A COSMOPOLITAN CRITIQUE ON STATE REFUSAL TO EXERCISE UNIVERSAL JURISDICTION

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Abstract

Despite some controversy surrounding its enforcement, universal jurisdiction is a well-known doctrine within the realm of international criminal law. While only a small number of countries have actively prosecuted grave human rights violations happening elsewhere within their domestic courts, there is still the overlooked question of whether a state could refuse the right to exercise this doctrine. In response to a recent decision by the Indonesian Constitutional Court which makes this an urgent inquiry yet addressed by existing prescriptive scholarship, we borrow the propositions of scholars of the cosmopolitan movement to argue that the answer is an unequivocal 'no'. We invoke philosophies that shape cosmopolitanism in this regard—natural law, social contract, and global justice—to not only offer a response for the inquiry but also stress its exigency. Using the same core premises, we further disprove common counter-narratives that, if entertained, would have detrimental effects on accountability and the spirit of international law at large.

Keywords*: Cosmopolitanism; International Criminal Justice; International Law in Domestic Courts, Universal Jurisdiction*

KRITIK KOSMOPOLITAN TERHADAP PENOLAKAN NEGARA UNTUK MELAKSANAKAN YURISDIKSI UNIVERSAL

Intisari

Terlepas dari beberapa kontroversi seputar penegakannya, yurisdiksi universal merupakan doktrin yang terkenal dalam ranah hukum pidana internasional. Meskipun hanya sedikit negara yang secara aktif menuntut pelanggaran HAM berat yang terjadi di negara-negara lain melalui pengadilan domestik mereka, masih ada pertanyaan yang terabaikan, yaitu apakah suatu negara dapat menolak untuk menggunakan doktrin ini. Menanggapi keputusan Mahkamah Konstitusi Indonesia yang baru-baru ini yang membuat pertanyaan ini menjadi pertanyaan yang mendesak dan belum dijawab oleh kesarjanaan preskriptif yang ada, kami meminjam ide-ide dari para cendekiawan dari gerakan kosmopolitan untuk berargumen bahwa jawabannya adalah "tidak". Kami menggunakan filosofi yang membentuk kosmopolitanisme dalam hal ini-hukum alam, kontrak sosial, dan keadilan global-untuk tidak hanya menawarkan jawaban atas pertanyaan tersebut-tetapi juga menekankan urgensinya. Dengan menggunakan premis-premis inti yang sama, kami lebih lanjut membantah kontra-narasi umum yang, jika dituruti, akan berdampak buruk pada akuntabilitas dan semangat hukum internasional pada umumnya.

Kata Kunci: *Kosmopolitanisme; Peradilan Pidana Internasional; Hukum Internasional dalam Pengadilan Domestik, Yurisdiksi Universal*

A. Introduction

"If we really do believe that all human beings are created equal and endowed with certain inalienable rights, we are morally required to think about what that conception requires us to do with and for the rest of the world."[1]

In 2023, the Indonesian Constitutional Court made a decision that prompted controversy—albeit very short-lived—among human rights scholars and activists.[2] The Court rejected the judicial review raised by prominent legal figures and a civil society organization on Article 5 of the Human Rights Court Law which restricts the jurisdiction of the Indonesian Human Rights Court only to acts perpetrated by Indonesians at home and abroad.[3] In response to the petitioner's claim of contradiction between the Court's narrow scope and the state's objective of ensuring world peace as provided in the 1945 Constitution,[4] the Court argued that the application and enforcement of human rights are based not only upon universality but also particularism allowing for socio-cultural validity that could not be separated from—in an unsurprisingly clichéd manner—Pancasila values.[5]

Suffice it to say, the decision left some more puzzled than before, primarily because the Court chose to get into the politics of law in human rights and clash it with universal jurisdiction, a doctrine grounded on customary international law norms of compelling nature.[6] Although momentous due to the explicit nature of the state's refusal to exercise it, Indonesia is just one among many taking reserved positions in enforcing universal jurisdiction through their legal system, especially by not including provisions allowing for its possibility in their texts.[7] Recent numbers suggest that only around

1 Martha C. Nussbaum, "Patriotism and Cosmopolitanism," Boston Review XIX, no. 5 (1994).

2 "Court Rejects Petition on Human Rights Court," Constitutional Court of the Republic of Indonesia, April 14, 2023.

3 Putusan Mahkamah Konstitusi Nomor 89/PUU-XX/2022 perihal Pengujian Undang-Undang Republik Indonesia Nomor 26 Tahun 2000 tentang Pengadilan Hak Asasi Manusia terhadap Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, 14 April 2023 (MK 89/PUU-XX/2022). See also Undang-Undang Republik Indonesia Nomor 26 Tahun 2000 tentang Pengadilan Hak Asasi Manusia (UU 26/2000), art. 5.

4 Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 (UUD 1945), Preamble.

5 MK 89/PUU-XX/2022.

6 M. Cherif Bassiouni, "International Crimes: 'Jus Cogens' and 'Obligatio Erga Omnes,'" *Law and Contemporary Problems* 59, no. 4 (1996): 63–74.

7 Uche Nnawulezi, Hilary Nwaechefu, and Salim Bashir Magashi, "Addressing the Principle and Challenges of Enforcement and Prosecution under Universal Jurisdiction: Charting New

a dozen countries worldwide actively prosecute crimes within their court systems on the basis of universal jurisdiction.[8] This trend, for instance, is even more pronounced in the Asian region where very few states have invoked it while others have at best opened limited interpretations of the same.[9]

In a world that is increasingly uncertain and marred with a scale of atrocities being committed so blatantly like never seen before,[10] a necessary question pertaining to this can and should be raised: is it right for states to refuse their right to invoke universal jurisdiction?[11] The short answer to that, in the authors' views as students and firm believers of the law as a means of combatting atrocities and upholding human dignity, is a clear 'no'.

This article is a critical piece aimed at exposing the hypocritical stance held by states on the matter by using the lens of cosmopolitanism. In particular, it aims to deal with the action of a state institution—without regard to whether it is done by the judiciary or any other branch of government—officially rejecting the possibility of invoking universal jurisdiction as such.[12] Given the newness of this phenomenon, this article fills a pertinent gap in literature whereby thus far, a number of people have been engaged in predominantly prescriptive scholarship justifying the doctrine and its exercise through cosmopolitan narrations.[13] It attempts to answer the query of what

Pathways for International Justice*," Indonesian Journal of International Law* 20, no. 2 (2023): 273.

8 TRIAL International, "Universal Jurisdiction Annual Review 2024," 16.

9 Xing Yun, "Asia's Reticence Towards Universal Jurisdiction," *Groningen Journal of International Law* 4, no. 1 (2016): 56.

10 Tirana Hassan. "The Human Rights System Is Under Threat: A Call to Action." *Human Rights Watch*, 2024.

11 This article discusses only universal jurisdiction as exercised by state courts. The reason for this, aside from the fact that there exists a growing scholarship on international courts and tribunals, is the relevance of domestic courts today due to the limitations of international avenues and the complementarity principle. See *inter alia* Moses Retselisitsoe Phooko, "How Effective the International Criminal Court Has Been: Evaluating the Work and Progress of the International Criminal Court;" Jo Stigen, *The Relationship between the International Criminal Court and National Jurisdictions: The Principle of Complementarity*. Notre Dame Journal of International, *Comparative & Human Rights Law* 1, no. 1 (2011): 182–210.

12 Thus far, the only reported case in which this has been done is in Indonesia. It is nonetheless important to make an inquiry of the same since, as discussed all throughout the article, it makes for a strong international precedent that pertains to the very fundaments of international law.

13 See *inter alia* Jennifer Biedendorf, *Cosmopolitanism and the Development of the International Criminal Court: Non-Governmental Organizations' Advocacy and Transnational Human Rights* (London: Fairleigh Dickinson University Press, 2019); Adeno Addis, "Imagining the International Community: The Constitutive Dimension of Universal Jurisdiction" in *Globalization and Common Responsibilities of States*, ed. Koen De Feyter, (London: Routledge, 2013); Patrick Hayden, "Cosmopolitanism and the Need for Transnational Criminal Justice: The Case of the

was a hypothesis but is now a grim reality that is the negation.

The discussion of this article is divided into four parts. It starts by tracing the history of universal jurisdiction to then make a case for its timeless relevance in correlation with three philosophical ideas inseparable from its development: natural law, social contract, and global justice. Preemptive negations to the classical arguments of apologists including none other than the Indonesian Constitutional Court are posited, backed up directly by a look at the potential repercussions of non-progress to the very integrity of international criminal justice and even international law as we know it.

B. The Origins of Universal Jurisdiction

To begin, the trajectory of universal jurisdiction can be analyzed in the period of post-World War II. While the theoretical origins of universal jurisdiction remain complex and contested,[14] when examining the Nuremberg and Tokyo trials, the notion of universal jurisdiction promptly snowballed with states embarking on a clear demonstration of their intent in endorsing universal jurisdiction. It is imperative to recognize the advancements since the prosecution of the Nazis for crimes against humanity, as demonstrated by the subsequent formulation of the Genocide Convention.[15] Following suit, the formation of the Geneva Conventions[16] facilitated numerous other international treaties mandating state parties to either extradite or prosecute individuals within their territory under-recognized universal jurisdiction for various crimes.[17]

Despite the historical tie universal jurisdiction has with piracy and slave trading,[18] rooted on the premise that the perpetrators of such acts were *hostis humani generis*—the enemy of all mankind— the crimes presently emphasized

International Criminal Court" *Theoria* 51, no. 104 (2004): 69–95; Roach, "Value Pluralism, Liberalism, and the Cosmopolitan Intent of the International Criminal Court", *Journal of Human Rights* 4, no. 4 (2005): 475.

14 Stephen Macedo (ed.), *Universal Jurisdiction: National Courts and the Prosecution of Serious Crimes under International Law* (Philadelphia: University of Pennsylvania Press, 2004), 169.

15 See generally Convention on the Prevention and Punishment of the Crime of Genocide 1948.

16 See generally Geneva Conventions of 1949.

17 Matthew Garrod, "The Expansion of Treaty-based Extraterritorial Criminal Jurisdiction," In *Research Handbook on Extraterritoriality in International Law*, eds. Austen Parrish and Cedric Ryngaert (London: Edward Elgar Publishing, 2023), 264.

18 Christopher C. Joyner, "Arresting Impunity: The Case for Universal Jurisdiction in Bringing War Criminals to Accountability," *Law and Contemporary Problems* 59, no. 4 (1996): 153, 165.

in the application of most cases of universal jurisdiction by states as a matter of customary international law are genocide, crimes against humanity, and grave breaches of and serious crimes against international humanitarian law.[19] These offenses can be understood to constitute a call for universal jurisdiction as was prompted by the imperative to prevent impunity and deter future criminal conduct in response to grave violations of international law.[20] As these offences comprise a violation of *jus cogens* norms—they thereby generate *erga omnes* obligations. Such obligations are exemplified in notable cases, including the Pinochet precedent wherein the former Chilean dictator was detained in London pursuant to an extradition request from Spain, as well as the prosecution of Adolph Eichmann under Israeli law. These cases stand as prominent—sensational—illustrations of universal jurisdiction in action, demonstrating its invocation in response to egregious international crimes.[21]

Scholars including those of Richard Falk contend that the legal proceedings against Pinochet augmented the significance of international criminal law, exposing the vitality of national courts to function as effective enforcers of the fundamental principles in international law. [22] A comparable use of universal jurisdiction is seen in the 1972 international convention that recognized apartheid as a crime against humanity.[23] Universal jurisdiction becomes apparent as a significant supplementary mechanism for international justice, as it can enhance the jurisdiction of international criminal courts and guarantee extensive jurisdictional reach for infractions of international law.[24]

The evolution of this doctrine coincidingly piqued the interest of academics and civil society organizations, eventually instigating exchanges that set the stage for noteworthy initiatives attempting to systematize it, including the Princeton Principles at the turn of the millennium.[25] These principles are

19 Leila Nadya Sadat, "Redefining Universal Jurisdiction," In *The Globalization of International Law*, ed. Paul Schiff Berman (London: Routledge, 2005), 244.
20 Garrod, "The Expansion," 253.
21 Macedo, *Universal Jurisdiction*, 2.
22 Ibid, 97–8.
23 Richard J. Goldstone, "The Role of Law and Justice in Governance: Regional and Global," in *From Sovereign Impunity to International Accountability: The Search for Justice in a World of States*, eds. Ramesh Thakur and Peter Malcontent (United Nations University Press, 2004), ix.
24 Aisling O'Sullivan, *Universal Jurisdiction in International Criminal Law: The Debate and Battle for Hegemony* (London: Routledge: 2017), 2.
25 See Princeton Project on Universal Jurisdiction, *The Princeton Principles on Universal Jurisdiction* (Princeton, NJ: Program in Law and Public Affairs of Princeton University, 2001)

intended to be useful to legislators seeking to ensure national laws conform to international law and to judges interpreting the law according to the state's international obligation.[26] It is also a tool for citizens to better understand what international law is and what it might become.[27] This also alludes to the cosmopolitan view that universal jurisdiction when properly exercised will fulfil the moral obligation to a shared goal. As rightly noted by the project's chair, however, they are not intended to end the many controversies that surround universal jurisdiction but make prompt a reasonable and responsible exercise by national courts to promote greater justice[28] for which in this paper we argue through global justice with universal jurisdiction.

Traditionally, national courts functioned as the exclusive venues for prosecuting international crimes. Now, they have increasingly assumed a prominent role in adjudicating cases involving foreign nationals for offences committed beyond its borders.[29] National courts can accomplish this by employing theories of universal jurisdiction, which provide an exception to the conventional principle that states typically enforce their penal laws inside their own territories.[30] This reinforces the position of the international human rights movement which embraces universal jurisdiction to bolster accountability for gross human rights violations.[31] Moreover, this illustrates how the realization of the theory of universal jurisdiction in itself is predicated primarily on the notion that some crimes are so heinous that they offend the interest of all humanity—indeed, they imperil civilization itself—as a result, any state may, as humanity's agent, penalize the perpetrators.[32]

C. A Case for Cosmopolitanism

Among the earliest ideas in eighteenth-century enlightenment in

26 Ibid, 26.
27 Ibid.
28 Ibid, 12.
29 Antonio Cassese, "On the Current Trends Towards Criminal Prosecution and Punishment of Breaches of International Humanitarian Law," *European Journal of International Law* 9, no. 1 (1998): 2 para. 17; Theodor Meron, "Is International Law Moving Towards Criminalization?" *European Journal of International Law* 9, no. 1 (1998): 18.
30 Sadat, "Redefining," 243.
31 Luc Reydams, *Universal Jurisdiction: International and Municipal Legal Perspectives* (Oxford: Oxford University Press, 2003), 1.
32 Kenneth C. Randall, "Universal Jurisdiction Under International Law," *Texas Law Review* (1988), 789.

philosophical thoughts is the birth of what Kant labels as cosmopolitanism.[33] Derived from the ideas of morality, the realms of this proposition on some universality throughout our existence of one humankind under the same cosmos spread to culture and politics.[34] It therefore comes as no surprise that the very conception of today's international human rights regime—arguably to a degree similar to other facets of international law—draws strong inspiration from and complementally adds into the understanding of cosmopolitanism.[35]

The constitution of modern nation-states, in the views of Kant, poses challenges to the upholding of human rights in its rudimentary forms as per the proposition of cosmopolitan morals and justice by virtue of the overly glorified majesty of the state as an institution of power.[36] Cosmopolitanism, especially as a polity in the extremity, has been subject to a fair share of critique by the likes of Hegel on grounds such as realism and duality with relevance to the Westphalian past and the cosmopolitan future.[37] In an effort to tackle these issues, new-wave cosmopolitan thoughts are introduced more contextually across fields like international law and international relations,[38] arguing essentially the way to create a truly international order based on the rule of law is by moving beyond or deeper from the traditional thesis of sovereignty.[39]

Here, we argue that there is a strong interlinkage between cosmopolitanism and human rights as such that leads to a strong case for universal jurisdiction which serves to bring humanity nearer to the realization of the so-called 'utopia'. We go back to natural law's creeds to reaffirm the pertinence of

33 See generally Immanuel Kant, *Kant: Political Writings,* ed. H S Reiss. *Cambridge Texts in the History of Political Thought. 2nd ed*. (Cambridge: Cambridge University Press, 1991).

34 See Adam Etinson, "Cosmopolitanism: Cultural, Moral, and Political." in *Sovereign Justice: Global Justice in a World of Nations*, eds. Diogo P. Aurélio, Gabriele De Angelis, and Regina Queiroz, (Berlin: De Gruyter, 2011).

35 Samuel Moyn, "The Universal Declaration of Human Rights in the History of Cosmopolitanism," *Critical Inquiry* 40, no. 4 (2014): 367.

36 Mogens Chrom Jacobsen, "Kant and the Modern State System," *Jahrbuch für Recht und Ethik/ Annual Review of Law and Ethics* 17 (2009): 93.

37 See Georg Wilhelm Fredrich Hegel, *Hegel: Elements of the Philosophy of Right*, ed. Allen W. Wood. *Cambridge Texts in the History of Political Thought* (Cambridge: Cambridge University Press, 1991).

38 See generally Robert Fine. *Cosmopolitanism* (Oxford: Routledge, 2007); Jorge E.Núñez, *Cosmopolitanism, State Sovereignty and International Law and Politics: A Theory* in *The Ashgate Research Companion to Cosmopolitanism*, eds. Maria Rovisco and Magdalena Nowicka (Surrey: Ashgate, 2011), 153.

39 Ibid.

cosmopolitanism, putting it within the framework of the state so as to ascertain its relevance regardless of form, and closing it up with an emergent voice that is of global justice.

1. Natural Law and the Universality of Conscience

We begin by considering Aquinas—whose scholarship has been recognized as principal in the natural law theories of the thirteenth century—who posits that natural law is universal to all.[40] Illustrated by Aquinas' natural law concept is an articulation of fundamental moral principles drawn from reason, therefore designating the corpus as natural due to its rules which are accessible to individuals employing human reason, and as the law given which comprises behavioural prescriptions.[41] The distinction between natural and positive law, which was significant in early natural law scholarship, re-emerges: the law of nations, as a human construct, is considered positive law, notwithstanding its impact from natural law.[42] Consequently, universal jurisdiction caters for certain crimes that contravene *jus cogens* norms therefore warranting states that infringement of natural law is to be universally condemned.

Meanwhile, Vattel, another prominent scholar, presupposes that the law of nature establishes fundamental obligations to which man will inherently adhere in their interactions with other men—a concept that can arguably be mirrored in the relations between states.[43] In tandem with preceding natural law theorists, Vattel perceives natural law as a universal principle ascertainable by reason, originating from the essence and nature of man and objects in general.[44] Here, we identify a potential direct correlation between practice alongside moral science.[45] In application of the doctrine of natural law to international law, Vattel was compelled to adopt the established Roman law division between natural and positive law, depicted as the necessary law

40 Joseph Boyle, "Natural Law and International Ethics," In *Traditions of International Ethics*, edited by Terry Nardin and David Mapel (New York: Princeton University Press), 113.
41 Ibid.
42 See generally Charles Covell, *The Law of Nations in Political Thought A Survey from Vitoria to Hegel* (New York: Palgrave Macmillan, 2009).
43 Thomas Weatherall, *Jus Cogens, International Law and Social Contract* (Cambridge: Cambridge University Press, 2015), 117.
44 Ibid.
45 Ibid.

of nations (*droit des gens nécessaire*) and the voluntary law of nations (*droit des gens volontaire*).[46] This aligned with what nineteenth-century prominent philosophers—among whom were Bentham, Hegel, and Kant—articulated about a concept of a law of nations, partially based on ideas of natural law.[47] Taking this necessary law of nations—which assumes obligations arise *erga omnes*—attributable to imperative law within the framework of a universal society of the human race.[48] Consequently, this can be applied by analogy to universal jurisdiction as an acknowledgement by contemporary international law as a collective legal interest in fulfilling obligations derived from peremptory norms, along with the affirmative duty of states to address serious breaches of these obligations.

Fundamentally, these commitments have been acknowledged by precedent since 1970 as legal duties owed to the world community collectively.[49] *Erga omnes* duties confer upon all nations a legal interest in the fulfilment of key commitments of international constitutional significance by all other states. [50] Therefore, this would entail that states cannot deflect themselves from adhering to *jus cogens* norms, which mandate conformity under all circumstances. Collating this with the scholarship of Aquinas and Vattel, arguably these align with the effects and principles of natural law, offering a moral foundation that supersedes local laws in cases of *jus cogens*—natural law—violations. Consequently, this development may very well indicate a favorable implementation of prior natural law principles on an international scale, therefore urging for the application of universal jurisdiction.

Adding to this, Kant asserts that we can will our actions as exemplifications of a principle applicable to rational agents and not merely adopt it arbitrarily for ourselves,[51] therefore promoting the maxim of the law of nature. Thus, natural law is an integral component of the natural system, in which we all act as participants.[52] Here, it is understood that Kant's philosophy operates on

46 Ibid, 118.
47 Covell, *The Law of Nations*, 11.
48 See generally Weatherall, *Jus Cogens.*
49 *Barcelona Traction, Light and Power Company, Limited* (Belgium v. Spain), Judgment, International Court of Justice Reports 1970, p. 3, 32.
50 Weatherall, *Jus Cogens*, xiv
51 Dinebari D. Varaba and Charles N. Berebon. "The Philosophy of Law of Immanuel Kant." Jurnal Tamaddun 20, No. 2 (2021): 271–282.
52 Ibid.

the premise that political law principally pertains to individual rights, with its main objective being the safeguarding of external freedom.[53] Accordingly, if the objective of political law is to ensure the exercise of external freedom, it may then be characterised as a framework of conditions that allows individual choices to be harmonised with the choices of others under a universal law of freedom.[54] The key term to underline in the likes of Kantian thinking is a universal law of freedom, which arguably refers back to a system of universal jurisdiction for all.

Subsequently, when considering cosmopolitism, its perspective on law is not on state interactions, but on the status of individuals in their relations with states of which they are not citizens.[55] For Kant, the essence of cosmopolitan law is the right to hospitality, hence the law should be confined to the principles of universal hospitality.[56] Accordingly, Kant elucidates the meaning of hospitality to mean an assertion a foreigner entering unfamiliar territory has to receive treatment from its proprietor without any animosity.[57] It can be surmised that there is an assertion of upholding rights that achieve perpetual peace, governed by cosmopolitan law, which Kant holds as a universal right.[58] From this, it is alluded that Kant posits the objective of political law to ensure the exercise of external freedom, which may be characterised as a framework of conditions that harmonises individual choices with those of others under a universal law of freedom.[59] In summary, Kant maintains that the objective of political law is to ensure that each individual's decisions may be amalgamated with those of others.[60] Consequently, this confirms the notion of a social contract which by nature is universal to all.

2. Social Contract and the State's Role in Protecting Rights

53 Fernando R. Tesón, "The Kantian Theory of International Law," In *The Nature of International Law*, ed. Gerry Simpson (London: Routledge, 2017), 557–606.
54 Paul Guyer, *Kant on Freedom, Law, and Happiness* (Cambridge: Cambridge University Press, 2000), 240.
55 See Varaba and Berebon, "The Philosophy of Law of Immanuel Kant."
56 See generally Jyotsna G.Singh, and David D. Kim (eds.). *The Postcolonial World* (London: Routledge, 2017).
57 Vanessa De Oliveira Andreotti, (ed.) *The Political Economy of Global Citizenship Education* (London: Routledge, 2024), 307.
58 Varaba and Berebon, "The Philosophy of Law of Immanuel Kant," 277.
59 See generally Guyer, *Kant on Freedom, Law, and Happiness*.
60 See Varaba and Berebon, "The Philosophy of Law of Immanuel Kant."

When exploring the doctrine of social contract, it is frequently attributed to the state's role in protecting rights, vis-à-vis acting as the source of, or explanation for, and the elevation of fundamental human rights to the prerogative of *jus cogens*.[61] Essentially, the notion of social contract delineates essential individual rights acknowledged by society, therefore simultaneously implying duties to uphold those rights for other members of society.[62] Hence, the primary result of the social contract is the formation of civil society as the means to safeguard individual rights apropos other persons.[63] This suggests a universal social consensus created by humanity as such with a view to collectively safeguard a common set of rights flowing directly from a universal concept of human dignity.[64]

Where then can the discussion of universal jurisdiction reconcile with the notion of social contract? Take the sanctioning of *jus cogens* international crimes—the finality of sanctions fosters the reinstating of human dignity for any given victim—it symbolically underscores the intrinsic importance of human dignity for humanity as a whole.[65] This, in the Kantian angle, likewise restores the human dignity of the perpetrator of the offence. Since Kant's objective was to broaden the philosophy of right beyond national confines in what may be termed extra-societal interactions, this also alluded to interactions between states collectively.[66] Accordingly, at every level of interaction, a state of public right is realised through the safeguards indispensable to the preservation of social equilibrium.[67] In understanding the fundamental premise of the social contract of Enlightenment, one will notice that its vantage point predicates the emergence of political order upon the protection of societal values necessary to safeguard individual welfare within a community[68]—therefore supporting

61 Weatherall, *Jus Cogens*, xvi.
62 Ibid.
63 Michael Lessnoff, *Social Contract Theory* (Oxford: Basil Blackwell, 1991), 3.
64 Weatherall, *Jus Cogens*, xvi.
65 M. Cherif Bassiouni, "The Philosophy and Policy of International Criminal Justice," in *Man's Inhumanity to Man: Essays on International Law in Honour of Antonio Cassese*, eds. Martinus Nijhoff, Antonio Cassese and Lal Chand Vohrah (The Hague: Kluwer Law International, 2003), 115 para. 6.
66 Robert Fine. "Cosmopolitanism and Natural Law: Rethinking Kant." In *The Ashgate Research Companion to Cosmopolitanism*, edited by Maria Rovisco and Magdalena Nowicka (Ashgate, 2011), 153.
67 Immanuel Kant, "Metaphysics of Morals," in *The Cambridge Edition of the Works of Immanuel Kant*, ed. Mary J. Gregor (Cambridge: Cambridge University Press, 1996), 309, para. 372.
68 See generally Weatherall, *Jus Cogens*.

the important role of universal jurisdiction as an accountability measure for the purpose of safeguarding the welfare of all. This turns back to cosmopolitanism as an ideal solution, as a law pursuant to Kant's notion of perpetual peace is the extension of a just nation involving individuals as citizens of a global civil society.[69]

Of course, social contract as a concept has been proposed in several other different variants. Amongst the scholars, Hobbes described the social contract as a process whereby individuals gave up all their rights in exchange for protection from life in a brutal state of nature[70]—albeit a controversial subset of Hobbes' argument is that there is an almighty state (leviathan) providing security with a demand for unquestioned obedience—it can be charitably viewed by analogy that Hobbes also possess the idea that the state in control must operate to protect. Rousseau, on the other hand, begins by distinguishing the natural man as a peaceful and timid entity whose primary impulse is to retreat rather than confront; it is but a man's inclination towards aggression, which arises from the customs and experiences of societal conditions, that corrupt him and compel him to form artificial alliances to engage in conflict with one another.[71] Thus, the social contract serves as a mechanism to facilitate fundamentally direct democratic administration. In this regard, individual autonomy would be forfeited, and the general will of society would become the central focus.[72] In the same vein, the absence of security in the untamed state of nature, tainted by the social condition, engenders a scenario akin to the Hobbesian state of nature, necessitating that individuals safeguard the primary law of nature, self-preservation, by forming a social contract.[73] Hence, instead of negating one's individuality by submitting it to majority rule, Rousseau contended that individuals can only realize their potential by means of involvement in a greater collective.[74] Implicitly, this aligns with the notion that universal jurisdiction as an external intervention can be justified to

69 Pavlos Eleftheriadis, "Cosmopolitan Law," *European Law Journal* 9, no. 2 (2003): 241 para. 63.
70 See generally Thomas Hobbes, *Leviathan* (London: Penguin Books, 1982).
71 See Jean-Jacques Rousseau, "The State of War" in *Rousseau on International Relations*, eds. Stanley Hoffmann and David Fidler (Oxford: Clarendon Press, 1991).
72 Weatherall, *Jus Cogens*, xvi.
73 John B. Noone Jr. "Rousseau's Theory of Natural Law as Conditional." Journal of the History of Ideas 33, no. 1 (1972): 23, 31.
74 Weatherall, *Jus Cogens*, xvi.

restore freedom and equality for all, but doing so as a collective state.

Arguably, prominent scholar Locke can also be deduced to be in favor of universal jurisdiction. This can be inferred from his depiction that perfect freedom and equality is the natural state of man—to be achieved by setting the foundation for the establishment of civil society—through a cooperative social condition guided by a single Law of Nature.[75] Locke advocates for the preservation of the state of nature, granting each individual the freedom to punish those who violate the law to an extent that averts more infractions.[76]

Notwithstanding Locke's assertion that individuals do not join organised society to relinquish all their rights or to attain universal equality, the core of his social contract theory is that individuals consent to societal structures specifically to ensure the protection of their rights by a central authority.[77] Essentially, his social contract theory is interpreted being a form of tacit consent.[78] This implicit consent is characterised as a sort of voluntary agreement and acceptance wherein individual involvement in and enjoyment of elements of civil society signifies their intention to be bound.[79] According to Locke, pre-state societies were fundamentally unstable since all individuals had the authority to assert their own rights. Hence, choosing to enter the state would result in a specific relinquishment of individual freedoms, therefore granting state institutions the capacity to maintain stable and predictable interactions with society.[80] The 19th and early 20th century struggle for human rights and fundamental freedoms have culminated in the conception of human rights as a safeguard against the arbitrary and abusive actions of the state, and, although Locke would very well reject such actions, his primary objective was to safeguard individuals against arbitrary or violent conduct among themselves.[81] In any case, this would also fall neatly with universal jurisdiction as a form of revolt, where if a government fails to safeguard rights or abuses the natural rights of citizens, the social contract beckons other states

75 See generally John Locke, *Two Treatises of Governmen*t (London: Everyman, 2003).
76 Ibid.
77 Weatherall, *Jus Cogens, International Law and Social Contract*, (Cambridge: Cambridge University Press, 2017), xvi.
78 See generally Locke, *Two Treatises.*
79 John Dunn, "Consent in the Political Theory of John Locke," *The Historical Journal* 10, no. 2 (1967): 153.
80 Weatherall, *Jus Cogens*.
81 Ibid, xvi–xvii.

to intervene based on this moral obligation. In essence, the guiding principle of civil society is to maintain the law of nature, with individuals articulating this collective interest by yielding their personal rights to enforce the social contract, to reciprocate for a political system that safeguards their natural rights.

In the same vein, there is an urgency to consider the international dimension of social contract in today's interconnected world—where, states are responsible not just for their own citizens but for protecting human rights globally. The capacity for a civil society in the international community of states arises from the general legal interest of all states in the performance of obligations arising from peremptory norms.[82] Consequently, the pragmatic implications impose specific obligations on all states addressing breaches of these peremptory norms, alluding again to universal jurisdiction as part and parcel for a state to protect as part of the social contract.[83] Moreover, it is further accepted as a duty for third states to engage in collective action to confront significant violations of responsibilities *erga omnes*, functioning as *actio popularis*.[84] These *erga omnes* obligations are seen articulated through worldwide political initiatives advocating a duty to protect in an era of accountability, invoking fundamentally community-oriented principles.[85] Ultimately, when national courts effectively exercise universal jurisdiction in tandem with internationally recognised due process principles, they uphold not only their respective interests but also the fundamental interests and values that are shared with the international community.[86] Additionally, this reflects the obligation *aut dedere aut judicare* which obligates states to utilise their authority to sanction infractions of peremptory rules under the principle of universal jurisdiction—thereby precluding impunity for breaches of jus cogens[87]—thus affirming the state's role in protecting rights in lieu of an agreed social contact.

82 Ibid, 456.
83 Ibid.
84 Ibid.
85 Ibid.
86 Macedo, *Universal Jurisdiction*, 18.
87 Weatherall, *Jus Cogens*, 456.

3. Global Justice and Humanity's Shared Duty

The writings of John Rawls throughout the infant years of international law influenced the creation of a movement so intertwined with human rights and dignity known commonly as global justice. In one of his seminal works, Rawls put forward the argument that people have with their rights so inseparable and morally imperative that they are grounded in principles of justice that transcends societal constructs of government and the arbitrary borders born of statehood.[88] While his brave claim has been criticized by other scholars such as for being 'statist' in the operational sense, it nonetheless lays a strong foundation for a case against divisive paradigms in the enforcement of human rights.[89]

Global justice is a conception that emphasizes the centrality of human beings instead of the state shell.[90] The theory in itself solicits many questions across a number of different fields, from which economic problems should be prioritized as important problems for global justice to who should bear responsibility for climate change rapidly unfolding today.[91] It is thus not surprising that interlinkage between the notions of global justice and cosmopolitanism in the moral—and arguably political—senses have been drawn, calling for less border-confined thinking to tackling issues closely intertwined with rights.[92]

Global justice has primarily garnered support from moral cosmopolitans on economic matters such as the tackling of poverty, but explorations as to its efficacy within the realms of politics in a globalized world have been made.[93] The moral force that purports the urgency of a global justice-driven perspective, which could be traced back to Kant,[94] gave birth to subsidiary

88 See John Rawls, *The Law of Peoples* (Harvard: Harvard University Press), 1999. See also Hobbes, *Leviathan*.

89 Alyssa R. Bernstein, "Human Rights, Global Justice, and Disaggregated States: John Rawls, Onora O'Neill, and Anne-Marie Slaughter," *The American Journal of Economics and Sociology* 66, no. 1 (2007): 92 para. 6.

90 Gillian Brock and Nicole Hassoun , "Global Justice" *Stanford Encyclopedia of Philosophy*, (2023)

91 Ibid.

92 See, for example, Charles R. Beitz, "Cosmopolitanism and Global Justice," *The Journal of Ethics* 9, no. 1 (2005); Andrew Kuper, "Rawlsian Global Justice: Beyond the Law of Peoples to a Cosmopolitan Law of Persons," *Political Theory* 28, no. 5 (2000).

93 See Charles R. Beitz , *Political Theory and International Relations* (Princeton: Princeton University Press, 1999).

94 See Sylvie Loriaux, *Elements in the Philosophy of Immanuel Kant*: *Kant and Global Distributive*

doctrines including distributive justice. Referred to in the mainstream for questions pertaining to the global governance of health to the environment,[95] its core premise that mankind is verily intertwined and should therefore strive to fulfill the needs of all human beings as a unity regardless of formalistic boundaries is one that traverses into the broader human rights framework, including those of civil and political nature.[96]

Interdependence is a word oft repeated in the discourse of international relations and the politics of human rights.[97] The domain of this timely moot ranges from ensuring that the means of sustenance are available to all through equitable international trade governance to justification for humanitarian intervention based on the responsibility to protect.[98] The complexity of today's problems in human rights thanks to the increasingly advanced society and therewith the potentialities for violations toward the right to life among other things underscores the need for actors of sufficient capacity to take concrete, due measures to ensure that justice is served and human rights are upheld.

Having established the importance, the query that remains is that of the way that global justice should be implemented. It needs to be acknowledged that cosmopolitan abstractions indeed find its shortcoming in real-world operationalization, causing some to be skeptical of it in its entirety.[99] The role of the state is chiefly a matter of dissidence whereby the powers and sovereignty vested upon it by way of the classical social contract are contested against the need for individual rights-focused actions.[100] The original position from which the agenda ought to be initiated is the basic argument that Kuper eloquently

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Justice (Cambridge: Cambridge University Press, 2020).

95 See Benedict Sheehy, Ying Chen, and Juan Diaz-Granados, "Rethinking Global Distributive Justice: Legal and Economic Norms Addressing Crises of Global Health, Hunger, and Sustainability*," Georgia Journal of International and Comparative Law* 52, no. 1 (2024).

96 This goes back to the provisional list of principles that people could reasonably endorse as argued in Rawls, *The Law of Peoples*.

97 See Simona Ţuţuianu, *Towards Global Justice: Sovereignty in an Interdependent World* (Hague: T.M.C. Asser Press, 2013).

98 Ibid. It should be noted that the possibility to invoke the responsibility to protect doctrine does not in itself mean that such intervention is the only option there is nor should it be used as primary resort, especially given the troubled history of its institution and practice. See generally Philip Cunliffe (ed), *Critical Perspectives on the Responsibility to Protect: Interrogating Theory and Practice* (London: Routledge, 2011).

99 Bernstein, "Human Rights," 88–90.

100 Robert L. Simon, "Global Justice and the Authority of States." The Monist 66, No. 4 (1983): 569.

answered through the conception of a functionally plural sovereignty.[101] One could argue that the idea of nesting rights at the global level and recognizing vertical and horizontal dispersions centered upon democratic rights form the basis of responsive global governance.[102]

The exercise of universal jurisdiction is one form of global justice. Given the nature of human rights and its high moral importance requiring respect by all,[103] and recognizing the interconnectedness of all stakeholders in the responsibility to ensure it,[104] states as vehicles of governance equipped with the means of enforcement have the obligation to resort to some sort of tangible measure when they observe the existence of injustice and violation to human rights elsewhere. When state acquiescence in the event of human rights atrocities contradicts the very ideals that cosmopolitanism stands for, universal jurisdiction becomes of exigency.

Global justice is the culmination of the cosmopolitan agenda. It wraps around the two ideas that precede it in that the rights inherent upon a human being that is protected by institutions like the state are to be promoted by any entity holding authority anywhere in our shared cosmos. It is our shared duty as a species to make right of what has wrongly been done upon others, more so when committed by competent authorities that should themselves uphold rights, to an extent beyond our conscionable acceptance and impression of justice.[105] The criteria qualifying a conduct to be a matter falling within universal jurisdiction is so grave that it falls under the definitional parameter of peremptory norms,[106] entailing not least the duty to prosecute or to extradite.[107]

D. Counterarguments and Their Negations

Despite all the above reasons in support of the doctrine of universal

101 Kuper, "Rawlsian Global Justice," 34.
102 Ibid.
103 See Rawls, *The Law of Peoples*.
104 See Ţuţuianu, *Towards Global Justice*.
105 Theodore Parker, "Of Justice and the Conscience," in *Ten Sermons of Religions (1852)* (Montana: Kessinger Publishing, 2010), 2. See also John Rawls, *A Theory of Justice, 2nd ed* (Cambridge: Belknap Press of Harvard University Press, 1999).
106 International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, Supplement no. 10 (A/56/10), chp.IV.E.1, November 2001 (ARSIWA).
107 Colleen Enache-Brown and Ari Fried , "Universal Crime, Jurisdiction and Duty: The Obligation of Aut Dedere Aut Judicare in International Law," *McGill Law Journal /Revue de Droit de McGill* 43 (1998): 625, para. 6.

jurisdiction, data again clearly shows that there is still resistance to its acceptance, let alone enforcement.[108] It is in principle insurmountably easy to dismiss any apologetics simply by referring to the *erga omnes* nature of universal jurisdiction since its invocation is contingent upon a *jus cogens* violation.[109] However, we would like to use this opportunity to briefly run through some of the most often cited claims made by the opposers of universal jurisdiction and debunk them specifically by drawing lines between them and the presupposing narrative of cosmopolitanism which anchors our stance.

1. State Sovereignty and Non-Interference

A point of concern surrounding the exercise of universal jurisdiction is that it may, when not conditioned by the appropriate norms and implemented prudently, be employed to resolve political grievances and intrude onto matters that are properly within the realm of legitimate self-governance.[110] Howbeit, this was not the case for Pinochet's court processes, as it proved to offer Chileans a favorable opportunity to reassess the atrocities of the dictatorship.[111] That being said, there has always been an increase in cases adopting universal jurisdiction. According to Langer, there were 32 universal jurisdiction cases that resulted in a completed trial between 1961 and June 2010.[112] Moreover, 29 universal jurisdiction trials were found to have been completed between July 2010 and 2017.[113] These figures of completed trials are a conceivably more accurate measure of states' endorsement and commitment to the notion of universal jurisdiction.[114] Moreover, seeing that the pursuit of formal inquiry, indictment, and trial in such situations can be a costly and challenging endeavour for prosecuting states, it appears that the choice predominantly rests with the state officials.[115] Consequently, the frequency

108 TRIAL International, "Universal Jurisdiction Annual Review 2024."
109 Bassiouni, "International Crimes"
110 Macedo, *Universal Jurisdiction*, 3.
111 Ibid.
112 Máximo Langer, "The Diplomacy of Universal Jurisdiction: The Political Branches and the Transnational
Prosecution of International Crimes," *American Journal of International Law* 105, no. 1 (2011): 105.
113 Mackenzie Eason and Máximo Langer, "The Quiet Expansion of Universal Jurisdiction," *European Journal of International Law* 30, no. 3 (2019): 779–817.
114 Langer, "The Diplomacy," 105.
115 Eason and Langer, "The Quiet Expansion," 790.

of completed trials then serves as—albeit a more expensive indicator of support—a dependable metric of the disclosed preferences of prosecuting states towards universal jurisdiction.[116]

In fact, recent trends seem to propose an increasingly prevalent application of universal jurisdiction, indicating that its implementation is not intrinsically an issue of contention for states. There has been data collected that indicates that 36 new investigations were launched in 2023, representing a significant 33% rise over 2022's overall case count.[117] In 2022, there were 40 war crime charges, 34 crimes against humanity charges, 17 genocide charges, and 30 suspects considered as economic actors.[118] Subsequently, 2023 witnessed an increase with 60 war crime charges, 50 crimes against humanity charges, 22 genocide charges, and 32 suspects considered as economic actors.[119] These statistics alone could be indicative of how misleading it would be to overgeneralize and to suggest that universal jurisdiction prosecutions will always or even typically be regarded as outside meddling[120]—attributing to the increased use of it every year. In fact, these cases depict the aspirations and anticipations that victims and survivors have for foreign domestic courts, and the increasing capacity and readiness of several jurisdictions to significantly contribute to the struggle against impunity for international crimes.[121]

In all fairness, there is merit to be had when considering the vivid North-South divide in the geographical distribution of forum jurisdictions and countries of commission for the crimes prosecuted on the basis of universal jurisdiction.[122] This explains the reservations shared by people and governments from the Global South, especially of African countries, on the state of affairs of universal jurisdiction's practice by the International Criminal Court.[123] This is without question a well-founded disquietude, but it is frankly not mutually

116 Ibid.
117 TRIAL International, "Universal Jurisdiction Annual Review 2024," 16.
118 TRIAL International, "Universal Jurisdiction Annual Review 2023," 13.
119 TRIAL International, "Universal Jurisdiction Annual Review 2024," 16.
120 See generally Macedo, *Universal Jurisdiction.*
121 TRIAL International, "Universal Jurisdiction Annual Review 2024," 11.
122 Ibid.
123 See *inter alia* Kamari M. Clarke, Abel S. Knottnerus, and Eefje de Volder , *Africa and the ICC Perceptions of Justice* (Cambridge: Cambridge University Press, 2016); Mandiaye Niang, "Africa and the Legitimacy of the ICC in Question," *International Criminal Law Review* 17, no. 4 (2017); Lucrecia García Iommi, "Whose justice? The ICC 'Africa problem'," *International Relations* 34, no. 1 (2020).

an exclusive concern vis-à-vis the cosmopolitan's case here. The very same countries, discounting resource capacity and willingness, do have the same rights under this doctrine to prosecute crimes committed in other parts of the world including the Global North as far as such a case can be made.[124]

In any case, the argument of state sovereignty must be discussed in parallel with the bias which may occur in states that feel victimised, as there would very well be less likelihood of impartial justice delivered.[125] Take for instance Bosnian and Rwandan courts trying to prosecute enemy war criminals today.[126] It appears that non-involved countries are more likely to deliver impartial justice, albeit less likely to hold such trials in the first place.[127] Nevertheless, the risks attributed to the fear of appearing to have overstepped when utilising universal jurisdiction is inadequate when weighing the benefits states would gain from such proceedings—among others, the prevention of impunity. Ultimately, state sovereignty must serve the protection of human rights and the violation of natural law.

2. Socio-Cultural Relativism

A highlight of the Indonesian Constitutional Court's reasoning—relativism[128]—as mentioned at the beginning is really not that new in the discourse of international human rights law. There is no doubt in the historical fact that the coming to life of contemporary international law is rife with colonial legacies.[129] Scholars belonging to the third world in the numerosity have attacked the integrity of international human rights law as a part of this imperial project by exposing their insensitivity to cultural circumstances[130]

124 Argentina proves to be a Global South country which has been both a state where crime is committed and a forum state, namely in the universal jurisdiction case involving former Colombian president Álvaro Uribe Velez. See TRIAL International, "Universal Jurisdiction Annual Review 2024."

125 Macedo, *Universal Jurisdiction*, 78.

126 Ibid.

127 Ibid.

128 MK 89/PUU-XX/2022.

129 See, most notably, Antony Anghie, *Imperialism, Sovereignty, and the Making of International Law (*New York: Cambridge University Press, 2004).

130 See Claudio Corradetti, *Relativism and Human Rights: A Theory of Pluralist Universalism 2nd ed.* (Dordrecht: Springer Dordrecht, 2022); David R. Penna, and Patricia J. Campbell , "Human Rights and Culture: Beyond Universality and Relativism," *Third World Quarterly* 19, no. 1 (1998).

to the ways that they are forcefully imposed upon 'lesser' societies.[131] These presuppositions are, in many ways, viable rebuttals toward some human rights doctrines as constructed in the mainstream. The relativism argument is naturally seen most when dealing with or having an impact on the economic, social, and cultural aspects of rights governance. In Asia, for example, some flexibility in the limitations of democratic rights was apparent throughout the past century under the pretense of development.[132]

The [moral] cosmopolitan stance on this is simple yet unequivocal. Without denying the existence of sociocultural differences that themselves enrich our understanding of human *and* rights, there are certain minimum thresholds that must not be trespassed by any party regardless of their relative understanding of rights.[133] Keeping in mind the gravity of crimes qualifying for grave violations subject to the exercise of universal jurisdiction,[134] arguments along the lines of relativism or particularism are shaky grounds at best. *Jus cogens* status, being conferred only upon a comprehension of actions as being the most serious crimes recognized by all if not at least a significantly large majority of states within their own domestic legal systems weakens claims of the opposite.[135]

Even the gesture of an attempt to dismiss the validity of the universal jurisdiction doctrine under the guise of particularism after its widespread recognition could indicate a state's hypocrisy to adduce to an anti-universal thesis when it is convenient to do so. One could argue that not all states recognize all types of international crimes, as is the case for instance in Indonesia.[136] This, however, still does not suffice in explaining why a state should *refuse* its right to invoke universal jurisdiction, let alone in a wholesale manner through self-limitation by confining jurisdictional scope to people of

131 See Makau Mutua, "Savages, Victims, and Saviors: The Metaphor of Human Rights," *Harvard International Law Journal* 42, no. 1 (2001).

132 See, for example, Randall P. Peerenboom, "Human Rights and Asian Values: The Limits of Universalism," *China Review International* 7, no. 2 (2000).

133 Michael J. Perry, "Are Human Rights Universal? The Relativist Challenge and Related Matters," *Human Rights Quarterly* 19, no. 3 (1997): 466.

134 Enache-Brown and Fried, "Universal Crime," 625.

135 M. Cherif Bassiouni, "Universal Jurisdiction for International Crimes: Historical Perspectives and Contemporary Practice," *Virginia Journal of International Law* 42, no. 1 (2001): 82.

136 The Indonesian Human Rights Court Law only recognizes two of the four international crimes under the Rome Statute of the International Criminal Court: the crime of genocide and crimes against humanity. See UU 26/2000, art. 7.

one's nationality.

3. Risks of Political Misuse

The political misuse of universal jurisdiction is a prevalent concept that undermines its credibility, and reasonably so—it is a binary paradox, oscillating between ending impunity and avoiding abuse.[137] Arguably, all legal powers can be abused by willfully malevolent individuals which brings great concern that states may abuse universal jurisdiction to pursue their politically motivated prosecutions.[138] Scholars such as Bassiouni even contend that the politically motivated use of universal jurisdiction, in its use to vex and intimidate foreign leaders, has the potential to destabilize the international framework and infringe upon fundamental rights.[139] Another concern may stem from mercenary governments and rogue prosecutors who could pursue indictments against heads of state or other senior officials in nations with which they have political conflicts—or perhaps even the case where powerful governments will attempt to shield their own heads of state from accountability all while pursuing to prosecute other states.[140]

Even so, however real this risk is, it should not be the lone reason to withhold from universal jurisdiction or declare it evil. In fact, it is precisely for this reason that universal jurisdiction must be used imprudently and is generally reserved for the most serious international crimes.[141] There has been research conducted which indicates that the majority of prosecutions brought under the universality principle pertain to lower or mid-level perpetrators, who have absconded the *locus delicti* and have sought asylum in a bystander state thus mitigating any risk of diplomatic tension.[142] Hence, despite the risk of political misuse, it seems that it may not be as pronounced as it appears.

137 See generally Martti Koskenniemi, "Between Impunity and Show Trials," *Max Planck Yearbook for United Nations Law* 6 (2002).
138 Macedo, *Universal Jurisdiction*, 39–40.
139 Ibid, 28.
140 Ibid.
141 See M. Cherif Bassiouni, "The History of Universal Jurisdiction and Its Place in International Law," in *Universal Jurisdiction and National Prosecution of Serious Crimes Under International Law*, ed. Stephen Macedo (Philadelphia: University of Pennsylvania Press, 2004).
142 Cedric Ryngaert, "International Jurisdiction Law," *Research Handbook on Extraterritoriality in International Law*, eds Austen Parrish and Cedric Ryngaert (Chichester: Edward Elgar Publishing, 2023), 24.

Furthermore, by acknowledging the trials which been effectively conducted under universal jurisdiction, one will notice the established important precedents and improved accountability—surely this too outweighs the risks. There is, in any event, good in remembering that the cases which fit under the ambit of universal jurisdiction will also be assessed based on their legal merits—crimes of *jus cogens*—and not simply any case. Thus, the nexus between the need to prosecute as part of a social contract owed to all mankind regarding universal jurisdiction can be noted here.

4. Practical Constraints

The last type of reasoning is unique in the sense that it is a challenge that seems at first view as being born not out of discord in principles but rather about a forum state's abilities. Problems related to the operationalization of universal jurisdiction has in fact been a long-standing issue of discussion.[143] There are at least two most common practical factors cited as responsible for the improbability of exercise: absence of domestic legal instruments recognizing the principle and/or outlining the procedures for such trials and hardship in executing a trial with sufficient evidentiary processes.[144]

To tackle the latter of these concerns, the challenges around this have been identified by practitioners observing universal jurisdiction trials globally over the years.[145] Best practices have consequently been identified from various countries, starting with the protection of victims' identities during testimonies to cooperations for the purposes of investigations with the local authorities.[146] Some might respond with an argument that an undertaking of the scale of a universal jurisdiction trial requires great amounts of resources. First, in the cosmopolitan's (or any reasonable person's) view, no amount of

143 TRIAL International, "Evidentiary Challenges in Universal Jurisdiction Cases: Universal Jurisdiction Annual Review 2019;" Uche Nnawulezi, Hilary Nwaechefu, and Salim Bashir Magashi, "Addressing the Principle and Challenges of Enforcement and Prosecution under Universal Jurisdiction: Charting New Pathways for International Justice." Indonesian Journal of International Law 20, no. 2 (2023): 263–86; Mohamed Radan. "Doctrinal Study of the Evolution of Universal Jurisdiction and Ways of Strengthening it in the Near Future: Prospects and Challenges," Ph.D Thesis, Brunel University of London, 2020.

144 Ibid.

145 TRIAL International, "Universal Jurisdiction Annual Review – UJAR;"; Amnesty International, "International Justice."

146 TRIAL International, "Evidentiary Challenges in Universal Jurisdiction Cases: Universal Jurisdiction Annual Review 2019."

money is worth a human life.[147] Second, as proven by the above examples, there are ways to ensure an effective and efficient exercise of universal jurisdiction, among others through mutual legal assistances[148] and welcoming the involvement of parties that would happily support such undertakings such as civil society organizations.[149]

This ties back to the prior. The absence of a codified national legal instrument is not a reason to preclude the possibility of exercising universal jurisdiction. Scholars have been warned time and again about the dangers of adopting an overly positivistic lens in judgment.[150] The fact that a state does not yet have an instrument on the matter does not mean that its possibility should be closed off. This is especially true whereas a state's constitutional values relate directly to those underlying international justice.[151] Further, extrapolating the reasoning in *Furundžija*,[152] even without any specific provisions, plausibility for the invocation of universal jurisdiction exists implicitly owing to the *erga omnes* obligations arising out of *jus cogens* violations.[153]

E. Foreseeable Implications

As the twentieth century witnessed the proliferation of law and justice in government beyond the confines of singular states, there should therefore be enhanced effort by states to continue to sustain the progress. The importance of this matter—both regionally and worldwide—is exemplified by advancements in international law, namely with the acknowledgement of universal jurisdiction under the umbrella of international human rights.[154] Nonetheless, this substantial progress and the cessation of impunity for war

147 Charles Jones, "Human Rights and Moral Cosmopolitanism," *Critical Review of International Social and Political Philosophy* 13, no. 1 (2010).

148 Many hard and soft laws have been produced at the bilateral, multilateral, and international levels on this, signalling a common commitment to fighting impunity. See for example UN General Assembly, Principles of international cooperation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity, A/RES/3074(XXVIII), UN General Assembly, 3 December 1973.

149 TRIAL International, "Universal Jurisdiction Annual Review 2024."

150 Wilfrid J. Waluchow, "The Many Faces of Legal Positivism," *The University of Toronto Law Journal* 48, no. 3 (1998).

151 In the case of Indonesia, see UUD 1945, Preambule.

152 *Prosecutor v. Furundžija*. Case no. IT-95-17/I-T, Judgment Trial Chamber, International Criminal Tribunal for the Former Yugoslavia 1998, 156.

153 Bassiouni, "International Crimes;" Enache-Brown and Fried, "Universal Crime."

154 See Goldstone, "The Role of Law."

criminals is at genuine risk of regression if the principles of international rule of law are abandoned.[155]

1. Dangerous Precedent for Accountability

A state's refusal to endorse universal jurisdiction may prompt other states to also curb their own use of universal jurisdiction. Ultimately a limited approach to this area of extraterritoriality admits more room for impunity in international crimes.[156] It is imperative that the progress which has been gained in the decades of advancements must be maintained. Given how the risks of universal jurisdiction have already been discussed to be minimal, seeing that there are adequate safeguards in international law—there is no good excuse for states to disregard it. In this way, if states persist in overtly neglecting the advancements stemming from cases that employ universal jurisdiction, they are fundamentally disregarding the social contract intended to protect mankind.

Regrettably, there are still many ongoing discussions of states in peril. Take the Rohingya Muslims in Myanmar as an illustration—consider the intensifying hostilities they have endured arising from years of adversity. Since 2017, the severe threats exacerbated by an extensive campaign of massacres, rape, and arson in northern Rakhine have culminated in crimes against humanity and acts of genocide, compelling over 750,000 Rohingya individuals to seek refuge and asylum in Bangladesh.[157] In a debate attending to the scope and application of universal jurisdiction in 2021, the delegate from Myanmar reiterated in addressing the illegal military coup, they were helpless in holding the perpetrators accountable.[158] It was explicitly expressed and stressed that the most germane method to eradicate impunity was through the principle of universal jurisdiction.[159] Only very recently did an Argentine prosecutor file requests for arrest warrants for 25 individuals affiliated with the Myanmar political and military leadership—citing the principle of

155 Ibid.
156 Garrod, "The Expansion," 251.
157 Human Rights Watch, "Myanmar: New Atrocities Against Rohingya Escalating Fighting Amid 7 Years of Desperation."
158 United Nations General Assembly Sixth Committee, "Concluding Debate on Universal Jurisdiction Principle."
159 Ibid.

universal jurisdiction no less.[160] While this offers a semblance of hope for the Rohingyas in Myanmar, the predicament of an ongoing aversion to universal jurisdiction—if continued—threatens to erode international human rights safeguards.

In the same vein, by undermining the global accountability framework for *jus cogens* breaches, authoritarian governments may be—and this is not ideal— empowered and emboldened. Consequently, deterrence can be expected to wane as governments are permitted to operate with impunity, facing few pushbacks and little to no fear of international repercussions. This will undoubtedly lead to a decline in democracy and eventually a widespread disregard for natural law and the protection of human rights—a dangerous precedent for accountability—and shameful protection of *jus cogens* human rights.

2. Fracturing of the International Law Spirit

International law has always been a perplexing matter for lawyers to deal with, mainly because of its troubled relationship with entities it rules but also takes legitimacy from: states.[161] Customary international law, to which *jus cogens* norms belong, has itself seen a forced evolution in the ways it is interpreted as the complexity of dealing with states keeps increasing.[162] Come what may of this, the intermediacy of state as primary actors in international relations and thereby the formation of customary international laws is irrefutable at least for the time being. The global diplomatic theater is but a forum where governments go on to play a calculated game of chances, influencing the decisions made by their peers to push certain agendas that climax in the adoption of behaviors as norms.[163]

It is not hard to come to the conclusion that international law is frankly fragile. The failure of the first global governance megaproject that was the

160 Human Rights Watch, "Myanmar: New Atrocities Against Rohingya Escalating Fighting Amid 7 Years of Desperation." n.d. https://www.hrw.org/news/2024/08/22/myanmar-new-atrocities-against-rohingya.

161 Sir Gerald Fitzmaurice, "The Foundations of the Authority of International Law and the Problem of Enforcement," *The Modern Law Review* 19, no. 1 (1956): 2.

162 Anthea E. Roberts, "Traditional and Modern Approaches to Customary International Law: A Reconciliation," *American Journal of International Law* 95, no. 4 (2001): 769 para. 70.

163 See Jack L. Goldsmith, and Eric A. Posner , "A Theory of Customary International Law," *University of Chicago Law Review* 66, no. 4 (1999).

League of Nations should have taught us that if anything, overpoliticization without adequate due respect for the law as an apparatus is a step backward in the realization of our (mankind's) shared objectives.[164] In a world where uncertainty is the name of the everyday, holding on to the principles in rule that have helped us move from a dark past is wise.[165] Now more than ever, states have to show a unified front in safeguarding the rules-based international order.

Refusing the exercise of universal jurisdiction in this sense firstly gestures an erosion in international legal cooperation. Many efforts have been taken throughout the decades to ensure that crimes committed anywhere across the globe are prosecuted, be it through the entering into force of thematic treaties or simply the sharing of information among police forces.[166] The significance of these cooperations are not to be downplayed as these not only help serve justice that would otherwise have been impossible but also a symbol of unity in upholding the rule of law.[167] Universal jurisdiction, be it as a doctrine or as an exercise of collectivism, epitomizes this spirit in the truest sense, not only as a state-to-state matter but also as one of people-to-people.[168] Denying the chance of its enforcement is a prelude to the denial of cooperation and thereby the denial of justice.

An even greater and more fundamental threat is that toward the universality of certain international legal norms. As repeatedly alluded to in previous parts, there is strong correlation between universal jurisdiction and peremptory norms that justify its conjuring.[169] Scholars have actively advocated for the need to take measures that affirm these principles that are so crucial to the international community and so closely intertwined with the *raison d'être* of international law.[170] The letting of vendetta or refutation

164 Stephen Wertheim, "The League of Nations: A Retreat from International Law?" *Journal of Global History* 7, no. 2 (2012): 228.

165 See generally Rein Müllerson, *Ordering Anarchy: International Law in International Society* (Leiden: Brill | Nijhoff, 2021).

166 Serhii S. Cherniavskyi et al., "International Cooperation in the Field of Fighting Crime: Directions, Levels and Forms of Realization," *Journal of Legal, Ethical and Regulatory Issues* 22, no. 3 (2019): 2 para. 3.

167 Georgeta Modiga, "Importance and Necessity of International Judicial Cooperation in Criminal Matters," AGORA International Journal of Juridical Sciences 8, no. 1 (2014): 99.

168 See Rawls, *The Law of Peoples*.

169 See Enache-Brown and Fried, "Universal Crime;" Bassiouni, "Universal Jurisdiction."

170 Gordon A. Christenson, "Jus Cogens: Guarding Interests Fundamental to International Society,"

against *erga omnes* obligations is opening Pandora's box;[171] making room to cast doubt over virtually every norm there is.

F. Conclusion

Nussbaum's writing quoted at the beginning of this article encapsulates the disconcertment we share with others that still believe in the potency of international law as a tool to fight impunity. Cosmopolitanism as a lens from which to assess the case in point is merely one of a number of different options. Our decision for this choice stems from our belief that it provides a wide range of grounds to support our case and similarly serves as strong basis to debunk some of the overblown assumptions that have predisposed the exercise of universal jurisdiction as a negative, overreaching thing which it is not.

This article started off as an expression of concern over the ripple effect that a nation's supreme judicial body has on the integrity of international law and its principles, particularly the peremptory norms. By breaking down the injunctions of cosmopolitan thought, one could conspicuously appraise the paramountcy of ensuring that states at the bare minimum do not close the door for the exercise of universal jurisdiction. Given the fact that at least one state has now done so explicitly, we now turn to others with a question: in this moment of retreat from the principles that bind us, can we truly claim to be citizens of a global community or are we acquiescing to the creation of a patchwork world where justice depends on the caprice of individual states?

BIBLIOGRAPHY

Addis, Adeno. "Imagining the International Community: The Constitutive Dimension of Universal Jurisdiction." In *Globalization and Common Responsibilities of States*, edited by Koen De Feyter. London: Routledge, 2013.

Amnesty International. "International Justice," n.d. https://www.amnesty.org/en/what-we-do/international-justice.

Andreotti, Vanessa De Oliveira (ed.). *The Political Economy of Global Citizenship Education*. London: Routledge, 2024.

Anghie, Antony. *Imperialism, Sovereignty, and the Making of International Law*.

Virginia Journal of International Law 28, no. 3 (1988): 646 para. 7.

171 Perry, "Are Human Rights Universal?" 466–70.

New York: Cambridge University Press, 2004.

Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain) (Judgment), [1970] ICJ Reports.

Bassiouni, M. Cherif. "International Crimes: 'Jus Cogens' and 'Obligatio Erga Omnes.'" Law and Contemporary Problems 59, no. 4 (1996): 63–74.

Bassiouni, M. Cherif. "The History of Universal Jurisdiction and Its Place in International Law." In *Universal Jurisdiction and National Prosecution of Serious Crimes Under International Law*, edited by Stephen Macedo. Philadelphia: University of Pennsylvania Press, 2004.

Bassiouni, M. Cherif. "The Philosophy and Policy of Criminal Justice." In *Man's Inhumanity to Man: Essays on International Law in Honour of Antonio Cassese*, edited by Martinus Nijhoff, Antonio Cassese and Lal Chand Vohrah. The Hague: Kluwer Law International, 2003.

Bassiouni, M. Cherif. "Universal Jurisdiction for International Crimes: Historical Perspectives and Contemporary Practice." Virginia Journal of International Law 42, no. 1 (2001): 81–162.

Beitz, Charles R. "Cosmopolitanism and Global Justice." The Journal of Ethics 9, no. 1 (2005): 11–27.

Beitz, Charles R., *Political Theory and International Relations*. Princeton: Princeton University Press, 1999.

Bernstein, Alyssa R. "Human Rights, Global Justice, and Disaggregated States: John Rawls, Onora O'Neill, and Anne-Marie Slaughter." The American Journal of Economics and Sociology 66, no. 1 (2007): 87–112.

Biedendorf, Jennifer. *Cosmopolitanism and the Development of the International Criminal Court: Non-Governmental Organizations' Advocacy and Transnational Human Rights*. London: Fairleigh Dickinson University Press, 2019.

Boyle, Joseph. "Natural Law and International Ethics." In *Traditions of International Ethics*, edited by Terry Nardin and David Mapel, 113. Princeton University Press, 1992.

Brock, Gillian, and Nicole Hassoun. "Global Justice." In Stanford Encyclopedia of Philosophy, 2023.

Cassese, Antonio. "On the Current Trends Towards Criminal Prosecution and Punishment of Breaches of International Humanitarian Law." European Journal of International Law 9, no. 1 (1998): 2-17.

Cherniavskyi, Serhii S., Bohdan M. Holovkin, Yuliia M. Chornous, Vasyl Y Bodnar, and Ilona V Zhuk. "International Cooperation in the Field of Fighting Crime: Directions, Levels and Forms of Realization." Journal of Legal, Ethical and Regulatory Issues 22, no. 3 (2019): 1–11.

Christenson, Gordon A. "Jus Cogens: Guarding Interests Fundamental to International Society." Virginia Journal of International Law 28, no. 3 (1988): 585–648.

Clarke, Kamari M., Abel S. Knottnerus, and Eefje de Volder. *Africa and the ICC Perceptions of Justice*. Cambridge University Press, 2016.

Convention on the Prevention and Punishment of the Crime of Genocide. Adopted December 9, 1948. 78 UNTS 277.

Corradetti, Claudio. *Relativism and Human Rights: A Theory of Pluralist Universalism*. 2nd ed. Springer Dordrecht, 2022.

Covell, Charles. *The Law of Nations in Political Thought: A Survey from Vitoria to Hegel*. New York: Palgrave Macmillan, 2009.

Cunliffe, Philip (ed.). *Critical Perspectives on the Responsibility to Protect: Interrogating Theory and Practice*. 1st ed. London: Routledge, 2011.

Dunn, John. "Consent in the Political Theory of John Locke." The Historical Journal 10, no. 2 (1967): 153–182.

Eason, Mackenzie, and Máximo Langer. "The Quiet Expansion of Universal Jurisdiction." The European Journal of International Law 30, no. 3 (2019): 779–817.

Eleftheriadis, Pavlos. "Cosmopolitan Law." European Law Journal 9, no. 2 (2003): 241–263.

Enache-Brown, Colleen, and Ari Fried. "Universal Crime, Jurisdiction and Duty: The Obligation of Aut Dedere Aut Judicare in International Law." McGill Law Journal / Revue de Droit de McGill 43 (1998): 613.

Etinson, Adam. "Cosmopolitanism: Cultural, Moral, and Political." In *Sovereign Justice: Global Justice in a World of Nations*, edited by Diogo P. Aurélio, Gabriele De Angelis, and Regina Queiroz, 25–46. De Gruyter, 2011.

Fine, Robert. "Cosmopolitanism and Natural Law: Rethinking Kant." In *The Ashgate Research Companion to Cosmopolitanism*, edited by Maria Rovisco and Magdalena Nowicka. Ashgate, 2011.

Fine, Robert. *Cosmopolitanism*. Oxford: Routledge, 2007.

Fitzmaurice, G. G. "The Foundations of the Authority of International Law and the Problem of Enforcement." The Modern Law Review 19, no. 1 (1956): 1–13.

Garrod, Matthew. "The Expansion of Treaty-based Extraterritorial Criminal Jurisdiction." In *Research Handbook on Extraterritoriality in International Law*, edited by Austen Parrish and Cedric Ryngaert, 236–68. Edward Elgar Publishing, 2023.

Geneva Conventions of 12 August 1949.

Goldsmith, Jack L., and Eric A. Posner. "A Theory of Customary International Law." University of Chicago Law Review 66, no. 4 (1999): 1113–78.

Goldstone, Richard J. "The Role of Law and Justice in Governance: Regional and Global." In *From Sovereign Impunity to International Accountability: The Search for Justice in a World of States*, edited by Ramesh Thakur and Peter Malcontent. United Nations University Press, 2004.

Guyer, Paul. *Kant on Freedom, Law, and Happiness*. Cambridge University Press,

2000.
Hassan, Tirana. "The Human Rights System Is Under Threat: A Call to Action." Human Rights Watch, 2024.
Hayden, Patrick. "Cosmopolitanism and the Need for Transnational Criminal Justice: The Case of the International Criminal Court." Theoria 51, no. 104 (2004): 69–95.
Hegel, Georg Wilhelm Fredrich. *Hegel: Elements of the Philosophy of Right*. Edited by Allen W Wood. *Cambridge Texts in the History of Political Thought*. Cambridge University Press, 1991.
Hobbes, Thomas. *Leviathan*. London: Penguin Books, 1982.
Human Rights Watch. "Myanmar: New Atrocities Against Rohingya Escalating Fighting Amid 7 Years of Desperation," n.d. https://www.hrw.org/news/2024/08/22/myanmar-new-atrocities-against-rohingya
International Law Commission. Draft Articles on Responsibility of States for Internationally Wrongful Acts, Supplement no. 10 (A/56/10), chp.IV.E.1, November 2001.
Iommi, Lucrecia García. "Whose justice? The ICC 'Africa problem'." International Relations 34, no. 1 (2020): 105–29.
Jacobsen, Mogens Chrom. "Kant and the Modern State System." Jahrbuch für Recht und Ethik / Annual Review of Law and Ethics 17 (2009): 85–107.
Jones, Charles. "Human Rights and Moral Cosmopolitanism." Critical Review of International Social and Political Philosophy 13, no. 1 (2010): 115–35.
Joyner, Christopher C. "Arresting Impunity: The Case for Universal Jurisdiction in Bringing War Criminals to Accountability." Law and Contemporary Problems 59, no. 4 (1996): 153–172.
Kant, Immanuel. "Metaphysics of Morals." In *The Cambridge Edition of the Works of Immanuel Kant*, edited by Mary J. Gregor, 309–72. Cambridge University Press, 1996.
Kant, Immanuel. *Kant: Political Writings*. Edited by H S Reiss. Cambridge Texts in the History of Political Thought. 2nd ed. Cambridge University Press, 1991.
Koskenniemi, Martti. "Between Impunity and Show Trials." Max Planck Yearbook for United Nations Law 6 (2002): 1–35.
Kuper, Andrew. "Rawlsian Global Justice: Beyond the Law of Peoples to a Cosmopolitan Law of Persons." Political Theory 28, no. 5 (2000): 640–74.
Langer, Máximo. "The Diplomacy of Universal Jurisdiction: The Political Branches and the Transnational Prosecution of International Crimes." American Journal of International Law 105, no. 1 (2011): 1–49.
Lessnoff, Michael. *Social Contract Theory*. Oxford: Basil Blackwell, 1991.
Locke, John. *Two Treatises of Government*. London: Everyman, 2003 [1689].
Loriaux, Sylvie. *Elements in the Philosophy of Immanuel Kant*: *Kant and Global Distributive Justice*. Cambridge: Cambridge University Press, 2020.

Meron, Theodor. "Is International Law Moving Towards Criminalization." European Journal of International Law 9, no. 1 (1998): 18.

Modiga, Georgeta. "Importance and Necessity of International Judicial Cooperation in Criminal Matters." AGORA International Journal of Juridical Sciences 8, No. 1 (2014): 98–103.

Moyn, Samuel. "The Universal Declaration of Human Rights in the History of Cosmopolitanism." Critical Inquiry 40, no. 4 (2014): 365–84.

Müllerson, Rein. Ordering Anarchy: International Law in International Society. Leiden: Brill | Nijhoff, 2021.

Mutua, Makau. "Savages, Victims, and Saviors: The Metaphor of Human Rights." Harvard International Law Journal 42, no. 1 (2001): 201–45.

Niang, Mandiaye. "Africa and the Legitimacy of the ICC in Question." International Criminal Law Review 17, no. 4 (2017): 615–24.

Nnawulezi, Uche, Hilary Nwaechefu, and Salim Bashir Magashi. "Addressing the Principle and Challenges of Enforcement and Prosecution under Universal Jurisdiction: Charting New Pathways for International Justice." Indonesian Journal of International Law 20, no. 2 (2023): 263–86.

Noone Jr., John B. "Rousseau's Theory of Natural Law as Conditional." Journal of the History of Ideas 33, no. 1 (1972): 23–42.

Núñez, Jorge E. Cosmopolitanism, State Sovereignty and International Law and Politics: A Theory. London: Routledge, 2023.

Nussbaum, Martha. "Patriotism and Cosmopolitanism." Boston Review XIX, no. 5 (1994).

O'Sullivan, Aisling. Universal Jurisdiction in International Criminal Law: The Debate and Battle for Hegemony. Routledge, 2017.

Parker, Theodore. "Of Justice and the Conscience." In Ten Sermons of Religions (1852). Kessinger Publishing, 2010.

Peerenboom, Randall P. "Human Rights and Asian Values: The Limits of Universalism." China Review International 7, no. 2 (2000): 295–320.

Penna, David R., and Patricia J. Campbell. "Human Rights and Culture: Beyond Universality and Relativism." Third World Quarterly 19, no. 1 (1998): 7–27.

Perry, Michael J. "Are Human Rights Universal? The Relativist Challenge and Related Matters." Human Rights Quarterly 19, no. 3 (1997): 461–509.

Phooko, Moses Retselisitsoe. "How Effective the International Criminal Court Has Been: Evaluating the Work and Progress of the International Criminal Court." Notre Dame Journal of International, Comparative & Human Rights Law 1, no. 1 (2011): 182–210.

Princeton Project on Universal Jurisdiction. "The Princeton Principles on Universal Jurisdiction," 2001.

Prosecutor v. Anto Furundžija (Trial Judgement), IT-95-17/1-T, International Criminal Tribunal for the former Yugoslavia (ICTY), [1998].

Putusan Mahkamah Konstitusi Nomor 89/PUU-XX/2022 perihal Pengujian

Undang-Undang Republik Indonesia Nomor 26 Tahun 2000 tentang Pengadilan Hak Asasi Manusia terhadap Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, 14 April 2023.

Radan, Mohamed. "Doctrinal Study of the Evolution of Universal Jurisdiction and Ways of Strengthening it in the Near Future: Prospects and Challenges," Ph.D Thesis, Brunel University of London, 2020.

Randall, Kenneth C. "Universal Jurisdiction Under International Law." Texas Law Review (1988): 785–841.

Rawls, John. A Theory of Justice. 2nd ed. Belknap Press of Harvard University Press, 1999.

Rawls, John. The Law of Peoples. Harvard University Press, 1999.

Reydams, Luc. Universal Jurisdiction: International and Municipal Legal Perspectives. Oxford University Press, 2003.

Roach, Steven C. "Value Pluralism, Liberalism, and the Cosmopolitan Intent of the International Criminal Court." Journal of Human Rights 4, No. 4 (2005): 475–90.

Roberts, Anthea Elizabeth. "Traditional and Modern Approaches to Customary International Law: A Reconciliation." American Journal of International Law 95, No. 4 (2001): 757–91.

Rousseau, Jean-Jacques. "The State of War." In Rousseau on International Relations, edited by Stanley Hoffmann and David Fidler. Oxford: Clarendon Press, 1991.

Ryngaert, Cedric. "International Jurisdiction Law." In Research Handbook on Extraterritoriality in International Law, edited by Austen Parrish and Cedric Ryngaert, 13–30. Edward Elgar Publishing, 2023.

Sadat, Leila Nadya. "Redefining Universal Jurisdiction." In The Globalization of International Law, edited by Paul Schiff Berman, 241–64. Routledge, 2005.

Sheehy, Benedict, Ying Chen, and Juan Diaz-Granados. "Rethinking Global Distributive Justice: Legal and Economic Norms Addressing Crises of Global Health, Hunger, and Sustainability." Georgia Journal of International and Comparative Law 52, No. 1 (2024): 89–156.

Simon, Robert L. "Global Justice and the Authority of States." The Monist 66, No. 4 (1983): 557–72.

Singh, Jyotsna G., and David D. Kim (eds.). The Postcolonial World. London: Routledge, 2017.

Stigen, Jo. The Relationship between the International Criminal Court and National Jurisdictions: The Principle of Complementarity. Martinus Nijhoff Publishers, 2008.

Tesón, Fernando R. "The Kantian Theory of International Law." In The Nature of International Law, edited by Gerry Simpson, 557–606. Routledge, 2017.

TRIAL International. "Evidentiary Challenges in Universal Jurisdiction Cases: Universal Jurisdiction Annual Review 2019," 2019.

TRIAL International. "Universal Jurisdiction Annual Review - UJAR," n.d. https://trialinternational.org/resources/universal-jurisdiction-tools/universal-jurisdiction-annual-review-ujar.

TRIAL International. "Universal Jurisdiction Annual Review 2023," 2023.

TRIAL International. "Universal Jurisdiction Annual Review 2024," 2024.

Ţuţuianu, Simona. Towards Global Justice: Sovereignty in an Interdependent World. The Hague: T.M.C. Asser Press, 2013.

UN General Assembly, Principles of international cooperation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity, A/RES/3074(XXVIII), UN General Assembly, 3 December 1973.

Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

Undang-Undang Republik Indonesia Nomor 26 Tahun 2000 tentang Pengadilan Hak Asasi Manusia.

United Nations General Assembly Sixth Committee. "Concluding Debate on Universal Jurisdiction Principle." 2021.

Varaba, Dinebari D., and Charles N. Berebon. "The Philosophy of Law of Immanuel Kant." Jurnal Tamaddun 20, No. 2 (2021): 271–282.

Waluchow, W. J. "The Many Faces of Legal Positivism." The University of Toronto Law Journal 48, No. 3 (1998): 387–449.

Weatherall, Thomas. Jus Cogens, International Law and Social Contract. Cambridge University Press, 2017.

Wertheim, Stephen. "The League of Nations: A Retreat from International Law?" Journal of Global History 7, No. 2 (2012): 210–32.

Yun, Xing. "Asia's Reticence Towards Universal Jurisdiction." Groningen Journal of International Law 4, No. 1 (2016): 54–67.