *supra* note 2.

9. *Id.*

10. Gladstone, *supra* note 3.

11. See, e.g., Ignacio de la Rasilla del Moral, *The Swan Song of Universal Jurisdiction in Spain*, 9 INT’L CRIM. L. REV. 777 (2009); Luc Reydam, *The Rise and Fall of Universal Jurisdiction*, in HANDBOOK OF INTERNATIONAL CRIMINAL LAW 337 (William A. Schabas & Nadia Bernaz eds., 2012); Rephael Ben-Ari, *Universal Jurisdiction: Chronicle of a Death Foretold?*, 43 DENV. J. INT’L L. & POL’Y 165 (2015).

12. See generally Máximo Langer & Mackenzie Eason, *The Quiet Expansion of Universal Jurisdiction*, 30 EUR. J. INT’L L. 779 (2019).

13. Yuna Han, *Rebirth of Universal Jurisdiction?*, ETHICS & INT’L AFFS. (May 4, 2017), <https://www.ethicsandinternationalaffairs.org/2017/rebirth-universal-jurisdiction/> [<https://perma.cc/KK5M-9V94>].

increase in the number of countries prosecuting cases under universal jurisdiction. To reach this conclusion, I conducted a study of all significant universal jurisdiction cases between 2014 and 2020 and analyzed the statistical significance of the amount of Syria universal jurisdiction cases.<sup>14</sup> In Part I, I provide background on the Syrian conflict and the attempts to bring about accountability for the perpetrators of international law violations in Syria. In Part II, I outline the concept of universal jurisdiction and detail the history of its use. In Part III, I explain efforts to bring about accountability for the perpetrators of international law violations in Syria using the principle of universal jurisdiction. Finally, in Part IV, I explain the results of my study, showing how the use of universal jurisdiction in the Syria context has expanded the overall use of the principle. I conclude by providing several explanatory factors for this phenomenon.

## I. THE SYRIAN CONFLICT

### A. Background

On March 15, 2011, swept up in the wave of the Arab Spring, Syrians took to the streets to protest the arrest of fifteen students for anti-regime graffiti.<sup>15</sup> Backlash from regime security forces triggered “one of the most protracted conflicts of the 21st century.”<sup>16</sup> Over twelve years later, this multi-sided conflict has resulted in over 5.6 million refugees and 6.6 million internally displaced people, and has claimed the lives of between 362,000 and 500,000 people.<sup>17</sup> Individuals from almost all parties in the Syrian conflict have committed serious violations of international law that may amount to war crimes and, in some cases, crimes against humanity.<sup>18</sup>

The most well-known perpetrators in the Syrian conflict—President Bashar Al-Assad and his regime—are responsible for a host of

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14. For an explanation of the methodology of the study, including how I collected the data, see *infra* Section IV.A. For the results of the study, see *infra* Section IV.B.

15. *The Syrian Conflict in Numbers: 10 Years Later in 2021*, VISION OF HUMAN. (2021), <https://www.visionofhumanity.org/ten-years-on-the-syrian-conflict-in-numbers/> [https://perma.cc/8KL8-YC6V].

16. *Id.*

17. *Id.*

18. Maria Elena Vignoli, “*These Are the Crimes We Are Fleeing*”: Justice for Syria in Swedish and German Courts, HUM. RTS. WATCH (Oct. 3, 2017), <https://www.hrw.org/report/2017/10/03/these-are-crimes-we-are-fleeing/justice-syria-swedish-and-german-courts> [https://perma.cc/229K-F67Q]. For the definitions of “war crimes” and “crimes against humanity”, see *infra* Section II.A.1.

violations, including arbitrarily detaining, disappearing, and torturing Syrian individuals.<sup>19</sup> Today, tens of thousands of people remain in government detention facilities, where individuals are subject to torture, horrific humanitarian conditions, and sexual violence, including rape.<sup>20</sup> Since March 2011, an estimated 15,000 individuals have died due to torture, the majority in these government facilities.<sup>21</sup> The Syrian government is also responsible for unlawfully restricting access to humanitarian aid.<sup>22</sup>

In September 2015, Russia joined the conflict on President Assad's side, deploying warplanes and giving military aid.<sup>23</sup> The Syrian-Russian military alliance has conducted widespread and systematic attacks, often deliberately and indiscriminately attacking civilian locations including schools, hospitals, markets, homes, and shelters.<sup>24</sup> Some of these attacks have used internationally banned weapons.<sup>25</sup> Between January and March of 2020 alone, Human Rights Watch documented eighteen unlawful attacks that killed at least 112 people and wounded at least 359 people.<sup>26</sup>

On the other side of the conflict, anti-government groups, including Hay'at Tahrir al-Sham (HTS), are also responsible for indiscriminate attacks against civilians, kidnappings, torture, the use of child soldiers, and the restriction of access to humanitarian aid.<sup>27</sup> HTS is also responsible for the execution of detainees.<sup>28</sup>

The Islamic State, also known as ISIS, has committed systematic and widespread violations since its inception in 2014 and its subsequent seizure of territory across Syria and Iraq.<sup>29</sup> ISIS is responsible for targeting civilians with artillery, the kidnapping of thousands of people, the use of child soldiers, and summary execution.<sup>30</sup> There have

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19. HUM. RTS. WATCH, WORLD REPORT 2021 638–41 (2021), [https://www.hrw.org/sites/default/files/media\\_2021/01/2021\\_hrw\\_world\\_report.pdf](https://www.hrw.org/sites/default/files/media_2021/01/2021_hrw_world_report.pdf) [<https://perma.cc/3R6H-B3XP>].

20. *Id.* at 641–42; Vignoli, *supra* note 18, at 12.

21. HUM. RTS. WATCH, *supra* note 19, at 641.

22. *Id.* at 639–41.

23. *Timeline: Ten years of Syria Conflict, From Protest to War to Economic Decline*, REUTERS (Mar. 11, 2021), <https://www.reuters.com/article/us-syria-security-timeline-idUSKBN2B40G7> [<https://perma.cc/E7PY-G9YW>] [hereinafter *Timeline*].

24. HUM. RTS. WATCH, *supra* note 19, at 638–39.

25. *Id.*

26. *Id.*

27. Vignoli, *supra* note 18, at 12.

28. HUM. RTS. WATCH, *supra* note 19, at 642.

29. *Timeline*, *supra* note 23.

30. Vignoli, *supra* note 18, at 12–13.

been at least three documented instances of ISIS attacking civilians using chemical weapons.<sup>31</sup> Further, ISIS has sexually enslaved and abused Yezidi women and girls.<sup>32</sup>

International state actors are also responsible for violations inside Syria. Since 2014, the United States has supported forces on the ground through its anti-Islamic State coalition, which includes the Syrian Democratic Forces (SDF), a Kurdish-led armed group.<sup>33</sup> Members of the U.S.-led coalition have committed abuses including the use of child soldiers, arbitrary detention, disappearances, and killing.<sup>34</sup> The coalition is also responsible for possibly illegal airstrikes that caused civilian deaths.<sup>35</sup>

Since 2016, Turkey has also been involved in the Syrian conflict, backing the Syrian National Army (SNA).<sup>36</sup> In the territories they occupy in northeast Syria, Turkey and Turkish forces have been accused of indiscriminately destroying civilian structures, arresting hundreds of individuals, carrying out at least seven summary executions, and committing sexual violence, including rape.<sup>37</sup>

All of the actions outlined above are human rights violations and may amount to the level of war crimes or crimes against humanity. While all the aforementioned parties to the Syrian conflict have committed serious crimes, the Syrian government is responsible for the disproportionate majority of atrocities.<sup>38</sup>

### *B. Accountability Efforts and Mechanisms for Syria*

Since the onset of the Syrian conflict, there have been efforts to hold perpetrators of human rights violations accountable. Accountability is the notion that those who commit human rights violations must account for, and be held responsible for, those violations.<sup>39</sup> Ensuring

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31. *Id.*

32. *Id.*

33. *Id.* at 13.

34. *Id.*

35. *Id.*

36. Timeline, *supra* note 23.

37. HUM. RTS. WATCH, *supra* note 19, at 642.

38. Alreem Kamal, *Impunity in Syria & Universal Jurisdiction in Europe: Is a Revival of the 'Global Enforcer' Approach in Order?*, 2 QUEEN MARY L.J. 96, 98 (2021).

39. Annemarie Devereux, *Accountability for Human Rights Violations in Syria: Reasons for Hope*, 25 AUSTL. J. HUM. RTS. 391, 392 (2019).

accountability for human rights violations is a central tenet of the international human rights framework.<sup>40</sup> In the context of the conflict in Syria, human rights violations that have been documented by the UN's Independent International Commission of Inquiry on the Syrian Arab Republic (IICISyria) include: massacres; targeted and indiscriminate attacks on civilians; attacks on protected places, such as hospitals; sexual slavery and other forms of sexual violence; chemical weapons attacks; enforced disappearances; arbitrary detention; torture; forced displacement; and the use of starvation as a method of war.<sup>41</sup>

The dearth of evidence presents a central obstacle facing efforts to hold human rights violators accountable. In 2013, a military defector code-named "Caesar" smuggled 53,275 photos out of Syria.<sup>42</sup> The photos show more than 28,000 photos of detainees in government custody, including at least 6,786 detainees who died in detention.<sup>43</sup> Despite this documented evidence of human rights violations by the Syrian regime, international mechanisms have not successfully utilized such evidence in a criminal proceeding.<sup>44</sup> The following mechanisms represent attempts to hold perpetrators of human rights violations in Syria accountable and mechanisms that may assist in holding perpetrators accountable in the future.

### 1. Syrian Domestic Courts

Generally, domestic courts are an ideal location for investigating perpetrators of crimes because they are proximate to the locations where the crimes occurred, enjoy access to evidence and witnesses, and lack a language barrier.<sup>45</sup> However, in this case, it is "unrealistic to expect the Syrian justice system to deliver real justice to Syrian victims, either at the current time or in the near future."<sup>46</sup> The Syrian domestic court system is not a viable option for accountability because it lacks independence.<sup>47</sup>

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40. *Id.*

41. *Id.* at 393–94; *see also supra* Section I.A.

42. *Syria: Stories Behind Photos of Killed Detainees*, HUM. RTS WATCH (Dec. 16, 2015), <https://www.hrw.org/news/2015/12/16/syria-stories-behind-photos-killed-detainees> [<https://perma.cc/F55D-PSQ4>].

43. *Id.*

44. Jessica Doumit, *Accountability in a Time of War: Universal Jurisdiction and the Strive for Justice in Syria*, 52 GEO. J. INT'L L. 263, 267–68 (2021).

45. *Id.* at 268.

46. Devereux, *supra* note 39, at 394.

47. *See* INT'L LEGAL ASSISTANCE CONSORTIUM [ILAC], ILAC RULE OF LAW ASSESSMENT REPORT: SYRIA 2017, 8–9 (Mikael Ekman ed., 2017).



The Syrian courts have generally failed to live up to international standards of independence and impartiality.<sup>48</sup> The government tends to move politically sensitive cases to “exceptional courts” which have no fixed procedure or limitations on jurisdiction.<sup>49</sup> Syrian judges and lawyers who are committed to upholding the rule of law are frequently the target of violent attacks and some judges that have refused to cooperate with the government have been forced to flee Syria.<sup>50</sup> The lack of independence and impartiality in Syrian courts means that it would be difficult to successfully bring cases against perpetrators of human rights violations, especially against members of the Syrian government.

The breakdown of government control over territory in Syria has resulted in a lack of uniformity in the execution of justice throughout the country.<sup>51</sup> There are several non-state armed actors that control or have controlled various swaths of territories in Syria—each of which have their own separate administrative and judicial institutions.<sup>52</sup> This lack of uniformity in the Syrian justice system further reduces the feasibility of successfully bringing cases against human rights violators because it makes it more difficult to navigate the justice system. Overall, Syrian domestic courts are not a viable option for accountability, especially accountability for members of the Syrian regime itself.<sup>53</sup>

## 2. The International Criminal Court (ICC)

Created by the Rome Statute, the ICC has jurisdiction over four main crimes: genocide, crimes against humanity, war crimes, and the crime of aggression.<sup>54</sup> As a “court of last resort,” the ICC was designed to operate in a complementary fashion to national mechanisms—it prosecutes cases only when States do not or are unwilling or unable to prosecute genuinely.<sup>55</sup>

The Court may exercise jurisdiction in situations where: (1) the crimes were committed by a national (or group of nationals) belonging

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48. *Id.* at 8.

49. *Id.*

50. *Id.* at 6–8.

51. *Id.* at 6.

52. *Id.* at 8–9.

53. Devereux, *supra* note 39, at 394; Doumit, *supra* note 44, at 268.

54. Rome Statute of the International Criminal Court art. 5, *opened for signature* July 17, 1998, 2187 U.N.T.S. 90 [hereinafter Rome Statute]. Articles 6 through 8 further elaborate on each of the four main crimes covered by the statute. *Id.* arts. 6–8.

55. *Id.* art. 18(2).

to a State Party;<sup>56</sup> in the territory of a State Party; or in a State that has accepted the jurisdiction of the Court; or, (2) the crimes were referred to the ICC Prosecutor by the United Nations (U.N.) Security Council.<sup>57</sup> Because Syria is not a signatory to the Rome Statute, and thus not a “State Party,” the crimes would have to be referred to the ICC Prosecutor by the U.N. Security Council.<sup>58</sup>

Prompted by the outrage generated by the “Caesar” photos,<sup>59</sup> France proposed a U.N. Security Council Resolution to give the ICC a mandate over the serious international crimes committed in Syria since 2011.<sup>60</sup> On May 22, 2014, both Russia and China vetoed the resolution.<sup>61</sup> Russia has been aiding the Syrian regime since 2015; any international criminal tribunal created for the situation in Syria would likely target members of the Syrian regime and would thus go against Russian interests.<sup>62</sup> Therefore, future efforts to refer a case to the ICC will likely to continue to fail as long as current political dynamics remain.<sup>63</sup>

### 3. Ad hoc Court or Tribunal

As of now, no ad hoc court or tribunal has been established to prosecute crimes against humanity and war crimes committed in Syria.<sup>64</sup> Examples of ad hoc courts or tribunals include the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). Both tribunals were created by U.N. Security Council resolutions.<sup>65</sup> Like a referral to the ICC Prosecutor, a U.N. Security Council resolution is unlikely to be passed because of the possibility of a Russian veto.<sup>66</sup>

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56. A “State Party” is a State that has ratified, or otherwise adopted, the Rome Statute. As of November 2022, 123 countries are State Parties to the Rome Statute of the International Criminal Court. *The State Parties to the Rome Statute*, ASSEMBLY OF STATE PARTIES TO THE ROME STATUTE, <https://asp.icc-cpi.int/states-parties> [<https://perma.cc/Q65A-UHTS>].

57. Rome Statute, *supra* note 54, arts. 12–13.

58. Mia Swart, *National Courts Lead the Way in Prosecuting Syrian War Crimes*, AL JAZEERA (Mar. 15, 2021), <https://www.aljazeera.com/news/2021/3/15/national-courts-lead-the-way-in-prosecuting-syrian-war-crimes> [<https://perma.cc/MWA7-F9B4>].

59. *See supra* note 42 and accompanying text.

60. Vignoli, *supra* note 18, at 13.

61. *Id.*

62. *See supra* Section I.A.

63. Doumit, *supra* note 44, at 269.

64. Swart, *supra* note 58.

65. *Id.*

66. *See supra* note 62 and accompanying text.

#### 4. Hybrid Tribunal

A hybrid tribunal is a court created to address a particular situation for a limited amount of time, incorporating both international and national features.<sup>67</sup> These courts are “hybrid” because they are composed of both international and local personnel, and apply a mix of international and local substantive and procedural law.<sup>68</sup> A hybrid tribunal has the advantage of maximizing the potential strength of the Syrian domestic justice system while curing its defects.<sup>69</sup> However, its establishment would require the cessation of hostilities, sufficient political will on the part of the Syrian authorities, secure conditions for victims, and confidence that such a body could operate independently.<sup>70</sup> Because of these prerequisites, a hybrid tribunal has not been established, and its establishment remains unlikely given the status quo.<sup>71</sup>

As outlined above, several avenues for national or international criminal prosecutions have so far been unsuccessful. The only successful prosecution of Syrian human rights violators was conducted in national courts outside of Syria under the principle of universal jurisdiction. It is this principle that I turn to next.

## II. THE PRINCIPLE OF UNIVERSAL JURISDICTION

### A. *Universal Jurisdiction: Defined*

“Jurisdiction” refers to the rules that determine the adjudicatory power of a national legal system’s courts, including which individuals and which crimes are covered by that legal system.<sup>72</sup> In most national

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67. *Hybrid Courts and Tribunals*, PRITZKER LEGAL RSCH. CTR., [https://library.law.northwestern.edu/IntlCrimLaw/Hybrid#:~:text=Hybrid%20courts%20and%20tribunals%20are,and%20national%20features%20\(mixed\)\[https://perma.cc/7STV-PQ4C\]](https://library.law.northwestern.edu/IntlCrimLaw/Hybrid#:~:text=Hybrid%20courts%20and%20tribunals%20are,and%20national%20features%20(mixed)[https://perma.cc/7STV-PQ4C]).

68. *Id.* Examples of hybrid tribunals include: the Extraordinary Chambers for the Courts of Cambodia (ECCC), the Special Court for Sierra Leone, and the Special Tribunal for Lebanon. For more information on these tribunals, see *id.*

69. Devereux, *supra* note 39, at 395. For a discussion of the defects of the Syrian domestic court system, see *supra* Section I.B.1.

70. Devereux, *supra* note 39, at 395.

71. *Id.*

72. HARD CASES: BRINGING HUMAN RIGHTS VIOLATORS TO JUSTICE ABROAD – A GUIDE TO UNIVERSAL JURISDICTION 4 (Int’l Council on Hum. Rts. Pol’y ed., 1999).

legal systems, “territory is the fundamental basis for criminal jurisdiction,”<sup>73</sup> meaning that the crime must have occurred within the territorial boundaries of the nation for its courts to have adjudicatory power.<sup>74</sup> Where the crime has taken place abroad, a court may have adjudicatory power if some other link to the nation is present—usually, if the perpetrator is a national or if the victim is a national.<sup>75</sup>

The principle of universal jurisdiction, however, grants a national court adjudicatory power over an individual suspected of a serious international crime, even if there is no link to that particular country.<sup>76</sup> The court has jurisdiction over the individual regardless of the location of the crime or the nationality of victims or the perpetrators.<sup>77</sup>

### 1. Types of Crimes Covered

Under customary international law, universal jurisdiction is limited to a few offenses “of universal concern,”<sup>78</sup> including crimes against humanity and war crimes.<sup>79</sup> Crimes against humanity include: systematic or widespread acts of murder, extermination, enslavement, or torture; genocide; deportation or forcible transfer of population; arbitrary imprisonment; enforced disappearance of persons; persecution on political, religious, racial, or gender grounds; and rape, sexual slavery and other serious forms of sexual violence.<sup>80</sup> War crimes include: killing of prisoners or civilians, torture, conducting unfair trials, forced

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73. WAYNE R. LAFAVE, *SUBSTANTIVE CRIMINAL LAW* §4.3 (updated Oct. 2022).

74. *HARD CASES*, *supra* note 72, at 4.

75. *Id.* Under the principle of nationality jurisdiction (also known as active personality jurisdiction), a nation has adjudicatory power over an act committed by its national outside of that nation’s territorial limits. LAFAVE, *supra* note 73, §4.3(b). Under the principle of passive personality, a nation has adjudicatory power over an act committed by a non-national outside of that nation’s territorial limits where the *victim* is a national. *Id.* §4.3(d). Under the protective principle, “a nation has the power to enact substantive criminal laws dealing even with the conduct of aliens in foreign territory when that conduct ‘is directed against the security of the state or against a limited class of other state interests.’” *Id.* §4.3(c). As can be seen through the aforementioned principles, the “link” to the nation, for the purposes of adjudicatory power, can be fairly widespread.

76. *Universal Jurisdiction in Europe: The State of the Art*, HUM. RTS. WATCH (Jun. 27, 2006), <https://www.hrw.org/report/2006/06/27/universal-jurisdiction-europe/state-art> [<https://perma.cc/2F5Q-CTEM>]; *HARD CASES*, *supra* note 72.

77. *HARD CASES*, *supra* note 72, at 1–2.

78. LAFAVE, *supra* note 73, § 4.3(e).

79. *HARD CASES*, *supra* note 72, at 5–6.

80. *Id.*

deportation, taking of hostages, and attacks on the civilian population.<sup>81</sup>

## 2. Justifications for Use

The basis for the principle of universal jurisdiction is the idea that some crimes are simply too monstrous to go unpunished.<sup>82</sup> The perpetrators of these crimes are considered *hostes humani generis* (“enemies of all mankind”).<sup>83</sup> Because these crimes violate international law, it is the duty and in the interest of every state to uphold that law.<sup>84</sup> Supporters of universal jurisdiction argue that prosecution under the principle is often the only way to obtain justice where it could not otherwise be obtained.<sup>85</sup> Additionally, supporters argue that prosecution under universal jurisdiction may more effectively deter future human rights violations, support a society based on the rule of law, and demonstrate the international commitment to basic human rights.<sup>86</sup>

## 3. Objections and Challenges to Use

The use of universal jurisdiction by national courts is still a relatively rare occurrence.<sup>87</sup> The international legal system has a long-entrenched concept of non-interference in the internal affairs of sovereign states.<sup>88</sup> Universal jurisdiction is therefore criticized as an abuse of state sovereignty, because the state alone should have control over acts committed within its territory.<sup>89</sup> Critics also argue that prosecution under universal jurisdiction is a form of “jurisdictional imperialism.”<sup>90</sup> This is because most universal jurisdiction prosecutions are likely to take place in North American and European courts, while those who

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81. *Id.* at 6. These crimes are defined by the four Geneva Conventions. *Id.* at 5.

82. Gladstone, *supra* note 3.

83. *Id.*

84. HARD CASES, *supra* note 72, at 5.

85. *Id.* at 9.

86. *Id.* at 11–16.

87. *Id.* at 35.

88. *Id.* at 32.

89. Doumit, *supra* note 44, at 274. Supporters of universal jurisdiction argue that when a state permits the commission of a serious crime within its borders, it effectively waives its sovereignty over the crime and prosecution becomes the concern of all states. *Id.* at 273.

90. HARD CASES, *supra* note 72, at 20.

are prosecuted are likely to come from developing countries.<sup>91</sup> An imbalance arises where former colonial powers prosecute crimes that occurred in their former colonies while refusing to scrutinize their own past crimes. This imbalance discredits a principle meant to be truly “international.”

Besides objections to its use, prosecutions under universal jurisdiction face a number of practical challenges.<sup>92</sup> The domestic law of the prosecuting state may present barriers, including: a failure to implement international law principles of criminal responsibility; immunity problems in cases involving current or former heads of state; or restrictive extradition laws.<sup>93</sup> Additionally, cases prosecuted under universal jurisdiction may be too remote from victims and affected communities, which may complicate investigations, hinder the quality of evidence, and prevent victims from participating in the proceedings.<sup>94</sup>

## *B. The Rise and Fall (and Rise Again) of Universal Jurisdiction*

### 1. Historical Roots and Development of Modern Universal Jurisdiction

The classic use of the principle of universal jurisdiction involved piracy on the high seas.<sup>95</sup> Because no single state could police or prosecute piracy, states agreed to work together to arrest and prosecute pirates, no matter where they were found.<sup>96</sup> Writing in 1625, Hugo Grotius, the father of modern international law, referred to the right of states to punish perpetrators from elsewhere who live or take shelter in the respective state.<sup>97</sup>

The modern use of universal jurisdiction has been expanded by international treaties, such as the Geneva Conventions, a series of treaties negotiated in the aftermath of the Second World War establishing

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91. *Id.* For a discussion on jurisdictional imperialism, see Dalia Palombo, *Business and Human Rights Symposium: Rejecting Jurisdiction to Avoid Imperialism – That Simple?*, OPINIO JURIS (June 25, 2021), <http://opiniojuris.org/2021/06/25/business-and-human-rights-symposium-rejecting-jurisdiction-to-avoid-imperialism-that-simple/> [https://perma.cc/U95J-S7SV].

92. HARD CASES, *supra* note 72, at 37.

93. *Id.* at 39–41.

94. Doumit, *supra* note 44, at 274; HARD CASES, *supra* note 72, at 42–44.

95. Devereux, *supra* note 39, at 400.

96. Gladstone, *supra* note 3.

97. Devereux, *supra* note 39, at 400.

international legal standards for humanitarian treatment in war.<sup>98</sup> The First Geneva Convention, for example, codifies the principle of universal jurisdiction in article 49:

Each High Contracting Party<sup>99</sup> shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a “prima facie” case.<sup>100</sup>

Parties to the First Geneva Convention are therefore obligated to try individuals accused of committing human rights violations “regardless of their nationality,” which is an application of the principle of universal jurisdiction.<sup>101</sup>

Another prominent example is the U.N. Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (U.N. Torture Convention), an international human rights treaty preventing torture and other acts of cruel, inhumane, or degrading treatment.<sup>102</sup> Under the U.N. Torture Conventions, state parties are required to “take such measures as may be necessary to establish its jurisdiction” over offenses, including “in cases where the alleged offender is in any territory under its jurisdiction.”<sup>103</sup> Both treaties are examples of the codification of the principle of universal jurisdiction. Treaties such as the Geneva Conventions and the U.N. Torture Convention expanded the use of universal jurisdiction because they introduced the principle into the legislation of all the state parties.<sup>104</sup>

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98. Gladstone, *supra* note 3.

99. The Geneva Conventions use the term “High Contracting Party” to refer to the States that are party to the Conventions. *The Practical Guide to Humanitarian Law: High Contracting Parties*, MÉDECINS SANS FRONTIÈRES [DRS. WITHOUT BORDERS], <https://guide-humanitarian-law.org/content/article/3/high-contracting-parties/> [<https://perma.cc/NA2J-KUE4>].

100. Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field art. 49, Aug. 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31.

101. *Id.*

102. United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20 (1988), 1465 U.N.T.S. 85 [hereinafter U.N. Torture Convention].

103. *Id.* art. 5.

104. There are 196 state parties to the First Geneva Convention. *Treaties, States Parties and Commentaries, Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Geneva, 12 August 1949.*, ICRC DATABASE, <https://ihl->

One of the earliest and most well-known uses of modern universal jurisdiction was the 1961 prosecution of Adolf Eichmann by Israel.<sup>105</sup> Eichmann, “a major architect of the Holocaust,”<sup>106</sup> was a former Nazi SS lieutenant colonel who oversaw the transport of Jewish people to concentration camps in Germany.<sup>107</sup> While Israel was not the situs of Eichmann’s crimes,<sup>108</sup> the Israeli court asserted jurisdiction over Eichmann because of the “universal character of the crimes in question.”<sup>109</sup> After a five-month trial, he was found guilty and executed.<sup>110</sup> The Eichmann trial created a precedent for the use of universal jurisdiction over cases of genocide and popularized the principle.<sup>111</sup>

## 2. The “Zeitgeist” of the 1990s

The 1990s saw “spectacular advances” in the international criminal justice project.<sup>112</sup> Spurred on by the end of the Cold War and the anticipated advent of a New World Order, the 1990s were driven by an idealism focused on great power cooperation, nuclear disarmament, multilateralism, and international criminal justice.<sup>113</sup> It is in this climate that the Rome Statute was adopted, creating the ICC.<sup>114</sup> And it is during this era that a “globalized world called for global jurisdiction over universal wrongs.”<sup>115</sup>

Two European countries—Belgium and Spain—were at the forefront of the expansion of universal jurisdiction during this period. In 1993, Belgium passed the “Act Concerning Punishment for Grave Breaches of International Humanitarian Law,” which provided for the use of universal jurisdiction to prosecute individuals accused of war

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databases.icrc.org/en/ihl-treaties/gci-1949/state-parties?activeTab=undefined [https://perma.cc/253U-L6U7]. There are 173 state parties to the U.N. Torture Convention. U.N. Torture Convention, *supra* note 102.

105. Gladstone, *supra* note 3.

106. Daniel Hautzinger, “A Universal Jurisdiction Over Genocide”: The Trial of Adolf Eichmann, WTTW CHICAGO (Mar. 27, 2017), <https://interactive.wttw.com/playlist/2017/03/27/universal-jurisdiction-over-genocide-trial-adolf-eichmann>. [https://perma.cc/T346-E738].

107. Gladstone, *supra* note 3.

108. Nor was Eichmann found in Israel; he was captured by Israeli security service agents in Argentina and taken to Israel. *Id.*

109. *Id.*

110. Hautzinger, *supra* note 106.

111. *Id.*

112. Reydams, *supra* note 11, at 338.

113. *Id.*

114. *Id.* at 337; *see* Rome Statute, *supra* note 54.

115. Reydams, *supra* note 11 at 338.



crimes wherever committed.<sup>116</sup> A 1999 amendment expanded universal jurisdiction to also cover crimes against humanity and genocide.<sup>117</sup> Under Organic Law 6/1985, Spanish courts had universal jurisdiction over genocide and any other offense that Spain is obligated to prosecute under international treaties, like the U.N. Torture Convention and the Geneva Conventions.<sup>118</sup> In 2004, crimes against humanity were criminalized under the Spanish Criminal Code, giving Spanish courts universal jurisdiction over such crimes.<sup>119</sup> Because of their expansive definitions of jurisdiction, Belgium and Spain were responsible for a large portion of the universal jurisdiction cases of the 1990s, including the infamous Augusto Pinochet case.

In 1998, universal jurisdiction attracted worldwide attention with the arrest of former Chilean dictator Augusto Pinochet in the United Kingdom on charges of torture.<sup>120</sup> A Spanish judge had issued an arrest warrant, charging Pinochet under universal jurisdiction for human rights atrocities during his rule.<sup>121</sup> Although Pinochet was not extradited, his case opened the floodgates for subsequent universal jurisdiction cases in Spain.<sup>122</sup>

### 3. The Contraction of Universal Jurisdiction

While the 1990s were the height of the expansion of universal jurisdiction, the turn of the millennium led to a contraction in the use of the principle. In April 2003, Belgium significantly narrowed its universal jurisdiction laws by removing the right of victims to initiate a prosecution under universal jurisdiction and introducing immunity provisions.<sup>123</sup> This decision was due, in part, to direct pressure from foreign governments following a wave of claims against high-ranking foreign officials.<sup>124</sup> The United States, for example, threatened to remove

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116. *Universal Jurisdiction in Europe*, *supra* note 76, at 47–48.

117. Loi du 12 février 1999 relative à la répression des violations graves de droit international humanitaire [Concerning the Punishment of Grave Breaches of International Humanitarian Law], M.B., Mar. 23, 1999 (Belg.).

118. Ley Orgánica 6/1985, de 1 de julio, del Poder Judicial [Organic Law 6/1985, of 1 July, of the Judicial Power], art. 23.4 (B.O.E. 1985, 12666) (Spain).

119. *Universal Jurisdiction in Europe*, *supra* note 76, at 108.

120. *Id.*

121. Gladstone, *supra* note 3.

122. *Universal Jurisdiction in Europe*, *supra* note 76, at 108.

123. *Id.* at 47–48.

124. *Id.*

the NATO headquarters from Brussels.<sup>125</sup> Under further pressure, Belgium repealed the “Act Concerning Punishment for Grave Breaches of International Humanitarian Law” in August 2003 and there is no longer a Belgian jurisdictional law covering international crimes.<sup>126</sup>

In 2009, Spain reined in its universal jurisdiction provisions to only allow jurisdiction over cases if there is a relevant connection to Spain and if no other country would try the case.<sup>127</sup> Like Belgium, this change followed direct pressure from foreign governments, including the United States.<sup>128</sup> In 2014, the Spanish government introduced legislation that would only allow perpetrators of a crime to be prosecuted if their country had sought their extradition, further curbing the use of universal jurisdiction.<sup>129</sup>

Because Belgium and Spain played an outsized role in the early development and use of universal jurisdiction, international criminal law scholars predicted that the amendments to the universal jurisdiction statutes in those two states would lead to a decline in the use of universal jurisdiction or would spur other states to follow suit and narrow their use of universal jurisdiction.<sup>130</sup> These changes, and the subsequent decrease in the number of cases prosecuted under universal jurisdiction, have led several prominent international criminal law experts to declare the downfall of universal jurisdiction.<sup>131</sup> As explained in the subsequent Sections, predictions regarding the downfall of universal jurisdiction are not as settled as some experts may think.

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125. *Id.* at 6. This threat was made because the head of the U.S. Central Command, and sitting British and Israeli political leaders, had been the subject of complaints filed under Belgium’s universal jurisdiction laws. *Id.* at 128 n.8.

126. *Id.* Currently, Belgian courts exercise an extended form of active personality and passive personality jurisdiction over war crimes, crimes against humanity, and genocide.

127. Ashifa Kassam, *Spain Moves to Curb Legal Convention Allowing Trials of Foreign Rights Abuses*, THE GUARDIAN (Feb. 11, 2014), <https://www.theguardian.com/world/2014/feb/11/spain-end-judges-trials-foreign-human-rights-abuses>. [<https://perma.cc/4Q8L-FQ2C>].

128. *Id.*

129. *Id.* The proposal became law on March 14, 2014. Ley Orgánica 1/2014, de 13 de Marzo, de Modificación de la Ley Orgánica 6/1985, de 1 de Julio, del Poder Judicial, Relativa a la Justicia Universal [Organic Law 1/2014, of March 13, Amending Organic Law 6/1985, of July 1, on the Judiciary, Relating to Universal Justice] (B.O.E 2014, 63) (Spain).

130. Langer & Eason, *supra* note 12, at 785.

131. For further discussion of the purported downfall of universal jurisdiction, see Reydams, *supra* note 11; de la Rasilla del Moral, *supra* note 11; Ben-Ari, *supra* note 11.

#### 4. Langer's "Quiet Expansion" of Universal Jurisdiction

Máximo Langer<sup>132</sup> has sought to dispel this narrative of the "rise and fall" of universal jurisdiction.<sup>133</sup> Using an original worldwide survey of all universal jurisdiction complaints between 1961 and 2017, Langer has argued that the use of universal jurisdiction has not been declining but has, in fact, been quietly expanding.<sup>134</sup> According to the data that Langer has collected, the use of universal jurisdiction as the basis for complaints has held steady or increased over time—both in terms of number and frequency.<sup>135</sup> Additionally, the number of universal jurisdiction cases that resulted in a completed trial has increased over time.<sup>136</sup> In fact, from 2008 to 2017, there were more completed trials under universal jurisdiction than in all previous years combined.<sup>137</sup>

Langer provides five causal factors that may explain the increase in the frequency and number of universal jurisdiction trials. First, the adoption of new universal jurisdiction provisions, as part of the domestic implementation of the Rome Statute, has increased the range of venues in which it is possible for universal jurisdiction claims to be heard.<sup>138</sup> Second, a rise in the number of newly-created special international crimes units in the police and in the office of the prosecutor has led to increased support in the filing, investigation, and prosecution of universal jurisdiction offenses because they provide the necessary resources and expertise and establish an institutional nexus within which the involved officials can share information.<sup>139</sup> Third, institutional learning—experience conducting universal jurisdiction cases which generates institutional knowledge—has facilitated an increase in universal jurisdiction trials.<sup>140</sup> This pattern can be gleaned

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132. Máximo Langer holds the David G. Price and Dallas P. Price Chair in Law at the University of California Los Angeles School of Law and is the Director of the UCLA Transnational Program on Criminal Justice. He is a leading authority on domestic, comparative, and international criminal law and procedure. For more information, see *Máximo Langer*, UCLA L., <https://law.ucla.edu/faculty/faculty-profiles/maximo-langer> [<https://perma.cc/KR9A-3WAH>].

133. See Langer & Eason, *supra* note 12.

134. *Id.* at 780–81.

135. *Id.* at 784.

136. *Id.* at 788.

137. Langer's data shows that there were thirty-four universal jurisdiction trials completed between 2008 and 2017. Meanwhile, there were only thirty-two universal jurisdiction cases that resulted in a completed trial between 1961 and 2010. *Id.*

138. *Id.* at 791.

139. *Id.*; see *infra* Section IV.C.2.

140. Langer & Eason, *supra* note 12, at 793.

from the fact that the majority of states that have held one or more universal jurisdiction trials in the last decade had already held at least one such trial in the previous decades.<sup>141</sup> Fourth, there have been several technological changes that have reduced the difficulty and economic cost of universal jurisdiction investigations and litigation, including the availability of Internet-connected devices capable of recording and the use of this technology to document human rights abuses.<sup>142</sup> Fifth, the high level of conflict-based migration in the last decade has driven universal jurisdiction litigation because the migrants include alleged victims, who may seek redress, and the alleged perpetrators.<sup>143</sup>

Finally, Langer argues that this expansion has been “quiet” because it has gone “unnoticed even by some of the most sophisticated experts working on the issue.”<sup>144</sup> The factors contributing to the “quietness” of this expansion include: the types of defendants,<sup>145</sup> the lack of publicity (sometimes due to language barriers),<sup>146</sup> and the salient universal jurisdiction transformations of recent years which have suggested a contraction, rather than an expansion, of universal jurisdiction.<sup>147</sup>

### III. UNIVERSAL JURISDICTION AND SYRIA

Part I outlined the human rights violations that have occurred throughout the conflict in Syria and the attempts by the international community to hold the human rights violators accountable. In securing justice for human rights violations in Syria, the international criminal justice system has “stood in its own way with regard to traditional tools for responding to atrocities.”<sup>148</sup> While local courts and international

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141. *Id.*

142. *Id.* at 793–95.

143. *Id.* at 796.

144. *Id.* at 808.

145. The universal jurisdiction trials “have concentrated on defendants whose prosecutions do not impose substantial diplomatic and other costs to the political branches of the prosecuting state.” *Id.* at 809. “Since most low-cost defendants are also low-level defendants, most trials have thus not brought substantial media attention.” *Id.*

146. In many cases, the prosecuting state has not made any effort to advertise the fact that they are conducting a universal jurisdiction trial to international audiences. *Id.* at 809–10.

147. *Id.* at 811. For a discussion of the “salient universal jurisdiction developments,” see *supra* Section II.B.3.

148. Alexandra Lily Kather, “*Water Finds Its Way*”? *Universal Jurisdiction as an Avenue for Justice in Syria*, LIEBER INST. WEST POINT (July 28, 2021), <https://lieber.westpoint.edu/water-finds-way-universal-jurisdiction-justice-syria/> [<https://perma.cc/ZRW2-6Q57>].

legal mechanisms have failed in the case of Syria, human rights lawyers have been able to achieve some success in cases pursued in national courts under the principle of universal jurisdiction.<sup>149</sup>

European courts have emerged as “‘fertile grounds for justice’ in the Syrian context.”<sup>150</sup> This is due, in part, to a European Union-wide policy in favor of domestic international crimes prosecutions and a formal network of international crimes units.<sup>151</sup> Cases based on the principle of universal jurisdiction have been brought in several European countries including: Austria, France, Germany, Spain, Sweden, Switzerland, and the Netherlands. International law scholars have argued that the prosecution of cases under universal jurisdiction has helped bring justice to Syrian victims and helped keep the hope of justice “alive” in Syria.<sup>152</sup> This Section analyzes the universal jurisdiction laws of five European countries and provides an overview of the use of the principle of universal jurisdiction to prosecute international crimes committed in Syria in those countries.<sup>153</sup>

#### A. France

The French Criminal Code of Procedure (FCCP) provides for universal jurisdiction where “an international Convention gives jurisdiction to French courts to deal with the offen[s]e.”<sup>154</sup> The offenses, emanating from international conventions ratified by France, include: torture and other cruel, inhuman or degrading treatment or punishment;<sup>155</sup> terrorism and the financing of terrorism;<sup>156</sup> offenses committed with nuclear substances;<sup>157</sup> unlawful acts against the safety of maritime navigation;<sup>158</sup> seizure of aircraft and other crimes related to

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149. Gladstone, *supra* note 3.

150. Kamal, *supra* note 38, at 98.

151. Beth Van Schaack, *National Courts Step Up: Syrian Cases Proceeding in Domestic Courts*, in *IMAGINING JUSTICE FOR SYRIA* 265, 284 (Oxford Univ. Press, 2020).

152. *See generally* Doumit, *supra* note 44.

153. The five countries—France, Germany, the Netherlands, Sweden, and Switzerland—were chosen because they each have prosecuted Syrian violators under universal jurisdiction. Each country also has a slightly different variation of universal jurisdiction, which helps provide an overview of how universal jurisdiction is applied across Europe.

154. Code de procédure pénale [C. pr. pén.] [Criminal Procedure Code] art. 689 (Fr.).

155. *Id.* art. 689-2.

156. *Id.* arts. 689-3, 689-9–689-10.

157. *Id.* art. 689-4.

158. *Id.* art. 689-5.

aviation;<sup>159</sup> European Union (EU) corruption crimes;<sup>160</sup> crimes within the jurisdiction of the ICC (genocide, crimes against humanity, and war crimes);<sup>161</sup> specific road transport offenses;<sup>162</sup> enforced disappearances;<sup>163</sup> and crimes against cultural property during armed conflict.<sup>164</sup>

However, the exercise of universal jurisdiction over these crimes in the context of Syria<sup>165</sup> is narrowed by the following requirements. First, Article 689 of the FCCP has a presence or residence requirement, depending on the crime. For torture and enforced disappearance crimes, French courts only have jurisdiction when the perpetrator is present on French soil (presence requirement).<sup>166</sup> For crimes falling within the jurisdiction of the ICC (genocide, crimes against humanity, war crimes, etc.), French courts have jurisdiction only when the perpetrator legally resides in France (residence requirement).<sup>167</sup> For the purpose of the residence requirement, asylum seekers are considered residents of France.<sup>168</sup> Second, for crimes falling within the jurisdiction of the ICC, the double criminality principle applies.<sup>169</sup> Thus, French courts do not have jurisdiction unless the conduct is also criminalized under the jurisdiction where the crime was perpetrated.<sup>170</sup> Since 2019, double criminality is not required for the crime of genocide.<sup>171</sup>

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159. *Id.* arts. 689-6–689-7.

160. *Id.* art. 689-8.

161. *Id.* art. 689-11.

162. *Id.* art. 689-12.

163. *Id.* art. 689-13

164. *Id.* art. 689-14; see TRIAL INT'L, UNIVERSAL JURISDICTION LAW AND PRACTICE IN FRANCE 4 (2019) [hereinafter UJ LAW AND PRACTICE IN FRANCE], <https://trialinternational.org/wp-content/uploads/2019/05/Universal-Jurisdiction-Law-and-Practice-in-France.pdf> [<https://perma.cc/3T8G-PYFE>].

165. The FCCP provides for different jurisdictional requirements for the prosecution of torture, enforced disappearance, and crimes committed in Rwanda and the former Yugoslavia. UJ LAW AND PRACTICE IN FRANCE, *supra* note 164, at 13–14. Because the focus of this paper is universal jurisdiction as applied to crimes committed in Syria, I will go over the French jurisdictional requirements that apply to crimes committed in countries other than Rwanda and the former Yugoslavia.

166. *Id.* at 14. According to the French Supreme Court, the perpetrator must be present on French soil *at the time of the opening of the investigation*. *Id.*

167. *Id.* at 15.

168. *Id.*

169. *Id.*

170. *Id.* Thus, the country where the crime was perpetrated must either be party to the Rome Statute *or* have criminalized the conduct under their legal system. *Id.*

171. *Id.*

In France, the number of cases related to Syria has risen steadily in recent years and Syrian investigations now constitute the majority of investigations pursued by the War Crimes Unit.<sup>172</sup> The French War Crimes Unit has launched a structural investigation<sup>173</sup> into the detention system of the Syrian intelligence services, which the unit runs jointly with Germany.<sup>174</sup> However, as of 2021, no trial on international crimes committed in Syria has been held, despite the large number of investigations.<sup>175</sup> This discrepancy may be due to the lengthiness of the French judicial process and the lack of indictments.<sup>176</sup>

### B. Germany

Under the Code of Crimes against International Law (Völkerstrafgesetzbuch), German courts may exercise universal jurisdiction over genocide,<sup>177</sup> crimes against humanity,<sup>178</sup> war crimes,<sup>179</sup> and crimes of aggression.<sup>180</sup> Germany is currently one of only two European countries to have “pure” universal jurisdiction, meaning that its national courts are permitted broad enforcement of specific crimes “even when the offen[s]e was committed abroad and bears no relation to Germany.”<sup>181</sup> While there is no territorial link to the victim or crime required to be investigated or indicted, the defendant must be present in German territory in order to be *tried*, as the German legal system does not allow for trial *in absentia*.<sup>182</sup>

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172. Lena Bjurström, *In France, the Lengthy Syrian Investigations*, JUSTICEINFO.NET (July 22, 2021), <https://www.justiceinfo.net/en/80112-in-france-the-lengthy-syrian-investigations.html> [<https://perma.cc/Q3GF-T3RN>].

173. In Germany, a structural investigation is opened “where there is evidence that a crime has taken place but potential perpetrators have not yet been definitively identified. The investigation focuses on structures related to the potential crime and groupings of potential perpetrators.” *Glossary*, ECCHR, <https://www.ecchr.eu/en/glossary/structural-investigation/> [<https://perma.cc/RV9C-FQP3>].

174. Bjurström, *supra* note 172.

175. *Id.*

176. *Id.*

177. Völkerstrafgesetzbuch [VStGB] [Code of Crimes against International Law], § 6 (Ger.).

178. *Id.* § 7.

179. *Id.* §§ 8–12.

180. *Id.* § 13.

181. *Id.* § 1; see Doumit, *supra* note 44, at 273. Sweden is the other country that has “pure” universal jurisdiction. See discussion *infra* Section III.D.

182. U.N. Secretary-General, *The Scope and Application of the Principle of Universal Jurisdiction*, ¶ 44, U.N. Doc. A/76/203 (July 12, 2021) [hereinafter U.N. UJ Report].

Germany has created specialized units within the Federal Police Office and the Office of the Federal Public Prosecutor General to investigate international crimes.<sup>183</sup> These specialized units have been conducting structural investigations<sup>184</sup> concerning crimes against humanity and war crimes in Syria.<sup>185</sup> In 2011, The Federal Public Prosecutor General opened a structural investigation into regime-perpetrated war crimes and crimes against humanity in Syria.<sup>186</sup> In 2014, German authorities opened another Syria-related structural investigation into crimes against the Yazidi minority in Syria and Iraq.<sup>187</sup> These two investigations have allowed German authorities to pursue cases against at least three dozen state and non-state actors for international law violations in Syria,<sup>188</sup> including a trial that has resulted in the conviction of two former Syrian intelligence officers for crimes against humanity.<sup>189</sup>

### C. *The Netherlands*

The International Crimes Act of 2003 criminalizes genocide,<sup>190</sup> crimes against humanity,<sup>191</sup> war crimes,<sup>192</sup> and torture.<sup>193</sup> Dutch criminal law applies to “anyone who commits any of the crimes defined in the Act outside the Netherlands, if the suspect is present in the Netherlands.”<sup>194</sup> Therefore, in the Netherlands, universal jurisdiction may be exercised over certain offenses only while the suspect is on Dutch soil; upon his or her departure, Dutch jurisdiction ends.<sup>195</sup>

Until 2021, all of the trials related to Syria in the Netherlands were concerned with returning Dutch nationals who joined the terrorist

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183. *Id.* ¶ 32.

184. *See Glossary, supra* note 173, and accompanying text.

185. U.N. UJ Report, *supra* note 182, ¶¶ 32–33.

186. Beini Ye, *How Germany is Leading the Way for Accountability for Crimes in Syria*, INT’L JUST. MONITOR (Apr. 19, 2019), <https://www.ijmonitor.org/2019/04/how-germany-is-leading-the-way-for-accountability-for-crimes-in-syria/> [<https://perma.cc/QH9L-9V84>].

187. *Id.*

188. *Id.*

189. *See supra* Introduction.

190. Wet van 19 juni 2003 [Act of 19 June 2003] Stb. 2003, 3 (Neth.).

191. *Id.* at 3–4.

192. *Id.* at 4–10.

193. *Id.* at 10.

194. *Id.* at 2.

195. Kamal, *supra* note 38, at 103.



organizations Jabhat al Nusra and ISIS.<sup>196</sup> On April 21, 2021, the first Syrian was convicted in the Netherlands under the principle of universal jurisdiction.<sup>197</sup> Ahmad al Y., a former commander of the Ahrar al-Sham militia, was convicted of war crimes and sentenced to two years.<sup>198</sup> However, more trials under universal jurisdiction are likely to take place in the Netherlands, as “Syria is now a focus for the Dutch” prosecutors.<sup>199</sup>

#### D. Sweden

Under the Swedish Criminal Code, Swedish courts have jurisdiction over certain international offenses, including: genocide, crimes against humanity, war crimes, hijacking or aircraft sabotage, airport sabotage, inciting crime, and torture.<sup>200</sup> Like Germany, Sweden has “pure” universal jurisdiction laws.<sup>201</sup> The basis of Sweden’s broad universal jurisdiction laws is its commitment to the Geneva Conventions of 1949 and Rome Statute.<sup>202</sup>

Sweden was the first state in which a Syrian citizen was prosecuted abroad for international crimes.<sup>203</sup> Mouhannad Droubi, a member of the Free Syrian Army and a refugee in Sweden, was accused of

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196. Janet H. Anderson, *Syria, The Dutch International Crimes Unit New Focus*, JUSTICEINFO.NET (Apr. 23, 2021), <https://www.justiceinfo.net/en/76319-syria-dutch-international-crimes-unit-new-focus.html> [<https://perma.cc/PB8G-FQJ4>].

197. *Id.*

198. *Id.*

199. *Id.*

200. Brottsbalken [BrB] [Criminal Code] Section 3 (Swed.).

201. *See supra* note 181 and accompanying text. While both Germany and Sweden have “pure” universal jurisdiction, Sweden has a broader application of universal jurisdiction because it allows its national courts jurisdiction over more crimes, such as

hijacking, shipping or aircraft sabotage, airport sabotage, counterfeiting currency, attempting to commit such offences, unlawful handling of chemical weapons, unlawful handling of mines, making an untrue or careless statement before an international court, a terrorist offence under Section 2 of the Act on Criminal Responsibility for Terrorist Offences (2003:148), attempting, preparation or conspiracy to commit such an offence, an offence referred to in Section 5 of that Act, an offence under the Act on Criminal Responsibility for Genocide, Crimes against Humanity and War Crimes (2014:406), [and] inciting crime consisting of an immediate and public call to commit genocide . . . .

Ministry of Justice Sweden, *Reply to the Scope and Application of the Principle of Universal Jurisdiction*, April 30, 2021, 1, [https://www.un.org/en/ga/sixth/76/universal\\_jurisdiction/sweden\\_e.pdf](https://www.un.org/en/ga/sixth/76/universal_jurisdiction/sweden_e.pdf) [<https://perma.cc/2C6S-ELBD>].

202. *Id.*

203. Lena Bjurström, *Sweden on the Frontline with Syria Cases*, JUSTICEINFO.NET (Feb. 11, 2021), <https://www.justiceinfo.net/en/73587-sweden-frontline-syria-cases.html> [<https://perma.cc/92AH-NRAU>].

war crimes and was prosecuted in 2015.<sup>204</sup> In 2015, the Swedish Public Prosecutor's Office opened a structural investigation into the events in Syria.<sup>205</sup> As of February 2021, Sweden had at least fifty investigations open on Syrian cases.<sup>206</sup>

### *E. Switzerland*

Under the Swiss Criminal Code, Swiss courts may apply the principle of universal jurisdiction for specific offenses, including: genocide, crimes against humanity, war crimes, offenses against minors, and crimes or offenses prosecuted under the terms of an international agreement.<sup>207</sup> Switzerland subscribes to a “conditional” or “limited” concept of universal jurisdiction.<sup>208</sup> In Switzerland, universal jurisdiction only applies where there is no jurisdiction or possibility of prosecution at the place of commission.<sup>209</sup> Additionally, investigations based on universal jurisdiction may be launched only when the perpetrator is present in the forum.<sup>210</sup> Swiss prosecutors possess the discretion to terminate an investigation if the suspect has left the forum.<sup>211</sup> This was the case in 2020, when a Swiss prosecutor dismissed witness testimonies given in connection to the prosecution of Rifaat Al-Assad because he was no longer present in Switzerland.<sup>212</sup>

Switzerland has also launched a structural investigation into international crimes committed in Syria. The investigation is meant to be broad, covering all parties to the conflict, as the mandate is to identify the most serious crimes.<sup>213</sup> Switzerland has been collaborating with other countries' war crime units that have ongoing investigations, including France and Germany.<sup>214</sup>

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204. *Id.*

205. *Id.*

206. *Id.*

207. U.N. Secretary-General, *The Scope and Application of the Principle of Universal Jurisdiction*, ¶ 20, tpls. 1–2, U.N. Doc. A/75/151 (July 9, 2020).

208. *Id.* at 45.

209. SCHWEIZERISCHES STRAFGESETZBUCH [STGB] [CRIMINAL CODE] art. 6 (Switz.).

210. *Id.*; Kamal, *supra* note 38, at 103.

211. Kamal, *supra* note 38, at 103.

212. *Id.*

213. Frédéric Burnand, *Mechanism Sends ‘Strong Signal to Perpetrators of Crimes in Syria’*, SWI (Feb. 6, 2019), [https://www.swissinfo.ch/eng/politics/international-justice\\_mechanism-sends—strong-signal-to-perpetrators-of-crimes-in-syria-/44726604](https://www.swissinfo.ch/eng/politics/international-justice_mechanism-sends—strong-signal-to-perpetrators-of-crimes-in-syria-/44726604) [<https://perma.cc/D95N-MDBS>].

214. *Id.*

*F. Use of Universal Jurisdiction: The Big Picture*

The countries discussed above are the primary actors in prosecuting Syrian perpetrators under universal jurisdiction. Their various rules also show the variety available in the implementation of the principle.<sup>215</sup> Each country determines the types of offenses that it criminalizes and that its courts have jurisdiction over.<sup>216</sup> In many of the countries discussed, the courts have universal jurisdiction over crimes arising under that country's obligations under international treaties, such as the Rome Statute and the Geneva Conventions.<sup>217</sup> Each country also determines the material conditions necessary for its courts to have jurisdiction.<sup>218</sup> On one side of the spectrum are countries with "pure" universal jurisdiction, with no requisite material conditions for the application of jurisdiction over the offense.<sup>219</sup> On the other side of the spectrum are countries with more limited universal jurisdiction, with the material condition that the suspect be found on the territory for the application of jurisdiction over the offense.<sup>220</sup> Table 1, below, shows the differences present in each of the five countries' application of universal jurisdiction.

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215. *See infra*

Table 1.

216. *Id.*

217. *Id.*

218. *Id.*

219. *Id.*

220. *Id.*

	France	Germany	The Netherlands	Sweden	Switzerland
<b>Relevant Statute</b>	French Criminal Code of Procedure	Code for Crimes against Int'l Law	Int'l Crimes Act	Swedish Criminal Code	Swiss Criminal Code
<b>Major Offenses Covered</b>	Torture; terrorism; crimes within the jurisdiction of the ICC; enforced disappearances; crimes against cultural property during armed conflict	Genocide; crimes against humanity; war crimes; crimes of aggression	Genocide; crimes against humanity; war crimes; torture	Genocide; crimes against humanity; war crimes; hijacking or aircraft sabotage; airport sabotage; inciting crime; and torture	Genocide; crimes against humanity; war crimes; offenses against minors; and crimes or offenses prosecuted under the terms of an int'l agreement
<b>Material Conditions</b>	Suspect must either 1) be present on French soil or 2) legally reside in France	None	Suspect must be present on Dutch soil.	None	Suspect must be present on Swiss soil

*Table 1: This table shows the number of ongoing cases, the number of Syria-related cases, and the percentage of ongoing cases that are Syria-related for each year between 2014 and 2020.*

#### IV. IMPACT OF THE SYRIAN CONFLICT ON THE USE OF THE PRINCIPLE OF UNIVERSAL JURISDICTION

In looking into the use of universal jurisdiction in the Syria context, one can observe an apparent expansion in the use of the principle. This Part details the study conducted to test this hypothesis and the possible explanations for the conclusions of the study.

##### *A. Methodology*

This study began by compiling data on cases that have been brought under universal jurisdiction worldwide between 2014 and 2020.<sup>221</sup> The primary source of this data came from the TRIAL International Universal Jurisdiction Database, supplemented by TRIAL In-

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221. All of the data used is publicly available. The compiled data is available with the author.

ternational's Universal Jurisdiction Annual Reviews (UJARs) published each year.<sup>222</sup> This database and the accompanying UJARs "[offer] an overview of major criminal cases related to universal jurisdiction worldwide."<sup>223</sup> The year 2014 was chosen as a starting point for data collection for two reasons. First, 2014 is the year that TRIAL International began collecting its data. Second, 2014 is the year that the first case concerning a Syrian individual was brought on the basis of universal jurisdiction. The data was then cross-referenced with, and supplemented by, information collected from the Syrian Justice and Accountability Centre, the Center for Justice and Accountability, and Civitas Maxima.<sup>224</sup>

The cases included represent those in which a judge or prosecutor has initiated a criminal investigation on the basis of universal jurisdiction. Complaints filed by victims, lawyers, and NGOs that did not result in an investigation, are currently pending before a national court, or have been dismissed have not been included.<sup>225</sup> Notably, civil

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222. Universal Jurisdiction Database, TRIAL INT'L, <https://trialinternational.org/resources/universal-jurisdiction-database/> (last visited Nov 13, 2021); TRIAL INT'L, UNIVERSAL JURISDICTION ANNUAL REVIEW 2015: MAKE WAY FOR JUSTICE (2015), <https://trialinternational.org/wp-content/uploads/2016/06/Universal-jurisdiction-annual-review-2015-publication.pdf> [<https://perma.cc/VT3T-YJS9>]; TRIAL INT'L, UNIVERSAL JURISDICTION ANNUAL REVIEW 2016: MAKE WAY FOR JUSTICE #2 (2016), <https://trialinternational.org/wp-content/uploads/2022/09/UJAR-2016.pdf> [<https://perma.cc/4VZ2-8R3P>]; TRIAL INT'L, UNIVERSAL JURISDICTION ANNUAL REVIEW 2017: MAKE WAY FOR JUSTICE #3 (2017), [https://trialinternational.org/wp-content/uploads/2017/03/UJAR-MEP\\_A4\\_012.pdf](https://trialinternational.org/wp-content/uploads/2017/03/UJAR-MEP_A4_012.pdf) [<https://perma.cc/667B-T27S>]; TRIAL INT'L, MAKE WAY FOR JUSTICE #4: MOMENTUM TOWARDS ACCOUNTABILITY (2018), <https://trialinternational.org/wp-content/uploads/2018/03/UJAR-Make-way-for-Justice-2018.pdf> [<https://perma.cc/S2FT-2XGE>]; TRIAL INT'L, EVIDENTIARY CHALLENGES IN UNIVERSAL JURISDICTION CASES: UNIVERSAL JURISDICTION ANNUAL REVIEW 2019 (2019), [https://trialinternational.org/wp-content/uploads/2019/03/Universal\\_Jurisdiction\\_Annual\\_Review2019.pdf](https://trialinternational.org/wp-content/uploads/2019/03/Universal_Jurisdiction_Annual_Review2019.pdf) [<https://perma.cc/7RC8-2K3Q>]; TRIAL INT'L, UNIVERSAL JURISDICTION ANNUAL REVIEW 2020: TERRORISM AND INTERNATIONAL CRIMES: PROSECUTING ATROCITIES FOR WHAT THEY ARE (2020), [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-2020_DIGITAL.pdf) [<https://perma.cc/523R-CA8S>]; TRIAL INT'L, UNIVERSAL JURISDICTION ANNUAL REVIEW 2021: A YEAR LIKE NO OTHER? THE IMPACT OF CORONAVIRUS ON UNIVERSAL JURISDICTION (2021), [https://trialinternational.org/wp-content/uploads/2021/04/TRIAL\\_International\\_UJAR-2021.pdf](https://trialinternational.org/wp-content/uploads/2021/04/TRIAL_International_UJAR-2021.pdf) [<https://perma.cc/5Z8S-6F7E>].

223. Although the TRIAL International Universal Jurisdiction Database and UJARs also include cases litigated based on active or passive personality jurisdiction, I did not include such cases in my study. For a discussion on active and passive personality jurisdiction, see *supra* note 75.

224. *Universal Jurisdiction*, SYRIA JUST. & ACCOUNTABILITY CTR., <http://syriaaccountability.org/resources/universal-jurisdiction/> [<https://perma.cc/3W8N-QVH4>]; *Human Rights Issues*, CTR. FOR JUST. & ACCOUNTABILITY, <https://cja.org/human-rights-issues/> [<https://perma.cc/YR2T-7LQL>]; *Public Cases*, CIVITAS MAXIMA, <https://civitas-maxima.org/legal-work/our-cases/> [<https://perma.cc/CC9K-TGJP>].

225. TRIAL INT'L, UNIVERSAL JURISDICTION ANNUAL REVIEW 2015, *supra* note 222, at 3.

cases have also not been included.<sup>226</sup> For each case, the following information was compiled: the names of the suspects/perpetrators (if publicly available), the country of prosecution, the country of commission, the year of initiation, and the year(s) in which the case was ongoing.<sup>227</sup>

## *B. Analysis*

### 1. Ongoing Cases

The total number of ongoing universal jurisdiction cases worldwide increased every year except for 2020.<sup>228</sup> The slight decrease in 2020 can likely be explained by the onset of the COVID-19 pandemic—due to the pandemic, there was a significant decrease in the initiation of cases, including cases brought under universal jurisdiction.<sup>229</sup> Additionally, the total number of ongoing Syria cases increased every year until 2020.<sup>230</sup> In comparing these two sets of data, it is apparent that the percentage of ongoing cases that had to do with the Syrian conflict also increased every year between 2014 and 2020.<sup>231</sup>

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226. This means that civil cases brought in the United States under the Alien Tort Statute or Torture Victims Protection Act have not been included. I decided not to include such cases based on the definition of universal jurisdiction as a basis for criminal jurisdiction. *See supra* Section II.A.

227. I based the year of initiation on the year in which a judge or prosecutor initiated an investigation into the suspect/perpetrator. At times, this information was not available. In those cases, I based the year of initiation on the year in which the complaint was filed.

228. *See infra* Table 2; Figure 1.

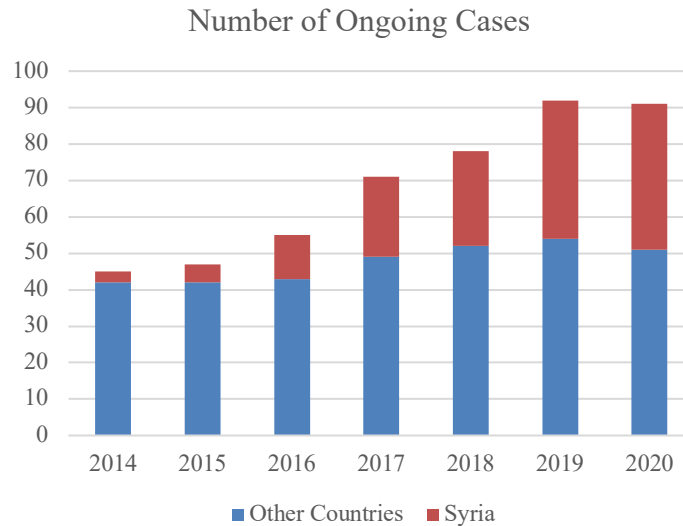
229. *See infra* Figure 1. The decrease in the initiation of cases because of the COVID-19 pandemic is not just limited to universal jurisdiction cases. In the United States, every state and Washington D.C. scaled back criminal court proceedings since the declaration of a national emergency in March 2020. *See* Melissa Chan, 'I Want This Over.' For Victims and the Accused, Justice Is Delayed as COVID-19 Snarls Courts, TIME (Feb. 23, 2021), <https://time.com/5939482/covid-19-criminal-cases-backlog/> [<https://perma.cc/C76J-X44K>]. The result has been a “snarled justice system” where hundreds of thousands are awaiting trial. *Id.*

230. *See infra* Table 2; Figure 1.

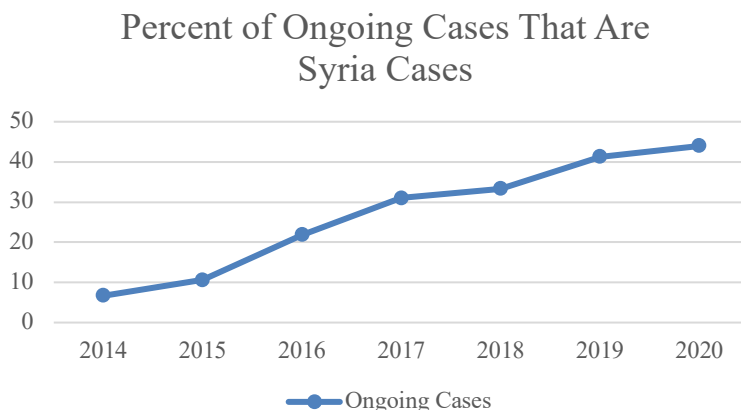
231. *See infra* Table 2.

	2014	2015	2016	2017	2018	2019	2020
<b>Total # of ongoing universal jurisdiction cases</b>	45	47	55	71	78	92	91
<b># of ongoing Syria universal jurisdiction cases</b>	3	5	12	22	26	38	40
<b>% of total ongoing universal jurisdiction cases that are Syria cases</b>	6.67%	10.64%	21.82%	30.99%	33.33%	41.30%	43.96%

*Table 2: This table shows the number of ongoing cases, the number of Syria-related cases, and the percentage of ongoing cases that are Syria-related for each year between 2014 and 2020.*



*Figure 1: This graph shows the number of ongoing cases and the number of Syria-related cases for each year between 2014 and 2020.*



**Figure 2:** This graph shows the percentage of total ongoing universal jurisdiction cases that are Syria cases for each year between 2014 and 2020.

Simple linear regression was used to test if the number of Syria cases brought under universal jurisdiction significantly predicted the total number of cases brought under universal jurisdiction. The fitted regression model was: total cases = 40.885 + 1.321 \* (Syria cases). The overall regression was statistically significant ( $R^2 = .99$ ,  $F(1, 5) = 573.60$ ,  $p < 0.001$ ). Therefore, the number of Syria case brought under universal jurisdiction significantly affected the total number of cases brought under universal jurisdiction ( $p < 0.001$ ).

## 2. Cases Newly Initiated

The total number of cases newly initiated each year followed an upward trend, although it fluctuated more than the total number of ongoing cases.<sup>232</sup> Again, there was a noticeable decline in 2020, which can be explained by the onset of the COVID-19 pandemic.<sup>233</sup> The total number of Syria cases newly initiated each year followed a similar trend.<sup>234</sup>

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232. See *infra* Table 3.

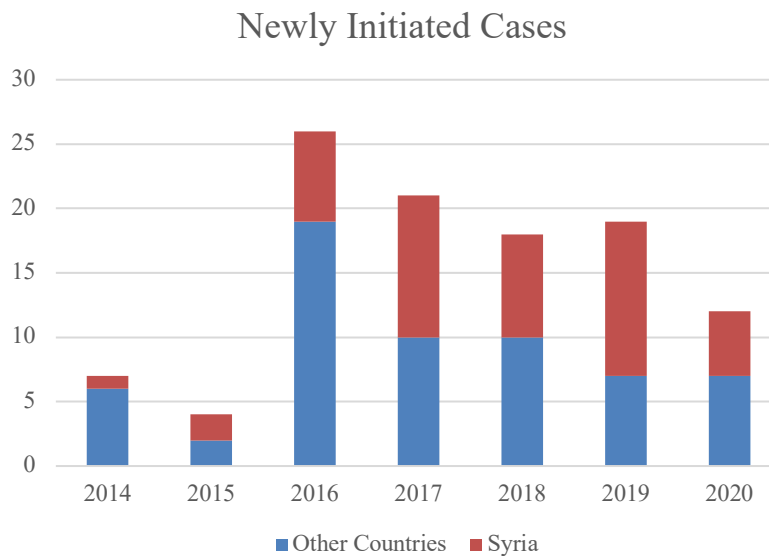
233. See *supra* note 229 and accompanying text.

234. See *infra* Table 3; Figure 3; Figure 4 (showing the percentage of total initiated universal jurisdiction cases that are Syria cases for each year between 2014 and 2020).

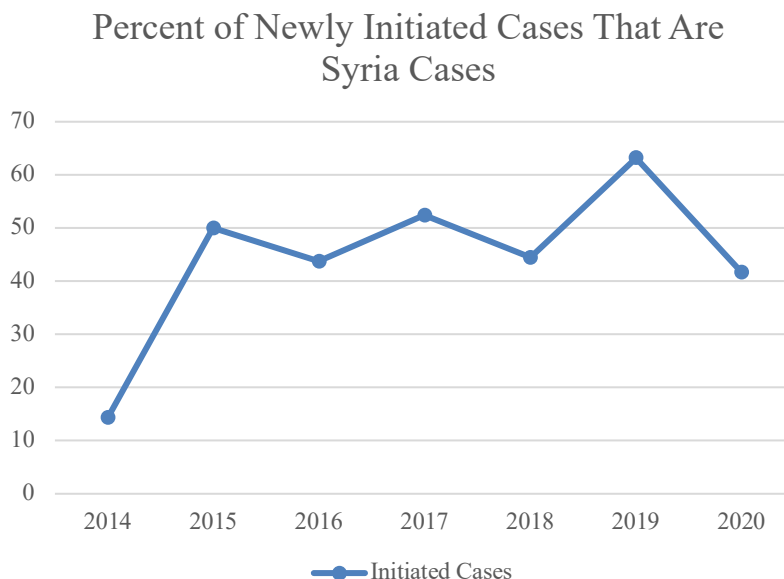


	2014	2015	2016	2017	2018	2019	2020
<b>Total # of initiated Universal Jurisdiction cases</b>	7	4	26	21	18	19	12
<b># of initiated Syria Universal Jurisdiction cases</b>	1	2	7	11	8	12	5
<b>% of initiated cases that are Syria cases</b>	14.29%	50.00%	43.75%	52.38%	44.44%	63.16%	41.67%

*Table 3: This table shows the number of initiated cases, the number of Syria-related cases initiated, and the percentage of initiated cases that are Syria-related cases for each year between 2014 and 2020.*



*Figure 3: This graph shows the number of initiated cases and the number of Syria-related initiated cases for each year between 2014 and 2020.*



**Figure 4:** This graph shows the percentage of total initiated universal jurisdiction cases that are Syria cases for each year between 2014 and 2020.

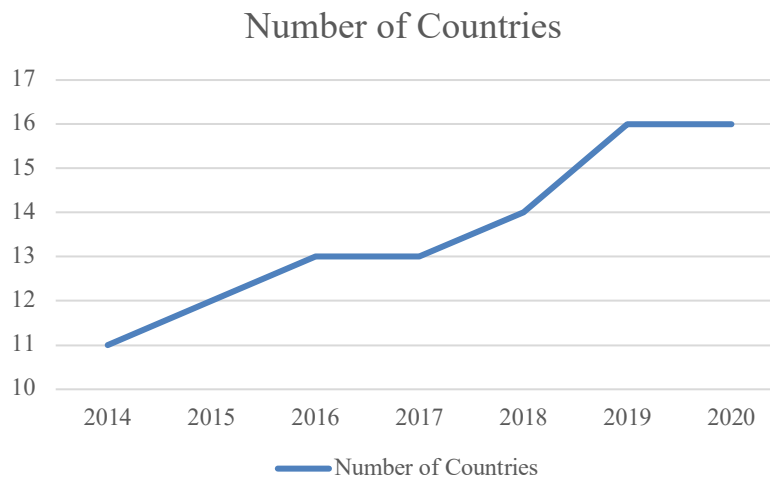
Simple linear regression was used to test if the number of Syria cases newly initiated under universal jurisdiction significantly predicted the total number of cases newly initiated under universal jurisdiction. The fitted regression model was: total cases initiated = 4.373 + 1.443 \* (Syria cases initiated). The overall regression was statistically significant ( $R^2 = .89$ ,  $F(1, 5) = 41.30$ ,  $p < 0.01$ ). Therefore, the number of Syria cases newly initiated under universal jurisdiction significantly affected the total number of cases newly initiated under universal jurisdiction ( $p < 0.01$ ).

### 3. Countries Included

The number of countries involved in prosecuting cases under universal jurisdiction also increased or remained constant every year between 2014 and 2020.<sup>235</sup> This mirrors the finding of Langer and Eason, who argued that the quiet expansion of universal jurisdiction included the geographical expansion of the principle to include countries outside of Western Europe.<sup>236</sup> Notably, there are non-European countries included in the data: Argentina, Canada, Ghana, Senegal, and the United States.

235. See *infra* Figure 5.

236. See Langer & Eason, *supra* note 12, at 799–800.



**Figure 5:** This graph shows the number of countries with ongoing universal jurisdiction prosecutions for each year between 2014 and 2020.

#### 4. Conclusions

The purpose of this study was to prove that the use of universal jurisdiction has expanded and that the prosecution of Syria-related universal jurisdiction cases has significantly contributed to this expansion. The data collected and the results of the analysis conducted prove this contention. First, the overall number of universal jurisdiction cases has continually increased and the number of Syria-related universal jurisdiction cases significantly predicted the overall number of cases.<sup>237</sup> Second, the number of universal jurisdiction cases that have been initiated has followed an upwards trend and the number of Syria-related universal jurisdiction cases initiated significantly predicted the total number of cases initiated.<sup>238</sup> Third, the number of countries involved in the prosecution of cases under universal jurisdiction has continually increased.<sup>239</sup> More than a “quiet expansion” of universal jurisdiction, these findings show a significant increase—leading to a rebirth of the principle.<sup>240</sup>

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237. See *supra* Section IV.B.1.

238. See *supra* Section IV.B.2.

239. See *supra* Section IV.B.3.

240. See Langer & Eason, *supra* note 12.

### C. Explanations for the Rebirth of Universal Jurisdiction

While the data show an expansion, they do not explain why this rebirth has occurred. Possible explanatory factors include: migration waves to Europe, the initiation of structural investigations, international political pressure, and domestic political pressure.<sup>241</sup>

#### 1. Migration Waves to Europe

Migration has always been a significant factor driving universal jurisdiction litigation.<sup>242</sup> First, conflict-based migration leads to an increase in the number of universal jurisdiction cases because it brings potential plaintiffs, witnesses, and defendants to the forum state.<sup>243</sup> Second, migration brings the opportunity to exercise universal jurisdiction to the attention of the relevant state authorities. For example, state officials have initiated investigations into alleged crimes based on information submitted by migrants as part of their immigration applications.<sup>244</sup>

With more than 6.6 million Syrian refugees worldwide, Syria is producing the world's largest refugee crisis.<sup>245</sup> As of March 2021, Europe was home to over one million Syrian asylum-seekers and refugees.<sup>246</sup> Germany is home to fifty-nine percent of Syrian asylum-seekers and refugees in Europe; Sweden is home to eleven percent; and Austria, the Netherlands, and France each host between two and five percent.<sup>247</sup> The number of Syrian migrants in Europe account for at least part of the increase in universal jurisdiction claims related to Syria, and thus contribute to the overall increase in universal jurisdiction cases. This is especially true when considering the geographic distribution of the Syrian migrants and the proportion of migrants in countries with expansive universal jurisdiction laws.

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241. This is a non-exhaustive list of possible explanatory factors for the increase of universal jurisdiction cases. It is likely that a combination of these factors, in conjunction with other factors, is responsible for the rise.

242. See Langer & Eason, *supra* note 12, at 796.

243. *Id.*

244. *Id.* In France, for example, the exponential increase in investigations under universal jurisdiction is due, in part, to information received from refugee applications (known as the "1F files"). Bjurström, *supra* note 172.

245. *Syria Refugee Crisis – Globally, in Europe and in Cyprus*, UNHCR (Mar. 18, 2021), <https://www.unhcr.org/cy/2021/03/18/syria-refugee-crisis-globally-in-europe-and-in-cyprus-meet-some-syrian-refugees-in-cyprus/> [https://perma.cc/L9M9-S34E].

246. *Id.*

247. *Id.*

## 2. Initiation of Structural Investigations

The purpose of a structural investigation is twofold: to fight against impunity and to preserve evidence to be used in any case in the future.<sup>248</sup> Structural investigations build an “evidentiary cache” which enables investigators and prosecutors to develop expertise on the context of the conflict, including the conflict’s history, dynamics of violence, functioning of operative chains of command, and identities of potential perpetrators.<sup>249</sup> This evidentiary cache allows evidence to be preserved so that prosecution may move quickly once a defendant comes within jurisdictional reach.<sup>250</sup> When a state launches a structural investigation into a specific conflict, it diverts resources to and develops expertise on the specific conflict, leading to more investigations and indictments of suspects.

As discussed above, several European countries have initiated structural investigations into the conflict in Syria, including France, Germany, Sweden, and Switzerland.<sup>251</sup> Some of these structural investigations have a broad mandate, while others focus on specific actors or actions within the conflict in Syria.<sup>252</sup> The initiation of these structural investigations has made it easier to bring cases under universal jurisdiction and is responsible, at least in part, for the increase of Syria universal jurisdiction cases.<sup>253</sup> This contributes to the overall increase in universal jurisdiction cases.<sup>254</sup>

## 3. International (External) Political Pressure

States are under external pressure to investigate and prosecute perpetrators of serious international crimes under the principle of universal jurisdiction. First, according to the international relations theory of idealism, state policy involves the pursuit of moral ideals such as

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248. Bjurström, *supra* note 203.

249. Van Schaack, *supra* note 151, at 284.

250. *Id.*

251. *See supra* Part III.

252. Switzerland, for example, has initiated a broad structural investigation that covers all parties to the Syrian conflict. *See supra* Section III.E. Germany, on the other hand, has initiated narrower structural investigations including a structural investigation into regime-perpetrated crimes and a structural investigation into crimes against the Yazidi minority. *See supra* Section III.B.

253. While the initiation of structural investigations is a cause in the rise of the use of universal jurisdiction, it can also be seen as a manifestation of the increase in universal jurisdiction cases.

254. While the structural investigations identified above are all related to Syria, there is the possibility for structural investigations initiated related to other conflicts.

human rights and global justice.<sup>255</sup> The prosecution of perpetrators of serious international crimes may be seen as the “moral” option and states may thus be pressured to engage in universal jurisdiction prosecutions for this reason. Second, the EU and other European states may play a role in pressuring states to prosecute under universal jurisdiction. The EU has a stated policy of encouraging domestic prosecution of international crimes, including those conducted under the principle of universal jurisdiction.<sup>256</sup> And as one European state begins prosecution under universal jurisdiction, others may be encouraged to follow suit.<sup>257</sup>

In the case of Syria, external political pressure has played a role in the increase of the use of universal jurisdiction. First, as Syria is currently home to “one of the most protracted conflicts of the 21st century,”<sup>258</sup> the prosecution of the perpetrators of violence in the conflict represents a moral obligation, which may incentivize states to launch investigations under universal jurisdiction. Second, after witnessing the prosecution of Syria cases under universal jurisdiction by their neighbors, other European countries have followed suit. For example, according to Hannah Leoine, a Swedish prosecutor, the opening of a structural investigation in Sweden was inspired by the opening of an investigation of this type in Germany years earlier.<sup>259</sup> Overall, external political pressure has resulted in an increase of the use of universal jurisdiction in the Syria context, and thus an increase in the overall use of universal jurisdiction.

#### 4. Domestic (Internal) Political Pressure

States are also under internal pressure by domestic actors to prosecute perpetrators of serious international crimes under the principle of universal jurisdiction. Relevant domestic actors include civil society organizations, NGOs, and migrant communities. Each of these groups has an interest in the prosecution of perpetrators of serious international crimes and pressure from these groups may incentivize states to take on universal jurisdiction prosecutions.

In the case of Syria, domestic political pressure has played a role in the increase of the use of universal jurisdiction. State prosecu-

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255. Mark Amstutz, *The Role of Morality in International Politics*, PROVIDENCE MAG. (Oct. 25, 2019), <https://providencemag.com/2019/10/role-morality-international-politics/> [<https://perma.cc/6JQP-FLPS>].

256. See *supra* note 151 and accompanying text.

257. See, e.g., *infra* note 259 and accompanying text.

258. See *supra* note 16 and accompanying text.

259. Bjurström, *supra* note 203.

tors rely on civil society organizations and NGOs for assistance in investigations.<sup>260</sup> And for states with a large Syrian migrant population, there may be pressure from these communities to prosecute other asylum-seekers or refugees that were perpetrators of serious international crimes back in Syria. For example, the “important Syrian community in Sweden”<sup>261</sup> is a motivator for the universal jurisdiction investigations that are taking place there. Domestic political pressure has incentivized states to prosecute Syrian violators of serious international crimes, which has led to an overall increase in universal jurisdiction cases.

#### CONCLUSION

Popular academic discourse predicted the fall of the principle of universal jurisdiction. However, far from being on its deathbed, the use of the principle of universal jurisdiction has been increasing in recent years. Based on a study of universal jurisdiction prosecutions, I have shown that this increase is due, at least in part, to the use of the principle to prosecute perpetrators of serious international crimes in Syria. Several factors—Syrian migration waves to Europe, the initiation of structural investigations, international political pressure, and domestic political pressure—have created a “perfect storm” to significantly increase the overall use of the principle of universal jurisdiction. While it is unclear how long the use of universal jurisdiction will continue to rise, the expansion of its use makes prosecution of serious international crimes more promising not only for Syrian victims, but for victims worldwide.

*Dana Ahdab\**

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260. For example, in Germany, the European Center for Constitutional and Human Rights has played a major role in advancing the principle of universal jurisdiction in European courts. Van Schaack, *supra* note 151, at 285.

261. Bjurström, *supra* note 203.

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