Book Review


In recent years, much discussion has taken place – both in the general public and in academic circles – on the use of universal jurisdiction, i.e. the fact that a State, without seeking to protect its own security or credit, seeks to punish conduct irrespective of the place where it occurs, the nationality of the offender and the nationality of the victim (p. 5). Universal jurisdiction can, thus, be defined as jurisdiction based on the heinous nature of the crime rather than on links of territoriality or nationality (whether as perpetrator or as victim).

After centuries of near dormancy – as the author puts it – the establishment of the international criminal tribunals in Rwanda and the Former Republic of Yugoslavia and the Pinochet case paved the way in the late 1990s for extensive discussions – and to some minor extent also application – of the concept of universal jurisdiction.

However, there has been little agreement and much confusion on the concept of universal jurisdiction, including on the precise definition, scope and application of the principle. Indeed, there has also been much dispute over the relevance and appropriateness of using universal jurisdiction in the fight against impunity. Some, notably the human rights groups, have in strong language welcomed the recent development and the use of universal jurisdiction, some have been more reluctant and some have directly opposed the use of universal jurisdiction and claimed that the principle can be a threat against international peace and stability.

Many commentators had hoped that the International Court of Justice would have clarified the situation in the *Case Concerning the Arrest Warrant of 11 April 2000* (Democratic Republic of the Congo v. Belgium) and set out guidelines for the scope and application of universal jurisdiction. But unfortunately the Court abstained from considering Congo’s initial – but later abandoned – claim that the in absentia proceedings were an excessive exercise of universal jurisdiction. Only a minority of three Judges (Judges Higgins, Kooijmans and Buergenthal) found it necessary to consider the issue of universal jurisdiction and issued a joint separate opinion on this.¹

¹ The question is, however, also discussed in separate opinions by President Guillaume and by Judge Van Den Wyngaert. President Guillaume argues – apparently in line with the author’s views – that apart from piracy and the situations of subsidiary universal jurisdiction provided for by various conventions if the offender is present on their territory – international law does not accept universal jurisdiction. On the contrary Judge Wyngaert concludes that international law permits and even encourages States to assert universal jurisdiction, including in absentia,
Against this background, this book, which seeks to provide a comprehensive and thorough description and assessment of universal jurisdiction, is much welcomed.

The author states in the introductory remarks that the goal of the study is to advance discussion on the subject and to offer a frame of reference to decision-makers and legal practitioners, both national and international.

The book is divided into two parts. The first part considers universal jurisdiction from an international law perspective, i.e. under what conditions a State is internationally competent to investigate or prosecute extraterritorial offences. The second part examines the basis in municipal law for the exercise of jurisdiction, with concrete examples of legislation and case law from 14 countries.

In chapter one in the first part of the book, a brief account is given from a practical point of view of the international legal issues that may arise when a State actually investigates and prosecutes an offence with a foreign element. The old but still relevant Lotus-principle – whereby States are authorized to prosecute extraterritorial offences provided that by doing so they do not breach a prohibitive rule of international law – is discussed and the various principles of jurisdiction are described. Seven principles are identified: territoriality, active personality, passive personality, the principle of the flag, the principle of protection, the principle over universality and the representation principle. Extradition and burden of proof in disputes involving extraterritorial jurisdiction is briefly touched upon. The often vital problem of a practical nature in cases involving extraterritorial jurisdiction of obtaining evidence and (lack) of mutual legal assistance is not touched upon.

The second chapter presents some of the principal scholarly views on universal jurisdiction and provides an interesting but very brief description of the historical evolution of the concept of universal jurisdiction. The universality principle is divided into three different concepts and phases: (1) the subsidiary jurisdiction of the custodial State (i.e. the State where an offender can be found or is present) over all serious offences if extradition of the suspect is impracticable; (2) the jurisdiction, whether primary or subsidiary, of the custodial State over international offences only; (3) the primary right of any State to try international offences, without regard to the offender’s whereabouts (whether or not the offender is present in the forum State).

The evolution in the course of time can be seen from the first version of the universality principle, through the second, and towards the third. However, at this point in time, according to the author, only the second version of the universality principle represents common ground.

The third and final chapter of the first part of the book examines universal jurisdiction in international texts, i.e. multilateral conventions, resolutions from intergovernmental bodies, and official drafts and studies. The author identifies about 30 conventions encompassing provisions on universal jurisdiction and goes into a more detailed discussion on some of these provisions. There is an interesting description of the evolution of the aut dedere aut judiciare (either extradite or prosecute) principle. The principle was rejected for the Genocide Convention (1948), first used in The Hague Hijacking Convention (1970), still contested during the drafting of the UN Torture Convention (1984), and now the obvious formula for international criminal law treaties found in more than 20 global and regional treaties concluded since 1970.

In order to ensure that suspects of war crimes and crimes against humanity do not find safe havens.