NO-OBLIVION

Promoting Universal Jurisdiction while Evoking the Crimes Committed within Former Yugoslavia

National Legal Frameworks

Universal Jurisdiction

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Contents

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Belgium

Legal basis	Belgium initially adopted universal jurisdiction through the 1993 Act on grave breaches of international humanitarian law, expanded in 1999 to include genocide and crimes against humanity. After political pressure and the 2003 reform, the law was integrated into the Belgian Criminal Code (Articles 136bis quater) and Code of Criminal Procedure (Articles 10, 10quater, 12bis, 29, 144bis).
Crimes covered	Belgium's universal jurisdiction applies to the core international crimes: genocide, crimes against humanity, war crimes, torture, and enforced disappearance. These align with the Rome Statute and customary international law, reflecting the most serious crimes of concern to the international community.
Presence of the suspect required?	Since the 2003 reform, universal jurisdiction can only be exercised when there is a specific nexus to Belgium: the suspect must be Belgian or habitually resident, the victim must be Belgian or have resided in Belgium for at least three years, or there must be a treaty-based obligation to prosecute. Presence of the suspect in Belgium is typically required unless a treaty permits otherwise. Prosecutors also have discretion to filter politically motivated or weak cases.
Notable cases	• **Butare Four (2001)**: First European trial for genocide; Rwandan nationals convicted in Belgium. • **Two Brothers case (2005)**: Rwandan defendants convicted for crimes during the 1994 genocide. • **Hissène Habré (2001–2016)**: Initial investigation in Belgium, later prosecuted in Senegal. • **Guatemala case (2023)**: Five former officials convicted by a Belgian court for crimes against humanity committed against Belgian missionaries. • **Syrian militia investigations** and ongoing **Gaza-related complaints** reflect Belgium's continued engagement in live conflicts.

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Observations/ Good practices	Belgium has developed an advanced, professional system for universal jurisdiction. Key features include: • **Specialised** police and judicial **units** (Court of Assizes) established since 1998 for international crimes. • No **statute of limitation** for core crimes. • Respect for **double jeopardy** (*ne bis in idem*) rules. • A **subsidiarity model** ensures Belgium only proceeds when the ICC or another national court is unwilling or unable. • **Judicial cooperation** with States like Rwanda, Guatemala, and Chad, including field investigations. • The framework includes **ICC notification** requirements for post-2002 crimes, and ensures that Belgium defers when more appropriate jurisdictions (like the ICC or States with territorial/national links) exist.
Additional resources	• https://www.hrw.org/report/2006/06/27/universal-jurisdiction-europe/state-art • https://www.derechos.org/intlaw/doc/beluj1.html?utm • https://www.justiceinitiative.org/uploads/b91142c3-5fef-49cb-a452-c147be4aca8a/universal jurisdiction-law-and-practice-belgium-en-05232022.pdf • https://competenceuniverselle.wordpress.com/legislation-belge/

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Bosnia and Herzegovina

Legal basis	Bosnia and Herzegovina incorporated universal jurisdiction through the following legislation: • Criminal Code (Krivični zakon) • Criminal Procedure Act (Zakon o krivičnom postupku) • Law on Implementation of the Rome Statute of the International Criminal Court and Cooperation with the International Criminal Court
Crimes covered	Bosnia and Herzegovina's universal jurisdiction applies to the following criminal offenses against humanity and human dignity: Genocide, crime of aggression, crime against humanity, war crime, violation of negotiators, unjustified delay in the repatriation of prisoners of war, recruitment of mercenaries, command responsibility, terrorism, financing of terrorism, public incitement to terrorism, recruitment for terrorism, training for terrorism, travel for the purpose of terrorism, terrorist association, preparation of criminal offenses against values protected by international law, torture and other cruel, inhuman or degrading treatment or punishment, slavery, human trafficking, trafficking in body parts: genocide, crimes against humanity, war crimes, torture and enforced disappearance.
Presence of the suspect required?	Yes, war crimes trials *in absentia* have been held in Bosnia and Herzegovina (BiH), but they are relatively rare and have been a controversial and legally sensitive issue. Under the Criminal Procedure Code of BiH (CPC BiH), trials *in absentia* (suđenje u odsustvu) are generally not allowed at the state level, especially for war crimes. The principle of presence of the accused is a cornerstone of fair trial rights under both domestic and international law, including the European Convention on Human Rights (ECHR), to which BiH is a party.

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Notable cases	In Bosnia and Herzegovina (BiH), the application of universal jurisdiction for war crimes is extremely limited, as BiH's judiciary generally relies on territorial and personal jurisdiction—focusing on crimes committed within BiH or by/against BiH nationals. However, notable intersections with the principle of universal jurisdiction arise mostly in the context of foreign jurisdictions prosecuting crimes committed in BiH, not BiH prosecuting crimes committed elsewhere. Still, we can highlight a few relevant and notable cases, both within BiH's legal system and abroad, that reflect the spirit or impact of universal jurisdiction related to war crimes in BiH. • Germany – The Kuntschewicz Case (1997) • Sweden – Mirsad Repak Case (2008–2011) • Switzerland – Alija Delimustafić Case (2016–2019) • France – Radomir Šušnjar Case (2014–2019) • Bosnia and Herzegovina – Ejup Ganić Case (2010–2012, London)
Observations/ Good practices	https://www.osce.org/files/f/documents/e/e/108103.pdf

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Croatia

Legal basis	Croatia's universal jurisdiction is established through the following legislation: • Criminal Code (Kazneni zakon) • Criminal Procedure Act (Zakon o kaznenom postupku) • Constitutional Act on the Cooperation of the Republic of Croatia with the International Criminal Court (Ustavni zakon o suradnji Republike Hrvatske s Međunarodnim kaznenim sudom) • Act on the Application of the Statute of the International Criminal Court and Prosecution of Criminal Offenses Against International Criminal Law (Zakon o primjeni statuta Međunarodnog kaznenog suda i progonu za djela protiv međunarodnog kaznenog prava)
Crimes covered	Croatia applies universal jurisdiction to the following criminal offenses against humanity and human dignity: Genocide, crime of aggression, crime against humanity, war crime, violation of negotiators, misuse of international emblems, unjustified delay in the repatriation of prisoners of war, recruitment of mercenaries, command responsibility, terrorism, financing of terrorism, public incitement to terrorism, recruitment for terrorism, training for terrorism, travel for the purpose of terrorism, terrorist association, preparation of criminal offenses against values protected by international law, torture and other cruel, inhuman or degrading treatment or punishment, slavery, human trafficking, trafficking in body parts or human embryos, cloning and alteration of the human genome, prohibition of mixing human reproductive cells with animals.
Presence of the suspect required?	Not at all, during last years more than 60% of war crimes trials were held *in absentia*.

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Notable cases	• Prosecuting War Crimes: Guarantee of Dealing with the Past • Policy of Erasure: Operation Pocket 93 and Its Consequences / Crime in the Medak Pocket
Observations/ Good practices	Summary of Monitoring War Crimes Report Findings and Recommendations: https://documenta.hr/en/novosti/report-on-the-monitoring-of-war-crimes-trials-in-2023/

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Germany

Legal basis	Germany's universal jurisdiction is established through the following legislation: • Code of Crimes Against International Law (VStGB, 2002) • Code of Criminal Procedure • International Criminal Court Act of 21 June 2002
Crimes covered	Germany applies universal jurisdiction to the following crimes: Genocide, crimes against humanity, war crimes, crime of aggression
Presence of the suspect required?	Germany's universal jurisdiction framework allows investigations and prosecutions without requiring the suspect's presence. Under the VStGB §1 and the Code of Criminal Procedure §160, cases can be initiated based on NGO submissions, refugee testimony, or digital evidence.
Notable cases	1. **Onesphore R. Case (2015)**: A Rwandan génocidaire received life imprisonment for organizing church massacres that killed hundreds. 2. **Anwar R. Case (2022)**: Germany secured the world's first conviction for Syrian state torture, sentencing an ex-intelligence officer to life for crimes against humanity. 3. **Taha A.-J. Case (2021)**: In a historic verdict, a German court convicted an ISIS fighter of genocide against Yazidi women and children. 4. **Sokolović Case (1997)**: This pioneering Bosnian war crimes trial laid the foundation for Germany's modern universal jurisdiction framework. 5. **Mustafa Case (2005)**: The Federal Court established critical precedents on command responsibility for wartime atrocities.

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Observations/ Good practices	Germany's universal jurisdiction system demonstrates several innovative best practices: specialised units like the Central Office for International Justice coordinate complex prosecutions, with particular success in sexual violence cases. The system emphasizes reparations, public transparency, and rapid evidence preservation - making it a global leader in victim-centred international justice. These practices have enabled landmark convictions for Syrian, Rwandan and ISIS crimes while protecting victims' rights. Key strengths include the integration of civil society expertise, innovative evidentiary methods, and institutional specialization - offering a replicable model for other states pursuing universal jurisdiction cases. The focus on systemic crimes rather than individual perpetrators represents a particularly significant evolution in international criminal law practice.

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Kosovo

Legal basis	Kosovo's universal jurisdiction framework is derived from: • Constitution of the Republic of Kosovo: Incorporates international human rights standards and the Ahtisaari Plan, which emphasises accountability for war crimes and crimes against humanity. • Criminal Code of Kosovo **(2019)**: Articles 139–154 define and criminalise genocide, war crimes, and crimes against humanity, aligning with the Rome Statute. Kosovo has not ratified the Rome Statute but has adopted its principles domestically. The Law on Specialist Chambers and Prosecutor's Office (2015) created a hybrid court to address crimes committed during the 1998–1999 war, though its jurisdiction is limited to crimes committed in Kosovo.
Crimes covered	Kosovo's universal jurisdiction applies to: • **Genocide** • **Crimes against humanity** • **War crimes** • **Torture and enforced disappearance** These crimes reflect Kosovo's obligations under customary international law and the Geneva Conventions.
Presence of the suspect required?	Yes, Kosovo typically requires the suspect's presence on its territory or extradition, as its legal framework lacks explicit provisions for extraterritorial prosecutions without a territorial or national link.
Notable cases	Focus on domestic war crimes
Observations/ Good practices	1. **Specialist Chambers Cases**: Hybrid court prosecutions of Kosovo Liberation Army (KLA) members for war crimes, including the trial of former President Hashim Thaçi (ongoing). 2. **Domestic War Crimes Trials**: Local courts have prosecuted Serb and Albanian perpetrators for

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	crimes during the 1998–1999 war, often with EULEX support. 3. **Cooperation with ICTY**: Kosovo courts have utilised evidence and precedents from ICTY rulings (e.g., *Milošević* and *Karadžić* cases).

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Portugal

Legal basis	Universal jurisdiction in Portugal is based on three key legal instruments: • Portuguese Criminal Code, Article 5(1)(e) – grants jurisdiction over core international crimes committed abroad, provided the suspect is present in Portugal. • Law No 144/99 on international judicial cooperation in criminal matters – governs international judicial cooperation, enabling evidence collection and extradition for cross-border cases. • Law No 31/2004 on violation of international law – Criminalises violations of international humanitarian law, aligning with the Rome Statute.
Crimes covered	Portugal applies universal jurisdiction to the core international crimes: • **Genocide** • **Crimes against humanity** • **War crimes** • **Torture and enforced disappearance**
Presence of the suspect required?	Yes, according to Article 5(1)(e) of the Portuguese Criminal Code, Portugal mandates the suspect's physical presence on its territory to initiate proceedings (conditional universal jurisdiction).
Notable cases	First war crimes conviction (2024) – Two Iraqi brothers were convicted for ISIS membership and war crimes (kidnapping, torture) in Mosul (2014-16). This case involved unprecedented cooperation with UNITAD.
Observations/ Good Practices	Portugal's judicial system does not have specialised courts to prosecute international crimes. However, the National Counter-Terrorism Unit of the Public Prosecutor's Office serves as the central authority for prosecuting terrorism and other serious and violent crimes that threaten democratic functioning and fundamental

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	rights, including international crimes, linked to terrorism. This Unit works closely with police counter-terrorism units and international agencies to gather evidence, execute arrest warrants.

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Romania

Legal basis	Criminal Code (Law 286/2009) • Art. 10 (principle of personhood and protection of the interests of the State) - establishes the limits of the territorial-personal application of Romanian criminal law. • Art. 11 (universality of criminal law) - provides that Romanian criminal law also applies to offenses committed outside the territory of Romania by foreign citizens or stateless persons who are voluntarily present on the national territory, in two situations: ----offenses that Romania has assumed the obligation to suppress by international treaty; ----when extradition/ surrender of the suspect has been requested and refused. LAW no. 137 of June 8, 2015 **for accepting the compulsory jurisdiction of the International Court of Justice was published in the OFFICIAL MONITOR no. 408 of June 10, 2015.** • In accordance with the law published in the Official Gazette, the compulsory jurisdiction of the International Court of Justice is accepted, on the basis of Art. 36 para. (2) and (3) of the Statute of the International Court of Justice, integral part of the Charter of the United Nations Organisation. Law No 44/2022 on judicial cooperation between Romania and the International Criminal Court • The present law regulates the judicial cooperation between Romania and the International Criminal

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	Court, established by the Statute of the International Criminal Court, adopted in Rome on July 17, 1998, ratified by Romania by Law no. 111/2002.
Crimes covered	Romania may investigate and prosecute the following categories of international crimes (jure gentium/jus cogens) on the basis of Art. 11 PC: Genocide (ICC Statute, Art. 6), Crimes against humanity (ICC Statute, Art. 7), War crimes (ICC Statute, Art. 8; Geneva Conventions), Torture (UN Convention against Torture, Art. 1) Aircraft hijacking (Hague Convention, 1970), Piracy (UNCLOS, Art. 100 and others), International terrorist crime (various WIPO/UN Conventions),Trafficking in human beings, sexual exploitation of children, drugs and arms - based on Framework Decision 2002/584/JHA for serious transnational crime
Presence of the suspect required?	Yes. The principle of Romanian universality implies the condition of "voluntary presence" on the national territory at the time of taking a deprivation of liberty measure (pre-trial arrest, arrest warrant). Romania cannot judge in absentia under Article 11 of the Criminal Code - the split procedure is activated only if the person is physically and voluntarily present on Romanian territory.
Notable cases	So far, Romania has not recorded any final domestic convictions exclusively on the basis of Art. 11 CC for international crimes (WU). There have been, however: Investigations initiated by DIICOT/EIP for alleged war crimes committed by Romanian citizens in foreign theaters of operations. Cooperation with Eurojust and the European Public Prosecutor's Office (EPPO) in investigations on torture and trafficking in persons with extraterritorial elements. Note: practicing universality is still in its infancy in the Romanian system compared to other EU Member States.

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Observations/ Good practices	Legislative clarity: it is recommended that jus cogens offenses (genocide, crimes against humanity, war crimes) be expressly introduced in the CC without additional conditions. Elimination of the presence requirement for international crimes of maximum gravity, as proposed by recent doctrine. Specialised units of prosecutors/judges for international crimes with continuous training in international criminal law. Close cooperation with Eurojust, EPPO and the International Crimes Prosecutors Network; use of structural investigative procedures. Protection of victims and witnesses, provision of translations and the right to legal counsel in mother tongue.

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Serbia

Legal basis	• EN - Criminal Code (Republic of Serbia) / SR - Krivični zakonik: Criminal legislation of Serbia shall also apply to a foreigner who commits a criminal offence abroad against a foreign state or foreign citizen, when such offence is punishable by five years' imprisonment or a heavier penalty, pursuant to laws of the country of commission, if such person is found on the territory of Serbia and is not returned to the foreign state (Criminal Code, Article 9); • EN - Criminal Procedure Code / SR - Zakonik o krivičnom postupku; • EN - LAW ON ORGANISATION AND COMPETENCE OF STATE AUTHORITIES IN WAR CRIMES PROCEEDINGS / SR - Zakon o organizaciji i nadležnosti državih organa u postupku za ratne zločine; • EN - LAW ON THE PROTECTION PROGRAMME FOR PARTICIPANTS IN CRIMINAL PROCEEDINGS / SR - Zakon o programu zaštite učesnika u krivičnom postupku; • EN - Law on Cooperation with International Criminal Court / SR - Zakon o saradnji sa Međunarodnim krivičnim sudom; • EN - Law on International Legal Assistance in Criminal Matters / SR - Zakon o međunarodnoj pravnoj pomoći u krivičnim stvarima; • EN - LAW ON COOPERATION OF SERBIA AND MONTENEGRO WITH THE INTERNATIONAL TRIBUNAL FOR THE PROSECUTION OF PERSONS RESPONSIBLE FOR SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW COMMITTED IN THE TERRITORY OF THE FORMER YUGOSLAVIA SINCE 1991 / SR - Zakon o saradnji Srbije i Crne Gore sa Međunarodnim Tribunalom za krivično gonjenje lica odgovornih za

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	teška kršenja međunarodnog humanitarnog prava počinjena na teritoriji bivše Jugoslavije od 1991.
Crimes covered	Chapter 34 of the Criminal Code (Criminal offences against Humanity and other Rights guaranteed by International Law, articles 370-386) includes the following criminal acts: Genocide, Crimes against Humanity, War Crimes against Civilian Population, War Crimes against the Wounded and Sick, War Crimes against Prisoners of War, Organising and Incitement to Genocide and War Crimes, Employment of Prohibited Means of Warfare, Unlawful Production, Trading and Keeping of Forbidden Weapons, Unlawful Killing and Wounding of Enemy, Unlawful Appropriation of Objects from Bodies, Violation of Protection Granted to Bearer of Flag of Truce/Emissary, Cruel Treatment of the Wounded, Sick and Prisoners of War, Unjustified Delay of Repatriation of Prisoners of War, Destroying Cultural Heritage, Failure to Prevent Crimes against Humanity and other Values Protected under International Law, Violation of the Sanctions Imposed by the International Organizations, Abuse of International Signs, War of Aggression.
Presence of the suspect required?	Criminal Procedure Code (Artical 381): A defendant may be tried *in absentia* only if particularly justified reasons exist, to try him/her although being absent, provided he/she is at large or not accessible to the state authorities. Trials *in absentia* were avoided for years, but later this practise was somewhat changed, and some cases of war crimes trials in absentia were recorded.
Notable cases	With the exception of trials for war crimes committed in the former Yugoslavia, there have been no other trials in Serbia based on the application of universal jurisdiction. The Humanitarian Law Fund has the largest documentation and database of war crimes trials before courts in Serbia, including transcripts, and has been following all trials from the very beginning.
Observations/ Good practices	https://www.osce.org/files/f/documents/f/b/594071.pdf

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