## Vanessa Thalmann

## Reasonable and effective universality

Conditions to the exercice by national courts of universal jurisdiction over international crimes

## **Contents**

Introd	luction	9
I.	The aim of the study	9
II.	The scope of the study	. 12
III. A. B. C.	Terminology Universal jurisdiction International crimes "Reasonable and effective universality": the principles guiding this study Other terms	. 15 . 15 . 16
IV.	Structure, methodology and sources	
V. A. B. C.	Legal impediments to the exercise of criminal jurisdiction in the context of universal jurisdiction cases  Amnesties  Immunities  Ne bis in idem	. 19 . 19 . 22 . 33
	: Universal jurisdiction in international law	
Chap	ter 1: Jurisdiction	. 41
I.	Definition	. 41
II. A. B.	Types of jurisdiction	.42
III. A. B.	The two approaches of public international law  The Lotus approach  The modern approach	. 44
IV.	Extraterritorial jurisdiction and the principles of sovereignty and non-intervention	. 48
V. A. B. C. D. E. F. G.	Bases of criminal jurisdiction Territoriality principle Active nationality principle Passive nationality principle Universal principle The representation principle Other principles	. 52 . 55 . 58 . 61 . 62
Chap	ter 2:The universal jurisdiction doctrine	. 67

I.	The notion of universal jurisdiction	67
II.	Distinctions	69
A.	Unilateral, delegated and absolute universal jurisdiction	69
	Conditional and absolute universal jurisdiction	
C.	Other distinctions	
III.	Universal jurisdiction and aut dedere aut judicare/ prosequi	
Α.	Introductory remarks	
В.	Categories of aut dedere clauses  The relationship between extradition and prosecution	
C. D.	Precedence of the "prosecute" obligation over the "extradite"	70
D.	obligation	83
IV.	Concluding remarks	
Chap	ter 3: Universal jurisdiction and international crimes	87
I.	Introductory remarks	87
II.	International crimes and jus cogens	87
A.		
В.	Jus cogens norms, obligations erga omnes and universal jurisdiction	ı 98
III.	Universal jurisdiction over core crimes and torture	105
A.	Preliminary remarks: crimes subject to universal jurisdiction under	
מ	international law	105
В.	Core crimes and torture	
IV.	The duty to prosecute core international crimes under the	e
A.	universality principle	119
В.	Introductory remarks	119 121
C.	Human rights obligations	141 193
D.	The ICC Statute	123 128
E.	The duty of states to prosecute or extradite	131
F.	Concluding remarks	133
V.	Treaty-based universal jurisdiction	
Part I	I: Universal jurisdiction in national law	
	ter 1: A general overview of domestic legislation on universal	111
1	jurisdiction	143
I.	The universality principle in domestic legislation	
A.	The existence of the universality principle	145 142
В.	Restrictions to the exercise of universal jurisdiction	149
C.	Elimited universal jurisdiction for specific situations or territories	. 158
D.	A list of crimes subject to universal jurisdiction and for a general	
	provision?	. 159

Ī	В.	The crimes subject to universal jurisdiction in domestic law	164 177
Ch	apt	er 2:State practice	205
I.		A general overview	205
II.		A regional overview	208
Pai	rt Il	I: Conditions to exercise of universal jurisdiction	213
Chapter 1:The principle of legality			215
I.		Introductory remarks	215
	А. В.	The legality principle and the implementation of international law  The principle of legality  The legality principle and the need for implementation at the	. 222
***		domestic level	
] [] ] IV.	A. B. C. D. E. F.	The absence of domestic criminalization of international crimes in universal jurisdiction cases	. 246 . 248 . 260 . 279 . 302 . 314
]	A. B. C.	Introductory remarks	.316
]	А. В. С. D.	The role of the foreign law of the territorial state and the legality principle	. 358 . 358 . 359 . 365
VI.		Concluding remarks to chapter 1  The limits to judicial activism, the legality principle and the separation of powers	370
]	В.	The need for implementation and the need for international sanctions on states	

	<del></del>
Chap	ter 2:The requirement of a link with the state exercising universal jurisdiction
I.	Introductory remarks
II. A. B.	A jurisdictional link: the debate
III.	The presence requirement under international law
IV. A. B.	The requirement of a link in state practice
V. A. B.	The definition of "presence" and the timing
VI.	Critical assessment and concluding remarks to chapter 2 412
Chap	ter 3:Subsidiarity417
I.	Introductory remarks
II. A. B. C.	Is the principle of subsidiarity a rule of international law?
III. A. B. C. D.	Issues arising from the analysis of state practice
E. F.	Is the forum state obliged to inform the affected states? Does a request need to be made to the territorial state?
IV. A. B. C.	Concluding remarks
V.	Double-subsidiarity: Does "priority" also apply to the International Criminal Court?
Chapt	er 4: The initiation of universal jurisdiction proceedings479
I.	Introductory remarks

II.	The role of private parties in the initiation of universal jurisdiction		
	Introductory remarks	479	
В. С.	The debate  The role of victims in universal jurisdiction proceedings according to international law		
	State practice	490	
III.	The role of the prosecutor, prosecutorial discretion, and judicial		
	The debate	503	
	The legality and opportunity maxims  The status of the prosecutor, prosecutorial discretion and judicial	504	
D.	review Concluding remarks and critical assessment		
	al conclusions		
I.	Summary	525	
II.	The way forward	528	
Bibliography5			
Table	Table of Contents5		