Scientific Research Publishing

Beijing Law Review, 2022, 13, 496-506
https://www.scirp.org/journal/blr
ISSN Online: 2159-4635
ISSN Print: 2159-4627

Eichmann in Jerusalem: A Study of the Legitimacy of Jurisdiction Based on Universal Interests

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How to cite this paper: Liu, W. J. (2022). Eichmann in Jerusalem: A Study of the Legitimacy of Jurisdiction Based on Universal Interests. *Beijing Law Review, 13,* 496-506.
https://doi.org/10.4236/blr.2022.133031

Received: October 20, 2021
Accepted: July 31, 2022
Published: August 5, 2022

Abstract

Although the trial of Adolf Eichmann by the Israeli court has been more than half a century, the case has been widely discussed by the academic community during the trial and for a considerable period of time thereafter, especially about the issue of the jurisdiction of the Israeli court which is still worthy of study now. On the issue of Eichmann's trial jurisdiction, from a legal point of view, the "Eichmann case" has neither the nationality of the victim nor the national interest relationship between the "Eichmann case" and the State of Israel. Israeli Court adopts Negative Personality Doctrine to "Localize" Eichmann's Crimes and makes the crime become a crime against Jews only, and because of this, the court believes that it judges crimes on behalf of all human beings and not its own nationals, thus ignoring the nature of the Holocaust crime against all human beings. The exercise of universal jurisdiction over international crimes is justified only because the crimes against humanity as a whole. Therefore, we need the objectivity of historical events and the moral judgment of human beings, and the use of universal jurisdiction in the trial of international crimes should only focus on justice and not be influenced by external politics.

Keywords

Adolf Eichmann, Principle of Universal Jurisdiction, Justice

"Forgetting means betrayal, and not being good at summarizing experience from the lessons of history also means that the tragedy of history may repeat itself."

—The Nuremberg Judgment

1. Introduction

After the end of World War II, the victorious countries tried war crimes mainly on two levels: for major war criminals, they were conducted through the Nuremberg International Military Tribunal and the International Military Tribunal for the Far East; for non-major war criminals, they were tried by the state through national courts. And there are two types of trials of war criminals by national courts: one is conducted by the national court of the country where the relevant crime occurred such as the Taiyuan trial in China and the British-led trial in Hong Kong; the other is conducted by national courts that are not directly related to the crime such as trials in Australia, the United States, and France. In the latter category, due to the lack of a relevant link with the crime, that is, the crime did not take place in the country, and the suspects and victims of the crime are not nationals, national courts need to resort to universal jurisdiction to conduct trials (Song, 2015). Regarding the jurisdiction of genocide, especially the issue of universal jurisdiction, the relevant practice of the international community has been developing and evolving (Song & Yang, 2019). This development and evolution provides a very important perspective for our understanding of the exercise of universal jurisdiction. The purpose of this article is to start with the case of Eichmann and discuss the legitimate sources of universal jurisdiction and related issues, which will help us understanding the application of universal jurisdiction.

The article is divided into four parts: The first part will focus on the relevant theories of universal jurisdiction and explore the source of the legitimacy of universal jurisdiction. The second part introduces Israel's relevant legislation and cases of universal jurisdiction reviewing Israel's Practices on Universal Jurisdiction. The third part focuses on universal jurisdiction and analyzes the Eichmann case in Israeli courts from this perspective. The fourth part is the conclusion, and on the basis of the above three parts, it discusses the relevant factors affecting state practice and the limitation of the application of universal jurisdiction.

2. Sources of Universal Jurisdiction Theory

2.1. Definition of Universal Jurisdiction

The so-called universal jurisdiction is different from the territorial principle and the personal principle, and it is for the maintenance of international peace and security and the general interests of all mankind as a whole. As long as the criminal is under the actual control of the country, any country can investigate and punish the crime according to international law regardless of the nationality of the offender, where the crime occurred or whether it violated the interests of its own nationals or the country. Crimes such as war crimes, piracy, slave trade and drug crimes all fall under the scope of universal jurisdiction (Zhao & Huang, 2005).

2.2. The Development of Universal Jurisdiction

In 1625, Hugo Grotius demonstrated the principle of universal jurisdiction

based on natural law in the book "The Law of War and Peace", and first proposed the principle of "extradite or prosecute". The legislation of the principle of universal jurisdiction begins from the principle of criminal jurisdiction established by the criminal laws of individual countries on the Mediterranean coast. The traditional criminal law theory of a few Eurasian countries such as Italy and Turkey is that no matter which country the perpetrator is from and where the crime is committed, as long as it is always a harm to society, any country has the jurisdiction to suppress it (Jiang, 1989).

Since the 19th century, the application of this jurisdiction has formed a customary international law such as the jurisdiction exercised by countries around the world for piracy crimes. The initial application of the principle of universal jurisdiction in international practice was mainly to combat piracy on the high seas. The international community is often unable to adequately punish these crimes and limited by traditional jurisdictional principles, so the concept of "pirates are outlaws" is gradually formed, which means that any country can punish pirate criminals as long as they fall within its jurisdiction (Jia & Shu, 2018). Therefore, at this time, people's understanding of the principle of universal jurisdiction is limited to a concept: this principle can be used as a supplement when other jurisdictional principles are insufficient to provide a basis for jurisdiction (Zhao & Huang, 2005).

In June 1945, the International Court of Justice was established in The Hague according to the Charter of the United Nations, and began to operate in April 1946, and it is the main judicial organ of the United Nations. The basic document followed by the Court was the Charter of the United Nations and its annexed Statute of the International Court of Justice. These two documents were supplemented by the Rules of Court and the Procedural Directives, as well as the resolution on the internal judicial practice of the Court. The International Court of Justice was the only universal and international court with general jurisdiction (Liao, 2020). The jurisdiction of the court had two aspects: one was the jurisdiction over litigation cases, and the other was the jurisdiction over consulting matters. The International Military Tribunal at Nuremberg proclaimed a rule: "Countries can establish tribunals to punish those who commit war crimes as long as the perpetrator fall into their hands" (He, 2006). At this time, countries applying universal jurisdiction generally did not need to consider the constraints of traditional jurisdictional principles, and perpetrators can be charged and tried under the principle of universal jurisdiction. Taking the opportunity of the Nuremberg Trials, the International Court of Justice summarized three main crimes against war criminals:

First, the crime of breaching peace: refers to planning, preparing to launch or conducting a war of aggression or a war in violation of international treaties, agreements or guarantees, or participating in a common plan or conspiracy to carry out any of the above crimes.

Second, war crimes: refers to violations of the laws or customs of war, includ-

ing but not limited to torture, etc., or the killing of prisoners, hostages, slave labor, looting of property, and destruction of towns and cities.

Third, crimes against humanitarianism: refers to the killing, extermination, enslavement and other inhumane actions of any civilian before or during the war.

Since the 20th century, the rules of customary international law have been gradually replaced by the content of international conventions, and the use of universal jurisdiction has been further generally recognized by the international community (Gao & Wang, 2001). After World War II, trials of war crimes by the international community have led to a considerable development in the application of the principle of universal jurisdiction.

2.3. The Theoretical Basis for the Principle of Universal Jurisdiction

The theoretical basis of the traditional jurisdiction principle has the territorial principle theory: the so-called territorial principle means that the domestic law is applicable to all crimes committed in the country regardless of the nationality of the perpetrator and the victim; the positive personality principle theory states that the criminal law of the country shall apply to the crime committed by citizens of the country and foreign citizens residing in the country wherever the crime is committed; the protective jurisdiction principle theory is also called the security principle, and almost all countries have presumed jurisdiction over the conduct of aliens abroad that affects their own security; and the negative personality principle theory means that regardless of where the crime occurred or the nationality of the offender, the country can exercise criminal jurisdiction as long as the victim of the crime has the nationality of the country. In order to deeply understand the theoretical basis of the principle of universal jurisdiction, the above-mentioned traditional jurisdiction principles should be distinguished.

The direct theoretical basis of the principle of universal jurisdiction is "international jointness in punishing crimes", which is the basis of the rights and obligations of all countries to punish international crimes (Zhou, 2008). It is the principle of universal jurisdiction that is also known as the "principle of universal law" or "the principle of universal criminal law". The meaning of the "international joint and several theory" of punishing crimes means that in the face of international crimes, all countries should work together, fully cooperate and perform their international obligations in good faith, punish crimes that violate international law, and maintain international human peace and security. For this reason, no country can provide asylum for those who have committed serious violations of international law to escape the law. Accordingly, "jointness" also means that if the country involved in the case cannot exercise jurisdiction, other countries should bring the culprit to justice by law. In short, the purpose of forming a global joint theory in punishing international crimes is to prevent criminals from having the opportunity to escape punishment, so as to maximize the justice of criminal law (Song, 2018).

Compared with traditional jurisdiction, the theoretical basis of the principle of universal jurisdiction has two notable characteristics: firstly, it focuses on the international obligations of states. From a practical point of view, the so-called jointness of punishing international crimes means that if the country where the crime is committed and the country to which the victim belongs cannot prosecute the crime based on the territorial principle and the passive personality principle, the perpetrator will go unpunished, and the country where the perpetrator is located should exercise jurisdiction to prevent those who commit atrocities and serious violations of international human rights law and international humanitarian law from evading punishment. Secondly, it does not come directly from national sovereignty. State sovereignty provides a rational basis for other traditional jurisdictional principles, but the emergence of the principle of universal jurisdiction is not based on the sovereignty of a country. This principle reflects the existence value of international criminal law (Zhao & Huang, 2005). From the above two aspects, the conceptual basis of the principle of universal jurisdiction may not only violate the self-interest of the state, but also show no more respect for the sovereignty of the state. It is supported by its own conceptual basis, and this conceptual basis has different connotations in the different histories stages of the emergence and development of the principle of universal jurisdiction (Zhao & Huang, 2005).

3. Israel's Legislation on Universal Jurisdiction and Other Cases

3.1. Relevant Legislation in Israel

Regarding the provision of universal jurisdiction over the crime of genocide such as the Holocaust, as far as Israel is concerned, it not only directly stipulated universal jurisdiction over war crimes through domestic legislation, but also provided for the retroactivity of the Act when other countries have lost the political will to prosecute war crimes. Israel enacted The Nazis And Nazi Collaborators Act in 1950, providing for universal jurisdiction over crimes against humanity, war crimes and crimes against the Jews. The Act is retroactive and differs from the related practice of directly or indirectly invoking universal jurisdiction to try and punish war crimes (Zheng, 2017). There are two typical cases involved in the application of the Act: the Eichmann case and the Demjanjuk case.

3.2. Specific Case

In the Demjanjuk case, the defendant was originally a Ukrainian Red Army soldier. After being captured by the German army, he volunteered to serve the German Nazis and help Germany implement a plan to eliminate Jews in Poland, and was suspected of war crimes, crimes against humanity and anti-Semitic crimes. He has lived in the United States since 1951. And later, according to the information disclosed by the former Soviet Union using German archives, the crimes committed by him were discovered by the United States. The U.S. de-

prived him of his U.S. citizenship and notified Israel of the relevant information. After Israel confirmed its identity and guilt, it immediately filed an extradition request with the United States. In response to the extradition request, the U.S. Court of Appeals for the Sixth Circuit ruled that Israel has the right to exercise criminal jurisdiction over Demjanjuk under international law. The universal jurisdiction established by Israel in the Act has been recognized and cooperated by the United States (Song, 2015). On February 26, 1986, the suspect was extradited to Israel. On April 25, 1988, Demjanjuk was found guilty and sentenced to death. Due to a successful appeal to the Supreme Court, Demjanjuk was released and returned to the United States in 1993. Although he was subsequently deported back to Germany and tried, he had not yet been finally "convicted and sentenced" by the time of his death in 2012. Despite this, Israel still demonstrated its political will and determination to punish war criminals in World War II through its own practice (Song, 2018).

4. The Eichmann Trial from the Perspective of Universal Jurisdiction

4.1. The Facts of the Case

In 1942, Adolf Eichmann was promoted to lieutenant colonel, and at the Wannsee Conference he was appointed to formulate a plan for the slaughter of Jews, and ultimately responsible for deportating Jews to concentration camps for the Holocaust. After World War II, Adolf Eichmann fled to Argentina after a long period of time. On May 11, 1960, he was arrested secretly by the Israeli intelligence agency Mossad and returned to Israel. On February 11, 1961, Adolf Eichmann was tried in Jerusalem by an Israeli court using the principle of universal jurisdiction. Israel's attorney general charged Adolf Eichmann with 15 counts of war crimes, crimes against the Jews and humanity, and participation in a criminal organization. The specific crimes include: killing millions of Jews; exposing millions of Jews to conditions of possible death; causing serious physical and psychological harm to Jews; prohibiting and interfering with pregnancy and childbearing among Jewish women; persecution of Jews on racial, religious and political grounds; looting of Jewish property in connection with the Holocaust; forcing hundreds of thousands of Poles from their homes; deporting 14,000 Slovenes from Yugoslavia; sending tens of thousands of Gypsies to Austria Swithin concentration camp; participation in the State Secret Police, etc. (Liu, 2021). In the face of all charges of his crimes, Eichmann firmly stated that "everything is done according to the order". In December of the same year, Eichmann was found guilty and sought the death penalty, before being hanged on June 1, 1962.

Although there are few international objections to the jurisdiction applied by the Israeli courts in the trial of Adolf Eichmann, we have to reflect on the following issues: Israel was not yet a state when Adolf Eichmann massacred the Jews and Israel was not the place where the crime was committed, nor the country of the perpetrator, let alone the country of the victim or the object of the

crime, so what is the legal basis for the Israeli court's trial of Adolf Eichmann? In the absence of a corresponding international tribunal, the relevant crime should be tried by the "competent court of the country where the act took place" (Qi, 2005), so does Israel have the right to try a man accused of genocide?

4.2. Defence in Israeli Courts

In this case, when arguing for its own jurisdiction, the Israeli court pointed out that the Act was formulated to try Nazis, Nazi accomplices and collaborators in Israel, and was retroactive and applicable extraterritorially (Song, 2015). As far as the retroactivity of the bill is concerned, the court explained that the crime regulated by the bill was not a new crime that was created and unknown before. And it cannot be argued that one did not know or cannot know that conduct constituted a crime. In response to the defendant's lawyer's view that "the bill violated international law, and the relevant prosecution conflicted with international law", the court pointed out that Israel had the right to make such a law. Since the corresponding crime attacked the entire human race, it was a serious violation of international law. In the absence of an international tribunal, international law not only did not limit the exercise of jurisdiction by a state, but required the legislative and judicial organs of each country to take action to carry out investigations against relevant criminals's trial (Yu, 2014). In international law, jurisdiction to try these crimes was universal.

4.3. Analysis of the Principle of Universal Jurisdiction

Some people think that the crimes committed by the fascists against the people of the world are too numerous to list, and it is not an exaggeration to impose any punishment on them. Why bother? There are also some ordinary German soldiers who think that as a German citizen, they only fulfilled their duty of defending the motherland, which was an honorable duty rather than a criminal act although they participated in the war. Jurists believe that an important reason for the progress of human civilization is the existence of self-reflection genes, and a fair trial can show people the truth, explain the truth and know themselves during the process of trial (Arendt, 2003).

Before the trial, Israeli Prime Minister Ben Gurion said: "In the dock, history is judged not by a single person or by the Nazi regime, but by anti-Semitism throughout history." (Perry, Gao, & Yang, 2017). Needless to say, Israel's trial of Eichmann both inside and outside the courtroom necessarily contained moral, political, and law-centred issues. Therefore, the question of "what is the purpose of this trial" has to be raised, and it is also necessary to clarify the legitimate purpose of Israel's trial of Eichmann. The Israeli state regards this trial as a mean to achieve a series of political ends. The purpose of the so-called trial is to impose sanctions, not anything else, no matter what a noble secondary purpose (Arendt, 2003). The Israelites tried to judge Eichmann not as a person but as a symbol at the beginning. It is not difficult to find several motives behind this

purpose: Firstly, it is to show the world the fate of the Jews, and to defend the state of Israel to by capturing the consciences of all countries in the world; Secondly, it is to show the Jews scattering around the world the misery of living as a minority; Thirdly, it can demonstrate the effectiveness of Zionism in restoring Jewish heroism to the people of Israel (Xi & Zhang, 1961). These motives are clearly motivated by the survival of the Israeli state and have nothing to do with justice. Any single emphasis on justice should necessarily separate law from morality, which relegates the latter to the private sphere and gives law a formal quality insteadly.

To justify the Eichmann trial, the crimes against the Jews were often cited as the greatest crimes of World War II. Israeli courts have also adopted negative humanism, that the victim is Jewish, as a reason for justifying the court's qualifications. Legally, a person must be tried not for what he/she is or what he/she represents, but for what he/she did (Xu & Qiu, 2020). The trial of Eichmann was not for a "crime against humanity", but for a "crime against Israelis". It is obviously inappropriate for the grounds to be prosecuted, and we have to challenge such justifications for trial qualifications. Needless to say, the defendants and their crimes and trials themselves are far away beyond the jurisdiction of the Jerusalem Court.

Because in addition to the principle of universal jurisdiction, other principles of extraterritorial jurisdiction are judged on the basis of the criminal act or the type of related factors between the perpetrator and a sovereign state or its nationals, which requires a self-evident basic premise—the existence of a sovereign state asserting jurisdiction when the crime was committed (Song, 2018). If the state did not exist at the time of the crime, the positive personality principle, the negative personality principle and the protection principle would lose their connection with the crime and the basic premise of claiming jurisdiction. The Eichmann case belongs to this particular case. So even if the world understands that the crimes committed by Eichmann are closely related to the state of Israel, which was established after World War II, this is the reason why Israel brought him to justice and executed him without causing international objection (Yang, 2010). However, from a legal point of view, there is neither the nationality of the victim nor the relationship of national security or national interests between the "Eichmann case" and the State of Israel. It is only because of historical reasons that Israel is more emotionally willing to try Eichmann than other countries, but this reason is not the basis for the principle of universal jurisdiction recognized by international law at all.

The case also involved the fact of a kidnapping that the court ignored which is a flagrant violation of international law about kidnapping Eichmann in Argentina (Cao, 2015). So that in the future some African country can go to the US to kidnap a segregationist and bring him back to Ghana or Guinea to try him for anti-black crimes. If so, any just cause will be greatly compromised. More importantly, if there is no standard of universal principles, those universal and se-

rious problems human beings facing cannot be solved by deep understanding (Zhao, 2004).

We must oppose all attempts to expand the scope of the trial (Lv & Li, 2004). The court cannot lead the trial to areas outside its own responsibilities. The legal procedure is determined by the law itself, and cannot change its own working method because of the object of the trial. Therefore, regarding Eichmann's trial, we can go back to history from the perspective of legal modernity. The purpose of this trial must be a just judgment and sanction (Liu, 2021). The trial itself should be about the facts of the prosecution put forward by the defendant, distinguish between black and white, and carry out the sentencing work within the law.

Regarding the Eichmann's trial, Arendt mentioned: "Eichmann's crime was not a crime against the Jews, but against mankind; if the trial of Eichmann were to be judged as an anti-Semitic symbol, it would cover up the crimes of the Nazis by misleading. Why raise the question that Eichmann should be tried for crimes against humanity, not for crimes against the Jews? A man of self-identification and with the concept of the world is involved here. There have always been, in varying degrees, inexplicable tensions between the universal standards of local identification with humanity. Especially our Jewish nation, whose cultural and historical encounters make it incline to local identity. It ignores the existence of a single universal standard that transcends race and nation. While the Jewish cries of revenge are understandable, justice might have been better served in this case if Eichmann had been directly shot dead in the streets of Buenos Aires, Argentina—a direct act of revenge. The trial was justified not for crimes against the Jews, but for crimes against human nature. The focus is not only on the victims, but also on the act itself." (Arendt, 2003). In Arendt's view, the purpose of a trial should be justice, and nothing else. Trampling the principles of justice for the sake of political expediency can be forgiven, but can justice still exist in the end? Israel masks its political purpose with a general demand (justice), indicating that its motives are "ideological". Therefore she concluded that political interests rather than justice constituted the conduct of the Israeli government's trial (Arendt, 2017).

5. Conclusion

Israel formulated laws that can be applied to the trial of war criminals specially, and conducted prosecution and trial within the framework of common law. The exercise of universal jurisdiction over war crimes involves complex political and legal issues. From the perspective of political factors, whether there is enough political will is the crux of the issue (Song, 2018). Without the corresponding political will, it is impossible to start the legal process. From a legal point of view, the handling of technical issues is key. The argument for its own universal jurisdiction is only the beginning of a series of problems. From the initiation of the procedure to the final verdict of conviction and sentencing, a large number of

complex and delicate procedural issues are involved such as the acquisition of evidence, the retroactivity of the application of the law, and the issue of one case not being tried twice.

Although the basis of universal jurisdiction is conducive to sanction international crimes and has broad international applicability, it also has its limitations: Firstly, universal jurisdiction is only a subsidiary criminal jurisdiction principle, since there is no consensus on the concept of international crime so far, and the jurisdictional scope of the principle of universal jurisdiction is uncertain. Secondly, universal jurisdiction is limited by the sovereignty of states and the traditional territorial and personal limitation principle of jurisdiction. Finally, in order to deter criminal activity, each country needs to consider the human and material resources invested in adopting universal jurisdiction, and some countries are often reluctant to exercise universal jurisdiction (He, 2006).

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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