

# The Principle of Universality of Criminal Law and Its Role in Combating Impunity

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## Abstract:

This article aims to highlight the worsening phenomenon of impunity amid the spread and evolution of crime, which has increasingly transcended borders and nations. On one hand, this emphasizes the principle of universality in criminal law as a mechanism for international cooperation, enabling states to exercise jurisdiction over individuals suspected of committing serious crimes, regardless of where these crimes were committed or the nationality of the perpetrator or victim. This principle seeks to close any gaps that might allow impunity at any stage of criminal proceedings, which can sometimes manifest as judicial immunity granted to certain state officials, amnesty systems, or an absence or ambiguity in legal texts.

**Keywords:** Principle of universality, impunity, immunity, criminal liability, victims' protection, amnesty, crime.

## Introduction

Impunity violates certain fundamental rights and duties that should be guaranteed, especially the right to justice, compromised by silence. As a result, the principle of universality arises from the assumption that some crimes are so serious that they impact the international community. Thus, all states have the right to bring legal action against the perpetrators, regardless of their location, the place where the crime was committed, or their nationality or the victims. This principle encompasses such crimes.

Moreover, criminals' ingenuity in committing their offences, leveraging technological and scientific advancements, has enabled them to expand the scope of their activities beyond regional levels, leading to transnational crime. This has created an imbalance between the means of committing crimes and those used to combat them. Therefore, the principle of universality refers to international solidarity in the fight against crime, given the threat that such criminal activity poses to the international community's security. Thus, the state apprehending a criminal on its territory can punish them according to its national laws when prosecution before their natural judge is impossible.

Hence, the significance of studying the principle of universality of criminal law and its role in combating impunity lies in its acknowledgement of international criminal liability for individuals, especially those holding official positions. Previously, states as legal entities acted in place of natural persons regarding international criminal liability. Similarly, individuals in official positions were exempt from accountability for the crimes they committed, whether before their domestic courts or foreign jurisdictions.

**Problem Statement:**

The widespread phenomenon of international criminals escaping punishment, particularly in light of the increase in transnational crimes and the exploitation of legal loopholes in national legislation by offenders to evade criminal responsibility, raises concerns. Moreover, victims fear losing their rights, prompting the international community to unite in search of solutions to this issue.

**Based on this, we raise the following problem statement:** What is the conceptual framework for both the principle of universality and the phenomenon of impunity? What are the reasons for the prevalence of the latter? To what extent does the principle of universality of criminal law contribute to reducing the impunity of perpetrators of serious crimes?

**This study is divided into two main sections:**

**First Section: The Principle of Universality in Criminal Law**

**Second Section: The Concept of Impunity and Its Manifestations**

**First Section: Defining the Concept of the Principle of Universality of Criminal Law and Explaining Its Significance in International Criminal Law**

Addressing the concept of the principle of universality requires defining it and explaining the various terms established by comparative legislation due to the differences in the criminal policies adopted by each state and the differences in their political systems. Based on this, we will first discuss the definition of the principle of universality and then explain its significance.

### **First: Definition of the Principle of Universality of Criminal Law**

Legal scholars addressing the principle of universality of criminal law have referred to various terms, such as the system of global repression, the universality of the right to punish, universal jurisdiction, and the principle of universal or comprehensive applicability<sup>1</sup>. This variation in naming the principle is likely due to differing legislation in each country.

Some have defined it as a principle in international criminal law that includes a criminal jurisdiction held by every state to prosecute perpetrators of international crimes. Each state claims criminal jurisdiction over individuals suspected of committing certain crimes, known as international crimes, regardless of the borders of the claiming state and without regard to the basis of criminal jurisdiction present in domestic legislation, such as the nationality of the accused or the state of residence.<sup>2</sup>

It also refers to the authority granted to the courts of a state to pursue and prosecute perpetrators for acts committed outside its territory, regardless of the location of the crime and without requiring a specific link between the state and the perpetrator of the crime or its victims, regardless of their nationalities<sup>3</sup>.

Suleiman Abdul Moneim defined the "**principle of universality**" as the implementation of a state's criminal law to crimes committed by a perpetrator within its territory, irrespective of where the crime was committed and regardless of the nationality of the accused or the victim<sup>4</sup>.

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<sup>1</sup> Ahmad Ali Mkhadama, *International Criminal Responsibility of Individuals*, Journal of Law and Economics, Faculty of Law, Cairo University, Issue 74, 2004, p. 42.

<sup>2</sup> Mohamed Al-Shibl, *The Principle of Universal Jurisdiction in Light of Harmonization between National Legislation and International Treaties*, previously cited reference, p. 6, available at: [https://www.researchgate.net/publication/336777619\\_mbda\\_alakhtsas\\_alalmy\\_fy\\_dw\\_almwamt\\_byn\\_altshr\\_yat\\_alwtnyt\\_w\\_almahdat\\_aldwlyt](https://www.researchgate.net/publication/336777619_mbda_alakhtsas_alalmy_fy_dw_almwamt_byn_altshr_yat_alwtnyt_w_almahdat_aldwlyt)

<sup>3</sup> Leila Osmani, *International Cooperation in Suppressing International Crime*, Ph.D. Dissertation, University of Oran, Faculty of Law and Political Science, 2013, p. 106.

<sup>4</sup> Suleiman Abdel-Moneim, *The General Theory of Criminal Law*, New University Publishing House, Alexandria, 2000, p. 138.

This definition enables the implementation of a state's criminal law to extend to all crimes without limitation or specification. The application of the principle of universality, being an exception to the jurisdiction of the national judge, includes only those crimes considered to pose a serious threat to the world.

It is also referred to as "**universal jurisdiction**," "**comprehensive jurisdiction**," or "**principle of universal jurisdiction in criminal law**"<sup>1</sup>. Despite the various names, each is synonymous with the others and aligns with the same concept.

**Dr. Sobhi Najm defined it** as the necessity of applying Jordanian penal provisions universally to any person who commits a crime or is apprehended in Jordan, regardless of the territory in which the crime was committed and irrespective of the nationality of the perpetrator, as long as they are a foreigner residing in Jordan. This applies whether his role in the crime is as a principal, accomplice, or participant, provided that this crime affects the entire international community. Therefore, the perpetrator is considered to infringe upon all states' common interests<sup>2</sup>.

**Xavier Philippe** defines it as a legal principle that enables or requires a state to initiate criminal proceedings against perpetrators of certain crimes, regardless of where the crime occurred or the nationality of the perpetrator or the victim. This principle contrasts with the ordinary rules of criminal jurisdiction that require a territorial or personal link to the crime, the perpetrator, or even the victim<sup>3</sup>.

Therefore, the principle of universality is an effective mechanism for international criminal cooperation<sup>4</sup>. Based on this principle, national courts can pursue, punish, and prosecute perpetrators of certain crimes, regardless of where they were committed or the nationality of the perpetrator or the victims. It seeks to ensure that those responsible for committing certain international crimes are brought to justice, thereby

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<sup>1</sup> Ali Adel Qassem Al-Kilani, *Activating National Criminal Enforcement of International Humanitarian Law Provisions*, Zain Legal Publications, Lebanon, 2024, 1st Edition, p. 138.

<sup>2</sup> Mohamed Sobhi Najm, *Criminal Law, General Section, General Theory of Crime*, Dar Al-Thaqafa Publishing and Distribution, 2012, 4th Edition, p. 96.

<sup>3</sup> Xavier Philippe, *Principles of Universal Jurisdiction and Complementarity: How the Two Principles Align*, *International Review of the Red Cross*, Vol. 88, No. 862, 2006, p. 377.

<sup>4</sup> Bouzid Séraphine, *Universal Jurisdiction and the Suppression of International Crime*, *Algerian Journal of Legal Security*, Issue 5, January 2018, p. 4.

reducing impunity<sup>1</sup>. Thus, the state can apprehend and punish criminals in its territory according to national law<sup>2</sup>.

All these definitions are consistent with the fundamental principle of combating crime wherever it exists and eliminating criminal impunity. However, they differ in their application of this principle due to the ideological orientations of each country.

Therefore, we conclude that the principle of universality of criminal law is grounded in the following points:

1. The accused must have committed a serious crime.
2. This crime must impact the security and stability of the international community, meaning its effect is not limited to the territory where it was committed but extends beyond it.
3. The perpetrator must be a foreigner in the state where the crime was committed and also in the state where they are apprehended. This means that the place of committing the crime and the perpetrator's nationality are not taken into account; rather, they are prosecuted wherever they are found.

## **Second: The Significance of Applying the Principle of Universality in International Criminal Law**

The principle of universality derives its importance from:

- The unity of states in combating modern international crime, whose perpetrators belong to various nationalities and whose criminal activities extend to most countries. This emphasizes the necessity for countries to intensify their cooperation in combating organized crime and pursuing these criminals<sup>3</sup>.
- Shared interests among all countries indicate the need for collaboration to fight these crimes. No single state can effectively confront these offences when perpetrators attempt to evade justice by changing their nationality according to favorable laws. This underlines the significance of the principle of universality in targeting these criminals.

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<sup>1</sup> Marwa Al-Sayed Al-Sayed Al-Hasawy, *Global Issues in Criminal Laws*, National Center for Legal Publications, Cairo, 2021, 1st Edition, p. 44.

<sup>2</sup> Abdullah Ouhaiba, *Explanation of the Algerian Penal Code, General Section*, Algeria, 2015, p. 169.

<sup>3</sup> Mohamed Sobhi Najm, *Criminal Law, General Section*, previously cited reference, p. 97.

- As a result, the principle of universality in criminal law seeks to prevent criminals from escaping punishment and finding a safe haven<sup>1</sup> after committing acts that constitute an insult to the international community.
- The principle of universality is a tool to address any gaps in international criminal law regarding the enforcement of penalties for crimes of genocide, crimes against humanity, and war crimes.

### **Third: Scope of Application of the Principle of Universality**

The application of the principle of universality of criminal law, as an exception to the principle of territoriality, includes the most dangerous crimes against international peace and security. Thus, its scope includes both international crimes and global crimes.

#### **1. International Crimes:**

An international crime, in its legal sense, is a human action punishable under criminal law. This action is only punishable because it includes an offence against values of great significance to the international community, which considers international crimes the most severe threats to its interests<sup>2</sup>.

Therefore, an international crime is any act or behaviour, whether positive or negative, that is prohibited by international criminal law and carries a criminal penalty for its perpetrators<sup>3</sup>.

Article 5 of the Rome Statute of the International Criminal Court explicitly defines the types of international crimes, which include genocide, crimes against humanity, the crime of aggression, and war crimes.

International crimes are characterized by certain subjective and legal traits. They represent unlawful acts that violate a rule of international criminal law. These features give them a unique nature that distinguishes them from other crimes. They are regarded as serious offences that are not subject to statutes of limitations. Furthermore, they are not exempt from immunity or official status, nor are they

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<sup>1</sup> Elena Begić, *Accountability for International Crimes*

<sup>2</sup> Gaye Joaquim, *International Crimes: Definition, Suppression, International Criminal Court, Comparative Law*, p. 1.

<sup>3</sup> Ali Abdel-Qader Al-Qahwaji, *International Criminal Law (Major International Crimes)*, Al-Halabi Legal Publications, Lebanon, 2001, 1st Edition, p. 7.

protected by amnesty laws for their perpetrators. Ultimately, the extradition of the criminals is permissible in these cases.

## 2. Global Crimes:

"Global crime" is a modern legal rather than a legislative one. This means that upon reviewing the domestic criminal laws of different countries, no specific crime is categorized as a "global crime." Instead, such crimes are referred to by other names, including transnational crime or cross-border crime. Even in international legislation, encompassing treaties and supplementary protocols, there is a strong emphasis on fighting these crimes.

Among the legal studies that have addressed the definition of global crime, Professor Muhi El-Dine Awad defines it as follows: "A global crime is an internal crime stipulated by domestic law, and countries cooperate in combating it through international agreements that outline the conditions under which domestic penal law applies to these crimes. These agreements also establish that criminals are subject to certain unified rules in international cooperation, ensuring more appropriate penalties for these domestic crimes<sup>1</sup>."

From these definitions, we can extract the features of global crime, as follows:

1. Global crime is an internal crime with a universal nature.
2. It is stipulated by national domestic law.
3. It constitutes a severe violation of the values and interests of the international community.
4. It can transcend the geographical boundaries of where it was committed, as it may occur within the framework of an organized criminal group.
5. To fight it, all countries cooperate based on the international agreements that stipulate this cooperation.
6. It is not limited to a specific type of crime; instead, it encompasses new categories, including drug crimes, human trafficking, cybercrime, corruption, and piracy.

## Section Two: The Concept of Impunity and Its Manifestations

The proliferation of impunity among perpetrators and its serious consequences, particularly in light of the increase, evolution, and diversification of crimes, requires

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<sup>1</sup> Mohamed Muhi El-Din Awad, *Studies in International Criminal Law*, Journal of Law and Economics, Cairo University, Issue 3, September 1965, p. 972.

the establishment of deterrent penalties to address their severity and the destructive impacts that threaten the core interests and values that the international community has long sought to protect and preserve.

Thus, after discussing the definition of the principle of universality and its significance in the first section, this section will focus on the concept of impunity. This will involve defining it as a legal term and examining its manifestations by discussing impunity from both a legal and practical perspective.

### **First: Impunity Definition**

Accountability is the opposite of impunity. Impunity is the inability to legally or practically hold perpetrators of human rights violations accountable in cases where the liability may be criminal, civil, administrative, or disciplinary<sup>1</sup>.

It is also defined as the failure to bring those responsible for serious human rights violations and international law to justice and hold them accountable. This is often attributed to a lack of political will and the absence of legal frameworks to invoke criminal, civil, and moral responsibility against perpetrators of violations of positive law. As a result, this means depriving victims of justice and creating an environment in which individuals can continue to commit violations without fear of criminal accountability and punishment.<sup>2</sup>

Impunity often results from the absence of judicial mechanisms capable of ruling on non-compliance with established legal standards. Punishments for crimes committed are frequently enforced by local courts, making it particularly difficult to apply justice to war crimes or crimes against humanity perpetrated by government officials or individuals under their command during armed conflicts<sup>3</sup>.

### **Second: Impunity Types**

Impunity occurs for two reasons: either by virtue of law or by virtue of reality. It can occur at any phase—before initiating legal proceedings, during them, or after their conclusion.

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<sup>1</sup> Louis Joinet, *Revised Final Report Submitted by the Special Rapporteur on the Issue of Impunity of Perpetrators of Human Rights Violations (Civil and Political)*, October 1997, E/CN4/Sub.2/1997//20/REV1, p. 18.

<sup>2</sup> Hicham Al-Sharqawi, *The Historical and Legal Development of the Principle of Non-Impunity*, Kalimat Publishing, Morocco, 2012, p. 14.

<sup>3</sup> <https://ar.guide-humanitarian-law.org/content/article/5/flt-mn-1-qb/>, accessed on 14/10/2024.

## **1. Impunity in Legal Terms:**

This refers to a situation where impunity arises from the legal rules themselves. In this case, the legal provisions that punish criminal acts are present and allow for criminal prosecutions, therefore holding accountable those responsible for human rights violations. However, existing loopholes in the legal framework enable impunity through:

### **A. Amnesty Laws:**

This is a legal situation resulting from a legal procedure that erases criminal convictions or establishes temporary or personal exceptions within criminal legislation to prevent the prosecution and conviction of individuals accused of committing criminal acts. It nullifies the punishable act, halts prosecutions, and cancels convictions<sup>1</sup>. In this sense, it is one of the means of fulfilling impunity, as granting amnesty without prosecution facilitates the escape of perpetrators from liability.

### **B. Immunity:**

Immunity is one of the most prominent forms of legal impunity.<sup>2</sup> It is a privilege recognized by public and international law that exempts the holder from the burdens or obligations imposed by public law on all individuals within the state's territory, or grants them the advantage of not being subject to the decisions of a public authority in the state, especially the judiciary<sup>3</sup>. Thus, it serves as a reason for exemption from punishment and a basis for inequality before the law, as it constitutes a procedural barrier to prosecution.

## **2. Impunity in Reality:**

Impunity in reality arises from two main cases:

### **A. Absence of Criminal Legal Provisions:**

Impunity occurs in this case either due to a lack of legislative provisions—particularly since some legal systems do not recognize certain acts as crimes—or because the legislator in a particular country has abolished the penalties related to

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<sup>1</sup> Pierre D'Argent, "Reconciliation, Impunity, Amnesty: Which Law for Which Words?", *La Revue Nouvelle, After the Dictatorships: Achieving Justice and Civil Peace*, France, No. 11, November 2003, p. 31.

<sup>2</sup> Hassam Laanani, *The Mechanism of Amnesty for International Crimes from the Perspective of International Law*, Ph.D. Dissertation in Public Law, Faculty of Law and Political Science, University of Oum El Bouaghi, 2017, p. 80.

<sup>3</sup> Youssef Hassan Youssef, *Criminal Responsibility of the Head of State for International Crimes*, Al-Maaref Establishment, Alexandria, 2011, p. 37.

certain illegal acts<sup>1</sup>. As a result, no judicial proceedings can be initiated against the committed act, as it is not regarded as a crime under the law and does not entail any form of responsibility for the perpetrator. The victims have no legal rights against the offender, and impunity is justified here based on the principle of legality in criminalization and punishment, which is considered a cornerstone of international criminal law.

### **B. Ambiguity of Legal Provisions:**

Some legal rules in force at the national level may inadvertently create absolute impunity in practice without theoretically excluding the right to initiate criminal proceedings against individuals accused of committing international crimes.

### **C. Slow Judicial Procedures:**

Slow procedures introduce a negative indicator of the judiciary's integrity and independence. This slowness results from various factors, such as executive authorities' lack of respect for the judicial institution, issues associated with the politicization of justice, or procedural problems regarding witnesses and evidence gathering, leading to prolonged disputes. Consequently, many victims may feel that the perpetrators are escaping justice<sup>2</sup>.

### **Conclusion:**

In conclusion, this study highlights that the principle of universality in criminal law is an effective tool for curbing impunity among perpetrators. Impunity is considered one of the most significant obstacles preventing the international community from upholding the highest standards of international criminal justice. Therefore, implementing the principle of universality has become an urgent necessity for achieving international criminal justice.

For this reason, international criminal law recognizes the authority of national judges to exercise criminal jurisdiction as a means of protecting the interests of the international community, to which they belong. This is achieved without relinquishing their inherent right to exercise jurisdiction according to traditional principles, including territoriality, nationality, and objectivity.

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<sup>1</sup> Safi Al-Jadaan, *Combating Impunity: The Role of International Criminal Space in Transitional Justice, Best Practices for the Syrian Case*, Syrian Center for Human Rights, France, 2014, p. 9.

<sup>2</sup> Omar Siraj, *The Experience of Transitional Justice in Bosnia and Herzegovina*, Report by the Syrian Commission for Transitional Justice, August 2014, p. 15, available at <http://syriatransitionaljustice.org>, accessed on 14/10/2024.

This additional jurisdiction granted to national judges is based on the principle of universality of the right to punish, also known as universal jurisdiction. This principle enables national criminal courts to exercise jurisdiction over any accused individual, regardless of the crime's location or the perpetrator's nationality. This jurisdiction extends from the investigation and prosecution stages through to the trial phase.

To ensure the effectiveness of the principle of universality in ending impunity, it is essential for countries that incorporate it into their laws to harmonize the criminalization standards within their national legislation. This alignment is a significant step toward resolving conflicts between criminal laws and addressing the limitations imposed by the principle of territoriality, thus preventing perpetrators from exploiting legal loopholes that allow them to evade accountability due to disparities in criminalization. Such disparities hinder the achievement of double criminality, a prerequisite for implementing the principle of universality.

Furthermore, international cooperation with neighboring countries should be strengthened, particularly through bilateral agreements concerning the extradition of criminals. It is also vital to establish an international mechanism to monitor the effective application of the principle of universality, ensuring it is not misused for political purposes.

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