



“Universal jurisdiction is simply the realization that there are crimes which are crimes not against a particular people living in one particular place, but crimes against all of humanity. And so therefore, the jurisdiction is all of humanity, it’s universal.”

– Larry Cox, Executive Director of Amnesty International USA

## The Pinochet Effect

The arrest of Augusto Pinochet is the most well-known case where states have exercised universal jurisdiction. Pinochet, the former president of Chile, is allegedly responsible for human rights violations including murder, torture and “disappearance” committed during his administration in Chile between 1973 and 1990. Efforts to prosecute Pinochet in countries other than Chile have served as a catalyst for a number of positive developments that benefit victims and survivors in Chile, including:

- ➔ challenging his, as well as his supporters’, version of what happened in the country and de-legitimizing any effort to justify the abuses;
- ➔ sending a strong message that no one is above the law;
- ➔ kicking open the door that had prevented investigations in the past – by the time Pinochet returned to Chile, he was facing some 300 complaints in local courts, hundreds of his colleagues were indicted;
- ➔ putting pressure on a D.C.-based bank to agree to pay damages into a fund established to compensate Pinochet’s victims. The bank in question had helped Pinochet set up false accounts to avoid having his assets frozen.

## Universal Jurisdiction

Universal jurisdiction is the principle that every country has an interest in bringing to justice the perpetrators of grave crimes, no matter where the crime was committed, and regardless of the nationality of the perpetrators or their victims. It was most famously utilized in the 1998 arrest of former Chilean dictator Augusto Pinochet on torture charges in London at the request of a Spanish court. The principle of universal jurisdiction is rooted in the belief that certain crimes, such as genocide, war crimes, crimes against humanity, torture, “disappearance” and extrajudicial executions, are so serious that they amount to an offence against the whole of humanity and therefore all states have a responsibility to bring those responsible to justice. To fulfill this responsibility, more than three-fifths of all states have enacted universal jurisdiction laws to ensure that their national courts are able to investigate and prosecute persons suspected of committing these crimes, and to ensure that their country is not used as a “safe haven” to evade justice.

### How does universal jurisdiction work?

National courts have traditionally prosecuted only people accused of crimes committed in their territory (territorial jurisdiction). Under international law, states can enact national laws that allow their national courts to investigate and, if there is sufficient admissible evidence, prosecute any person who enters their territory suspected of certain crimes, regardless of where the crime was committed or the nationality of the accused and the victim. Over 125 countries have enacted universal jurisdiction laws. Universal jurisdiction can be applied to most ordinary crimes (murder, manslaughter, theft), as well as to crimes of international concern (hijacking and hostage-taking) and crimes under international law including genocide, crimes against humanity, war crimes, torture, extrajudicial executions and “disappearances.”

The Geneva Conventions and the Convention against Torture place a legally binding obligation on states that have ratified them to exercise universal jurisdiction over persons accused of grave breaches of the Geneva Conventions and torture or to extradite them to a country that will. The Inter-American Convention on Forced Disappearance of Persons requires Organization of American States members that have ratified the Convention to exercise universal jurisdiction over persons suspected of the crime of “disappearance” or to extradite them. Although there are no treaties requiring states to exercise universal jurisdiction over genocide, crimes against humanity and extrajudicial executions, taking into account the serious nature of the crimes, which, along with “disappearances,” war crimes and torture, are the gravest crimes under international law, Amnesty International believes that states should exercise universal jurisdiction over these crimes as well.

### How many states have used universal jurisdiction in their national courts?

Since the end of the Second World War more than a dozen states have conducted investigations, commenced prosecutions and completed trials based on universal jurisdiction or arrested people with a view to extraditing the persons to a state seeking to prosecute them. These states include: Australia, Austria, Belgium, Canada, Denmark, France, Germany, Israel, Mexico, the Netherlands, Senegal, Spain, Sweden, Switzerland, the United Kingdom and the United States.



For additional information, updates and actions

AIUSA Program for International Justice and Accountability, [amnestyusa.org/international\\_justice](http://amnestyusa.org/international_justice)

## Recent cases

### **Alberto Fujimori**

Former Peruvian president Alberto Fujimori is believed to be responsible for hundreds of cases of “disappearances,” extrajudicial executions, crimes against humanity and torture. In 2005, Fujimori was detained under an international arrest warrant upon his arrival in Chile. As of August 2007, Chilean courts were considering Peru’s request for Fujimori’s extradition.

### **Hissène Habré**

In September 2005, Hissène Habré, former president of Chad, was indicted by a Belgian court for war crimes, crimes against humanity and torture. A 1992 Truth Commission Report concluded that 40,000 political murders and 200,000 cases of torture occurred in Chad when Hissène Habré was president. The Senegalese authorities arrested Habré in November 2005. In July 2006, in response to a request by the African Union, Senegal agreed to prosecute Hissène Habré.

### **Efraín Ríos Montt**

Nobel Prize-winner Rigoberta Menchú and others filed a criminal complaint in Spain against former head of state General Efraín Ríos Montt and other senior officials charging them with terrorism, genocide and systematic torture stemming from the 1980s massacres. The case is modeled on the Chilean General Augusto Pinochet case which was also brought in Spain under the principle of universal jurisdiction, and represented the first time that a former head of state was investigated and an arrest warrant and extradition request executed in a case arising from the victims’ initiative.

### **Who can be prosecuted using universal jurisdiction legislation?**

The Charter of the Nuremberg and Tokyo Tribunals, the Statutes of the International Criminal Tribunals for the former Yugoslavia and Rwanda and the Rome Statute of the International Criminal Court all confirm that courts can exercise jurisdiction over grave crimes under international law regardless of the official capacity of the accused at the time of the crime or later, be it head of state, head or member of government, member of parliament or other elected or governmental capacity. The fact that no one is above the law was confirmed when the British House of Lords ruled that Augusto Pinochet had no right to immunity from prosecution as a former head of state.

### **Shouldn’t the accused person be returned to the country where the crime took place, if that state is willing to prosecute them?**

In an ideal world, it is generally preferable for most parties involved if the trial takes place in the country where the crime took place. However, in many cases this is not possible. For example, in the aftermath of a conflict, the national legal system may not be capable of carrying out an investigation and prosecution. In many cases there is a lack of political will to prosecute the person or the person may have been granted an amnesty for their crime. It may also be the case that the accused may not receive a fair trial in that country. States exercising universal jurisdiction are, of course, able to consider extradition requests from the country where the crime took place. The state where the crime occurred – which will usually not have investigated or prosecuted the suspect – should have the burden of proving to the court with custody of the suspect that it can investigate and prosecute the accused in fair proceedings will not result in the death penalty.

If a person has been granted an amnesty for crimes by the state where the crimes took place, can they still be prosecuted in another state using universal jurisdiction? National amnesties, pardons or similar national measures to prevent a person from being brought to justice for these worst imaginable crimes not only have no place in the international system of justice, but also are prohibited under international law. Therefore, such steps cannot prevent the courts from another state or an international court from investigating and prosecuting persons accused of such crimes.

### **Does the suspected person have to be present in the country for an investigation to begin?**

No. If a suspect is not in the territory, international law permits national authorities to conduct an investigation and, if there is sufficient admissible evidence, issue an extradition request to the state where the accused is, or is reported to be. However, the accused should be present during a trial to hear the prosecution’s full case, and to put forward a defense or assist his or her counsel in doing so.

### **Can universal jurisdiction be misused as a political tool?**

The Bush Administration has claimed that universal jurisdiction is a dangerous political tool that can be misused against American officials and service personnel. Amnesty’s landmark global survey on universal jurisdiction has found no evidence to support this assertion. Instead, when political motivations have come into play, it has been used to block legitimate cases from moving forward. The cases described above show that universal jurisdiction is first and foremost an effective road to justice for victims who have nowhere else to go.

### **With the establishment of the International Criminal Court, is universal jurisdiction still necessary?**

Yes. The International Criminal Court (ICC) is not a replacement for national prosecutions. In fact, the Court’s Statute expressly requires states that ratify it to accept the primary responsibility to investigate and prosecute persons suspected of crimes within the Court’s jurisdiction (genocide, war crimes and crimes against humanity) in their national courts. The ICC is designed to be complementary to national courts, and will investigate and prosecute individuals only when national courts are unable or unwilling to do so. In the absence of a U.N. Security Council referral, the ICC will not be able to investigate crimes committed either by nationals of a state that has not ratified the Court’s Statute, or on the territory of a state that has not ratified the Court’s Statute. States with universal jurisdiction legislation, however, are able to investigate and prosecute such crimes in their national courts. Furthermore, the ICC will be able to try people accused of crimes committed only after the Court’s Statute entered into force in 2002. National courts exercising universal jurisdiction may be able to prosecute people accused of crimes committed before 2002.