FEATURE

Should German Courts Prosecute Syrian International Crimes? Revisiting the "Dual Foundation" Thesis

Yuna Han

In February 2019, police detained two Syrians in Germany and one in France on "suspicion of torture and other crimes against humanity."[1] Among the suspects was Anwar Raslan, a former colonel in Syria's military-intelligence agency who had overseen investigations at an outpost known as Branch 251. Human rights organizations have claimed that people held at Branch 251, a detention center for Syria's General Intelligence Directorate, were "starved, tortured, sexually assaulted and offered no medical care," resulting in several deaths.[2] Raslan, after defecting from Assad's regime in 2012, eventually made his way to Germany and claimed asylum, living alongside other Syrians, some of whom had been held as prisoners at Branch 251.[3] Raslan's trial began on April 23, 2020, in the German city of Koblenz, alongside a lower-level official named Eyad al-Gharib, who had worked under Raslan in Damascus.[4]

Raslan's trial is one among a growing number of universal jurisdiction (UJ) proceedings, which prosecute "core" international crimes—genocide, war crimes, crimes against humanity, and the crime of aggression[5]—committed outside of a state's territory and involving foreigners. These proceedings show three common characteristics: first, the proceedings are mainly initiated in Western European states; second, they are predominantly concerned with the conflict in Syria; and third, the criminal investigations and prosecutions of international crimes are

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closely linked with the flow of refugees and migrants into Western Europe as a result of the conflict in Syria and the neighboring regions.

This article revisits the normative questions raised by UJ against this background, using the German prosecutions of Syrian international crimes as an illustrative example. Germany has been a leading actor in UJ prosecutions with respect to Syrian crimes in the present day, related both to the regional conflict and to the human rights violations of the Assad regime. One of the questions that justifications of UJ must answer concerns the venue in which prosecutions are initiated: Are German domestic courts the appropriate fora to be prosecuting individuals such as Anwar Raslan for crimes committed in Syria? Most existing literature on UJ assumes that third-party states derive their authority to prosecute from the exceptionally heinous nature of the crimes; however, this account has been criticized for not providing a sufficient basis for evaluating whether a particular state, like Germany, should prosecute the crimes in question.

As an alternative, this article applies a "two-tiered test" to the example of German prosecutions, derived from Itamar Mann's reading of the "dual foundation" thesis concerning the final decision issued by the special tribunal in the trial of Adolf Eichmann.[6] The two-tiered test is used to clarify the relationship between a state's international obligations to prosecute core international crimes and the contingent and contextual question of whether a state is the more (or most) appropriate forum for prosecution. Drawing both on theories of UJ that focus on the rights of victims, as advanced by Devika Hovell and Frédéric Mégret,[7] and on theories regarding the nature of refugeehood, this article argues that the presence of large numbers of refugees and migrants as a result of the Syrian conflict provides additional normative imperative for Germany *in particular* to initiate UJ proceedings against crimes committed by Syrian actors.

By turning our attention to the state's relationship both with the people who are within its borders and with the abstract "international community," this article contributes to the broader discussion on international criminal justice and UJ proceedings in a manner that is rooted in the domestic politics surrounding UJ proceedings and its potential effects. This approach is particularly urgent given that continued criticisms against international courts, such as the International Criminal Court (ICC), mean it is increasingly likely that the route to realizing justice will be domestic.

This article will proceed as follows: First, it will provide a brief overview of the historical development of UJ and the German prosecution of Syrian conflict–

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related international crimes. It will then discuss the normative theories of UJ, focusing on the "standard account" of cosmopolitanism and its critiques. From this, the article will introduce the framework of the two-tiered test drawing on Mann's reading of the dual foundation thesis in the Eichmann judgment. Finally, based on the two-tiered test, the article will argue that the particular political relationship between Germany and the Syrian conflict–related crimes is forged by the movement of refugees and the specific forms of physical and ontological harms they have suffered.

Background: Universal Jurisdiction

"Universal jurisdiction" refers to the prescriptive jurisdiction to punish exercised by a state over conduct that is committed by and against foreigners outside of its territory, when the crime is not deemed to constitute a direct threat to its fundamental interests.[8] Historically, UJ was associated with piracy and later slavery. It is generally accepted in contemporary international law that "core" international crimes—namely, genocide, war crimes, crimes against humanity, and torture—are subject to universal jurisdiction.[9] Multilateral treaties, such as the Convention against Torture, obligate member states to "prosecute or extradite" individuals within their jurisdiction regardless of the offender's or the crime's connection to the country.[10] While the customary international legal basis for UJ is less clear, given inconsistencies in state practice, it is nonetheless accepted that using UJ to prosecute core international crimes and piracy is an established customary norm.[11] For example, according to a 2012 survey by Amnesty International, 147 states have enacted legislation that provides for UJ over one or more of the core international crimes in their respective domestic jurisdictions.[12]

The history of UJ post–World War II is often told as a story of "rise and fall," with the dramatic 1998 arrest in London of former Chilean dictator Augusto Pinochet, pursuant to a Spanish arrest warrant, marking the apex of its "rise."[13] Although Pinochet was released from custody, his arrest prompted various UJ cases related to atrocities committed in countries such as Argentina, Chad, Congo, Guatemala, and Rwanda to make their way through various domestic courts, particularly in Europe.

However, the post-Pinochet UJ cases generated considerable political backlash, resulting in restrictions on UJ legislations in "standard-bearing" states known for

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their permissive UJ laws, such as Spain and Belgium.[14] The complaints against Israeli and American state officials in Belgium were particularly controversial. Because of the case against then–Israeli prime minister Ariel Sharon and other high-level state officials for their alleged role in the 1982 massacre of Palestinian refugees, Belgium was sidelined from the Israeli-Palestinian peace talks, even though it was the president of the European Union at the time. The United States exerted public pressure on Belgium to quash investigations against former president George H. W. Bush and other top officials, such as Dick Cheney and Colin Powell, for their alleged responsibility for war crimes committed during the 1991 Gulf War. The United States even blustered that it might pull the NATO headquarters out of Belgium if Belgian courts continued with the case.[15] In 2003, the Belgian legislature responded by severely restricting its UJ laws. It required both alleged perpetrators and victims to be Belgian nationals or long-term residents, and provided immunity for state officials and heads of states.[16]

Despite concerns about the "death" of UJ,[17] such prosecutions continued to increase in number.[18] The nature of UJ cases, however, shifted over the years, with states taking on politically less controversial cases related to "low-cost defendants," who imposed less of a political cost on the prosecuting country,[19] or "quiet" cases that attracted less public attention,[20] such as cases involving politically weaker states or less prominent individuals. Underlying this change seemed to be a shift in the key aim of UJ prosecutions, as Máximo Langer argues, moving from a "global enforcer" model, in which states are understood to be part of a global anti-impunity regime, to a "no safe haven" model, in which UJ cases are pursued by states to avoid becoming a refuge for participants in core international crimes.[21]

Germany Prosecuting Syrian International Crimes: The New Standard-Bearer for UJ?

Syrian conflict–related UJ cases started to work their way through European judicial systems against this backdrop. Since its start in 2011, the conflict in Syria and its surrounding region has been marked by the commission of grave atrocities by all sides. According to Amnesty International, all parties to the conflict "continued to commit with impunity serious violations of international humanitarian law, including war crimes . . .," such as indiscriminate attacks against civilians, use of internationally banned weapons, and obstruction of vital humanitarian aid,

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as well as gross violations of human rights, such as arbitrary detention, torture, and enforced disappearances.[22] In 2016, the International Commission of Inquiry on the Syrian Arab Republic also found that the so-called Islamic State of Iraq and al-Sham (ISIS) committed genocide against the Yazidi population.[23] As of November 2021, the United Nations High Commissioner for Refugees has registered over five million refugees from Syria.[24]

Despite such allegations of the widespread commission of international crimes, efforts to hold perpetrators accountable have been less than forthcoming.[25] For example, the ICC seems unlikely to intervene for both legal and political reasons—as Syria is not a state party to the ICC, the prosecutor does not have the authority to open investigations under its proprio motu powers. While the United Nations Security Council could refer situations pertaining to nonparty states to other organizations, efforts to refer the situation in Syria to the ICC were defeated by Chinese and Russian vetoes.[26] Although the UN General Assembly did create an investigative body known as the International, Impartial and Independent Mechanism (IIIM) in 2016, its mandate is limited to assisting in future trials by collecting and analyzing evidence of international crimes; it does not have its own adjudicative powers.[27]

This accountability gap has so far been filled predominantly by Western European domestic courts that have initiated investigations under the principle of UJ.[28] As of early 2020, there were thirty-two cases against individuals accused of international crimes committed in Syria, including cases under preliminary investigation and at sentencing stages.[29]

German Efforts to Prosecute Syrian Crimes

Germany has thus far pursued the greatest number of investigations related to international crimes committed in Syria.[30] The type of investigations and prosecutions that are currently underway broadly align with the post-Pinochet shift toward prioritizing politically lower-cost, quiet cases that involve officials within Syrian state organs, such as the Air Force Intelligence Directorate rather than politically significant individuals such as President Assad, or allegations of war crimes and genocide committed by groups that are potentially less publicly controversial, such as ISIS.[31] Furthermore, the motivations behind the pursuit of international crimes are in line with the no safe haven model, which prevents Germany from becoming a refuge for perpetrators,[32] as indicated by Germany's dedicated federal war crimes investigation unit, the Central Unit for the Fight

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Against War Crimes and further Offences (Zentralstelle für die Bekämpfung von Kriegsverbrechen, ZBKV).[33]

Three major institutional factors contribute to Germany's current role in Syrian conflict–related UJ prosecutions. First, along with Norway, Germany has one of the least restrictive requirements for UJ proceedings in Europe.[34] The Code of Crimes against International Law (CCAIL, or Völkerstrafgesetzbuch), which the country adopted at the time of the establishment of the ICC to incorporate crimes specified in the Rome Statute into domestic law, provides for "pure" UJ proceedings, or the prosecution of core international crimes without direct links of territory, residence, or nationality to Germany, although the Office of the German Federal Public Prosecutor retains discretionary powers not to pursue cases.[35] The expansive nature of CCAIL, alongside Germany's multilateral treaty obligations such as the Convention against Torture,[36] created a favorable legal environment for UJ cases. The adoption of CCAIL, which was passed with broad support across political parties,[37] was made necessary by the German legal system, which requires international law to be incorporated into the domestic legal order through legislation.[38] CCAIL replaced the crimes of genocide and war crimes in the domestic criminal code, which had laid dormant for nearly four decades.[39]

Additionally, the establishment of the specialized war crimes unit ZBKV, as briefly noted above, within the federal prosecutor's office in 2010 increased the efficacy and resources devoted to UJ proceedings pursuant to CCAIL.[40] The ability of the prosecutor to conduct "structural investigations," which investigate the criminality of broader structures even before individual suspects are identified, further facilitated UJ proceedings in complex contexts such as the Syrian conflict.[41]

Germany's favorable legal and institutional environment is further augmented by broader developments in technology as well as activities of civil society organizations. Technological developments, including relatively simple ones that allow for massive amounts of data to be stored in small devices that can be easily smuggled out of the country, as well as the proliferation of social media postings, have also meant that UJ investigations can utilize a vast array of different kinds of evidence, including crucial photographic and video evidence with relevant metadata and timestamps.[42] Nongovernmental organizations (NGOs) have also played a significant role in initiating UJ proceedings more generally, by utilizing national instruments, launching criminal complaints in domestic jurisdictions, submitting amicus curiae briefs, and mobilizing public opinion.[43] The Commission for

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International Justice and Accountability (CIJA), for example, is an NGO that effectively functions as a private investigative body. It aims to "collect documentation and material that follows a chain of custody" to "[establish] criminal linkages between those who physically execute the underlying crimes" and those who "give the orders and/or establish policy." Its ultimate objective is to prepare case briefs for future criminal prosecutions by domestic courts or international tribunals, specifically with regard to the Syrian context.[44] Some of this information has been provided to the German authorities at their request, notably regarding the case on Anwar Raslan.[45] Groups such as the European Center for Constitutional and Human Rights (ECCHR)[46] and the Caesar Files Group[47] have played pivotal roles in filing criminal complaints in Germany pertaining to torture by the Assad regime.

The most significant development that cuts across advancements in legal institutions, civil society, and technology, however, is the movement of refugees into Europe from Syria and the neighboring region since the beginning of the conflict in 2011. Germany has been at the center of this trend—between 2015 and 2019, 1.7 million people applied for asylum in Germany,[48] making it the country with the fifth-highest population of refugees in the world.[49] Refugees and asylum seekers from Syria make up the largest group of people applying for asylum in the country. In 2019, for example, about 27 percent of first-time asylum applicants in Germany came from Syria.[50] According to a statement by the German federal prosecutor from the war crimes unit, the focus of UJ proceedings shifted from African situations to the Syrian conflict precisely because of the increasing number of Syrian asylum seekers entering Germany and returning German nationals who had joined armed groups in Syria and Iraq. This heightened the concern that perpetrators of international crimes had entered Germany unpunished.[51] In Germany, as well as in other European countries, asylum seekers were regularly asked whether they had been victims of, witnesses to, or perpetrators of international crimes, providing valuable leads for UJ investigations.[52]

The presence of Syrians in Germany, in terms of both the potential suspects in and victims of grave international crimes, however, does not simply form the background condition for the rising number of Syria-related UJ proceedings in Germany. Syrian refugees, alongside human rights activists still operating within Syria, have played proactive roles in making it possible for German prosecutors to initiate UJ proceedings. Syrian diaspora organizations have collaborated with non-Syrian transnational advocacy groups to demand accountability for mass

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atrocities committed in Syria, both by the government and nonstate armed groups such as ISIS. These demands are predominantly framed in transitional justice terms that include efforts toward criminal prosecution.[53] For example, the aforementioned ECCHR is representing several Syrian torture victims who are now refugees in Germany in their criminal complaints.[54] ECCHR has partnered with Anwar al-Bunni, a human rights lawyer who himself arrived in Germany in 2014 on a humanitarian visa and founded the Syrian Center for Legal Studies and Research in Berlin, to build momentum for UJ proceedings regarding the Syrian regime.[55]

Universal Jurisdiction: Normative Accounts

The discussion has thus far sketched out the key factors that have enabled German UJ proceedings regarding Syrian conflict–related international crimes. Factors such as the legal and institutional provisions that allow for wide-ranging UJ cases, the technological developments that aid investigations, and the pivotal role played by Syrian refugees within Germany and Europe more broadly, however, only explain *how* UJ proceedings came to be in present-day Germany, rather than their normative appropriateness. To better understand whether Germany should be taking on Syrian conflict–related UJ cases, the following discussion will examine the normative justifications behind the principle of UJ itself.

The Standard Account of Universal Jurisdiction: From Sovereignty to Cosmopolitanism

The very idea of a *universal* jurisdiction severs the tie between the state that is exercising jurisdiction and the wrongs that are being prosecuted. Jurisdiction—the authority to administer justice—over a specific territory, group of people, and set of interests is considered to be one of the foundational entitlements of sovereignty.[56] The international law of jurisdiction thus emphasizes the link between the "subject matter of jurisdiction" and state sovereignty, whether it is in terms of the state's territory or national interest.[57] Exercising pure UJ, as permitted by CCAIL, in Germany challenges this link between state sovereignty and jurisdiction by its very definition.

Consequently, the standard account of UJ relies on the nature of the wrongs it regulates, rather than the relationship between the prosecuting state and the crime.[58] Jurisdiction is justified through the exceptional moral gravity or heinousness of the crime that is understood to be not only universally wrong but also

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damaging to the broader international community. For example, *The Princeton Principles on Universal Jurisdiction* states that in the absence of common connections to the state that justify jurisdiction, such as territory or national interest, national courts may nevertheless exercise jurisdiction under international law over crimes of such exceptional gravity that they affect the fundamental interests of the international community as a whole. This is universal jurisdiction: it is jurisdiction based solely on the nature of the crime.[59]

By focusing on the nature of the wrong, the standard account of UJ relies on a form of cosmopolitanism as its normative justification.[60] This cosmopolitan foundation of UJ can be understood in two ways. First, UJ is derived from the assumed existence of universal values that pertain to all of humanity. Core international crimes that are commonly understood to be subject to UJ are argued to be so heinous that their commission "shock[s] the conscience of humanity," rendering those who commit them *hostis humani generis*, or "enemies of humanity" in violation of the universal values of all humankind.[61] In this context, investigating and prosecuting cases under the aegis of UJ transforms domestic courts into a component of a "decentralized enforcement of universal values," with individual states being stand-ins for humanity at large.[62] This understanding of UJ is most explicit in the global enforcer model of UJ mentioned above, justifying the prosecution of *any* international crime by *any* national court.[63]

There is a second interrelated dimension to this cosmopolitan account. The assumption of universal values rooted in *humanity*, comprised of individuals, rather than a society or system of discrete sovereign states, gestures toward a substantially different understanding of the international legal order. If we understand the international legal order to be primarily about governing the behavior of states and their relations to one another, jurisdiction is also understood as stemming from state sovereignty. However, broader developments in the international legal order, particularly pertaining to the conduct and prevention of violence,[64] have resulted in the heightened importance of individuals both as rights holders and duty bearers under international law.[65] As Ruti Teitel argues, descriptively the "grammar and syntax" of international law is progressively moving beyond that of states to the individual.[66] Human security and the rights of the individual are becoming key referents in the landscape of international norms, as evidenced by the development of international criminal law, the body of law that provides for the core crimes under international law with UJ. If both the moral agent and the referent of international law is the individual, then jurisdiction follows the

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imperative to protect individual rights rather than state territory or interest, necessitating UJ.

This cosmopolitan account of UJ provides a clear basis to justify the *existence* of UJ as a legal principle. However, it presents challenges when it is used as an evaluative guideline to determine whether a state *should* take on a UJ case in a particular context. In other words, if cosmopolitanism helps to clarify the absolute question of jurisdiction (whether a state should have jurisdiction over international crimes that were committed by and against foreigners outside of its territory), it leaves open the question of relative appropriateness (whether a given state is a more, or the most, suitable forum for prosecution, compared to all the rest).[67] Cosmopolitanism, from this perspective, provides the general and permissive conditions for UJ but not the normative, legal, and/or political imperatives to determine the appropriateness of specific cases.

Critique of the Cosmopolitan Account

Four major types of normative issues arise from the permissive and general characteristics of the cosmopolitan account of UJ. First is the problem of burden sharing. Without a normative theory that provides a secondary evaluative standard for determining whether a specific state should pursue UJ, it is not clear how the burden of prosecuting crimes should be distributed between states, if the state in which the crime occurred does not carry out its responsibility to provide justice. The ICC, while near global in its jurisdiction, was designed only to address a small number of cases where states are "unwilling or unable"[68] to do so, and thus provides only a partial solution to this issue.[69] The distributional question remains particularly pertinent in the case of UJ prosecutions, given the reality that UJ cases are often pursued precisely because international prosecutions are not possible for political and practical reasons, as in the context of the Syrian conflict.

Without a secondary normative principle that guides the issue of burden sharing, the question of which domestic court has a better claim to prosecute particular international crimes becomes effectively about resources and will—those who are able and willing have the better claim.[70] In the case of Syrian conflict–related crimes, we have seen efforts by international organizations and NGOs to increase the capacity of domestic courts to prosecute international crimes, primarily by amassing evidence that can be used in future criminal trials. This not only reduces the cost of domestic courts opening criminal trials but also transfers some of the practical cost of prosecuting international crimes to the broader international

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community. The formation of investigative bodies such as the IIIM and the work of CIJA and ECCHR can be understood as developments that increase the overall capacity of domestic courts to pursue UJ cases.[71]

Making investigations and prosecution easier for domestic institutions, however, does not answer the question, from the perspective of the domestic polity, of whether resources should be used for the particular UJ cases rather than for other domestic activities. Consequently, the broader distributional issue of the international legal order translates into a question of prioritization within an individual state. Without a clearer, more persuasive articulation of secondary normative and political arguments that can guide how UJ cases are distributed, the pursuit of UJ cases is open to criticism from the domestic public as an inappropriate use of resources. For example, in light of the post-Pinochet UJ cases, the Spanish press worried that UJ was turning Spanish courts into surrogate international courts, siphoning resources away from addressing national problems.[72]

The idea that states that have the capacity to prosecute should pursue UJ cases under the cosmopolitan framework highlights the second, more fundamental issue with a general and permissive theory of UJ. By allowing all states to have authority to prosecute all international crimes committed, UJ has the potential to take on a form of vigilantism, in which punishment is administered by groups and individuals that do not have clear legal authority to do so.[73] Given that criminal punishment is one of the most extreme forms of interference in individual liberty a state can mete out, modern states generally differentiate themselves from opportunistic vigilantes—those deriving their authority through sheer capacity—by connecting their authority to political procedures rooted in popular sovereignty, such as democratic legislative processes.[74]

In contrast, as David Luban argues, justice administered in the name of humanity becomes "vigilante justice," in which the perpetrator "becomes anyone's and everyone's legitimate enemy" absent principled evaluative standards that can decide the appropriateness of the specific tribunal.[75] Luise Müller further suggests that this logic of vigilantism can result in a competitive structure of jurisdiction, in which different domestic courts will have equal or similar claims to prosecutorial authority.[76] This concern is echoed in the concern of "judicial chaos" expressed by the former president of the International Court of Justice (ICJ) Gilbert Guillaume in a separate opinion he issued in the *Arrest Warrant* case, which pertained to the arrest warrant issued by Belgium in 2000 against a former minister of the Democratic Republic of the Congo under its UJ law.[77] For Luban, vigilantes

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cannot be trusted to mete out any form of justice due to their illegitimate authority.[78] Müller, on the other hand, presents a more circumscribed point of contention that arises from recognizing the parallels between UJ and vigilantism. For Müller, allowing any foreign court to prosecute international crimes that occurred in faraway lands can be, in effect, imposing one state's conception of justice and punishment on another, given the diversity of conceptions of criminal justice in the world.[79] Although international standards for the right to a fair trial do exist,[80] the issue of cultural diversity continues to affect international justice.[81]

This critique of vigilantism is rooted in the ambiguity of the normative authority of humanity itself. As Hovell argues, "humanity," as both a moral and legal concept, lacks a clear definition or parameters that can be translated into a normative evaluation.[82] Such conceptual ambiguity results in challenges to a particular domestic court's authority to prosecute, regardless of the broader normative acceptance of the prohibition of the underlying acts of international crimes, hence mirroring the logic of vigilante justice.

This brings us to the third critique of the cosmopolitan justifications of UJ. Based only on general and permissive arguments for UJ, specific UJ prosecutions are open to accusations that they are politically motivated. Henry Kissinger famously contended that UJ cases generally are susceptible to arbitrary application because, due to different understandings of "historical and political context[s]," it is difficult to agree on who the perpetrators are, whether they are truly responsible for the crimes, and even whether the crimes have been committed at all.[83] Kissinger's argument is curious, as it implies that clarity of guilt is required even before the trial begins. Nevertheless, it does point to a broader issue of the relationship between political motivations and UJ prosecutions. Prosecution of international crimes "originates in political decisions and motives," as the type of acts criminalized by international law frequently assumes political organization and ideologies, and thus the act of prosecution itself can become a means of discrediting the perpetrator's politics.[84] The debate as to whether such a relationship between politics and international criminal prosecutions should be embraced or kept at arm's length even if acknowledged is beyond the scope of this article.[85] But the intricate relationship between the politics of another country and UJ prosecutions should be recognized when considering the robustness of the cosmopolitan account of UJ.

The politics of prosecuting international crimes takes on greater urgency once we consider inequalities within the international system. Simply put, a general and

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permissive model of UJ opens the possibility of turning UJ into a tool of hegemonic interference. Critics of international criminal justice, more broadly, have long highlighted the selective nature of international criminal prosecutions, both by the ICC and by domestic courts, where the focus has been on crimes committed by weaker states in the international system that do not directly impinge on the interests of more powerful states and their allies.[86] This is a particularly acute critique when considering UJ prosecutions by predominantly Western states in relation to crimes committed in the Global South, as is the case in Germany's prosecution of Syrian conflict–related crimes. Judge Bula-Bula in his separate opinion of the *Arrest Warrant* case, for example, argued that the historic and colonial relationship between Belgium and the Congo makes Belgium a particularly inappropriate venue for UJ proceedings regarding Congolese cases.[87] In a similar vein, William Schabas asked, in reference to Belgium's insistence that Hissène Habré should be prosecuted, "Why won't Belgium insist that American leaders like Rumsfeld and Cheney be extradited to stand trial, as it did with little Senegal?" contrasting Belgium's insistence that impunity in Senegal is something Belgian courts need to urgently address while bowing to diplomatic pressure from more powerful countries like the United States.[88] A purely capacity-driven argument fails to fully address the thorny normative question of paternalism and neocolonialism—after all, the distribution of government capacity, including the ability to prosecute international crimes, is not a fact exogenous to political dynamics but rather the result of a complex imperial legacy of unequal development and exploitation.

Making Victims and Refugees Invisible

Finally, a cosmopolitan justification for UJ in effect denies normative significance to the current activism of victim and diaspora communities. A significant feature of modern UJ cases has been the advocacy by victims, their families, and the human rights groups that supported them to propel the cases forward. For example, Chilean and Argentinian exiles in Spain, many of whom had been persecuted for their human rights activism back home, were instrumental in Spain's investigations into Pinochet's crimes and mobilizing public support for the case in Spain and London.[89] The controversial Belgian cases against Israeli and U.S. officials were also initiated by Palestinian and Iraqi survivors of the atrocities.[90] As Hovell demonstrates, over half of the UJ prosecutions since 1961 have been "primarily victim driven."[91]

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The cosmopolitan account of UJ is, from this perspective, based on a descriptive fallacy that overemphasizes the normative pull of states' obligations to an international community founded on individual rights. As Mégret notes, this obscures the fact that the existence of UJ proceedings has almost always "followed existing patterns of transnational interactions between states"—the most concrete form being the movement of peoples.[92] Thus, anchoring Germany's UJ proceedings in the standard cosmopolitan account of UJ not only renders the proactive and critical roles played by Syrian victims and activists as normatively insignificant but also makes the existence of a large refugee population in Germany a marginal factor in determining its appropriateness as a forum for Syrian conflict–related cases. The existence of a large refugee population, from the general and permissive characteristics of the cosmopolitan account, only serves as an argument to demonstrate a state's potentially increased capacity to prosecute due to increased access to witnesses and other forms of evidence.

The Dual Foundation of Universal Jurisdiction

Despite these weaknesses, the contention here is not to deny the cosmopolitan foundations of UJ. Rather, as this section will lay out, the aim is to suggest that the evaluation of UJ proceedings should be based on a two-tiered test that conceptualizes the imperative to prosecute international crimes as stemming from *both* the universal character of the crimes and their specific political relationship to the prosecuting state.[93]

This two-tiered test is a jurisprudential conceit that stems from Itamar Mann's reading of the opinion of *The State of Israel v. Adolf Eichmann* case.[94] The trial of Adolf Eichmann before a special tribunal at the Jerusalem District Court in Israel, while not directly pursuant to UJ, is commonly considered as a precedent to UJ for grave international crimes.[95]

The district court, in this case, justified its jurisdiction over Nazi crimes committed in Europe by advancing two arguments. First, it defended its jurisdiction through a cosmopolitan account, arguing that Nazi atrocities were breaches of international law that offend the conscience of humanity.[96] The Jerusalem District Court thus was standing in as the "court of humanity,"[97] filling a judicial vacuum as a global enforcer.[98] The court not only presented itself as a component body to enforce international law but also went a step further to argue that its particular authority was based on a "dual foundation: [t]he universal character of the

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crimes in question and their specific character as being designed to exterminate the Jewish People."[99] It was this "special relationship" between the State of Israel and Nazi crimes against Jews that gave the court the authority to prosecute Eichmann[100]—the "right to punish" is in part derived from the specific right of the "*victim nation* to try any who assault its existence."[101]

Mann's reading of the dual foundation thesis, however, does not rely on the assumption that there was a preexisting historical and political relationship between the Nazi crimes and Israel. The conventional reading of the *Eichmann* judgment derives Israel's "right to punish" from the self-evident identity of Israel both as a homeland for the Jewish diaspora and as existing as a result of the history of Nazism.[102] Rather, the dual foundation thesis, as read by Mann, reveals how the relationship between Israel as the prosecuting state and the Nazi crimes was *constituted* by the trial of Eichmann. The UJ trial, rather than relying on a preexisting relationship between the victim, perpetrator, and prosecuting state outside of the courtroom, consolidated the "collectivity of victims and the community of Israeli citizens" into one, "reasserting what the state of Israel stands for."[103] The cosmopolitan theory of UJ points to the constitutive role of UJ in creating an international community based on universal values.[104] The dual foundation theory, on the other hand, suggests that this constitutive role is twofold—first, UJ creates an international community and clarifies the prosecuting state's role within it, and second, UJ forges the domestic political community of the prosecuting state. In the case of *Eichmann*, as historian Tom Segev argues, the trial became a national unifying experience that put the Holocaust at the center of the country's collective memory,[105] while simultaneously fusing Israel's international identity with that of the Jewish victims of Nazi crimes, suggesting that "whatever the world owes to the victims, they now owe to Israel."[106]

Ultimately, the dual foundation thesis of UJ explicitly places the secondary normative, political, and historical justifications as to why a specific state would take on UJ cases at the heart of the normativity of UJ itself. Descriptively, as briefly discussed in the previous sections, state practice suggests that UJ cases are more likely to be pursued when they are in some way related to the prosecuting state's interests—Germany's own justification for trying Syrian crimes, for example, is stated as the desire to prevent Germany from becoming a refuge for perpetrators.[107] States rarely justify UJ on the grounds of cosmopolitanism alone, and tend to resolve the ambiguity of the permissive characteristics of the cosmopolitan

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justification by highlighting specific political interests. *The Princeton Principles on Universal Jurisdiction*, for instance, attempts to resolve this ambiguity by highlighting specific contexts, such as the national connections of the alleged perpetrators or victims and the availability of evidence, as the criteria for determining jurisdictional priority between states.[108]

The standard cosmopolitan account of UJ, however, considers these secondary interests as implicitly contravening the normative foundation of UJ. In other words, pursuing UJ for "parochial" reasons is seen as a weak commitment to the normative principle underlying UJ.[109] This conceptualization presents three distinct problems: First, it theoretically relies on an overly high bar for what "counts" as evidence of states complying with normative principles, assuming that the existence of any additional short-term instrumental consideration in a state's decision to adhere to an international norm negates the possibility of principled motivation. But, as Janina Dill points out, the distinct "compliance pull" of international legal principles lies in the specific mix of instrumental utility and normative appropriateness they present for states.[110] In other words, international law works precisely because states understand the principles to be the "right thing to do" and because they are useful for them in a particular moment. From this perspective, the existence of secondary interests to pursue UJ in specific contexts does not contradict or diminish a state's principled commitment—it simply reflects the reality of how international legal principles function.

Second, framing UJ as essentially a form of window dressing that allows states to achieve other political objectives underplays the specific expressive function of prosecuting an act as an international crime.[111] For example, Eugene Kontorovich contends that the increase in European UJ cases is a result of European courts' broad interpretations of the rule of non-refoulment, which allegedly have made it difficult to extradite migrants and asylum seekers. Kontorovich suggests that European countries have initiated UJ cases as a surrogate extradition or rendition process for migrants who are suspected of committing international crimes. This understanding negates the significance of UJ proceedings as an enactment of international normative principles by a domestic court, and sees them primarily as a workaround that allows states to remove undesirable individuals from society when it is not possible to expel them entirely.[112] However, as Langer notes, even in the no safe haven justification of UJ, the prosecuting state is implicitly conceptualized as a stand-in for the international community, carrying out both a broader international normative principle and "parochial" interests.[113]

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Finally, and most crucially for our purposes, the conceptualization of UJ only through the standard cosmopolitan account does not provide a way to judge the relative appropriateness of different UJ cases where political considerations are present. For instance, how should we evaluate the normative difference between Belgium's arrest warrant against a Congolese minister and the complaints against a former U.S. president? Both cases involve political considerations—but the standard cosmopolitan account of UJ blurs the boundaries between the two very distinct cases.

In effect, the two-tier test derived from the dual foundation thesis of UJ clarifies the secondary normative principle that can mitigate the issues of burden sharing, vigilantism, and imbalances of power politics arising from the cosmopolitan account of UJ by articulating a contextual reason why particular UJ trials should be pursued at a given moment. As Mann states, the two-tier test demands that "the political link between the court's state," the defendant, the victim, and the crime be laid bare.[114] This two-tier test does not negate the importance of the cosmopolitan foundation of UJ, as the universality of the harm that UJ trials address forms the necessary condition for UJ's normativity. Cosmopolitanism, however, does not provide the sufficient condition—a robust normative justification of UJ requires a persuasive and open justification of its domestic political links. This link cannot be fundamentally in conflict with UJ's cosmopolitan foundation. Mann uses Justice Bula-Bula's opinion in the aforementioned *Arrest Warrant* case to illustrate this point—using the frame of the two-tier test, Bula-Bula's argument is precisely that the second-tier consideration of the neocolonial link between Belgium and the Congo taints the first-tier consideration of universality, which is rooted in notions of equality.[115]

Universal Jurisdiction Trials as Protection of Victims

The absolute question of whether Germany has jurisdiction over international crimes at all, and the fact that core international crimes give rise to UJ, has already been covered in the previous background discussion. What, then, forms the specific political link between Germany and the Syrian conflict–related crimes from the perspective of the two-tier test? The argument here is that the link between Germany and the Syrian conflict–related crimes is forged by the presence of the large number of Syrian refugees, including victims of international crimes, in Germany. Refugees and migrants not only facilitate UJ prosecutions but also provide the secondary normative imperative as to why Germany *in particular* should be acting on behalf of humanity to prosecute these international crimes.

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Victims are generally provided with a recognized legal interest in the prosecution of crimes, so arguing that the presence of victims within the country justifies UJ trials does not require a radical shift from the standard cosmopolitan account of UJ.[116] But beyond the general rights of victims, the existence of victims of Syrian conflict–related crimes within the country suggests the possibility that the suffering and harm created by the original commission of the crime will continue within Germany. While from a strictly legal point of view, the commission of a crime is understood through a specific "time and place" where the act was physically carried out,[117] as Mégret argues, serious international crimes have a "long tail" that goes beyond the moment of commission.[118] The effects of wounds and trauma, both physical and psychological, travel with the victims and their communities. This severs the imagined neat link between the crime that occurred "over there" and the people that now reside within the host country. Furthermore, the fact that perpetrators and victims often take the same escape routes due to proximity, historical connections, or political expediency presents the possibility that victims will suffer the secondary harm of encountering, and living alongside, their perpetrators in their new place of refuge.[119] The dramatic trial of Anwar Raslan in Koblenz, in fact, began with a chance encounter with a victim—through a strange twist of fate, the Syrian human rights lawyer Anwar al-Bunni, whose arrest and imprisonment were supervised by Raslan in 2006, had been assigned to live in the same refugee resettlement center as his former jailer, on the outskirts of Berlin.[120] The existence of a large Syrian refugee population in Germany, from the perspective of the dual foundation thesis, therefore provides a normative urgency for German UJ proceedings regarding Syrian crimes.

Furthermore, the specific experience of refugeehood also points toward a continued harm that could be addressed by the UJ trial. The Refugee Convention defines a refugee as someone who

> owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.[121]

From this definition, refugees are in effect those who find themselves outside of the state system, lacking effective membership in one state, and without a clear positive entitlement to any other.[122]

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For Hannah Arendt, this condition of disconnect from both one's state of origin and one's state of refuge results in two forms of fundamental deprivation. First, the condition of the refugee denotes the de facto deprivation of human rights. Human rights may have universal aspirations, but it is through the state that such rights can be enforced and gain practical meaning. Consequently, Arendt argues, the condition of exile renders people "rightless," as well.[123] In legal terms, this means that once someone is no longer subject to the domestic jurisdiction of his or her home country, there is no clear way to treat that person as a full legal subject.[124] Consequently, the loss of clear political community for victims of international crimes can be understood as the loss of the right to justice. Arguably, the establishment of international institutions such as the ICC has mitigated this situation. However, in the case of Syrian international crimes, such international options are effectively inaccessible because of the political context discussed above. Prosecution by a foreign court pursuant to UJ is the only viable option for criminal accountability in the foreseeable future. From this perspective, as Mégret suggests, UJ can be a "remarkable way of circumventing law's exclusions, of treating the newcomer as if he were already a citizen."[125]

Second, Arendt argues that the condition of the refugee results in the loss of individual sociopolitical identity and the consequent loss of political agency and recognized subjectivity. As Arendt states, being a refugee means that "nobody knows who I am."[126] Serena Parekh refers to this as "ontological deprivation."[127] Stripped of their identity, shaped in part through their experiences of suffering in their home states, refugees appear as "abstract human being[s]" who are not fully human, and are constituted through their private selves and public political persona, both past and present.[128] Giorgio Agamben refers to this abstract existence as "bare life," defined primarily through immediate and material needs.[129] Refugees thus become objects of need; bodies to be rescued, cared for, and protected, rather than political subjects with agency.[130]

The focus on bare minimum survival results in policies of integration and resettlement geared toward the urgent material needs, endeavoring to transform refugees into economically productive members of society. Public recognition of the experiences brought by refugees into their host country—including the political struggles, trauma, and wounds that severed their relationships with their home states in the first place—becomes difficult to achieve. For example, while the German integration policies for Syrian refugees are widely considered to be successful, both in terms of international standards and compared to past

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integration policies, the metric through which this is measured is predominantly refugees' integration into the labor market and, to a lesser degree, into the educational system.[131] Even support for explicit trauma is understood primarily in terms of physical recovery.[132] For some Syrian refugees, this singular focus on their needs represents a paternalistic "one-way conversation" between them and the German state, which does not allow for their own agency.[133] Therefore, responding to the political demands for justice made by victims to investigate and prosecute relevant international crimes through UJ can become a way to recognize refugees as ontological subjects, responding to them by considering who they are rather than what they need.[134] Trials such as that of Anwar Raslan can serve as a means of constituting a new political community within the host state that includes refugees as political agents.

Conclusion

This article has argued that to evaluate the normative appropriateness of UJ cases, relying on the standard cosmopolitan account alone is insufficient. The cosmopolitan account of UJ justifies UJ's existence. The question of whether a particular state should take on a specific UJ case requires a two-tiered test that is cognizant of UJ's dual foundation, as derived from both universal claims of cosmopolitanism *and* the specific political relationship between the victim, perpetrator, and prosecuting state. Ultimately, what the two-tiered test for UJ reveals is the potential for understanding Syrian UJ cases in Germany as a domestic political event. Germany should administer UJ not only because it is acting on behalf of an amorphous international community but also because it allows the German state to enforce the rights of victims and recognize the status of refugees already within its territory as ontological subjects, giving them meaningful political agency in their new surroundings.

This more inward-looking justification of UJ has several implications for the resurging practice of UJ in Europe. First is that the imperative to prosecute Syrian conflict–related crimes may markedly differ from one state to another, not only because of the divergences in legal and institutional environments but also due to the differences in their respective relationships to the refugee population and victim groups. Demands from victim and refugee communities within a state's borders should be considered normatively significant when a state is weighing whether to pursue UJ, and the state should be open about the role of victim advocacy in the political debates surrounding UJ.

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Furthermore, focusing on the domestic political relationships may result in differing standards of what are the important and urgent cases that should be tried by domestic courts. Some critics of European efforts to prosecute Syrian conflict–related crimes have criticized the focus on specific types of crimes and perpetrators—generally, those focused on past regime violations, terrorism-related cases, and those centered on relatively less powerful individuals. If each of the UJ cases is seen as a stand-in for a broader global struggle against impunity on behalf of the international community, the emphasis on crimes committed by one particular actor in the conflict, or the tendency to pursue less controversial cases, can result in selective justice.[135] It also can be seen as distorting the overall narrative of the conflict.[136] If, however, it is argued that states *should* be responsive to internal political demands and imperatives, it should be expected that the type of cases pursued in each European jurisdiction will vary greatly. Thinking about the victim and refugee populations within the country not as resources to be used to facilitate global efforts to prosecute Syrian conflict–related crimes, but as agents who can demand specific justice for themselves in the host state means that the contours of UJ will necessarily change in each country's context.

Finally, the two-tiered test of UJ suggests further avenues of empirical inquiry that focus on the internal effects of UJ. Both scholarly and political debates on UJ trials have generally focused on the effects they have on international developments—how they respond to shifts in international power dynamics,[137] how they respond to international legal developments,[138] and how they provide remedies to the ongoing crisis of international mechanisms of accountability.[139] By highlighting the specific relationship between the victim, perpetrator, and prosecuting state in the normative justification of UJ, the two-tiered test shifts the attention to what happens to the domestic polity through the trial. How do UJ trials change the relationship between old and new members of the domestic society?

The argument that UJ should be something a state does not only for the international community but also for those who are closer to home is simultaneously a position of humility and ambition. It is a position of humility in the sense that it circumvents the historical grandstanding that permeates much of international criminal justice endeavors; it is a position of ambition because arguing for the normative appropriateness of UJ trials based on domestic political considerations, such as the place of refugees in society, is potentially a far more contentious one. By "rightsizing" the rhetoric surrounding UJ, the two-tiered test forces a more explicit discussion of the politics of UJ.

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NOTES

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[3] Ibid.
[4] Emma Graham-Harrison, "'My Goal Is Justice for All Syrians': One Man's Journey from Jail to Witness for the Prosecution," *Guardian*, December 12, 2020, www.theguardian.com/world/2020/dec/12/my-goal-is-justice-for-all-syrians-one-mans-journey-from-jail-to-witness-for-the-prosecution.
[5] Whether states have the right to exercise universal jurisdiction for the crime of aggression under customary international law is debated. See Michael P. Scharf, "Universal Jurisdiction and the Crime of Aggression," *Harvard International Law Journal* 43, no. 2 (Summer 2012), pp. 357–89.
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[7] Devika Hovell, "The Authority of Universal Jurisdiction," *European Journal of International Law* 29, no. 2 (May 2018), pp. 427–56; and Frédéric Mégret, "The 'Elephant in the Room' in Debates about Universal Jurisdiction: Diasporas, Duties of Hospitality, and the Constitution of the Political," *Transnational Legal Theory* 6, no. 1 (2015), pp. 89–116.
[8] Roger O'Keefe, "Universal Jurisdiction: Clarifying the Basic Concept," *Journal of International Criminal Justice* 2, no. 3 (2004), pp. 735–60, at p. 745; and Luc Reydams, *Universal Jurisdiction: International and Municipal Legal Perspectives* (Oxford: Oxford University Press, 2004), p. 5.
[9] Princeton Project on Universal Jurisdiction, *The Princeton Principles on Universal Jurisdiction* (Princeton, N.J.: Program in Law and Public Affairs, Princeton University, 2001), p. 17.
[10] Hovell, "The Authority of Universal Jurisdiction," p. 431. See, for example, Article 5, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, December 10, 1984. The principle of "prosecute or extradite" (*aut dedere aut judicare*) is not, in the strictest sense, conceptually equivalent to the idea that jurisdiction over certain crimes is universal. Nevertheless, it has been interpreted to support UJ. For further discussion, see M. Cherif Bassiouni, "Universal Jurisdiction for International Crimes: Historical Perspectives and Contemporary Practice," *Virginia Journal of International Law* 42, no. 1 (January 2001), p. 123.
[11] While in the *Arrest Warrant* case of 2000, judges at the International Court of Justice argued that an assessment of national legislation suggests that the only clear consensus in UJ is over the crime of piracy, not the "core" international crimes, scholarly discourse on UJ has pointed out that state practice has evolved greatly in favor of UJ's existence over the subsequent decades. See Arrest Warrant of 11 April 2000 (Democratic Republic of Congo v. Belgium), Judgment, 2002 I.C.J. (Feb. 14) (joint separate opinions of Judges Higgins, Kooijmans, and Buergenthal), paras. 44, 45, 50; and Claus Kreß, "Universal Jurisdiction over International Crimes and the *Institut de Droit International*," *Journal of International Criminal Justice* 4, no. 3 (July 2006); and Máximo Langer and Mackenzie Eason, "The Quiet Expansion of Universal Jurisdiction," *European Journal of International Law* 30, no. 3 (August 2019), pp. 779–817.
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[15] Ibid, p. 387; and Richard Bernstein, "Belgium Rethinks Its Prosecutorial Zeal," *New York Times*, April 1, 2003, www.nytimes.com/2003/04/01/world/belgium-rethinks-its-prosecutorial-zeal.html.
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[19] Ibid., p. 782; and Máximo Langer, "The Diplomacy of Universal Jurisdiction: The Political Branches and the Transnational Prosecution of International Crimes," *American Journal of International Law* 105, no. 1 (January 2011), pp. 1–49, at p. 1.
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[27] Ingrid Elliott, "'A Meaningful Step towards Accountability? A View from the Field on the United Nations International, Impartial and Independent Mechanism for Syria," *Journal of International Criminal Justice* 15, no. 2 (May 2017), pp. 239–56.

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[30] Ibid.

[31] Van Schaak, *Imagining Justice for Syria*, p. 288.

[32] "Central Unit for the Fight against War Crimes and further Offences Pursuant to the Code of Crimes against International Law (ZBKV)," Bundeskriminalamt, www.bka.de/EN/OurTasks/Remit/CentralAgency/ZBKV/zbkv_node.html.

[33] Ibid.

[34] Wolfgang Kaleck and Patrick Kroker, "Syrian Torture Investigations in Germany and Beyond: Breathing New Life into Universal Jurisdiction in Europe?," *Journal of International Criminal Justice* 16, no. 1 (March 2018), pp. 165–91, at p. 176.

[35] Ibid., p. 171.

[36] The Federal Republic of Germany (as Berlin [West] prior to reunification with the German Democratic Republic) adopted the Convention against Torture in 1984 and ratified it in 1990. The Genocide Convention on the Prevention and Punishment of the Crime of Genocide was adopted in 1948 and ratified in 1954.

[37] Langer, "The Diplomacy of Universal Jurisdiction," p. 11.

[38] The German legal system, while highly receptive to international law, is not, strictly speaking, a monist state, in which international law is seen as superior to municipal law, is considered within the same legal corpus, and requires customary international law to be incorporated into this domestic legal system through Article 25 of the Basic Law for the Federal Republic of Germany (Grundgesetz). Consequently, the crimes listed in the Rome Statute of the International Criminal Court can be considered part of customary international law, but they require domestic legislation to be applicable in Germany. Although the Rome Statute does enumerate individual crimes, because it does not meet German constitutional principles of legality, and because the primary aim of the statute was understood as providing the ICC jurisdiction over the crimes, not its member states, a separate piece of legislation was necessary to introduce the international crimes in the Rome Statute in the German legal order. For further explanation of CCAIL, see Helmut Satzger, "German Criminal Law and the Rome Statute: A Critical Analysis of the New German Code of Crimes against International Law," *International Criminal Law Review* 2, no. 3 (2002), pp. 261–82; and on Germany's dualist legal system, see George Slyz, "International Law in National Courts," *NYU Journal of International Law & Politics* 28, nos. 1/2 (Fall/Winter 1995), pp. 65–114.

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[40] Kaleck and Kroker, "Syrian Torture Investigations in Germany and Beyond," p. 178.
[41] Ibid., p. 179.
[42] Langer and Eason, "The Quiet Expansion of Universal Jurisdiction." For example, the so-called Caesar Report, named after a Syrian military defector with the code name "Caesar," was based on tens and thousands of images smuggled out of Syria. United Nations Security Council, *A Report into the Credibility of Certain Evidence with Regard to Torture and Execution of Persons Incarcerated by the Current Syrian Regime* (the "Caesar Report"), S/2014/244, April 4, 2014, undocs.org/en/S/2014/244.
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[62] Mégret, "The 'Elephant in the Room' in Debates about Universal Jurisdiction," p. 93.
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[131] For example, the German Integration Act (Integrationsgesetz) focuses on language acquisition, skills acquisition, and removing barriers to labor market entry. Summary of the Act in English available at

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www.loc.gov/law/foreign-news/article/germany-act-to-integrate-refugees-enters-into-force/. Germany explicitly defines "integration potential" to mean economic self-reliance, measured by indicators such as "educational and vocational training" and "professional experience." Natalie Welfens and Saskia Bonjour, "Families First? The Mobilization of Family Norms in Refugee Resettlement," *International Political Sociology* 15, no. 2 (June 2021), p. 219. See also Herbert Brücker, Philipp Jaschke, and Yuliya Kosyakova, *Integrating Refugees and Asylum Seekers into the German Economy and Society* (Washington, D.C.: Transatlantic Council on Migration, Migration Policy Institute, December 2019), www.migrationpolicy.org/sites/default/files/publications/TCM_2019_Germany-FINAL.pdf.

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Abstract: Should Germany be prosecuting crimes committed in Syria pursuant to universal jurisdiction (UJ)? This article revisits the normative questions raised by UJ—the principle that a state can prosecute serious international crimes such as genocide, crimes against humanity, and war crimes committed by foreigners outside of its territories—against the backdrop of increasing European UJ proceedings regarding Syrian conflict–related crimes, focusing on Germany as an illustrative example. While existing literature justifies UJ on the basis of universal prohibition of certain atrocities, this creates residual normative issues. Alternatively, this article applies the "two-tiered test" derived from the "dual foundation" thesis of the Eichmann judgment, in which the normative appropriateness of UJ is evaluated against both accounts of universal prohibition and the specific politics surrounding the prosecution. It contends that the large number of Syrian refugees in Germany means that Germany, in particular, should initiate Syrian conflict–related UJ proceedings to prevent continued harm and recognize the political agency of refugees. Ultimately, the article suggests UJ should normatively be thought of as a domestic, rather than international, political event.

Keywords: Syria, human rights, refugee, international crimes, universal jurisdiction, accountability, international criminal justice

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