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A MULTI-DIMENSIONAL APPROACH TO IMPOSE UNIVERSAL JURISDICTION IN INTERNATIONAL LEGAL PRACTICE

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The study introduces a multidimensional solution to impose universal jurisdiction by utilizing firm concepts in international law to enhance the functionality of this principle in international legal practice. Initially, it explores the current classification of the principle of universal jurisdiction in international law to determine its latest status quo. Then, the study reviews its evolution in international legal instruments and how international courts utilise them. In addition, the research analyses the UN relevant resolutions on universal jurisdiction to draw a global portrait of its legal status in international law.

Because of the cosmopolitan humanitarian ends of universal jurisdiction, the research suggests employing the concept of humanness to justify imposing it. In addition, these ends, and the purpose of enhancing international justice, drive the study to introduce the theory of the responsibility to protect (R2P) to justify the utilization of domestic legal rules extra-territorially. Nevertheless, this utilisation might trigger the question of national judiciaries' independence. The research analyses this problem to establish the required foundations to strike a balance between the independence of national judiciaries and imposing universal jurisdiction to secure justice.

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1. INTRODUCTION

The evolution of international judicial cooperation innovated the universal principle of jurisdiction. It means the ability to prosecute and try criminals regardless of their location or nationality. It seeks to achieve international justice that requires transcending the traditional jurisdiction determinants to cut off severe acts of crime.

Universal jurisdiction is a legal principle that allows states or international judicial bodies to claim criminal jurisdiction over an accused person regardless of where the alleged crime was committed, and regardless of the accused's nationality, country of residence, or any other relation to the prosecuting entity.[1] This principle is based on the idea that some crimes are so severe and harmful to the international community or order that they should not go unpunished and that no place should be a safe haven for those who have committed such crimes. These crimes include crimes against humanity, war crimes, genocide, and torture, which are considered crimes against all, or *erga omnes.*[2] Universal jurisdiction is a tool for international justice, but it requires states to have appropriate legislation and resources to implement it. Universal jurisdiction is a significant and complex principle of international law that aims to ensure accountability and justice for the most serious crimes against international law. It reflects the moral and legal obligation of states and the international community to protect human rights and uphold the rule of law. However, it also poses many legal and political challenges that need to be addressed with caution and respect for other values and interests. Universal jurisdiction is not a panacea for all the problems of international justice, but it is an important instrument that can contribute to its advancement.

Nevertheless, universal jurisdiction faces challenges and controversies in its application. Critics argue that universal jurisdiction violates state sovereignty and interferes with domestic affairs. Furthermore, universal jurisdiction may lead to political or ideological bias, selective prosecution, or abuse of power by judges or prosecutors in addition to practical and logistic difficulties, e.g., lack of evidence, witnesses, cooperation, or extradition. Therefore, universal jurisdiction must be balanced with other international law principles and safeguards, such as complementarity, subsidiarity, due process, and human rights.

[1] The Princeton Principles of Universal Jurisdiction, 2002. https://lapa.princeton.edu/hosteddocs/unive_jur.pdf.
[2] Ibid.

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Therefore, legal logic and justice requirements imply reaching an implementable solution to stop this gap in international legal practice. The cosmopolitan nature of universal jurisdiction requires a universal strategy to impose it. The universality of this strategy means that its pillars should be internationally firm concepts, which guarantees their acceptance among several jurisdictions. Therefore, the research introduces a mechanism to rehabilitate the no man's land concerning the practice of universal jurisdiction. It is a multi-dimensional strategy employing certain theories of international law and jurisprudence to justify universal jurisdiction. The global admittance of these theories qualifies them to establish universal jurisdiction, which is: the concept of humanness, the responsibility to protect (R2P) theory. Furthermore, the prominent vacancy that the controversy of domestic jurisdictions' independence occupies in jurisprudence compels the study to pay attention to its nexus to universal jurisdiction. The *prima facie* interpretation of this independence hinders the application of universal jurisdiction. Thus, it is crucial to clarify the deconfliction between them. Otherwise, both principles are integrated and should be applied in compliance with their humanitarian ends.

2. THE DOCTRINAL CHARACTERIZATION OF UNIVERSAL JURISDICTION

Here the author should start their papers and discuss some of the subjects they want to address. I really get giggles from noticing that many authors don't have any methodology to support what they do. How did they collect the documents they are using? How can we actually make a serious paper with this people? And then I remember that without our contributors we would have no journal, which brings me to make jokes. Like this model.

International law jurists, scholars, and judges also carried the burden of profiling the principle of universal jurisdiction. Their academic efforts contributed to determining the nature and themes of this principle which constituted a threshold to its utilization in international legal practice. Despite the enormous debate on its nature, the research sheds light on its classification in recent scholarships. The need to present a modern view of the research topic implies this limitation.

Despite the absence of an agreed-upon definition of universal jurisdiction in conventional and customary international law, the major definition that scholars produced was: "prescriptive jurisdiction over offences committed extraterritorially by non-nationals against non-nationals, where the offence constitutes no threat to the fundamental interests of the prescribing state and does not give rise to effects

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within its territory" [33]. Becker *et al* [5] describe the principle of universal jurisdiction as "a legal principle allowing or requiring a state to bring criminal proceedings in respect of international crimes irrespective of the location of the crime and the nationality of the perpetrator or the victim".

Mukherjee [30] argues that domestic courts derive their authority to prosecute and try the perpetrators of international core crimes under the principle of universal jurisdiction from two groundings: treaties and customary international law. While the former did not include a clear interpretation of this norm, it presented the legal foundations to utilize domestic legal rules to prevent international impunity concerning severe crimes. Regarding customary international law, Mukherjee decides that international judgments and case laws contributed to the establishment of universal jurisdiction as an accepted principle of international law that Jurisdictions adopt to prosecute international core crimes. Furthermore, he hints that universal jurisdiction gains an evolving global jurisdictional consensus since it provides humanity with a tool to suppress international criminals, an urgent international community need [30].

Soler (2019, p.325-329) claims that utilizing universal jurisdiction to suppress core crimes manifests an *erga omnes* obligation in international criminal law. He reasons his conclusion with the fact that customary international law, which is the dominant source of international law, obliges the international community as a whole to prosecute these crimes. In addition, the need to provide victims of atrocities with immediate remedy implies adopting universal jurisdiction. As a consequence, they can reach justice for what they previously suffered, which constitutes a fundamental human right. Moreover, the inability to prosecute the perpetrators of core crimes threatens world peace and security because it destabilizes international peaceful cohabitation. It is a diplomatic justification at its core that endorses states to adopt and practice universal jurisdiction regarding international core crimes. He asserts that a genocide committed anywhere injures all states since it violates the fundamental human right to live in peace [40].

Universal jurisdiction presents a significant progression of international criminal justice since it enables states and the concerned bodies to prosecute international criminals globally, regardless of their nationality [31]. Thus, universal jurisdiction restricts their impunity which enhances international criminal justice. It constitutes a right of the international community to intervene wherever atrocities are committed to prosecute the perpetrators. Mung'omba mentions that universal jurisdiction does not require a direct link between the prosecuting judicial body and the crime. Universal jurisdiction, in his view, "stands out"

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of the basic jurisdictional norms, which suits its mission in enforcing international criminal justice.[3] It is based on the need to enforce justice and deterrents regarding severe human rights violations.[4] Thus, universal jurisdiction is crystalized in international law as a unique set of atrocities prosecution proceedings. This fact grants this principle a universal theme as Prince indicates that it maintains world peace and security by prosecuting the perpetrators of international core crimes. Therefore, he argues that practising universal jurisdiction against international core crimes manifests a *jus cogens* of a binding force. It is an international interest to suppress heinous crimes. This opinion aligns with the International Law Commission's (ILC) confirmation that the protection of fundamental human rights and the prohibition of severe crimes, such as war crimes, aggression, slavery, etc., are peremptory rules whose violations trigger an international obligation to intervene.[5]

Deriving from this logic, Mischa argues that the *jus cogens* theme of the prosecution of international core crimes elevates the principle of universal jurisdiction to the status of an *erga omnes* obligation [20]. He cited the words of the Frech judiciary as she claims that the latter adopted this doctrine as it decided in Barbie's judgment[6] that violating *jus cogens* prohibiting gross human rights violations falls under the international criminal order that overwhelms national legal boundaries.[7] Therefore, imposing universal jurisdiction against grave crimes manifests an international obligation upon the international community. The internationalization of their prohibition justifies the prominent status of utilizing universal jurisdiction against those crimes because suppressing them is a human need.

On the contrary, Wui Ling (2022, P.2) figures out that ASEAN states[8] profile universal jurisdiction as a general principle of international law. It has no binding force but could be functioned to bridge gaps in international legal practice. The possibility of politicizing its application by powerful states threatens the genuine legal concept of the rule of law. Thus, ASEAN states tend to adopt a cautious approach concerning the principle of universal jurisdiction. Contributing to settling this conflict, it can be determined that universal jurisdiction is best profiled as an *erga omnes* obligation with a *jus cogens*

[3] He, however, decides that the perpetrator should be present *in persona* before the court under the Princeton Principles, ibid 96.
[4] Ibid 100.
[5] UN Res A/74/10, 147, the ILC defines them as "A peremptory norm of general international law (jus cogens) is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law (jus cogens) having the same character" see 148.
[6] Fédération Nationale de Déportés et Internés Résistants et Patriotes v Barbie (1985) 78 ILR 124.
[7] Ibid 130.
[8] Brunei, Cambodia, Indonesia, the Lao People's Democratic Republic, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam.

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feature. This means that all members of the international community are obliged to prosecute and try the perpetrators of gross human rights violations, disregarding their nature, universally to maintain the effective implementation of the peremptory rules of international law. The ongoing utilization of universal jurisdiction due to the escalation of armed conflicts globally, with all the atrocities they brought, evolved the core of this norm to be an *erga omnes* duty with a core of *jus cogens*. Since peremptory rules prevent gross violations of human rights and seek to achieve the main objective of international law, which is maintaining international peace and security, universal jurisdiction should be considered a prominent *jus cogens* because of its contribution to achieving justice, which is a must to secure peace. This nature makes it a duty of all jurisdictions to utilize their legal toolkits universally to suppress international human rights violations.

Hartig (2023, p.344-347) distinguishes the principle of universal jurisdiction from other convergent prepositions of international law. She mentions that universal jurisdiction implies acting as an agent of the international community requiring no nexus between the acting jurisdiction and the criminal act committed. Thus, it does not function when a state prosecutes a foreigner within its territory for a crime committed abroad because it falls under the principle of representation. In this case, the acting jurisdiction does not operate on behalf of the international community but the state of the original jurisdiction solely. The universal theme is absent in this situation. In addition, she argues that universal jurisdiction differs from treaty-based jurisdiction because the latter limits its application by the terms of the treaty and domestic ratification procedures. Thus, universal jurisdiction is an independent principle in international law that should be mentioned explicitly when utilized in international legal practice. Accordingly, he decided that states can exercise universal jurisdiction based on international precedents occurred by international tribunals since the Nuremberg trials, which constituted a landmark that crystallized the exercise of universal jurisdiction concerning international core crimes [21].

Universal jurisdiction proves to be an effective mechanism against international impunity. Heidi points out that this international norm permits domestic and international courts to prosecute and try the perpetrators of grave crimes without disrupting international relations or weakening the concept of international criminal justice [19]. Its humanitarian ends exceed its critiques because eradicating impunity is a justice priority. This mechanism facilitates conducting effective and impartial criminal proceedings concerning atrocities that grant victims access to justice.

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Since the limited practical role of the International Criminal Court presents universal jurisdiction as a second-stage procedure, Segate (2022, p.247) suggests replacing it with a universal prosecution authority that investigates international crimes and prosecutes the perpetrators. Then, with the investigations' closure, it refers the whole case to the competent domestic jurisdiction to try the perpetrators. He argues that this mechanism would enhance the sense of universal jurisdiction at domestic courts and would avoid the deliberate qualitative resizing of this international norm. Thus, its stability becomes enhanced.

Dey (2021, p.67) emphasizes that universal jurisdiction effective implementation relies on the cooperation between the state of the proceedings and the state where the crimes are committed. He points out this obligatory requirement by claiming that the prosecuting judiciaries should have access to evidence within the territorial state to prosecute atrocities perpetrators effectively. This cooperation is fundamental to the effective application of universal jurisdiction to cure the deficiencies of domestic criminal justice systems regarding gross human rights violations. Thus, he suggests utilizing the positive cooperation mechanism, included in the Rome Statute of the ICC,[9] to institutionalize a multi-dimensional application of cooperative legal toolkits among states [11]. It is a core component of the complementarity principle, integrated into the Prosecutorial Strategy of the Office of the Prosecutor (OTP).[10] The Report mentions that this mechanism represents "a positive approach to complementarity, meaning that it encourages genuine national proceedings where possible; relies on national and international networks; and participates in a system of international cooperation"[11] Consequently, a joint legal network is established that extends to inter-states judicial assistance that provides international jurisprudence with a manifestation of the effective complementarity as a sort of mutual legal cooperation.

In conclusion, international law scholars investigated the principle of universal jurisdiction to determine its genuine characteristics. They sought to grasp its nature and classification as an international law principle so jurisdictions could utilize it effectively. Notwithstanding their non-agreement on its classification, they accord on the humanitarian ends of this principle that all states should seek to achieve. Universal jurisdiction is crucial for international criminal justice, which is a core block of the establishment of international peace and security.

[9] Rome Statute of the International Criminal Court (last amended 2010), 17 July 1998, ISBN No. 92-9227-227-6, part 8, https://www.refworld.org/docid/3ae6b3a84.html.
[10] Office of the Prosecutor, Report on Prosecutorial Strategy, September 2006, 4-5, https://www.icc-cpi.int/nr/rdonlyres/d673dd8c-d427-4547bc69-2d363e07274b/143708/prosecutorialstrategy20060914_english.pdf
[11] ibid 5.

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3. EXPLAINING THE MULTI-DIMENSIONAL APPROACH

As previously mentioned, the solution suggested by the study has three core pillars. They represent firm theories in international law that the research manages to make use of their legal firmness to integrate them into one establishment that justifies the application of universal jurisdiction.

3.1. Utilising Universal Jurisdiction Under the Concept of Humanness

By the end of World War Two in 1945, a major evolution occurred in the field of international law interpretation as chief judicial efforts tended to crystalize the concept of international justice. Nevertheless, the prevailing military thought about stabilizing Europe did not suffice to motivate judicial proceedings against the perpetrators of atrocities during the War. To solve the dilemma, jurisprudence shed light on the concept of humanity as a core of those proceedings. It should be noted that post-war trials, e.g., Nuremberg, were precedents to contextualize this concept within the term "inhumane acts" while regulating the Tribunal's jurisdiction.[12] Then, international jurisprudence's interpretation of this concept evolved which qualifies it to establish other international law norms to serve justice. Thus, the research, in this section, reviews the reflection of this concept and its reflections on international justice to conclude whether a nexus to the principle of universal jurisdiction exists and to what extent it could be utilized to justify imposing universal jurisdiction against atrocities.

What Does "Humanness" Reflect in the Context of International Justice?

Being a core pillar of international judicial proceedings, academics exerted major efforts to illustrate the concept of humanness and determine its reflections in legal practice as a distinctive norm. The Nuremberg Charter's adoption of the term "inhumane"[13] led scholars to contribute with their interpretation of this concept to determine the legal theme of the concept of humanness.

Initially, the concept of "humanity" occupies a significant place in International Criminal Law. It is the protected interest of the category "crimes against humanity" [2], which includes several atrocities that affect the whole international community. Humanity, in the context of those crimes, manifests a

[12] Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, Annex, 59 Stat. 1544, adopted 8 August 1945, 82 U.N.T.S. 279 (entered into force 8 August 1945), Article 6(c).
[13] Ibid.

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fundamental value in expressing the basic rights of human beings. According to Atadjanov's explanation, jurisprudence should see humanity as humanness since both concepts reflect the same comprehensive meaning. Hence, this research adopts the term "humanness" to express humanity to establish a nexus between it and the principle of universal jurisdiction. Atadjanov argued that the humanness concept consists of basic elements that point out the main protected interests. These elements are: 1. Freedom, 2. Dignity, 3. Civillied attitude, 4. Humaness, 5. Reason. Then, he claimed that humanness is "a human status, or condition, or quality of being human." Thus, he concluded that these elements are the protected legal interests by criminalizing crimes against humanity or other inhumane acts. This interpretation of the humanness concept qualifies it to express a clear legal interest that laws should protect to defend the international community against atrocities. Furthermore, Atadjanov [1] claimed that eliminating the ambiguity of the humanness concept is crucial to determining its protected interest. He argued that reviewing the development of the Nuremberg Charter discussions revealed that this concept is not obscure. The discussions, formal and informal, concluded that the concept of humanity should be interpreted as a different of mankind – or the human race generally. This conclusion accorded with Lauterpacht's (2004, p.602) vision of humanity concept as human considerations that guarantee an adequate living for humans.

In addition, Atadjanov [2] mentioned that jurisprudence profiled the concept of humanness as a quality of behaviour that aims at preserving the well-being of humans and their peaceful cohabitation. Both "humanness" and "humanity" in the legal context reflect that meaning. However, the concept of humanness presents an appropriate understanding of the humanity concept because the former includes a comprehensive illustration of the fundamental pillars of human well-being. This theme reflects the prominent contribution of humanness to international criminal law due to the fundamentality of its core elements to the criminalization objectives of this law.

Despite the diversity of its understandings among nations, according to the cultural and civilizational background of each, the humanness concept still owns its fundamental humanitarian core [1]. It is a mutual heritage of human beings to be equal and worthy disregarding the variety of their status, culture, religion, etc. Thus, acts that deprive persons of their dignity or human well-being are an obvious infringement of the concept of humanness. This infringement is the threshold to activate justice toolkits to defend

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humanness. Correspondingly, the International Law Commission (ILC), in 1991, linked humanness to fundamental human rights as it described crimes against humanity as acts that violate these rights.[14]

Atadjanov [1] argued that the ILC's description reflected its interpretation of the humanness concept as fundamental humanitarian global values. Thus, he elaborated that the German theory of Rechtsgutstheorie[15] considers humanness a protected legal interest by the criminal law. Criminal law should prevent violations of the fundamental values that humanness reflects; it is a humanitarian need to preserve freedom, dignity, good quality behaviour, and reason for all human beings. This basic fact justifies the validity of humanness as a protected legal interest. Moreover, he concluded that humanness manifests the core of IHL because the latters' purpose is maintaining basic human rights, expressed by humanness elements [2]. Thus, the perpetrators of international core crimes inflict harm to the humanness concept, which qualifies it to justify their prosecutions and other judicial proceedings taken by states to suppress them.

The components of the humanness concept reflect its function. It could be concluded from the above that humanness reflects fundamental human rights. It is an *erga omnes* international obligation to protect these rights and prevent their violations under the Universal Declaration of Human Rights.[16] Protecting these rights is essential to maintaining world peace and security because it enables the international community to evade and settle conflicts [15]. There is a direct correlation between protecting these rights and maintaining international peaceful cohabitation. Engeland (2022) determined that the Declaration universalised human rights; their fragmentation destabilizes international peaceful cohabitation because these rights are common for all human beings. Thus, the principle of universality applies to human rights. Accordingly, it extends to the concept of humanness. In this light, humanness is understood as a universal set of fundamental human standards that should be provided for every individual on Earth. Humanness, with this description, contributes to securing world peace by justifying legal proceedings to secure these fundamentals. It is a result of the continuous evolution of doctrine that highlighted that the distinctive feature of humanness is its ability to secure global peaceful cohabitation [8]. Therefore, it could be concluded that humanness and maintaining human rights are two sides of a single coin.

[14] International Law Commission (1991) Report of the International Law Commission on the work of its forty-third session, 29 April–19 July 1991, Vol. II, Suppl. 10. UN GAOR 46th session, A/46/10, 103.
[15] The theory of protected legal interests, see Roland Hefendehl, Andrew Von Hirsch, and Wolfgang Wohlers, Die Rechtsgutstheorie: Legitimationsbasis Des Strafrechts Oder Dogmatisches Glasperlenspiel?, Nomos Verlagsgesellschaft Mbh & Co (2003), ISBN 978-3832901578.
[16] The Universal Declaration of Human Rights adopted by the UNGA Res 217A on 10 December 1948, art 2.

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According to this interpretation of humanness, it becomes obvious that international justice's objective is to support humanness. Amnesty International clarified that international justice contributes to establishing accountability for gross human rights violations and ensuring the victims' access to justice.[17] Remedy and access to justice are fundamental human rights that the international community must mobilise its judicial mechanisms to defend [10]. The UDHR assured this right as a humanitarian guarantee to achieve the Charter's purposes.[18] Furthermore, the justice concept is universalized because of its cosmopolitan unified standards, which aim at preventing the perpetrators of core crimes from evasion of justice [13]. By holding the accountability of those perpetrators, international justice defends human rights via judicial mechanisms of prosecutions and trials.[19] Ending impunity grants humanness a shield against gross violations. Besides, the redress it provides to atrocities victims secures international peaceful cohabitation. The contemporary international justice system grants victims' remedy a particular prominence by ensuring the preservation of their dignity and safety, among other humanitarian considerations, during the judicial proceedings.[20] Wheeler indicated that this prioritization enhances the victims' humanness since the Statute granted them codified legal protection against threats that might hinder their efforts for justice [42]. Thus, universality makes justice a solid pillar of the humanness concept because of its contribution to maintaining humanitarian considerations of peaceful cohabitation.

To conclude, the research reveals that the concept of humanness is a symposium of humanity that refers to the fundamental human standards and rights that maintain human well-being. It is a valid legal interest that the international community is committed to defending to secure world peace. For this purpose, the international community utilises its legal and judicial mechanisms required to achieve justice concerning severe human rights violations. This manifestation of international justice discloses its nexus to the humanness concept; the former is a part and parcel of the latter. Therefore, jurisdictions can utilize humanness to justify their proceedings against those violations, which constitute a major part of achieving the international justice process.

[17] Amnesty International, International Justice, https://www.amnesty.org/en/what-we-do/international-justice/
[18] The UN Charter, art 11.
[19] Nikita Lourenco Calling, The Power of Justice: How International Criminal Justice Upholds Human Rights (*Raoul Wallenberg Institute: The Human Righter on 14 July 2023*), https://rwi.lu.se/blog/the-power-of-justice-how-international-criminal-justice-upholds-human-rights/
[20] The Rome Statute Arts 54(2) and 68(1).

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Universal Jurisdiction's Nexus to Humanness

The universal nature of humanness implies that legal toolkits should be universalized to maintain this concept. It is a critical protected legal interest that ensures the integrity of global peaceful cohabitation. Limiting domestic judicial mechanisms to state boundaries frustrates this protection since national jurisdictions lose the ability to prosecute and try the perpetrators of gross crimes extra-territorially. The absence of universality enables those perpetrators to evade justice if the territorial state is unable to prosecute them, or unwilling to do so. As explained in Chapter 4, this situation creates a legal vacuum in the international practice that endangers the concept of justice and its global trustworthiness.

It is acknowledged that the impacts of international core crimes are not limited to their direct victims or custodial territory [1]. They inflict damage on the international community as a whole because of their severity. Consequently, the concept of humanness is universally destabilized because the gross violations of human rights frustrate world peace and security by depriving human beings of the minimum quality required to maintain their humanity. It is a favoured interest in international law doctrine which qualifies the prosecution of severe international crimes to be an international obligation [40].

Furthermore, the destabilizers of humanness are inhumane acts that violate fundamental human rights; their impacts are global, regardless of their location or the victims' identities [29]. As Rosemary claimed, humanness is the direct victim of these atrocities. Thus, the universal theme of these violations requires a transnational legal toolkit to confront them. Universal jurisdiction is an effective principle against international crimes since its universal theme permits its utilization globally, disregarding the diversity of national legal regimes and cultural backgrounds. Then, it shares this universal theme with the concept of humanness, which qualifies the latter to justify imposing universal jurisdiction.

The principle of universal jurisdiction enhances the concept of international justice due to its contribution to eradicating the impunity of serious criminals [29]. Since international justice is a core component of humanness, it links it to universal jurisdiction; this principle promotes international justice. Thus, universal jurisdiction promotes the stability of the humanness concept by protecting its core component: international justice. Differently put, defending humanness is the chief objective of universal jurisdiction; jurisdictions should utilize its legal rules to suppress international gross human rights violations. Because the integrity of humanness depends entirely on maintaining human rights, it can justify extra-territorial judicial proceedings against their violations. Defending humanity is a universal mutual

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interest according to the Preamble of the MLA (2022) Convention. Therefore, universal jurisdiction is an appropriate legal framework to protect humanness against atrocities.

To sum up, being an adequate quality of humanity considerations, humanness is a suitable justification for the principle of universal jurisdiction. The humanitarian ends of this principle combine its utilisation with the core element of humanness, which is international justice. The latter is crucial to establishing a stable and secure world. Hence, domestic courts can justify the extra-territorial application of national legal toolkits by the international duty to protect humanness. They can include this justification within their proceedings and rulings as it manifests a prioritized humanitarian requirement. This is a crucial function of the humanness concept in international legal practice because it proves its functionality and protects it against normative deadlock.

3.2. Establishing Universal Jurisdiction on the Responsibility to Protect (R2P)

International law includes obligations on states to protect humanity against atrocities. These obligations are binding according to their legal roots. The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICSECR) mention fundamental human rights as the subject of protection. Beforehand, the 1948 Genocide Convention obliged states to prevent genocide crimes.[21] Moreover, the UN Charter adopts these duties to defend humanity by securing international peace. Indeed, the evolution of the UN doctrine tended to adopt this theory to prevent severe violations of human rights.[22] The 2005 World Summit concluded that a global theory of the international community's responsibility should be employed to achieve the UN's aims of maintaining world peace and security. These legal instruments include the threshold to trigger the obligations of the states to prevent core crimes. The binding force of these obligations reflects their enforceability and the universal determination to protect humanity. Thus, the concept of responsibility to protect is rooted in international law.

The R2P has evolved to be an international legal norm that aims to prevent inhumane atrocities. It was mentioned in the UN Security Council resolutions to justify military intervention in the atrocities' territorial states.[23] This attitude shifts the R2P from an innovative idea to an acknowledged legal principle in international law. Then, it introduces a systematic legal foundation to act against serious crimes and to

[21] The 1948 Convention on the Prevention and Punishment of the Crime of Genocide, Arts 3,6 and 8.
[22] The UN General Assembly, 'Resolution Adopted by the General Assembly: 60/1' (UN, 2005), para. 139 and the Resolution A/75/277 (UN 2021), para. 6.
[23] Resolutions 1674 (2006), 63/308 (2009)68 and 1894 (2009).

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prosecute their perpetrators. The severity of international core crimes implies the accountability of the international community to act, regardless of sovereignty considerations under the R2P theory.[24]

Royer (2021, p.86) claims that states' political will and the traditional understanding of their sovereignty hinder the international community's efforts against core crimes. So, he emphasizes that states should integrate the R2P into the interpretation of their national interests regarding the concept of humanity protection. He argues that the R2P does not manifest a valuable reference for state politics that it might oppose its application. This fact implies reconceptualising the international community's endeavours to combat evil in a political framework. Yet, while the R2P represents a moral norm, jurisprudence should review it as a preventive procedure to protect humanity. This integration supports the R2P in international politics as it eliminates extremist patriotic odds that oppose foreign intervention. Royer's reframing of the R2P underlines the severity of core crimes that require a cosmopolitan reaction to suppress.

External intervention, under the R2P, could utilize foreign jurisdictional tools to prosecute the perpetrators of core crimes. This responsibility consists of both state and international community duties to prevent severe atrocities that violate fundamental human rights [35]. Therefore, the R2P aims are guaranteed by this intervention as its humanitarian aspects overwhelm sovereignty claims. This duty of the international stipulates the non-fulfilment of the territorial state of its responsibility to protect fundamental human rights, intentionally or accidentally. Moreover, the perpetrators of core crimes must not exploit state sovereignty as a shield to avoid prosecution [40]. Moreover, international law permits humanitarian intervention to prevent human rights violations even by use of force, though its rare cases [3]. Thus, judicial intervention is an appropriate solution to defend these rights. These rights are rooted in international law that grants them continuous protection.

Humanitarian ends of the R2P justify the utilization of its tools even for non-party states, particularly under the approval of the R2P in the UNSC resolutions. Nevertheless, the R2P, to be effective, should instrumentalize diplomatic and humanitarian mechanisms [4]. This approach includes employing legal toolkits from foreign jurisdictions. For instance, the ICC imposed its jurisdiction in Kenya and issued a request to the government to establish an ad hoc court for post-election violence. The ICC's legal efforts, in this case, represented the R2P theory as it tended to protect the local population against violence. Bellamy concludes that both the R2P and the ICC system are integrated humanitarian establishments to

[24] Ibid 77.

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confront international core crimes. Despite the sceptics, the implementation of non-military measures under the R2P introduces them as alternatives to military operations [18]. They are intermediate stages before waging wars. Thus, their prominence in the R2P theory is unneglectable, which endorses judicial intervention measures to prevent international crimes.

Notwithstanding the ICC and the R2P's mutual role in preventing heinous crimes, utilizing the court's universal toolkits should be subordinate to the Statute's aims [23]. This restriction guarantees the effectiveness and trueness of the ICC measures regarding core crimes since it creates judicial surveillance of ICC practices. This mechanism, consequently, enhances the trustworthiness of the ICC's contribution to international justice. As Ercan elaborates, the R2P toolkit defends international justice and security because it endorses international intervention to guarantee global compliance with international law [16].

The R2P as a Basis of Universal Jurisdiction

Jurisprudence points out the prominence of the R2P theory in international law because of its contribution to defending humanity against atrocities. The R2P, as Royer introduces, is a humanitarian tool to prevent evil since it justifies legal intervention to haunt the perpetrators of core crimes universally since it prioritises the protection of humanity rather than politics. Furthermore, the flexible theme of the R2P harmonizes its application with the humanitarian ends of atrocities prevention. As a consequence, states' political will cannot oppose the application of legal principles that are based on the R2P. Instead, the R2P combines states' political interests and humanity's morals in a shield against evil deeds [37]. This moral portrayal of the R2P proves its validity in utilising other international law principles against atrocities. It frees the international community from political restrictions and requirements to intervene to protect human rights [32]. The latter is a need that the R2P prioritizes which enhances its impartial practice.

Furthermore, judicial intervention under the R2P principle has an ethical justification in the UN Charter because it limits the State Members' opportunities to resort to the use of force to suppress mass atrocities [27], whether the intervener is the international community or a state on behalf of it. This end accords with the Charter's restrictive conditions to permit the use of force by State Members.[25] In addition, the R2P's contribution to defending fundamental human rights enhances its ethical aspect since its application is limited to suppressing gross human rights violations. Therefore, this ethical consideration, besides the natural legal logic, justifies universal judicial intervention to protect human rights.

[25] The UN Charter, art 2(4).

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As the judicial international practice discloses, the collective obligation on states prompts them to adopt universal toolkits to eradicate the impunity of serious criminals to secure world peace. The Nature of universal jurisdiction is compatible with this purpose; prosecuting core crimes internationally limits their occurrence and enhances justice by restricting impunity. And since the R2P justifies transcending sovereignty considerations to suppress atrocities by military intervention, it justifies extra-territorial judicial intervention, i.e., imposing universal jurisdiction. The humanitarian ends of universal jurisdictions and the international *erga omnes* obligation to suppress atrocities concord with the purposes of the R2P principle. Thus, the state's jurisdiction is responsible for prosecuting the perpetrators of international core crimes universally under the R2P principle in customary international law. This judicial intervention can utilize the approach of inter-state mutual legal assistance, organized by bilateral or multilateral agreements, or the horizontal complementarity principle. Indeed, the conscience of humanity prefers judicial intervention rather than military intervention because the former does not inflict losses of souls or properties. Judicial mechanisms accord with the humanitarian needs of peaceful cohabitation. Furthermore, they enhance global trustworthiness in international criminal justice by eradicating international impunity.

To sum up, scholarships and jurisprudence justify the R2P by the need to maintain peace and security. It introduces a legal norm that justifies jurisdictional intervention concerning serious human rights violations. Thus, it is an appropriate justification to employ foreign legal rules, particularly universal jurisdiction, within the state of crime location. Hence, it overcomes sovereignty claims that might hinder defending human security and encourages the international community to fulfil its obligations to protect humanity. Furthermore, the evolution of the R2P theory in international law, along with its several adoptions in politics, grants it a universal protective theme against atrocities. It is an effective foundation to intervene to prosecute core crimes, disregarding their territory or the perpetrators' nationality. These features qualify the R2P to impose universal jurisdiction in the context of atrocities and global prosecution and eradicate the impunity of their perpetrators. Therefore, the R2P principle is the required justification for universal jurisdiction regarding the prosecution of international core crimes. Since the latter is an international threat to world peace and security, the international community must act to eradicate its dangers via universal jurisdiction mechanisms. This intervention complies with international law because it safeguards human rights, which is its favoured interest.

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3.3. The Independence of National Courts Controversy

Amongst fundamental human rights guarantees, the independence of judges provides individuals with critical constitutional protection. It is essential to establishing good governance of a state; judges, in their duties, should be freed of any sort of influential factors to enhance the impartiality and fairness of their judgments. Thus, states tend to prevent domestic or foreign influence from interfering with national judgments. This guarantee is active concerning prosecuting crimes by domestic courts.

Nevertheless, when the territorial jurisdiction does not initiate legal proceedings against atrocities, foreign jurisdictions may act under the principle of universal jurisdiction. This intervention would provoke national opposition because it violates the independence of the national courts. Consequently, national opposition might frustrate crucial efforts to suppress atrocities. This manifests an anti-humanness consequence. Therefore, achieving the research objective requires eliminating this contradiction by striking the balance between the principle of universal jurisdiction and the independence of national jurisdiction.

The Concept of the National Judiciary's Independence

The independence of the national courts and judges is not solely crucial to maintaining the integrity of the citizenry's fundamental human rights, but it manifests a major sense of state sovereignty. For the former, the constitutional umbrella of this independence is the minimum requirement to protect human rights [39]; it should be included within legislation and minor regulations. And for the latter, the politicians' statements indicate their eagerness to defend this constitutional principle.[26] It is an aspect of competition among national politicians. It is the demarcation between the state's political organs and national courts that defends the judicial process against political pressure [26]. According to the European Court of Justice (ECJ), this protection extends to all officials who undertake a judicial service, regardless of their formal titles.[27] Through this broadening interpretation, the ECJ sought to enhance the impartiality of the judicial process disregarding the conducting organization. Independence is a prerequisite for courts to accomplish their judicial objectives. In the same context, the Commissioner of Human Rights of the EU wrote "The independence of judges should be regarded as a guarantee of freedom, respect for human

[26] Mosutafa Elmenshawy, El-Sisi Stresses State Obligation to Maintain the Independence of the Judiciary as a Firm Approach, *(Elmasry Elyoum on 1 October 2023)*, https://www.shorouknews.com/news/view.aspx?cdate=01102023&id=5d2d4070-aac3-4a51-87d5-0a95ff0ae281

[27] ECJ, *Syfait and Others*, case C-53/03 EU:C:2005:333, judgment on 31 May 2005, para 31. In this case, the Court considered members of the competition authority in Greece judges who should be protected against the pressure of the executive authorities.

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rights and impartial application of the law. Judges' impartiality and independence are essential to guarantee the equality of parties before the courts."[28]

Walid and Oussama indicated that the independence of the national judiciary reflects the principle of separation of powers in positivist doctrine [14]. It constitutes an institutional guarantee for the judicial authority as a whole, not for individual judges. It is a core requirement of the rule of law. They argued that the independence of the judiciary implies the protection of judges against interventions of other state authorities concerning the entire judicial proceedings [14]. The strength of this independence enhances the effectiveness of the judicial proceedings in achieving justice and *vice versa* [39]. There is a direct correlation between judicial independence and the rule of law. Moreover, Zeller affirmed that judicial independence is a core requirement of the rule of law concept [45]. In her paper, she introduced a European criterion of judicial independence set by jurisprudence and contributions of the Council of Europe. She concluded that the judges' awareness of their duties concerning the rule of law qualifies them to maintain their independence [45]. In addition, the judges' strong professional skills, which appear within their judgements, contribute to enhancing the public confidence in the judiciary. These judgments are the public's direct contact with judges, so they point out how those judges are skilful and hold adequate legal knowledge.

The solid nexus between the judges' independence and the citizenry's personal freedom is tight. Gutmann and Berggren argued that judicial independence is an indicator of the national standard of personal freedom [6]. Thus, it creates a shield against political encroachments. Furthermore, judicial independence enhances the judges' contribution to establishing political accountability, bridging the vacuum that the absence of electoral accountability creates. This role manifests an inherent contribution of the judiciary in securing the citizenry's fundamental rights and freedom which, in turn, promotes the political stability within society.

The judicial independence in a state reflects the impartiality of its judges. McIntyre claimed that the national judgments' evasion of non-legal influences manifests the impartiality of the judiciary [28]. It presents a judicial liberty that prevents other state authorities' incursions into the judicial process. Judges should not submit their rulings to outside pressure to enhance their fairness. Moreover, he portrays the independent judiciary as an instrument to isolate judges of non-legal influences which, in turn, promotes

[28] Commissioner of Human Rights of the EU, The Independence of Judges and The Judiciary under Threat, (Human Rights Comment on 3 September 2019), https://www.coe.int/en/web/commissioner/-/the-independence-of-judges-and-the-judiciary-under-threat

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the impartiality of their judgments. It is a prerequisite of the rule of law within states. This opinion accords with Díez-Picazo's (2021, p.1-2) indication in the "Encyclopedia of Contemporary Constitutionalism". He argued that judicial independence has four pillars:1. liberty of instructions, 2. non-removablilty of the judges, 3. immunity, 4. prohibitions. He added that the value of the independence of the judiciary is justified by two considerations. The first is the requirement to satisfy the principle of separation of powers. The second consideration relies on the partial satisfaction of the litigation parties about the judgment because neither would gain a full victory in the litigation. Thus, the social acceptability of this status stipulates the impartiality of the judicial proceedings leading to it. Impartiality is the core of the judicial independence. In his conclusion, he mentioned the affirmation of judicial independence included in the Charter of Fundamental Rights of the European Union to provide individuals with effective judicial protection.[29] Furthermore, the Court of Justice of the European Union (CJEU) indicated that the impartiality of the judges manifests their obligation to give judgments on each case without showing any indication of bias.[30] Dijk argued that this judgment points out the relevance between independence and impartiality. Nevertheless, he claimed that independence does not suffice solely as an indicator of the judges' impartiality since determining the latter by the litigators is less questionable than determining the former.[31] The difference in the sentiment analysis of both concepts disqualifies independence from impartiality.

In conclusion, the independence of the national courts is a solid guarantee of human rights as it provides them with impartial and effective judicial protection. Jurisprudence concluded that infringing this independence destabilizes fundamental human rights since it deprives citizens of their judicial protection. Judicial independence is a chief guarantee of human rights and freedoms. Therefore, it is a national duty to preserve this independence and defend it against breaches, regardless of their source, because of their threats to national political and legal stability.

Allegations of Universal Jurisdiction Breaches of the National Judiciary's Independence

According to the previous preview, the independence of the national judiciary is a major aspect of state sovereignty. It is a legal notion with a political reflection; the independence of the judges is the key defence of society's stability. Thus, infringing this norm constitutes a direct threat to the legal and political

[29] European Union, Charter of the Fundamental Rights of the European Union, *Official Journal of the European Union* C83 53:401, 2010, art 47.
[30] CJEU, Combined Cases C-585/18, C-624/18 and C-625/18, ECLI:EU: C:2019:982, Judgment of 19 November 2019, para 128.
[31] Ibid.

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regime of the state as a whole. In this section, the study will not address the inner infringements of judicial independence. Nevertheless, it concentrates on the infringements caused by foreign judicial proceedings that might be portrayed as interventions. In particular, it analyzes the judicial proceedings that foreign judicial bodies intake within the territory of another state under the principle of universal jurisdiction.

Initially, it is glaring that universal jurisdiction could be exploited as a weapon under a political agenda [24]; a universal legal principle without a disciplined consensual formulation would create a foreign tyrannical judge prosecuting a national tyrannical politician or an international non-political serious criminal. Intruding state sovereignty in that way manifests a crucial deficiency of universal jurisdiction because it violates the independence of the national judiciary of the territorial state, which is a chief representation of its sovereignty. Since foreign judicial proceedings overshadow the national proceedings, they would be viewed as unwanted interventions within national affairs. This portrait frustrates the international efforts to prosecute core crimes as it includes two contradicted attitudes: national sovereign judicial proceedings and foreign proceedings. These proceedings were considered by the African Union (AU) a Western attempt to subjugate national judiciaries which endangers international security.[32] The AU condemned the political motivations of non-African judges who initiated prosecutions against African officials. The negative political consequences of these proceedings jeopardize the stability of the world legal order. Through this statement, the AU sought to maintain the independence of the Member States' judiciaries. It reflects a direct collision between African and European jurisdictions concerning the principle of universal jurisdiction and its impacts on the independence of national judiciaries. The tensions that this collision creates deteriorate the international relations among states, destabilising world peace and security [9]. Therefore, the AU issued a statement that called the Member States to engage the debates at the UN General Assembly regarding the principle of universal jurisdiction and express their concerns about its abuse by Western states.[33] It is a chief concern regarding the application of universal jurisdiction. Accordingly, the AU argued that the ICC's warrant against Omar El-Beshir, the former Sudanese President, is null and void because it violated the principle of complementarity which makes the ICC's jurisdiction subsidiary to the Sudanese jurisdiction.[34] Hence, foreign jurisdictions should not initiate judicial proceedings against atrocities until domestic courts start

[32] African Union Doc PSC.PR/COMM.(DXIX) Communiqué, Peace and Security Council 519th, 26 June 2015, para 6, https://papsrepository.africa-union.org/bitstream/handle/123456789/828/519.comm_en.pdf?sequence=1&isAllowed=y
[33] The African Union Decision on the implementation of the Decisions on the International Criminal Court (ICC) Assembly/AU/Dec.419(XIX), 1.
[34] Avocats Sans Frontières, African and the International Criminal Court: Mending France, July 2012, 12, https://www.asf.be/wp-content/uploads/2012/08/ASF_UG_Africa-and-the-ICC.pdf

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their investigations. According to the AU's interpretation, the principle of complementarity serves as a shield to protect the independence of domestic courts; judicial proceedings transcending this principle, even under universal jurisdiction, violate the national judiciary independence. In addition, African delegations adopted this interpretation at the Sixth Committee (Legal) to express their concern that universal jurisdiction might turn into a political weapon of superpowers and defend the independence of their national judiciaries. The representative of Zimbabwe required the consent of the national jurisdiction before applying universal jurisdiction according to the principle of complementarity, otherwise, its application would be selective and prejudiced.[35] Besides, Rwanda insisted that the application of universal jurisdiction should be appropriate to domestic judicial peculiarities.[36] This is the sole method to generate a domestically admitted portrait of universal jurisdiction since neglecting the peculiarities of the national judicial regime violates its independence. The independence of the national jurisdiction was a key focus defended by African and Arab states at the UN regarding the application of universal jurisdiction. The utter result of this interpretation is jeopardizing universal judicial endeavours to prosecute the perpetrators of core crimes, in particular officials of high ranks, which enhances international impunity.

Moreover, the pressure that the utilization of universal jurisdiction might inflict distorts the impartiality of the national judge. Foreign judicial interventions would influence the domestic judicial function due to the different approaches they use regarding a single incident. Joe insisted that judges should be liberated from internal and external pressure (McIntyre, 2019, p.171). The political, or sentimental, motivation for universal jurisdiction may influence the judicial method and affect the decision the judge reaches (McIntyre, 2019, p.173). Disregarding the severity of the atrocity, the proper judicial method should be based on persuasion and legal logic. Otherwise, the principle of judicial independence becomes in vain and a dead letter. This consequence opposes the efficiency that the judicial function requires.

To sum up, domestic concerns that universal jurisdiction might violate the independence of the national courts hinder the functionality of this international principle. Jurisdictions would oppose and deliberately frustrate the judicial proceedings initiated by foreign courts or prosecutors against atrocities committed within national territory. In the shadow of this confrontation, the no man's land expands and

[35] The UNGA Sixth Committee (Legal), Concluding Debate on Universal Jurisdiction Principle, Sixth Committee Speakers Wrestle with Challenging Balance between State Sovereignty, Fighting Impunity (SEVENTY-SIXTH SESSION, 15TH MEETING (AM)), GA/L/3642, para 5, https://press.un.org/en/2021/gal3642.doc.htm
[36] Ibid para 2.

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international impunity strengthens, which has dire consequences on the concept of justice. Thus, it is an *erga omnes* obligation to settle the legal dispute between universal jurisdiction and the national courts' independence to maintain the balance between these principles and achieve the humanitarian objectives of both.

Conciliation Mechanisms

Since the previous dilemma cannot be left unsettled, international jurisprudence exerted chief efforts to maintain the balance between universal jurisdiction and national judicial independence. Both concepts aim to maintain the integrity of the justice system, domestic and international. Thus, neither should overwhelm the other to guarantee their effectiveness in legal practice. The maintenance of this balance is crucial to enhancing the useful utilization of universal jurisdiction against core crimes while defending the independence of the national judiciary. As Ezeh claimed, the continuity of universal jurisdiction applicability depends on harmonizing its interpretation with domestic norms [17]. Thus, the conciliation between the two concepts is indispensable; it is a prerequisite for the correct implementation of universal jurisdiction. Accordingly, the research hereinafter introduces legal concepts that are appropriate to serve as mechanisms of the settlement.

The *first mechanism* is a domestic approach lies in the incorporation of universal jurisdiction into national legislation. This method guarantees avoiding the contradiction between domestic judicial bodies' competence and foreign judicial proceedings. When national laws admit foreign judicial intervention under universal jurisdiction, there will be no vacancy for the contradiction possibilities; universal jurisdiction derives its authority from domestic legislation. Hence, the discussions at the Sixth Committee concluded the inevitability of integrating universal jurisdiction into national laws to enhance the effectiveness of this principle. According to Grigaitė and Vaišviliene (2015, p.187), multilateral treaties would affirm this incorporation and organize it among member states. Moreover, states are obliged to incorporate universal jurisdiction within domestic rules to enable its effective application [34]. Indeed, the cohesion provided by this incorporation prevents any violations of the independence of the national judiciary under the principle of universal jurisdiction.

The burden of the *second mechanism* is carried by the Sixth Committee. It is manifested in its endeavour to reach a global consensus regarding the scope and application of universal jurisdiction. The Sixth Committee invited the Member States to share their views on universal jurisdiction at the meetings

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of this working group,[37] which held two meetings discussing the scope and application of the principle of universal jurisdiction and reached a draft resolution. The General Assembly, in this draft, noted the absence of a universal consensus concerning the scope and application of the principle of universal jurisdiction.[38] The draft, also, claimed that the ongoing discussions would be the threshold of this consensus that would enhance the impartiality of the application of this principle.[39] Therefore, the Committee initiated a series of legal discussions where states expressed their attitudes and opinions about the application of universal jurisdiction. The discussions reflected a notable gap concerning the understanding of this norm that jeopardised its effective employment against impunity. While the discussions continued, the Committee did not reach a firm conclusion regarding universal jurisdiction. This fact paved the way for relying on multilateral conventions that adopt universal jurisdiction and organize its utilization by the parties. Consequently, unifying these understandings and requirements enables world jurisdictions to operate universally against core crimes without violating the independence of the territorial state jurisdiction.

The third mechanism is mutual legal assistance. It has become the chief theme of universal jurisdiction application in international legal practice. According to the European Commission, mutual legal assistance is a "form of cooperation between different countries to collect and exchange information. Authorities from one country may also ask for and provide evidence located in one country to assist in criminal investigations or proceedings in another."[40] Due to the current challenges of applying universal jurisdiction jurisdictions managed to sign multilateral agreements organizing the inter-state judicial interference under the concept of mutual legal assistance. This mechanism innovated solutions to overcome logistical and procedural obstacles of universal jurisdiction. In addition, it grants universal jurisdiction a conventional feature. Thus, the independence of state parties' judiciaries will not be violated if another state party initiates judicial proceedings under the agreement of mutual legal assistance and *vice versa*. Indeed, the state's fulfilment of a conventional obligation does not inflict the independence of the national judiciary, but it solidifies the national commitment to conventional obligations. This enhances the trustworthiness of the national judiciary, which is an integral part of its independence.

[37] The UN General Assembly Report of the Sixth Committee on the Scope and Application of the Principle of Universal Jurisdiction A/72/464 on 10 November 2017, para 5.
[38] The General Assembly Draft Resolution A/C.6/72/L.23 on 7 November 2017, para 4.
[39] Ibid.
[40] European Commission, Mutual legal assistance and extradition, https://commission.europa.eu/law/cross-border-cases/judicial-cooperation/types-judicial-cooperation/mutual-legal-assistance-and-extradition_en

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Notably, the Hague Convention on Mutual Legal Assistance, adopted on 26th May 2023, is the best utilization of this method to organize the practice of universal jurisdiction among state parties. In its preamble, the Convention figures out that the fighting against impunity manifests an obligation of the international community that requires unifying states' legal efforts to prosecute the perpetrators of international core crimes.[41] Thus, the Convention manifests a building block in the development of international law rules of limiting impunity. It redefines the concepts of core crimes[42] to provide judicial bodies with a disciplined interpretation of them since these crimes are the threshold to apply the legal mechanisms of the Convention. Furthermore, it extends the jurisdiction of state parties over core crimes committed abroad if the perpetrator is present within their territory.[43] Biazatti and Amani mentioned that this rule was opposed by France and the UK at the conference.[44] Both states argued that the duty to impose national jurisdiction over core crimes, based on the defendant's presence, was not included in the treaty and customary international law and they demanded a flexible contextualization of the presence condition.[45] Then, the delegations reached a point of consensus with a reservation-based proposal that limited the scope of Art 8(3) by permitting state parties to present a reservation on this article under their domestic laws of jurisdictions.[46]

Moreover, the Convention introduces a conventional *aut dedare aut judicare* obligation on state parties as it requires the state where the perpetrator is found to surrender the case to the competent jurisdiction under Art 8.[47] Thus, it considers this obligation a sort of mutual legal assistance[48] which the Conventions provide a legal ground to provide.[49] Eliminating the logistical obstacles of universal jurisdiction, the Convention permits employing distance video conferences and telecommunications to hear witnesses or experts residing in a different state party.[50] Thus, the witnesses' physical absence at the trying court does not frustrate the trial because the judges can hear their testimonies through

[41] Ibid 6.
[42] The Ljubljana – The Hague Convention on Mutual Legal Assistance, art 5.
[43] Ibid art 8 para 3.
[44] Bruno de Oliveira Biazatti and Ezéchiel Amani, The Ljubljana – The Hague Convention on Mutual Legal Assistance: Was the Gap Closed? *(EJIL Talks on 12 June 2023)*, https://www.ejiltalk.org/the-ljubljana-the-hague-convention-on-mutual-legal-assistance-was-the-gap-closed/.
[45] Ibid.
[46] (n 42) ibid art 14
[47] Ibid art 92 para 3.
[48] Ibid art 19.
[49] Ibid art 29.
[50] Ibid art 34.

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telecommunications. This ability secures the witnesses' evidence which is mandatory to enhance the effectiveness of the trial.

Pillai argues that the image of cooperation and coordination that the MLA Convention presented universal jurisdiction with acquired a global consensus of the participants during the negotiations.[51] While states would oppose the extension of a foreign jurisdiction into their territory, they would rather admit the concept of legal assistance to implement their duties concerning international core crimes.[52] Thus, this conventional cohesion enhances the effective application of universal jurisdiction by the international community because of its unified framework, that eliminates logistical and legal obstacles that hinder the prosecution of core crimes universally.

To sum up, international jurisprudence marched steadily towards an ultimate adoption of the principle of universal jurisdiction in international law. The tiny scattered steps in bilateral and multilateral conventions, that were limited to certain crimes, along with the debates at the UN General Assembly Sixth Committee, expanded to an international treaty that introduced the concept of mutual legal assistance as the effective manifestation of universal jurisdiction. It is a modern flexible concept that ensures the global utilization of universal jurisdiction to prosecute the perpetrators of heinous crimes, which can tackle the state's strictness to defend the independence of the national judiciary that might frustrate the global endeavours to prosecute core crimes committed within its territory. Therefore, the above-mentioned mechanisms ensure the continuity of these efforts. The function of these legal strategies is to maintain the balance between national judicial independence and the application of universal jurisdiction. The integrity of this balance is a mandate to preserve the legitimacy of the judicial proceedings under the principle of universal jurisdiction.

4. CONCLUSIONS

To conclude, the solution, introduced by the research, manifests its practical benefit by closing the broad gap regarding the application of universal jurisdiction. This solution is multi-dimensional because

[51] Priya Pillai, Symposium on Ljubljana – The Hague Convention on Mutual Legal Assistance: Critical Reflections – Lessons Learned: Civil Society Engagement in Treaty Negotiations, (*OpinioJuris on 4 August 2023*), http://opiniojuris.org/2023/08/04/symposium-on-ljubljana-the-hague-convention-on-mutual-legal-assistance-critical-reflections-lessons-learned-civil-society-engagement-in-treaty-negotiations/.
[52] Ibid.

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it employs three firm concepts in international law to justify the utilization of universal jurisdiction. Jurisprudence concluded that universal jurisdiction is a part and parcel of international law because achieving international justice is merely an illusion without utilizing a global legal mechanism that enables states to prosecute and try the perpetrators of heinous violations of fundamental human rights. The prominence of universal jurisdiction in international legal practice and the humanitarian need to achieve international justice is the motivation for conducting this research. Legal knowledge should focus on maintaining this principle by securing a harmonized global interpretation of it among jurisdictions. Even though the concerns about its abuse should not drive jurisdictions to avoid applying universal jurisdiction; it is a legal norm subject to multilateral discussions to reach a consensus about it. Since universal jurisdiction requires a solid and globally admitted justification that overwhelms the legal stubbornness of world jurisdiction, caused by their diversity in interpreting universal jurisdiction, the research establishes this solution on a handful of well-acknowledged legal theories. The firmness of these theories enhances the applicability of the solution to guarantee an effective utilization of the principle of universal jurisdiction. It plants a seed that jurisprudence should pay attention to and irrigate until the greeny flourished picture of universal jurisdiction is realized.

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UN ENFOQUE MULTIDIMENSIONAL PARA IMPONER LA JURISDICCIÓN UNIVERSAL EN LA PRÁCTICA JURÍDICA INTERNACIONAL

RESUMEN

El estudio presenta una solución multidimensional para imponer la jurisdicción universal mediante la utilización de conceptos firmes en el derecho internacional para mejorar la funcionalidad de este principio en la práctica jurídica internacional. Inicialmente, explora la clasificación actual del principio de jurisdicción universal en el derecho internacional para determinar su status quo más reciente. Así, el estudio revisa su evolución en los instrumentos jurídicos internacionales y cómo los tribunales internacionales los utilizan. Además, la investigación analiza las resoluciones relevantes de la ONU sobre jurisdicción universal para dibujar un retrato global de su estatus legal en el derecho internacional. Debido a los fines humanitarios cosmopolitas de la jurisdicción universal, la investigación sugiere emplear el concepto de humanidad para justificar su imposición. Además, estos fines, y el propósito de mejorar la justicia internacional, impulsan el estudio a introducir la teoría de la responsabilidad de proteger (R2P) para justificar la utilización de normas jurídicas internas extraterritorialmente. Sin embargo, esta utilización podría plantear la cuestión de la independencia de los poderes judiciales nacionales. La investigación analiza este problema para establecer las bases necesarias para lograr un equilibrio entre la independencia de los poderes judiciales nacionales y la imposición de la jurisdicción universal para garantizar la justicia.

Palabras clave: jurisdicción universal, derecho internacional, estatus jurídico, humanidad, responsabilidad de proteger (R2P), independencia judicial nacional.

国际法律实践中实施普遍管辖权的多维方法

摘要

本研究提出了一种多维解决方案，即利用国际法中的明确概念来实施普遍管辖权，以提高这一原则在国际法律实践中的功能性。首先，它探讨了国际法中普遍管辖权原则的现行分类，以确定其最新现状。通过回顾有关这一原则的国际判例，全面介绍普遍管辖权的结构及其在国际法中的相关概念，这一点非常重要。因此，本研究回顾了普遍管辖权在国际法律文书中的演变，以及国际法院如何利用它们。此外，本论文还分析了联合国关于普遍管辖权的有关决议，以描述其在国际法中的法律地位。由于普遍管辖权具有世界性的人道主义目的，本研究建议采用人性概念来证明实施普遍管辖权的合理性。此外，这些目的以及加强国际正义的理想促使本研究引入保护责任（R2P）理论，以证明在域外适用国内法律规则的正当性。然而，这种适用可能会引发国家司法机构独立性的问题。本文分析了这个问题，为在国家司法机构独立性和实施普遍管辖权之间取得平衡奠定了必要的基础，以保障正义。

关键词：普遍管辖权、国际法、法律地位、人性、保护责任（R2P）、国家司法独立。

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