The Princeton Principles on Universal Jurisdiction define universal jurisdiction as “criminal jurisdiction based solely on the nature of the crime, without regard to where the crime was committed, the nationality of the alleged or the convicted perpetrator, the nationality of the victim, or any other connection to the state exercising such jurisdiction.” This is not the appropriate forum in which to attempt to define universal jurisdiction; a general understanding of the theory is essential to distinguish what universality is not, especially with respect to an assessment of conventional law.

Both the Council of Europe and the European Union have legislated on the issue of concurrent jurisdiction and the solution of conflicts of jurisdiction. It is irrelevant whether the jurisdictional principle applied is universal jurisdiction or any other principle of jurisdiction: what matters is the fact that there is overlapping jurisdiction. But there is no country that would establish express “criteria” to decide upon competing national jurisdictions.

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**Keywords:** “Universal jurisdiction”; “Concurrent Criminal Jurisdiction”; “International Criminal Tribunals”; “conflict of jurisdiction”

**Introduction**

The Princeton Principles on Universal Jurisdiction define universal jurisdiction as “criminal jurisdiction based solely on the nature of the crime, without regard to where the crime was committed, the nationality of the alleged or the convicted perpetrator, the nationality of the victim, or any other connection to the state exercising such jurisdiction. This is not the appropriate forum in which to attempt to define universal jurisdiction; a general understanding of the theory is essential to distinguish what universality is not, especially with respect to an assessment of conventional law.
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**A. Concurrent Criminal Jurisdiction and the solution of conflicts of jurisdiction**

1. In the context of the Council of Europe, the European Convention of Transfer of Proceedings in Criminal Matters is relevant, because 24 states ratified this convention, which is a relatively low number in comparison the European Convention on Extradition has 47 ratifications and the Transfer of Sentenced Persons has 61 ratifications. First Convention provides a mechanism based on a consultation procedure between the concerned states to solve problems resulting from what it calls a plurality of criminal proceedings.

1.1. In the European Union, article 31, paragraph 1 Treaty on European Union provides that “Common action on judicial cooperation in criminal matters shall include (...) (d) preventing conflicts of jurisdiction between member states.” Article 31, paragraph 2, Treaty on European Union states “The Council shall encourage cooperation through Eurojust by: (a) enabling Eurojust to facilitate proper coordination between Member States' national prosecuting authorities.”


So, much more effective in practice are the consultations that take place within Eurojust. It is within this agency that various prosecutors of the European Union states make operational decisions with regard to serious forms of cross-border crime by which more than one European Union state is affected. [2] Article 31, paragraph 1 of the Framework Decision provides that it shall be Eurojust’s objective in the context of investigations and prosecutions concerning two or more European Union states, to stimulate and improve coordination between the competent authorities of the states. Article 6 gives further criteria to determine which of the European Union states is in the best position to investigate or prosecute certain offences.

2. There is no country that would establish express criteria to decide upon competing national jurisdictions. In Finland, conflicts of multiple jurisdictions are taken into account by the Prosecutor-General when prosecution in Finland is
appropriate. In Japan, there is no rule, but the legislator tacitly understands that the state connected with the case should exercise its jurisdiction.

In some countries there are rules about competing extradition requests that can serve as model for the resolution in case of conflict of multiple jurisdictions.

In Germany the law offers rules for the resolution of cases on the juxtaposition of an extradition request and a domestic criminal proceeding in the same matters. If domestic criminal proceedings concerning the same act have been carried out in Germany and the court has rendered a judgment or a decision, the statute of limitations has elapsed or an amnesty law has been enacted, no extradition shall be granted to the requesting state. The same applies if a judgment or a decision has been rendered by an international court. The German prosecutor has discretion to dispense with prosecuting an offence if the accused is extradited because of the same or another offence or if he is transferred to an international court. [3]

In the Netherlands if the extradition would be requested by two or more countries, the law stipulates that the Minister of Justice has to take into account criteria of the so-called good administration of justice. In addition reference is made to the following criteria:
- the seriousness of the offences for which the extradition is requested;
- the “locus delicti”;
- the date on which the requests were done;
- the nationality of the requested person;
- the possibility of the requested persons being transferred to another country. [4]

In Finland some criteria are mentioned in the case of multiple extradition requests. When selecting between multiple extradition requests, the Ministry of Justice takes into account such criteria as the nature of the offence, the time and place of its commission, the order of arrival of the extradition requests and the nationality and domicile of the person whose extradition is sought. This list of criteria is not exclusive and therefore other relevant circumstances may be taken into account as well. If a national court and the International Criminal Court have both requested extradition, the request of the International Criminal Court has primacy. [5]

In Germany, due to the subsidiarity of the exercise of universal jurisdiction, a flexible ranking of concurrent jurisdictions has been established concerning the prosecution of international crimes: primacy is given to the state of commission, the perpetrator's home state and home-state of the victim as well as to an international criminal court.

In Spain the law has developed the principle of subsidiarity by virtue of which the state where the crime was committed has priority over the Spanish jurisdiction when exercising universal jurisdiction.
3. In Germany, several proposal are being discussed on the proposal of the academics, on how to determine the most effective jurisdiction in cases of conflict of multiple jurisdictions. It makes a distinction between two basic models:

- flexible handling of the allocation of jurisdiction on a case-by-case basis;
- a hierarchical order who determines which state is authorized to exercise its jurisdiction according to the classification of links which underlie those principles of jurisdiction.

However, it’s questionable whether such a ranking already emerged as a rule under customary international law. It can be assumed that in such a case, the primary jurisdiction will always be that of the state of commission. In USA, with the Princeton Principles on universal jurisdiction, the best approach would be a balancing test of the different elements, departing, as a minimum condition, on the existence of a readily accessible forum and fully effective remedies in the different states.

In Belgium, it was established a list of criteria to solve the conflicts of multiple jurisdictions. The priority order of criteria is: the jurisdiction of the State of commission of the crime; the international jurisdictions; the jurisdiction of the state of the nationality of the author or of the state where the alleged offender has been arrested; the jurisdiction based on universal jurisdiction combined with the extended passive personality principle.

**B. Universal Jurisdiction and International Criminal Tribunals**

1. The International Military Tribunal was not based upon an assertion of universal jurisdiction but was predicated upon the Allies’ exercise of sovereign power over the German territory as a result of their occupation and the unconditional surrender of the German military. [6] Similarly, the Subsequent Proceedings, which were conducted by the various Allied nations on German territory, were founded upon occupation law. The jurisdiction of the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda is territorial in nature. The jurisdiction of the International Criminal Court [7] is based on territorial and active personality principles. According to Article 12(2) of the International Criminal Court Statute, the Court has jurisdiction if the crime occurs on the territory of a state party or the accused is the national of a state party. Yet, there is one aspect of the International Criminal Court’s jurisdiction that may be described as universal, in referrals by the Security Council pursuant to Article 13(b). According to these, “the Court may exercise its jurisdiction with respect to a crime referred to in article 5 in accordance with the provisions of this Statute if: (a) situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations.”
2. With the exception (until Oct. 2007) of the USA, Japan and Turkey, all other countries have signed and ratified the International Criminal Court Statute on 10 December 1998. In Germany, the Constitution was amended authorizing the parliament to enact a law allowing individuals to be turned over to certain international courts. In Finland, some provisions of Statute are considered to conflict with the basic rules of the Constitution, but the Constitution is currently being amended. In Hungary, although the International Criminal Court Statute was ratified several years ago, it is still not implemented in national law, because is very difficult to amend the Constitution.

3. About the conflict of domestic jurisdiction with the jurisdiction of an international court, it is convenient to make a distinction between the jurisdiction of the International Criminal Court and the jurisdiction of the United Nations ad-hoc tribunals.

3.1. The Primacy of the Tribunals for the former Yugoslavia and Rwanda, created by two United-Nations Security Council resolutions, over the national courts is clearly established by Article 9 and Article 8 of their respective Statutes. These international tribunals can require the national courts, at any stage of the procedure, “to defer to the competence of the International Tribunals”. These imply that domestic criminal proceedings that fall within the jurisdiction of the tribunal shall be transferred to it at any stage at the tribunal’s request, such in France and in Germany. In Germany and in the Netherlands the domestic Acts approved in order to regulate the procedure and the means of judicial assistance with these tribunals.

The domestic authorities, such prosecutor or criminal court, have no discretion once the transfer of proceedings is requested by the ad hoc Tribunals. For example, in Hungary proceedings for crimes under the International Criminal Tribunal for the Former Yugoslavia or Rwanda Statutes must be suspended on the request of the respective Tribunal.

In some countries it is controversial whether the domestic authorities have a duty to review the competence of the tribunals in each individual case. In France the Court de Cassation reviews the requests and has to verify if there is any mistake. In the Netherlands, the District Court is bound to declare the surrender inadmissible in case of mistaken identity or if the surrender has been requested on account of offences in respect of which the Tribunal has no jurisdiction under its Statute. [8] In Belgium the Court de Cassation decides to defer the competence at the request of the ad hoc tribunals, and the duty to review the Court is limited to the identity of the person and the facts.

In Germany, the authorities do not officially check the competence of the tribunals if they do not request the transfer of proceedings. The prosecutor or the
court may bring forward the case to the tribunals in order to trigger a formal requests. [9]

3.2. The International Criminal Court jurisdiction is complementary to national jurisdiction, according to the Rome Statute and he has no mandatory primacy over domestic courts, except if the investigating or prosecuting state, having jurisdiction, is unwilling or unable to carry out its responsibilities. [10] Positive jurisdictional conflicts may emerge in two situations, related to requests for surrender and extradition.

3.2.1. In some countries, the universal jurisdiction of domestic courts is subsidiary to the International Criminal Court's jurisdiction. In Croatia, domestic courts will have jurisdiction to prosecute perpetrators of international crimes according to the universality principle only if criminal proceedings cannot be conducted before the International Criminal Court, but is not explicitly stated how it is to be determined whether such proceedings can be conducted before the International Criminal Court. The decision as to whether to initiate an investigation lies within the discretionary powers of the Chief State Prosecutor. The universal jurisdiction of Croatian courts is not only subsidiary to the International Criminal Court's jurisdiction, but also to that of other states more closely connected with the criminal offence. In Finland, the requests for surrender of a suspected offender made by the International Criminal Court have primacy over proceedings in their country.

In some situations, the proceedings can be transferred to the International Criminal Court, such in Belgium’s legislature or in Spain, who has decided to reverse rule of complementarity: claims can be transferred to the International Criminal Court. The Ministry of Justice can submit to the competence of the International Criminal Court. The procedure prescribes that the Minister of Justice in consultation with the Council of Ministers issues an executive order informing the International Criminal Court of its intention. This is not possible for a claim that refers to a crime committed by or against a Belgian national, unless this crime is identical with or connected to a crime for which the International Criminal Court has accepted a claim as admissible.

Notes

[2] Council Framework Decision of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crimes;
[5] M. Kimpimaki, National Reports, see 4 – p. 113-203;

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