

Universal Jurisdiction and International Crimes: Contemporary Challenges in Prosecuting Genocide & Crimes against Humanity

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ABSTRACT

The article looks at the legal and practical limits of universal jurisdiction in relation to genocide, crimes against humanity and war crimes. Universal jurisdiction enables a State in certain situations to prosecute very serious international crimes, even if the conduct took place outside its territory and the parties have no ordinary nationality connection to the forum. The article discusses the main legal basis for the principle in terms of the Geneva Conventions, treaty obligations to prosecute or extradite the violator, and customary international law. It then considers the main legal limits, particularly personal immunity of some sitting senior officials, the continuing dispute about functional immunity, presence or residence requirements, prosecutorial or governmental consent and fair-trial requirements. The article covers practical limits in that it is unable to access foreign evidence, witness protection, cost, translation and selectivity. Germany, the United Kingdom, Canada and Australia are the main comparative examples with India and Pakistan being South Asian examples. The article argues that universal jurisdiction is still a useful but limited tool. In practice, universal jurisdiction is not about the broad wording of a statute but about whether the State has specialist prosecutors, access to evidence, witness-support systems and clear procedural rules. In the end the article argues that universal jurisdiction will develop with the pace of national reforms in place and cooperation rather than through a one-size-fits-all universal system.

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1. Introduction

Universal jurisdiction is attractive in principle but not so much in practice. The basic idea is that some crimes are so serious that every state has an interest in criminalization of them. A person accused of torture or genocide is not to be held accountable simply by moving to another country. At the same time, criminal law is territorial because evidence, witnesses, affected community and enforcement machinery are usually located where the offence happened. When a Syrian case is tried in Germany, for example, prosecutors have to reconstruct the activities of a foreign security service, the background of the conflict and evidence in another language and legal setting. Where legislation also needs ministerial consent before prosecution, the question may be legal and policy.

In what follows, we are looking at the legal and practical limits that are in place and that currently affect universal jurisdiction. The purpose is not to claim that every possible crime shall be prosecuted, nor to claim that the principle has become irrelevant.

Recently, a mixed bag of new investigations and prosecutions and convictions have been seen in Europe. Germany is one of the most striking examples of a state that has a broad statutory framework for international crimes committed abroad. France, Sweden and the Netherlands have also developed excellent practice. Canada has a much smaller record while the United Kingdom has a much slimmer statutory framework for a number of core crimes committed abroad. Australia has extensive jurisdictional language but also significant consent needs. These differences make comparative study useful.

The comparison is intended for an international law audience while acknowledging that major advances have been made in both common-law and civil-law systems. European civil law jurisdictions play a key role as universal-jurisdiction practitioners in recent times and so we do not make common-law experience the only model. India and Pakistan are included because they are a different set of cases: neither State has built a comprehensive system in the domestic world that can prosecute core international crimes on a German-style universal-jurisdiction basis. Their legal frameworks thus show the consequences of exclusively relying on territorial jurisdiction, nationality and extradition.

The main argument is that legal limits can be found in general, but practical limits will have an even bigger effect on whether a case actually goes to trial. Personal immunity can prevent the prosecution of some sitting senior officials. Presence or residence requirements can limit who can be prosecuted. Political consent rules can also affect the timing and availability of proceedings. But beyond the legal requirements, cost, evidence, witness protection, translation and selection can determine whether an investigation becomes a trial. A realistic evaluation of universal jurisdiction therefore needs to consider law and institutional capacity.

The article also avoids two counter-narratives. One takes every indictment to be proof that international justice is working and every acquittal as a failure. That is not helpful for criminal law analysis because to say that the prosecution did not prove the case beyond the minimum standard is not a good thing. The other approach treats all third-State prosecutions as a kind of judicial tourism. That criticism might be relevant where a court does not have expertise or sufficient evidence, but it does not describe cases in which the specialized prosecutors and courts spend years looking at witnesses, documents and expert evidence. The German Syria cases show that these proceedings are significant.

1.1 Research Question, Objectives and Method

The research question is: What are the legal and practical limits of universal jurisdiction in contemporary international criminal law? Our aims are to state the idea, to look at its history and treaty basis, to discuss its application to genocide, war crimes and crimes against humanity, to examine

immunity issues, compare various national systems and to identify the current problems and future challenges. The study takes doctrinal and comparative approaches. The primary materials are the Geneva Conventions, the Genocide Convention, the Convention against Torture, the Rome Statute as context, relevant ICJ jurisprudence, the International Law Commission work on immunity of State officials, and domestic statutes and cases from the jurisdictions discussed. Soft-law materials are used only to demonstrate debates and practice. The legal position has been checked against materials available up to September 2026.

The concept of universal jurisdiction

In public international law jurisdiction is usually divided into nationality of the accused, nationality of the victim, protective principle, territorial principle, and universality. Universal jurisdiction is the last of these. It is the claim that the nature of the crime, not a link to the forum, founds the State's competence.

Two more distinctions matter. Prescriptive jurisdiction is the power to make the conduct a crime in the forum's law. Adjudicative jurisdiction is the power to try a particular person. Enforcement jurisdiction is the power to arrest and imprison. A State may prescribe universally and still refuse to try in absentia. A State may try only those who would walk onto its soil. Those design choices are not details. They are the difference between Germany's case record and the United Kingdom's case record.

Another important distinction is between universal jurisdiction itself and other forms of extraterritorial jurisdiction. Active personality (the forum's national did it) and passive personality (the forum's national suffered it) are not universality. Many of the cases counted in annual reviews are mixed. A Syrian who tortured other Syrians and then applied for asylum in Koblenz is, in the pure sense, a universal-jurisdiction defendant. A dual national who fought for an armed group is not. It is crucial to separate these two categories in order to measure the real reach of universal jurisdiction.

Conditional or "with presence" universal jurisdiction assumes that the suspect has to be on the territory (and sometimes, live there) before trial can begin. Absolute universal jurisdiction (sometimes also called pure universality) provides for investigation and even trial without that connection. In absentia trials, in some instances French and prior Belgian, are at the far end. Each model has a cost. The presence conditions do not include the visitor who stays for three weeks. Absolute models invite diplomatic clash and emptiness of world. In reality, no legal system considers that every court can try every international crime regardless of its situation.

Piracy is often referred to as the historical starting point for the modern idea of universal jurisdiction. The pirate was *hostis humani generis*, for he operated beyond one territorial sea, and every maritime State had an interest in safe passage. That comparison, with modern international crimes, is useful, but the historical situation is not the same. Pirates were tried when they were caught, because that was the alternative to impunity on the water. *Génocidaires* are usually tried, if they are tried, where the graves are. The modern principle is a twentieth-century construction that used an older phrase.

The grave-breaches provisions of the 1949 Geneva Conventions are the first great treaty move. High Contracting Parties were going to search for persons who had committed grave breaches and bring them before their own courts, regardless of nationality, or to hand them over to another Party. That is *aut dedere aut judicare* with a universal flavour. The 1948 Genocide Convention is more cautious. Article VI either talks about a competent tribunal of the State where the crime was committed or to an international penal tribunal. It does not explicitly give a duty of third-State prosecution. The Convention against Torture of 1984 is closer to a Geneva model: a State in whose territory the alleged offender is found must extradite or submit the case to its competent authorities.

After these treaties, several countries made more general national efforts, though international consensus was not yet complete. Israel tried Eichmann in the courtroom on a combination of universal

and protective claims which other States never fully endorsed as a package. In London, Pinochet made functional immunity yield to official torture for a former head of State of a party to the Torture Convention. Belgium and Spain wrote vast statutes, drew complaints from powerful States, then narrowed the statutes when diplomatic conditions were favorable.

The Rome Statute of 1998 created a permanent court with complementary jurisdiction. It did not establish universal jurisdiction for national courts. It changed the politics of national courts, as a State that can try a resident génocidaire is a State which can keep the International Criminal Court at bay under complementarity—or that can fill in the gap for an international court that cannot enter, as in Syria before a referral.

Structural investigations and survivor communities in European States became especially important in the 2010s and 2020s. German, Swedish and French prosecutors opened situation-wide files on Syria, Iraq and later other theatres, took witness statements from refugees and waited for a suspect to enter. That is universality with patience. It is universality that depends on asylum policy and on who escapes where.

Structural investigation is crucial because it changes the way prosecutors organize a case. So instead of waiting for a named defendant and then opening a file, a unit opens a situation file, collects documents and witness accounts, maps units and detention sites, and only later attaches a person who happens to be present. The legal basis remains universal or extra-territorial jurisdiction over specific crimes. The investigative method borrows from the big international tribunals. Presence-based universality without that method is a lottery. With it, presence-based universality can look almost planned. The limit is obvious. A State that will not fund the situation file will only ever try the defendant who walks into a police station with a confession.

International Legal Basis

The legal basis of universal jurisdiction is not in one rule. Custom is claimed for the core crimes and is still argued about at the edges. Treaties provide duties to extradite or prosecute for certain crimes. General international law provides permission to prescribe, at least where the crime is recognised as one of universal concern. In the Lotus principle, read generously, States are free to exercise jurisdiction unless a prohibitive rule is in place. Critics of expansive universality say a prohibitive rule does stand in its way: non-intervention and the ordinary transfer of criminal control to the sovereign. The better view, and the one that most States studied here now act as if it were true, is that there is permission for genocide, crimes against humanity, grave-breach war crimes and torture, subject to immunity and to the forum's own filters.

Permission is not duty. A State may have the competence and refuse to use it. That is why comparative practice matters more than a footnote on custom. For years the Sixth Committee of the General Assembly has discussed the scope of the principle but has not reached a convention. The absence of a convention is not the absence of law. It is the absence of an agreed restatement and that is why national statutes do the defining.

The Rome Statute is relevant mainly as a framework for understanding the offences and the relationship between national courts and the ICC. Complementarity assumes that national courts will carry out part of the work. It doesn't tell them what jurisdictional head to use. A territorial trial in Kyiv and a universal trial in Frankfurt can be complementary to The Hague. They can also collide, which is why *ne bis in idem*, transfer of proceedings and coordination of prosecutors have become part of the modern craft. Coordination is itself a limit: a second forum should keep its hand when the first is genuinely able and willing even if the second forum's politics would be more favorable.

Genocide

Genocide has a profound mental aspect because the prosecution must prove to a judge that there is a specific intent to the Genocide Convention and related laws. The Convention definition—intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such—is at different points of detail in national statutes. Canada's conviction of Munyaneza involved genocide counts from Rwanda in 1994 and was based on a specific effort to do so—witnesses who had to travel and a record that could be for years. That's the gold standard and why so few third-State genocide trials take place.

German, Canadian and Australian legislation provides a domestic foundation for prosecuting genocide committed abroad, though such prosecutions remain uncommon. Prosecutors prefer crimes against humanity or war crimes where the same facts will sustain a conviction without the *dolus specialis* fight. That preference is not cowardice. It is an evidential limit wearing a charging decision.

Genocide is usually charged in a third State, because the situation is already legally labelled (Rwanda, Srebrenica, Yazidis, and so on) and because the forum has witnesses from that labelling. Newer controversies, in which the word itself is politically radioactive, are the least likely to produce a first-instance genocide verdict far from the scene. That, too, is a limit.

The absence of a universal-jurisdiction clause in the Genocide Convention should not be taken as a prohibition against every type of third-State prosecution. Silence is not a prohibition on prescription. It is the absence of a duty. A State that tries a génocidaire found on its soil is not violating Article VI. It is doing work that Article VI did not assign and did not forbid. Custom and later national statutes have occupied that space. The honest treaty point is narrower: a State cannot be a Convention violator just because it has not opened a genocide case for universal jurisdiction. Duty and permission must be kept separate if the legal boundaries are to be intelligible.

6. War Crimes

War crimes have one of the treaty foundations for extraterritorial prosecution especially in relation to grave breaches of the Geneva Conventions. Grave breaches of the Geneva Conventions generate an obligation to search and to try or to hand over. Additional Protocol I extended the list for armed conflict. Custom and the Rome Statute have added a catalogue for non-international armed conflict, which is where most of the recent universal-jurisdiction defendants actually fought. National statutes that copy Article 8 of the Rome Statute therefore do daily work than the 1949 grave-breaches list alone.

The legal limits here are classification and nexus. A court in Stockholm or Frankfurt must decide whether there was a conflict, of which type and whether the victim was protected. These questions can be difficult when the available evidence consists mainly of witness memories, documentary material and open-source evidence. The practical limits are command structures. A low-level fighter who is in the forum because he claimed asylum is easier to arrest than a general who still sits in a ministry. Universal jurisdiction over war crimes has therefore tended to produce convictions of the reachable, which invites the charge of selectivity when the law on the charge sheet is impeccable.

The United Kingdom's Geneva Conventions Act gives jurisdiction over breaches without the residency filter that the International Criminal Court Act applies to the wider Rome Statute list. That split is a legacy of treaty drafting and a live limit. A visitor accused of a -grave-breach war crime in a non-international conflict may fall outside the easier statute and inside the harder one. Doctrine that treats "war crimes" as a single bucket misses that fork.

Modes of liability travel with the war-crime charge. Often decide the case. Joint enterprise, co-perpetration command responsibility and aiding are not interchangeable. A forum that imports one doctrine while the territorial State uses another can produce conflicting pictures of the same unit. Command responsibility can be important in cases because it may connect senior officials to crimes

committed by subordinates. At the time it can create serious evidentiary problems when the command structure has to be reconstructed from witness accounts and other indirect evidence. One difficulty is therefore that a foreign court must resolve many of the complex questions found in international criminal law while lacking direct access to the original crime scene.

Occupation, siege, starvation and attacks on care have returned to charging lists after Ukraine and after other contemporary conflicts. Some of those theories are legally mature. Others are being tested for the time in a third-State court. Universality is a venue for a first impression of an unsettled war-crime theory because the diplomatic cost of a novel holding is paid by a State that did not fight the war. Caution here is not timidity. It is a recognition that national courts making law should usually follow, not lead, on the most contested elements.

7. Crimes against Humanity

Crimes against humanity have become a part of contemporary universal-jurisdiction practice. They do not require a conflict. They do require an systematic attack against a civilian population and knowledge of the attack. That contextual element is demanding. It is often easier to prove from a pattern of detention centres and intelligence branches than genocidal intent is to prove from the same pattern. Koblenz used crimes against humanity to describe Branch 251. Frankfurt used them with war crimes against a doctor who tortured in a hospital wing reserved for opponents. Those judgments matter because they treat a State's security apparatus as the organisation behind the attack.

As of 2026 there is still no global convention on crimes against humanity in force comparable to the Genocide Convention or the grave-breaches regime although the topic has been under sustained work at the International Law Commission. National legislators have filled the gap by copying the Rome Statute. Custom is widely thought to support third-State prosecution. The legal limit is less the existence of the crime than the existence of a forum statute that names it extra-territorially. The practical limit is the same as for war crimes: who's present who will testify and which government will complain. A future convention would help by settling drift among national codes. It would not by itself staff a unit. Produce a witness. Treaty completeness and trial capacity remain problems and only the second puts a person in the dock.

8. State Immunity and Official Immunity

Immunity is an issue that domestic prosecutors cannot simply avoid through creative charging. The ICJ in Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium) held that Belgium had violated law by circulating an arrest warrant for Congo's sitting foreign minister. Heads of State heads of government and ministers enjoy immunity *ratione personae* before foreign national courts while they hold office. The immunity covers as well as official acts during that period. It is a bar, not a statement that the crime did not occur. When the person leaves office personal immunity falls away. What remains is immunity for official acts. (International Court of Justice 2002).

Whether functional immunity covers crimes is the live controversy. Pinochet (No. 3) Held that a former head of State of a Torture Convention party could not claim official-act immunity for torture at least in the House of Lords' reasoning about the Convention's implied waiver. Many scholars treat atrocity crimes as incapable of being acts. Many States still treat them as official when they want to protect their people. The ILC's draft articles, moving through reading in 2025 and 2026 would provide in draft article 7 that functional immunity does not apply to listed crimes under international law. Governments remain split. Until custom hardens or a convention is adopted, a national prosecutor who charges an official of a powerful State is taking a legal risk that a prosecutor who charges a former official of a fallen regime is not. That double standard is ugly. It is also a description of the present law's uncertainty.

Two further points. First immunities before courts are a different legal world. The ICC's struggle with sitting officials is not a precedent that automatically binds a court and the ICJ has been careful to keep the two planes apart. Second special missions and diplomatic immunity can block an arrest even when the person is not in the troika. Forum States that host multilateral meetings know this well. The visiting official who comes for a conference is often the official who leaves on the aeroplane.

State immunity in the sense—the immunity of the State as a legal person from foreign courts—is mostly a civil-law problem. Universal jurisdiction as discussed here is criminal. Is aimed at natural persons. Confusing the two produces arguments on both sides. A criminal charge against an intelligence officer is not a suit against Syria. A suit against Syria for torture is not a substitute for that charge. Some victims want both. The law supplies them through doors with different immunities on each door. This article stays with the door because that is where the principle of universality has its contemporary life.

The work of the International Law Commission is important. The status of its draft articles should be described carefully. In 2022 the Commission adopted the draft articles on reading. In 2026 it adopted the set on second reading and recommended that the General Assembly consider elaborating a convention on their basis. This development gives institutional weight to the proposed exception to functional immunity for specified international crimes but the draft articles themselves should not be presented as automatically changing customary international law for all States. The distinction between existing law, progressive development and a possible future treaty remains important. (International Law Commission, 2026).

9. Comparative National Practice

9.1 Germany and Other European Jurisdictions

Germany's Code of Crimes against International Law was written to implement the Rome Statute and to allow prosecution of core crimes without a nexus. Structural investigations on Syria harvested thousands of witness statements from people who had reached territory. When Anwar Raslan, a colonel in General Intelligence was recognised by victims who had also reached Germany the file had a defendant. The Koblenz Higher Regional Court convicted him in January 2022 of crimes against humanity including killing, torture, deprivation of liberty and sexual violence. In August 2024 the Federal Court of Justice dismissed his appeal. The life sentence is final. In June 2025 the Frankfurt Higher Regional Court sentenced Alaa M., a Syrian doctor to life imprisonment for crimes against humanity, war crimes and murder. Further indictments of Assad-era officials have followed, including a prison-guard case announced in 2025. After Assad's fall in December 2024 the political context changed; the legal machinery did not need to be invented. (Federal Ministry of Justice 2024; Federal Court of Justice 2024; Hessen Higher Regional Court, 2025).

France, Sweden and the Netherlands have run Syrian and other files, including some in absentia practice, in France and important functional-immunity rulings that refuse to treat atrocity crimes as protected official acts. Belgium and Spain once the emblems of universality now operate under narrowed statutes after the diplomatic crises of the 2000s. The European picture is therefore not a model. It is a cluster of units EU evidence tools and a shared refugee intake that makes presence-based universality feasible. Remove the diaspora. Many of the files would starve.

9.2 United Kingdom

The United Kingdom arrived early. Then stopped. Pinochet made London the capital of the functional-immunity argument. The International Criminal Court Act 2001 included genocide, crimes against humanity and war crimes but connected extra-territorial prosecution in general to UK nationality living in the UK or service in the forces. Torture under the Criminal Justice Act 1988 is still possible to charge based on being present. Grave breaches have their older way. The outcome, as REDRESS and others have recorded is that a person who comes to the UK but is not a resident can often

not be charged with crimes against humanity even if the proof is there. Successful universal-jurisdiction charges in UK courts have been rare. None of the ICC Act core-crime cases has become a regular case. Attorney-General permission and the 2011 stricter private-arrest permits add checks. The legal limit here is how the law is designed. The real limit is that there is no Koblenz-scale system. (International Criminal Court Act 2001).

9.3 Canada

Canada passed the Crimes Against Humanity and War Crimes Act in 2000 as part of its effort to follow the Rome Statute. The law gives the power to charge offenses that happened outside Canada under situations, including when the person accused is in Canada. Canada has had two charges under the law: Désiré Munyaneza was found guilty in 2009 of genocide crimes against humanity and war crimes and Jacques Mungwarere was cleared in 2013. The Canadian record is much smaller than Germany's. It shows that local courts can do deep trials with evidence from a different country's conflict. The Canadian officials have also used immigration and refugee processes with investigations, which brings up another question about how exclusion processes and criminal responsibility are connected. (Crimes Against Humanity and War Crimes Act, 2000; Public Prosecution Service of Canada 2014).

9.4 Australia

Division 268 of Australia's Criminal Code creates crimes for genocide crimes against humanity and war crimes and uses Category D jurisdiction for the crimes listed in the Division. The law does not need the connection to the country or nationality as normal criminal law. At the time section 268.121 requires the permission of the Attorney-General before any legal action can start. This makes a check. The Australian example is useful for showing that a wide legal power does not always lead to finished trials. (Criminal Code Act 1995 Cth).

9.5 India and Pakistan

Neither India nor Pakistan is a part of the Rome Statute. Neither has passed a law like Germany's code of crimes against law with true universal reach. International humanitarian law is not always the same through manuals, Geneva rules and normal criminal codes. Atrocities that cross borders in the area are handled, if they are handled, as diplomacy, as criminal law or as information for international places. That choice is itself a sign. Universal jurisdiction is an option, not something every common-law system must do. Countries that are near conflicts and do not create trial systems for third countries show that the European records are a result of law, money and people living abroad not just legal family.

There is a reason for that decision that should be stated without being negative. Extra-territorial criminal power in South Asia is politically dangerous because the people who could be charged would not be faraway officers from an old regime. They would be neighbors. A rule that Europe uses mainly for conflicts looks different when the conflict is on a border that is known or disputed. That does not make the rule less correct. It does explain why the governments in New Delhi and Islamabad have not spent energy copying the *Völkerstrafgesetzbuch*. Law that ignores that reason will mistake no law as no understanding.

Extradition and sending someone away are still the choices. A person found in Karachi or Mumbai is more likely to be sent than tried at home for a crime that happened on another continent. Sending can be justice. It can also be a way of avoiding a trial that would cost the country in policy. Universal jurisdiction is, among things the decision to take that cost at home. Few governments choose to do it.

Table 1

Statutory design of universal jurisdiction in four jurisdictions.

Feature	Germany	United Kingdom	Canada	Australia
Core statute	Völkerstrafgesetzbuch (CCAIL)	ICC Act 2001; Geneva Conventions Act; CIA 1988 (torture)	Crimes Against Humanity and War Crimes Act 2000	Criminal Code Div. 268 (Category D)
Presence / link	No nexus required (absolute UJ in principle)	ICC crimes: UK national, resident or forces; torture: presence	Presence-based practice; CAHWCA extra-territorial	No nationality/victim nexus required
Political filter	Federal prosecutor; no AG veto of German type	AG consent; private-arrest reforms after 2011	AG / AG Canada involvement in practice	Attorney-General consent (s. 268.121)
Specialised unit	Yes (Federal Prosecutor; ZBKV / war-crimes unit)	MPS / CPT and war-crimes capacity, limited trials	RCMP / DOJ war-crimes programme; limited number of completed trials	AFP / CDPP; very limited number of completed trials
Leading cases	Raslan (Koblenz, appeal resolved 2024); Alaa M. (Frankfurt, 2025 judgment pending appeal)	Pinochet; few ICC Act trials; limited number of completed core-crime trials	Munyaneza (2009); Mungwarere acquittal; Eldidi pending	Almost no completed Div. 268 atrocity trials

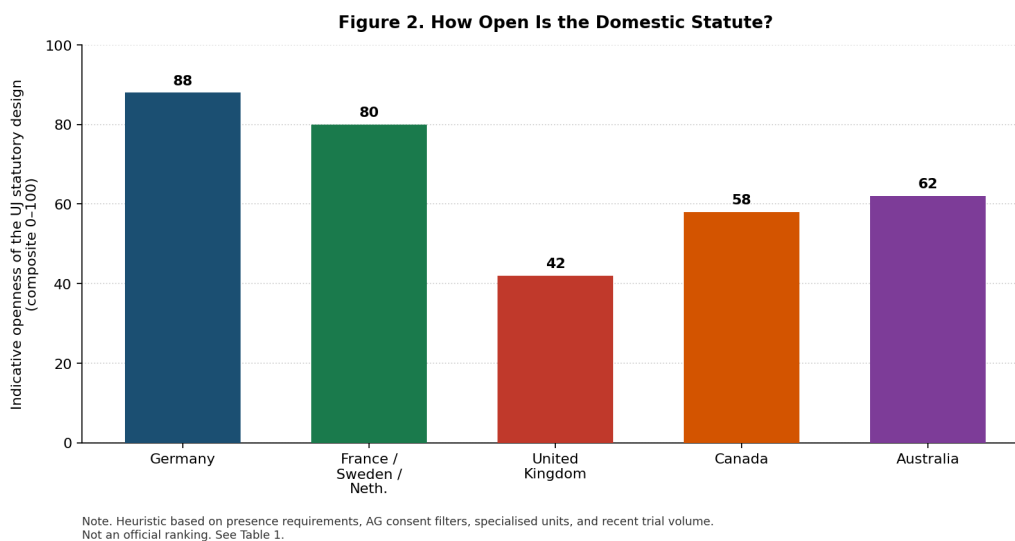


Figure 2. Indicative openness of domestic UJ design.

10. Contemporary Challenges

The first challenge is immunity, already discussed. The second is presence. Conditional universality misses the short-stay suspect and, in the British ICC Act form, even the long-stay visitor who is not a resident. The third is evidence. A trial that must reconstruct a prison in another country will consume years and millions. Witness protection, interpretation, and the ethics of asking survivors to relive torture in a foreign language are not logistics in the thin sense. They are the conditions of a fair trial. Fail them and the conviction is unsafe. Over-protect the accused and the case collapses. There is no cheap version of this work.

A further challenge is selectivity. In practice, cases often arise where suspects and witnesses are physically present, which means that the case record does not necessarily reflect the geographical distribution of international crimes. Syria is over-represented in European courts because Syrians reached those courts as witnesses and as defendants. Other situations with fewer arrivals produce fewer files. Allies are under-represented because immunity and consent filters bite harder. Critics call this judicial imperialism against the weak. Defenders call it the art of the possible. Both descriptions

capture part of the truth. A principle that only ever tries the defeated and the displaced will lose legitimacy even when each individual trial is fair.

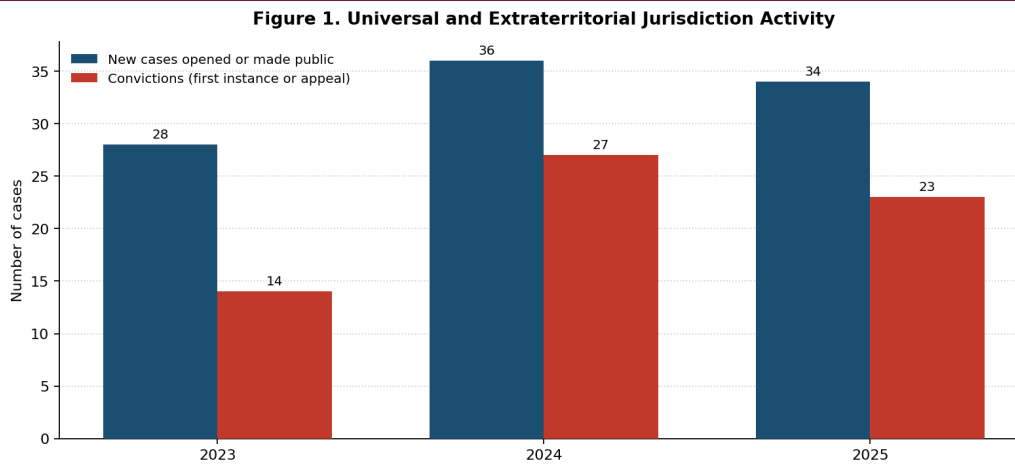
Another challenge is the role of political decision-making within otherwise legal procedures. Attorney-general consent, federal-prosecutor discretion, and the timing of an arrest around a state visit are the everyday form of that challenge. The sixth is coordination with the ICC, with territorial courts that later reopen, and with truth-seeking bodies in the State of commission. Double jeopardy, transfer, and the question of whether a third-State sentence should be served at home after a transition are no longer hypothetical. Assad's fall made some of them concrete.

Resource constraints are another major challenge. Specialized international-crimes units require investigators, prosecutors, translators, analysts and witness-protection measures, and these resources compete with ordinary domestic criminal-justice priorities. A government may support universal jurisdiction in principle while still providing only limited funding. The 2026 Universal Jurisdiction Annual Review reported 34 new cases opened or made public in 2025 and 23 convictions. These figures show significant activity, but they should not be treated as proof of a permanent institutional trend. The number and quality of cases can change with budgets, political priorities and the availability of suspects and evidence. (TRIAL International, 2026).

An eighth challenge is digital evidence. Open-source videos, leaked archives such as the Syria files that civil-society groups have curated, and satellite imagery have made some extra-territorial cases possible that would have died in 1999. They have also created new fairness problems. Authentication, chain of custody, and the right to confront a source who is an anonymous user or a hostile intelligence service are not yet settled in every forum. Digital evidence can expand the available record, but doubts about authenticity, provenance and reliability can also prevent that evidence from being used effectively. Courts that have handled these materials well—and several European chambers have—should publish more of their method. Universality will not scale if every new chamber must reinvent how to watch a video fairly.

A ninth challenge is the defendant who is also a refugee. Many of the reachable suspects arrived as claimants. Charging them can look like a trap laid at the border. Not charging them can look like a safe haven. Refugee law already excludes those about whom there are serious reasons for considering that they committed a crime against peace, a war crime, or a crime against humanity. Exclusion is not conviction. The gap between an exclusion decision and a criminal trial is where Canada has sometimes stopped and where Germany has sometimes continued. How a system treats that gap says as much about its commitment to the principle as the text of its code.

A tenth challenge is time. International crimes do not always prescribe, but witnesses do. A structural investigation that waits ten years for the right defendant may find that the best voices are gone. Statutes of limitation, where they still apply to ordinary domestic charges joined on the indictment, can lop off counts even when the international crime itself remains triable. Speed and fairness pull against each other. Units that cannot do both will do neither well.



Note. Compiled from TRIAL International Universal Jurisdiction Annual Review figures for 2024–2026 editions. Counts include some active- and passive-personality cases reported in the same reviews.

Figure 1. Recent universal and extraterritorial jurisdiction activity (UJAR figures).

Table 2

Legal limits and their practical twins.

Limit	Legal form	Practical form
Immunity <i>ratione personae</i>	Sitting heads of State, heads of government, foreign ministers (Arrest Warrant)	Investigations stall or stay while the person remains in office
Immunity <i>ratione materiae</i>	Official-act immunity; ILC draft art. 7 exception contested	States split on whether atrocity crimes are official acts
Presence and residency	Conditional UJ versus absolute UJ	Suspects transit without arrest where statute requires residence
Political consent	AG or government fiat before charge	Foreign-policy veto dressed as evidential caution
Evidence and witnesses	Beyond reasonable doubt in a distant crime scene	Cost, trauma, translation, and no access to the theatre of war
Selectivity	No legal duty to pick every situation	Diaspora and allied-suspect patterns drive the docket

11. The Future of Universal Jurisdiction

A single global instrument that removes all presence requirements and immunity barriers is unlikely to be the immediate path of development. A more realistic direction is gradual strengthening of existing national systems. This may include specialized units in more States, better evidence-sharing arrangements, joint investigations, more effective mutual legal assistance, and carefully drafted statutory amendments. Political consent requirements may remain, but clearer and reviewable criteria could reduce uncertainty. The 2026 completion of the ILC's work on immunity also provides an important reference point for future national legislation and possible treaty negotiations.

Three assumptions should also be avoided. One is romantic universality that promises a trial for every name on every list. National courts cannot carry that promise and will discredit the principle if they pretend to. Another is the claim that the ICC makes national universality redundant. The Court is busy, contested, and jurisdictionally incomplete. Syria showed the gap. A third is the claim that universality is only a weapon against the Global South. The remedy for selectivity is more even application where evidence and presence exist, not the abandonment of the files that do exist.

If those refusals are honoured, universal jurisdiction will remain what it has quietly become: a backstop for situations the territorial State will not try and the international court cannot try, used most effectively where a diaspora, a statute and a specialised office coincide. This is a more limited

understanding of universal jurisdiction than the older language of *hostis humani generis* might suggest. Even so, this narrower approach has already resulted in final or near-final convictions in serious cases.

Legislative checklists follow from that diagnosis. First, copy a complete catalogue of crimes, including non-international war crimes and a usable crimes-against-humanity offence. Second, decide honestly between presence-based and absolute models, and do not write absolute words that a consent clause then empties. Third, create a specialised unit with a multi-year budget, not a task force that expires with a news cycle. Fourth, put reasoned, reviewable criteria on political consent. Fifth, legislate witness protection that can handle foreign residents. Sixth, join or deepen evidence-sharing arrangements so that Frankfurt and Paris are not rebuilding the same organigram from scratch. None of those steps requires a new UN convention. All of them require a finance ministry and a justice ministry to speak to each other.

Academic writing in this area can also improve by avoiding two common problems. One is counting every extra-territorial case as a universal-jurisdiction case and then declaring a renaissance. Mixed heads of jurisdiction should be labelled as mixed. The other is treating every political filter as a scandal. Some filters exist because universality can be abused as politically motivated use of criminal proceedings against visiting officials of States the forum happens to dislike. A more balanced approach is to retain the jurisdiction while putting safeguards in place against abuse and ensuring that genuine cases have adequate resources. That position is less exciting than either the renaissance narrative or the imperialism narrative. It fits the last twenty years of data better than both.

Finally, victims' participation should be designed rather than improvised. Civil-party models in some civil-law systems have let Syrian survivors sit in the room as more than witnesses. Common-law systems that try these cases will need an equivalent that does not collapse the adversarial trial. Information, protection, and the chance to be heard at sentence are the minimum. A system that treats survivors only as sources of evidence may also weaken the cooperation needed to investigate and prove these cases.

12. Conclusion

The legal limits of universal jurisdiction are immunity *ratione personae* for sitting high officials, a contested exception to functional immunity, presence and residency filters, political consent, and the ordinary demands of a fair criminal trial. The practical limits are evidence, cost, witness care, specialised capacity, and the politics of who flees where and who is welcome to visit. Germany has shown that the principle can convict. The United Kingdom has shown that a celebrated precedent does not guarantee a working statute. Canada has shown that two trials do not make a system. Australia has shown that wide words on the page can live with an empty list of verdicts. India and Pakistan have shown that a legal system can decline the principle altogether and still be a system of law.

These limits do not by themselves make universal jurisdiction unlawful or ineffective. They make it a tool with a specified job. Its practical purpose is to reduce the possibility that people accused of serious international crimes can avoid accountability simply because the territorial State cannot or will not prosecute them, provided that the forum State has the legal and institutional capacity to conduct a fair trial. International criminal law does not need every forum to be that forum. What is needed is a sufficient number of capable forums that understand the limits of immunity, can obtain evidence, and can conduct fair proceedings. This is a more limited expectation, but it is more consistent with the record of the last two decades.

The research question can therefore be answered in a qualified way. Universal jurisdiction is limited by personal immunity for certain sitting senior officials, continuing debate over functional immunity, presence and residence requirements, political consent rules, and ordinary fair-trial guarantees. Its practical limits include access to evidence, cost, language, time, witness protection and

selectivity. Recent German cases demonstrate that universal jurisdiction can result in serious convictions when a State has a suitable statute, specialized prosecutors and access to witnesses. Other systems show that broad language on paper does not by itself create a functioning prosecution system. The contemporary role of universal jurisdiction is therefore best understood as a limited but important mechanism for addressing accountability gaps where the territorial State cannot or will not prosecute and where the forum State can provide a fair trial.

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◆ Data Availability Statement	All data used in this study are derived from publicly available legal sources, including statutes, judicial decisions, treaties and published academic literature cited in the references. No new datasets were generated or analysed.
◆ Ethical Statement	Ethical approval was not required because this study is based exclusively on publicly available legal documents, judicial decisions, treaties and published literature, and did not involve human participants, animals or confidential data.
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