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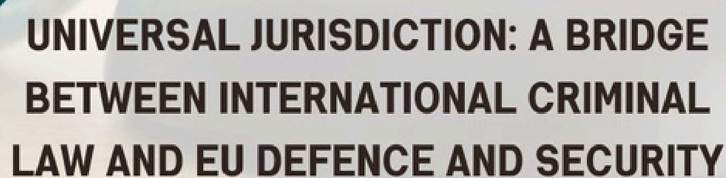

WRITTEN BY
MARGOT LITTLEFAIR

EDITED BY
MAXWELL GOLDSTEIN

SUPERVISED BY
JAIME TORAL

Introduction

Thomas Paine once quoted that “[a] body of men holding themselves accountable to nobody ought not to be trusted by anybody” (Paine, 1791, p. 1788). Such recite bears particular significance in light of the high number of crimes currently being committed in conflicts around the globe.

Indeed, understanding what can be done to hold perpetrators accountable for crimes that have taken place during conflicts not only matters as a foundational principle in disciplines such as International Criminal Law but also as a supporting one in other areas such as EU Defence and Security. The notion of 'transitional justice’ allows for viewing the aforementioned accountability as a mutually necessary factor for both International Criminal Law and EU Defence and Security. Furthermore, in exploring the connection between accountability and defence and security, the mechanism of ‘universal jurisdiction’ shall be delimited and further applied to concrete situations of conflict.

The aim of establishing connections between two supposedly separate disciplines is to demonstrate the permeability between them. Such linkage will be shown through, as previously mentioned, the concept of accountability which is itself drawn from that of transitional justice. By showing how the latter concept falls within the ambit of defence and security – an area evidently concerned with conflicts – there is hope that accountability can be taken into deeper consideration by the EU. The more perpetrators are held accountable for their actions, the more just a world we will live in.

Structurally, this paper commences in section one with the basic theory of multiple notions. Firstly, the two relevant disciplines of this paper shall be defined: International Criminal Law followed by Defence and Security. Subsequently, illustrated as the raison d’être for accountability being of interest to both disciplines, transitional justice shall be clarified. Lastly, universal jurisdiction will be elucidated as a means to exemplify the notion of accountability. In section two, the paper then moves on from theory to practice by applying universal jurisdiction to conflict situations from the past, present and future. The third and final section corresponds to an assessment of the place accountability has within the field of defence and security and the importance of prioritising it and implementing it through universal jurisdiction.

1. Theoretical considerations

International Criminal Law and EU Defence & Security

The objective of International Criminal Law (hereafter ICL) is to hold individuals accountable for their wrongs (Harvard Law Review, 2001, p. 1957). Wrongs, in ICL, correspond to particularly serious violations of international law, such as "war crimes, crimes against humanity, genocide and potentially, aggression" (Sassòli et al., 2011). As can be observed, these international crimes often relate to violations of International Humanitarian Law (hereafter IHL). Their condemnation thus aims to protect human rights (to life, to lawful detention, etc.), as well as to guarantee their reparations. The prosecution and punishment of the aforementioned violations can be held at national as well as international forums (Cassese, 1998, p. 3-4). The instruments primarily relied upon in this paper regarding ICL are the Geneva Conventions and the International Criminal Court's Statute.

EU Defence and Security institutions aim to provide a safe and stable environment for European citizens. Given increased global instability, the EU vows to take more responsibility for its own security as well as its capacity to act autonomously outside of its borders (European External Action Service, 2023). Indeed, the EU needs to acknowledge security considerations beyond its borders because events that happen outside of the EU can directly affect security within Europe (European External Action Service, 2023). The instruments primarily relied upon regarding this area are the EU's Common Security and Defence Policy as well as the Peace Mediation Guidelines.

Transitional Justice

The European External Action Service (hereafter the EEAS) is key for carrying out the Common Security and Defence Policy (hereafter the CSDP). The former comprises multiple authorities, one of which is the Peace, Partnerships and Crisis Management Directorate. Within the instruments of the latter exist the Peace Mediation Guidelines, wherein human rights and transitional justice are a thematic priority (EEAS, 2024a).

The place given to human rights and transitional justice in said guidelines derives from the EU's integrated approach to security, crises and conflicts. Such an approach is achievable through the union of institutions – whether military or civilian –, expertise and instruments on prevention – whether economic or diplomatic –, crisis response, stabilisation and peacebuilding, all contributing to sustainable peace (EEAS, 2024b, p. 7). This commitment to human rights and transitional justice is understandable given that the EU is precisely founded on values of respect for said human rights, democracy and the rule of law

(EEAS, 2024b, p. 17). This is confirmed in Article 21 of the Treaty of the European Union (hereafter TEU).

In practice, in order to uphold the aforementioned values, EU Member States must engage in situations where past violations and abuses have occurred, including gross violations and abuses of human rights and serious violations of IHL (EEAS, 2024b, p. 17). Actors must fulfil such engagements by employing a range of context-specific measures promoting truth, justice, reparations, and guarantees of non-recurrence (EEAS, 2024b, p. 1). Because these initiatives are considered essential to state responsibility and peacebuilding, they are to be considered as incorporated into the EU's larger crisis response, conflict prevention, security, and development initiatives (European Parliament, 2024, p. 1).

Universal Jurisdiction

An EU Member State could carry out a human rights and transitional justice centred engagement by exercising universal jurisdiction. It is the principle whereby "a State, without seeking to protect its security or credit, seeks to punish conduct irrespective of the place where it occurs, the nationality of the perpetrator, and the nationality of the victim" (Reydams, 2004, p. 6). The conduct in question relates to crimes considered to be so grave and heinous that they affect the international community as a whole (Advisory Service on IHL, 2021, p. 1; Joyner, 1996, p. 153). The International Criminal Court Statute (hereafter the ICC Statute) codifies these crimes.

The concept of universal jurisdiction finds its legal basis both in treaty law and in customary international law (Advisory Service on IHL, 2021, p. 1). Under treaty law, the most renowned – although not exclusive – provisions enshrining this principle can be found in the four Geneva Conventions of 1949 (Geneva Convention I, II, III and IV. (1949). Articles 49, 50, 129 and 146. ICRC Database). Under customary law, the pertinent clause consecrating universal jurisdiction is Rule 157 of the ICRC Customary International Humanitarian Law Study.

A key element that successfully implements this principle is the adoption by states of legislation that support the exercise of said concept within its domestic law (Eurojust, 2023, p. 3). In fact, this requirement is generally a basis for the commencement of investigations and trials. However, it is not absolutely necessary because states may initiate proceedings simply on the basis of international law, exercising adjudicative universal jurisdiction, without any reference to national legislation (Advisory Service on IHL, 2021, p. 1).

The reason why universal jurisdiction is essential for carrying out transitional justice engagements is attributable to the fact that its objectives align exactly with those of the

latter. Indeed, universal jurisdiction reinforces the principles of international law and human rights by addressing past violations, promoting reconciliation, and enhancing the influence and credibility of the prosecuting state, all while ensuring that accountability remains a central pillar of the justice process.

2. Practical applications of Universal Jurisdiction from the past, present and future

From the Past: The Case Against Augusto Pinochet

On October 16, 1998, the world was shocked. Following a request from Spain, British officials arrested former Chilean president General Augusto Pinochet in London. Spanish authorities wanted to charge Pinochet with crimes against humanity regarding his actions during his seventeen years of military leadership in Chile (McHale, 2001, p. 49).

It is owing to the Convention Against Torture that government officials can be held accountable for crimes against humanity (Lagos et al., 1999, p. 29). The United Kingdom became a party to said Treaty in 1988, with Spain and Chile already having ratified it previously. As a result, all three states were capable of exercising extraterritorial jurisdiction over the acts of torture that Pinochet was accused of having committed (Bianchi, 1999, p. 245). Furthermore, these crimes are condemned by international law in Article 7(1)(f) of the ICC Statute, of which all three states are a party.

In practice, this meant that municipal courts were deemed competent to undertake criminal proceedings under international law standards (Bianchi, 1999, p. 241). Not only was this a possibility for these States to do so, but in fact an obligation (Bianchi, 1999, p. 247). Such a decision to prosecute was agreed upon despite the principle of continued immunity of ex-heads of State. In fact, regarding the latter, it was eventually deemed inapplicable because the acts committed – torture, in this case – are prohibited and criminalised by international law itself (Bianchi, 1999, p. 245).

It is owing to the aforementioned international legal setting showcased in this judgment that the notion of worldwide universal jurisdiction emerged, establishing a precedent for similar future cases.

From the Present: The Case Against Russia

The above precedent was indeed relied upon in future cases, such as those which have been initiated against Russia regarding its invasion of Ukraine. In fact, within days after the war broke out in February 2022 several prosecutors opened structural investigations into

the core international crimes allegedly perpetrated by Russia in Ukraine (CEELI Institute, 2024).

More recently, three cases were handed to German prosecutors by The Clooney Foundation for Justice (hereinafter CFJ) in the hopes that the principle of universal jurisdiction would allow for criminal prosecution to take place in Germany for crimes which had been carried out by Russia in Ukraine (Borger, 2023). Indeed, Germany and Ukraine are parties to the Geneva Conventions, providing them with a concrete basis to carry out universal jurisdiction.

The facts of the cases include indiscriminate missile attacks by Russia causing death and injuries; unlawful detention, torture and execution; as well as sexual violence and looting (Khattab, 2023). The ICC Statute – of which Germany and Ukraine are a party – prohibits these crimes in Articles 7 and 8(2)(b)(xx).

CFJ's decision to address the German authorities stems from a demonstrated commitment by said institutions to implement universal jurisdiction. Indeed, and particularly ever since an investigation into senior members of the Syrian government in 2019, Germany has reflected a responsibility to prosecute the gravest breaches of ICL and IHL (Rankin, 2019, p. 395).

Germany has made this objective operative by explicitly providing for it within their domestic law, which includes the Basic Law and German Code of Criminal Procedures, as well as by virtue of customary international law (Rankin, 2019, p. 396). Such solid anchoring of the principle of universal jurisdiction allows for an unequivocal exercise of the legal obligation at hand – that of investigating and prosecuting atrocities crimes, irrespective of where the crimes took place and by whom (Rankin, 2019, p. 396-397). On such solid grounds, it is foreseeable that a judgement of this case will be rendered in the near future, although it has not taken place yet.

For the Future: The Potential Opening of a Case Against Yemen

In light of universal jurisdiction's past successes in holding accountable those responsible for atrocity crimes, such a notion can thus be transposed to similar cases that have not yet been adjudicated. One example is the situation in Yemen, where the improved security conditions for civilians, owed to a truce in 2022, is currently being threatened (United Nations Security Council, 2025).

For context, Hans Grundberg, the Special Envoy of the Secretary-General for Yemen, has reported that Ansar Allah (the Houthi Movement) is escalating its attacks on Israel and pushing forward assaults in the Red Sea, which has consequently led to retaliatory strikes by

the United States, the United Kingdom, and Israel on Yemen. Furthermore, Israeli airstrikes have severely damaged key civilian infrastructure (an airport and port) affecting the delivery of humanitarian aid thereby constituting violations under the Geneva Conventions and the ICC Statute. He emphasized the urgent need for de-escalation and sincere efforts towards peace, noting that nearly forty million Yemenis "have waited far too long" for such a development (United Nations Security Council, 2025).

A potential response to Mr. Grundberg's call for help could be an application of the universal jurisdiction principle. A good candidate for such a task could be, amongst others, Norway, which is a State party to both the Geneva Conventions and the ICC Statute. The former considers universal jurisdiction to be an obligation for certain crimes and the latter internationally criminalises certain acts. Moreover, Norway has enumerated which crimes committed abroad can be prosecuted nationally within Sections 5 and 6 of its Penal Code, largely mirroring the ICC Statute (Open Society Justice Initiative & TRIAL International, 2019, p. 5). Additionally, Norway has demonstrated its commitment to universal jurisdiction by creating a special prosecutorial post and establishing a unit within the National Criminal Investigation Service (NCIS) to investigate and potentially extradite or prosecute individuals suspected of involvement in core international crimes (Selman-Ayetey, 2013, p. 269).

Can this array of measures suffice for the mechanism of universal jurisdiction to be triggered? Norway's history of applying universal jurisdiction seems to indicate the affirmative. It is one of the States that has made the most use of this mechanism, having initiated proceedings on this basis almost every two years since 2006 for a long period of time (Selman-Ayetey, 2013, p. 269-270). Believing that Norway is capable of undertaking investigations and proceedings into the situation in Yemen is thus not illusory, but has yet to be materialised.

3. Assessment drawn from above theoretical and practical considerations

Perhaps states' current absence of compliance with their international obligations to prosecute and criminalise heinous crimes – the happenings of which are prevalent nowadays – comes down to a necessity to maintain diplomatic relations (Salerno-Garthwaite, 2024).

But does maintaining diplomatic relations and applying universal jurisdiction have to be antithetical to one another? It should be reminded that the purpose of the legal principle at hand is precisely to safeguard States' security and defence interests on an international scale. Indeed, as explained previously, the willingness to initiate proceedings and prosecute perpetrators for atrocity crimes derives from a desire to ensure that justice prevails and to

ensure that international relations – relating to defence and security – are stable. Yet, as seen previously, justice and security considerations are precisely conducive to one another.

In fact, it is not a coincidence that the term 'diplomatic peace' exists. In international relations – the arena within which diplomacy takes place (Kornprobst, 2023, p. 3) – peace and war are the main object of discussion (Kornprobst, 2023, p. 4). The exercise of universal jurisdiction in advancing peace and halting war thus seems like a manifest solution to this end.

However, peace is indeed multifaceted and the ways to attain it are too, sometimes creating friction between different methods known as restraint, compromise and polylogue. Regarding this matter, universal jurisdiction is best categorised as a solution to a form of (co-operative) restraint by one State over the escalation of war or disruption of peace by another (for further explanations, see Kornprobst, 2023, p. 13.).

Indeed, postulating that universal jurisdiction is the primary means to attain peace appears to be unrealistic given the complex character of diplomacy and peace. Be that as it may, it remains a valid and necessary measure to maintain healthy international relations. Not considering said mechanism as a building block towards "an international order that works towards leaving today's era of turbulences, crises and wars behind" (Kornprobst, 2023, p. 3) would be an injustice to the most relevant global value of these times; justice.

Conclusion

This paper aimed to demonstrate the link between ICL and EU Defence and Security considerations.

It begins by examining theoretical considerations, providing an overview of transitional justice and its relevance to International Criminal Law (ICL) and EU Defence and Security. It connects the EU Common Security and Defence Policy (CSDP) objectives to human rights and introduces universal jurisdiction as a mechanism for upholding rights in relation to atrocity crimes. The latter concept is defined as an international legal norm enabling states to hold perpetrators accountable, regardless of where the crimes were committed.

From a practical perspective, the paper presents three cases demonstrating the successful (and potential) implementation of universal jurisdiction, detailing the political context, relevant treaties, and crimes involved. The latter's effectiveness in prosecuting crimes against humanity was demonstrated, as evidenced by historical cases such as Augusto Pinochet as well as present-day situations like that of the Russian invasion of Ukraine. Looking forward, the potential application of universal jurisdiction to the situation in Yemen equally

highlighted the continuing relevance and necessity of this legal principle.

Finally, the paper assesses the relevance of universal jurisdiction to defence and security, considering the potential lack of state action in this area as well as the ensuing diplomatic consequences. Ultimately, the assessment draws the conclusion that universal jurisdiction reinforces diplomatic relations and is thus an avenue that could benefit the EU's defence and security goals. As a result of this, the link between ICL (represented through universal jurisdiction) and EU Defence and Security (as viewed under its Peace Guidelines) was demonstrated, revealing two areas within which it is justified for a state to undertake the mechanism known as universal jurisdiction. Said conception of the latter principle thus increases the instances in which it may be used, paving the way for perpetrators of atrocity crimes to be brought to justice more often.

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