

# On the Universal Jurisdiction in International Law

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**Abstract:** With the development and progress of the society, in order to promote the harmony and unification of each country, the social value of international law is quite vital. Under the management of international law, peaceful and coordinated development has been achieved among many countries. Universal jurisdiction in international law has been paid more and more attention in recent years. It is formed after a certain period of historical development, and has been constantly improved. Through continuous practice, it has certain conditions of use and inevitable premise. There are also some obstacles and problems encountered in practice, which conflicts with the sovereignty of some countries. Based on this, this paper analyzes universal jurisdiction in international law.

## 1. Introduction

Throughout the development and reform of the world, universal jurisdiction in international law plays an increasingly important role, and gradually becomes an international way of jurisdiction. In recent years, the continuous improvement of the world's economy and politics has brought people great material enjoyment and spiritual satisfaction, changed people's lifestyle, and improved people's happiness index. However, in such an international background, we have to admit that the types and scope of international crime are also expanding and increasing. Countries and the international community are also facing severe challenges. Therefore, the prevention and arrest of international crimes has become one of the major responsibilities of the international community. Universal jurisdiction in international law has been paid more attention, and its research has become an important topic.

## 2. Overview of Universal Jurisdiction

### 2.1 Background of Universal Jurisdiction

First of all, from the perspective of social background, the goal and purpose of universal jurisdiction in international law is to prevent and solve criminal acts in the international scope, and to ensure the personal safety and property safety of the international community and international people. Universal jurisdiction is gradually improved after the development of the times. At first, it was applied to fight against piracy. Because piracy crime was so rampant that threatened the common interests of many countries, so it was attacked by the international community. After the 20th century, people's concept gradually changed. They realized the close relationship between their own country and international development, and wanted to improve their own interests by improving the interests of the international community. Therefore, they increasingly recognized and valued universal jurisdiction. The reason for its boom is that during the Second World War, many countries strengthened exchanges and cooperation. In war disputes, the number of international criminals was also increasing, so the application of universal jurisdiction tended to be more extensive.

Secondly, from the perspective of academic background, in view of the attack and restriction on pirates, universal jurisdiction is mainly limited to territorial jurisdiction and personal jurisdiction in the way that is recognized by all countries, excluding other forms. That is to say, the international community has not fully realized the value and connotation of universal jurisdiction. Therefore, the jurisdiction over pirates is only based on the understanding that there is no violation of national

sovereignty, which does not play the real role of universal jurisdiction. In the application of universal jurisdiction in the Second World War, a great progress has been made. Due to the great influence of the Second World War on the international community, natural law once again attracted people's attention, which also led to the development of universal jurisdiction. The bloody rule of Germany stimulated people's desire to realize the idea of peaceful and unified rule. The universal jurisdiction to a certain extent reflected the view of human freedom and was advocated and respected by more people. With the continuous progress of international law, the international community's understanding of international law was gradually deepened. At the beginning, many countries thought that there was a conflict between international law and their own national sovereignty. However, under the background of globalization, people have gradually realized that national sovereignty is not unchangeable but has certain legal binding force. People's softening attitude towards national sovereignty has given universal jurisdiction in international law certain development space and theoretical basis.

## **2.2 Meaning of Universal Jurisdiction**

First of all, there is a narrow meaning. In this sense, universal jurisdiction mainly takes those countries with sovereignty as the applicable objects and criminals committed crimes in the international community as the jurisdiction objects who affect the harmonious development of the international community. The universal jurisdiction has the right to dispose of criminals generally recognized by the international community according to the law. Only when the criminal suspect appears in the territory of his country and endangers the territory, social development and the security of people, can the universal jurisdiction be implemented. This narrow sense reflects the strict application conditions and international requirements of universal jurisdiction, and regulates its application premise.

Secondly, there is a broad meaning. In the broad sense, universal jurisdiction expands the scope of application. It no longer aims at a certain kind of criminals, but types of crimes recognized by the international community. Moreover, it can also be implemented when the criminal suspects do not enter their own territory, which solves the requirement that the criminal suspect must be geographically related to his own territory in the narrow sense, improves the scope and conditions of application, offers some new values and expands its international influence.

Finally, there is a broader meaning. In the broader sense, the subject of universal jurisdiction is extended to sovereign states and some international organizations, which endows international organizations with certain rights to exercise universal jurisdiction. The object of jurisdiction is no longer limited to those who commit major criminal cases, but all criminals who endanger the harmonious development of the international community and the peace and security of people. In addition, it removes geographical restrictions on suspects and does not require them to be in their own territory.

## **3. Application Forms of Universal Jurisdiction**

### **3.1 Requirements for Initiation Mechanism**

To ensure that universal jurisdiction exists in international law and plays an important role, there should be a special mechanism responsible for initiating and exercising rights. Only with special mechanism can the application rules and conditions of universal jurisdiction be regulated.

First of all, the mobile management departments have the initiation mechanism of universal jurisdiction, since they are in charge of the information of all the persons who have applied for or are applying for immigration. One the relevant departments need the information, the mobile management departments can immediately cooperate, match the information of these persons with that of criminal suspects, and transfer the matched persons to the procuratorate immediately, which fully embodies the starting mechanism of universal jurisdiction.

Secondly, victims are allowed to initiate universal jurisdiction by private means. To a certain extent, since victims have had some contact with criminal suspects, they are able to provide some

effective and real clues to the international community, accelerate the progress of evidence collection and arrest of suspects, and bring certain convenience to the initiation of universal jurisdiction.

Finally, the inspecting authorities have the initiation mechanism of universal jurisdiction. The initiation mechanism between the prosecutor and the victim should complement each other and exist at the same time. They do not contradict each other, but promote each other. With the support of many departments and technologies, the inspecting authorities have advantages to solve many difficulties of victims existing in private starting. For example, the cooperation among departments provides great advantages in monitoring and retrieving information of criminal suspects through big data.

### **3.2 Preconditions and Requirements for the Initiation of Universal Jurisdiction**

To initiate universal jurisdiction, certain rules and requirements should be followed. That is to say, the starting of universal jurisdiction must conform to some preconditions of judicial practice. Generally speaking, there are three requirements: (1) The court department with priority jurisdiction is unwilling to conduct jurisdiction because of certain reasons; (2) The suspect may or has appeared in the territory of his own country, and the relevant departments of the country must apply for and initiate universal jurisdiction; (3) The cases involved in applying for or initiating universal jurisdiction must have some inevitable connection with the security of the country's society or people. It is forbidden to initiate universal jurisdiction without reasons.

## **4. Difficulties in the Application of Universal Jurisdiction**

### **4.1 Contradiction between Universal Jurisdiction and State Sovereignty**

As above mentioned, there has been a certain contradiction between universal jurisdiction in international law and national sovereignty in the process of development. This contradiction is mainly reflected in that universal jurisdiction is a right exercised in the international scope and must be comprehensively considered by every country. However, each country is an individual with different national sovereignties. To pursue universal jurisdiction, it will inevitably affect the form of sovereignty of some countries. Here is the case of Pinochet. Pinochet, the former president of Chile, harmed the personal safety of many Spaniards due to his bloody rule during his reign. During Pinochet's treatment in Britain in 1998, Spaniards filed a lawsuit against the UK. The UK initiated universal jurisdiction and agreed with Spain's request. However, Chileans believed that the UK violated the requirement of national sovereignty in international law and refused to extradite Pinochet. In the end, Pinochet was not extradited, which is a fierce confrontation between universal jurisdiction and national sovereignty. In view of this case, when national sovereignty is in a certain theoretical dominant position, the national government can appropriately limit the initiation premise of universal jurisdiction, which will reduce the conflict between the two.

### **4.2 Contradiction between Universal Jurisdiction and Diplomatic Immunity**

The meaning of universal jurisdiction and diplomatic immunity determines that there must be conflicts and contradictions between them. Universal jurisdiction emphasizes that no matter who has violated the stability and harmony of the international community and constituted an international crime, they must be prosecuted and sued. Diplomatic immunity stresses that diplomats are not subject to the control of the local government and that the local courts cannot govern the crimes of diplomats, which to a certain extent gives diplomats great rights. There is a typical case for the management between the two, "Congo and Belgium Arrest Warrant". In 2000, Congo issued an arrest warrant to the then Minister of Foreign Affairs for crimes against humanity committed by diplomats. However, the Congolese government believed that Belgium's lawsuit was invalid and violated the principles of international sovereign equality and universal jurisdiction in international law. Finally, the International Court of Justice ruled that the arrest warrant issued by Belgium was invalid.

This case fully reflects the great conflict and contradiction between the universal jurisdiction and the immunity of diplomats. The international community generally believes that diplomatic immunity should be implemented prior to the universal jurisdiction, which to a certain extent gives diplomats greater rights, leading to their behavior of deliberately breaking the law. They may take advantage of the customs of the international community and escape some of their own crimes, which is easy to cause some bad influence on the international community, thus causing some unfair phenomena. Therefore, in this case analysis, I think that the international community should make analysis depending on specific cases. It is not necessary to keep diplomatic immunity prior to universal jurisdiction at all times. Because universal jurisdiction exists, it needs to be endowed with the value of existence. Exceptions to diplomatic immunity can be properly allowed under the premise of universal jurisdiction.

## **5. Conclusion**

To sum up, this paper makes a basic overview of universal jurisdiction from the background and meaning of international law, briefly introduces its connotation and concept, then analyzes its initiation mechanism and conditions in terms of its application, expounds some values of universal jurisdiction, and then analyzes difficulties encountered in today's international society. Two typical cases are cited in order to enhance the credibility of the theory. Through in-depth analysis, this paper makes an research on universal jurisdiction in international law, in order to help relevant personnel better understand universal jurisdiction, promote universal jurisdiction to play a greater value, solve some contradictions and problems in the international community, and provide more gospels for people.

## **References**

- [1] Shen Yu, Wei Lin. (2015). On Universal Jurisdiction in International Law. Law and Society, no. 18, pp. 127-128.
- [2] Ma Chengyuan. (2013). On the Significance of Universal Jurisdiction. Journal of China University of Political Science and Law, no. 03, pp. 26-41 + 160.
- [3] Zhou Zhibing, Zhang Zhixun. (2011). On the Universal Jurisdiction Mechanism of Piracy. Shenzhou, no. 01, pp. 63-64.
- [4] Zeng Lingliang, Yu Minyou. (2005). International Law in the Era of Globalization: Foundation, Structure and Challenges. Wuhan University Press.