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Article

Universal Jurisdiction as Vicarious Jurisdiction

Domestic Adjudication of Core International Crimes and the Claim to Act on Behalf of the International Community

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ABSTRACT

Universal criminal jurisdiction (UJ) over core international crimes is frequently justified on the basis that forum states act as trustees or agents of the international community. However, the normative and procedural implications of this characterization for the proper administration of UJ remain largely unexplored, while past UJ trials have faced criticism for insufficient engagement with victim communities and inadequate communication with the international public. Against this backdrop, the article challenges the theoretical understanding of UJ as an extension of state sovereignty, instead emphasizing its role within the legal framework of the international community. It advocates for a more reflective engagement with UJ as a derivative right — more precisely, as a form of vicarious or representational jurisdiction, wherein states exercise adjudicative jurisdiction while relying on another legal system's prescriptive jurisdiction and normative authority. Through the development of a framework of structural principles and duties, the article explores how the derivative and representational structure of vicarious UJ informs the domestic adjudication of international crimes. This reconsideration not only provides a more precise analytical foundation for current UJ practice but also offers normative constraints to guide its expanding application.

1. INTRODUCTION

The principle of universal criminal jurisdiction (UJ) for core international crimes[1] is frequently justified on the basis that the forum state acts as a 'trustee', 'guardian', or 'surrogate'

[1] The scope of this article is limited to UJ *sensu strictu* as it applies to core international crimes, cf. on the distinction to 'treaty-based' UJ, cf. M. Boe, 'Universal Jurisdiction: Concept and Conceptions', in H. van der Wilt and L. Yanev (eds), *Universal Jurisdiction over Core International Crimes: Law & Practice* (Elgar, 2025) 12, at 46 *et seq.*

on behalf of the international community.[2] However, domestic courts often seem to fall short of this aspiration. They tend to treat UJ cases as 'ordinary' trials, applying domestic procedural law and considering UJ as a mere 'entry requirement' with minimal impact on the course of the trial.[3] Past trials have exposed the limitations of this approach, drawing widespread criticism, particularly regarding the lack of transparency and accessibility of domestic UJ trials for the international community and, most crucially, for victim communities.[4] Despite the trials' apparent success and efficiency when viewed through a domestic lens, they often fall short of meeting broader expectations placed upon them by observers and participants.[5] This suggests that UJ is not only about the *outcome* of punishment. It appears to be as much about the *process* of adjudicating international crimes.[6] Building on the apparent disconnect between UJ's unique international character and its often parochial administration, this article questions the traditional yet still influential view of UJ as an *extension* of a state's penal power in the interest of the international community. Instead, it advocates for a more reflective engagement with UJ as a distinct form of *vicarious* jurisdiction, derived from the international community's own universal jurisdiction over core international crimes.

Existing scholarship on UJ explores the concept from diverse perspectives, often emphasizing its role as an important mechanism for the indirect enforcement of international criminal law (ICL).[7] Additionally, scholarship has articulated guidelines and limits for the

[2] See e.g. United Nations General Assembly (UNGA), 'Report of the Secretary-General: The Scope and Application of the Principle of Universal Jurisdiction' (2010) UN Doc A/65/181, at para. 11 ('on behalf of the international community'); US Court of Appeals, *Demjanjuk v. Petrovsky*, Judgment, 31 October 1985, 776 F2d (6. Circ. 1985) 571, at 583 ('prosecuting nation is acting for all nations'); Supreme Court of Israel, *Israel v. Eichmann*, Judgment of 29 May 1962, in 36 *International Law Reports* (1968), 277, 299 ('guardian of international law and agents of its enforcement'); M.C. Bassiouni, 'Universal Jurisdiction for International Crimes: Historical Perspectives and Contemporary Practice', 42 *Virginia Journal of International Law* (2002) 81, at 96 ('surrogate', 'actio popularis'); C. Kreß, 'International Criminal Law', in R. Wolfrum (ed.), *Max Planck Encyclopedias of Public International Law (MPEPIL)*, March 2009, at para. 17.

[3] D. Hovell, 'The Authority of Universal Jurisdiction', 29 *European Journal of International Law* (*EJIL*) (2018) 427, at 428–429; M. Langer and M. Eason, 'The Quiet Expansion of Universal Jurisdiction', 30 *EJIL* (2019) 779, at 809–810; M. Langer, 'Universal Jurisdiction as Janus-Faced—The Dual Nature of the German International Criminal Code', 11 *Journal of International Criminal Justice* (*JICJ*) (2013) 737, at 760.

[4] See e.g. A. Dünkersbühler, A. Suttor and L. Borger, 'Universal Jurisdiction without Universal Outreach?', Völkerrechtsblog, 13 January 2021, available online at https://voelkerrechtsblog.org/universal-jurisdiction-without-universal-outreach/(last visited 12 September 2025); cf. B. McGonigle Leyh, 'Using Strategic Litigation and Universal Jurisdiction to Advance Accountability for Serious International Crimes', 16 *The International Journal of Transitional Justice* (2022) 363, at 376–377; T. Becker et al., 'Will Victims' Rights Be Lost in Translation? Bridging the Information Gap in Universal Jurisdiction Cases', 38 *Utrecht Journal of International and European Law* (2023) 39–61. For examples beyond Germany, see D. Hovell and M. Malagodi, 'Universal Jurisdiction: Law out of Context', 87 *The Modern Law Review* (2024) 1480–1518; O. Kavran, 'Communicating Justice: Lessons from International and National Courts and prosecution Authorities Dealing with International Crimes', Asser Institute, June 2022, available online at https://www.asser.nl/media/795748/communicating-justice-lessons-from-international-and-national-courts-and-prosecution-authorities-dealing-with-international-crimes.pdf (last visited 12 September 2025), at 31–46. More generally on the linguistic and cultural challenges and limitation of international criminal justice, see L. Swigart, 'Linguistic and Cultural Diversity in International Criminal Justice: Toward Bridging the Divide', 48 *University of the Pacific Law Review* (2016) 197–217; but see e.g. JusticeInfo.net, 'Syrian Trials Translated into Arabic: The Netherlands' Conclusive Test', available online at https://www.justiceinfo.net/en/128392-syrian-trials-translated-into-arabic-netherlands-conclusive-test.html (last visited 12 September 2025).

[5] Cf. S. Aboueldahab and F.-J. Langmack, 'Universal Jurisdiction Cases in Germany: A Closer Look at the Poster Child of International Criminal Justice', 31 *Minnesota Journal of International Law* (2022) 1–34; M. Karkoutly, 'Case number 1 St 9/19—Syrians' perceptions of justice vs. German legal procedure', in W. Kaleck and P. Kroker (eds), *Syrian State Torture on Trial* (Bundeszentrale für politische Bildung, 2023) 31–44; A. Fowler, 'Comparing Universal Jurisdiction in Europe and in Latin America: A Vehicle for International Justice or for Colonial Reckoning?', 29 *The International Journal of Human Rights* (2025) 736, at 739 *et seq.*; for an instructive overview over UJ practice in Europe, see the state chapters in van der Wilt and Yanev (eds), *supra* note 1.

[6] Cf. F. Mégret, 'In Defense of Hybridity: Towards a Representational Theory of International Criminal Justice', 78 *Cornell International Law Journal* (2005) 725, at 741–743.

[7] The concept remains subject to considerable debate, cf. A. Lagerwall and M.-L. Hébert-Dolbec, 'Universal Jurisdiction', in H. Fabri (ed.), *Max Planck Encyclopedia of International Procedural Law*, July 2022.

administration of UJ, typically framed as a set of principles.[8] However, these principles are often merely proclamatory and sometimes lack integration into a broader normative framework.[9] This article, in contrast, draws on a specific strand of illuminating literature that conceptualizes UJ as a right rooted in the *ius puniendi* of the international community and the *ius cogens* status of ICL *sensu strictu*.[10] In this context, Jeßberger has explicitly noted the vicarious structure of UJ,[11] while Mégret, more generally, has argued in favour of a 'representational theory' of international criminal justice, emphasizing that tribunals adjudicating international crimes should '"represent" the nature of the crimes at stake'.[12] However, previous literature has often stopped short of examining the normative implications of this understanding for UJ's practical implementation in the domestic courtroom. Only recently have Hovell and Malagodi advanced the idea that reconceptualizing UJ as 'international jurisdiction' affects how domestic courts should conduct UJ trials.[13] While their work offers valuable insights into the international character of UJ proceedings, it does not engage in depth with the normative structure of the jurisdictional authority asserted by the forum state. Meanwhile, a growing body of research has shifted focus to the practical realities of UJ administration, in particular highlighting the pivotal role of civil society and affected communities in initiating and shaping accountability efforts.[14] Yet, justifying UJ *solely* on it being a pathway to justice for victims of international crimes risks neglecting the foundational jurisdictional question.[15]

This article, therefore, aims to connect and synthesize two key arguments essential for understanding UJ over core international crimes, which often remain implicit in previous scholarship. First, that UJ constitutes a distinct form of vicarious jurisdiction on behalf of the international community, and second, that its international character imposes unique demands on domestic criminal trials. To this end, the article seeks to demonstrate that the well-established customary law approach to UJ aligns with the old jurisdictional idea that one justice system may vicariously act on behalf of another. In doing so, the article substantiates UJ's derivative nature by exploring how the interests and concerns of the international community must be reflected in its administration. Reconceptualizing UJ as a distinct form

[8] Most importantly, S. Macedo (ed.), *Princeton Principles on Universal Jurisdiction* (2001), available online at https://law.depaul.edu/academics/centers-institutes-initiatives/international-human-rights-law-institute/projects/Documents/princeton_principles.pdf (last visited 12 September 2025) (hereafter Princeton Principles); for further references, see Boe, *supra* note 1, at 24 (note 104).

[9] Similar, A.R. Reeves, 'Liability to International Prosecution: The Nature of Universal Jurisdiction', 28 *EJIL* (2018) 1047, at 1051.

[10] See e.g. A.J. Colangelo, 'Double Jeopardy and Multiple Sovereigns: A Jurisdictional Theory', 86 *Washington University Law Review* (2009) 769, at 794 *et seq*.; A.J. Colangelo, 'Universal Jurisdiction as an International "False Conflict" of Laws', 30 *Michigan Journal of International Law* (*MichJIL*) (2009) 881, at 888 *et seq*.; F. Jeßberger, *Der transnationale Geltungsbereich des deutschen Strafrechts* (Mohr Siebeck, 2011), at 270; J. Davidovic, 'Universal Jurisdiction and International Criminal Law', in C. Flanders and Z. Hoskins (eds), *The New Philosophy of Criminal Law* (Bloomsbury, 2016) 113, at 114; F. Jeßberger, 'Briefing: Towards a "complementary preparedness" Approach to Universal Jurisdiction'; in EU Parliament—Directorate-General for External Policies (ed.), *Workshop: Universal Jurisdiction and International Crimes: Constraints and Best Practices* (2018), Part C, 1, at 2; J. Geneuss, *Völkerrechtsverbrechen und Verfolgungsermessen* (Nomos, 2013), at 90, 122; A. Addis, 'Imagining the International Community: The Constitutive Dimension of Universal Jurisdiction', 31 *Human Rights Quarterly* (*HRQ*) (2009) 129, at 142–143; E. Cimiotta, 'The Relevance of *Erga Omnes* Obligations in Prosecuting International Crimes', 76 *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* (2016) 687, at 688 *et seq*.; C. Kreß, 'Universal Jurisdiction over International Crimes and the Institut de Droit International', 4 *JICJ* (2006) 561, at 584.

[11] Jeßberger, *Geltungsbereich*, *supra* note 10, at 270 *et seq*. ('Sachwalterprinzip').

[12] Mégret, *supra* note 6, at 727.

[13] Hovell and Malagodi, *supra* note 4, at 1480, 1482; see also Langer, *supra* note 3, at 739, 760–761.

[14] See e.g. McGonigle Leyh, *supra* note 4, at 366 *et seq*.; Hovell, *supra* note 3, at 449 *et seq*.

[15] See e.g. F. Mégret, 'The "Elephant in the Room" in Debates About Universal Jurisdiction: Diasporas, Duties of Hospitality, and the Constitution of the Political', 6 *Transnational Legal Theory* (2015) 89–116; K.M. Frode, 'Universal Jurisdiction as International Solidarity with Survivors of Atrocity Crimes: Lessons from Afghanistan's Diaspora', 22 *JICJ* (2024) 463–477; K. Mehta, S. Imani and L. Melchior, 'Prosecutions Across Borders: A TWAIL Review of Universal Jurisdiction Practices: The Case of Germany', 22 *JICJ* (2024) 631, at 645; A.S. Galand, 'Victims Right to Justice, Immunities and New Avenues for International Criminal Justice', 25 *International Community Law Review* (2023) 184, at 187 *et seq*.

of vicarious jurisdiction has important implications for domestic UJ trials: The justification as to *why* it is legitimate for a domestic court to adjudicate an extraterritorial international crime also informs *how* the forum state should administer international criminal justice.[16]

To substantiate this argument, the article is structured in three parts. The first part contrasts the classic view of UJ as an extension of a state's prescriptive penal authority with an argument for reconceptualizing UJ based on a community-centric perspective. The second part advances the view that a more accurate understanding of UJ positions it as a mechanism for the representational domestic enforcement of norms prescribed at the international level. The third part outlines the general normative implications of understanding UJ as vicarious jurisdiction, proposing in broad strokes a framework of structural principles and identifying specific duties that the forum state must fulfil when exercising UJ. This article concludes by highlighting the potential of the proposed framework to both analytically explain and normatively constrain the expanding practice of UJ.

2. TWO CONFLICTING CONCEPTIONS OF UNIVERSAL JURISDICTION

The unresolved tension between the specificities of domestic legal systems, the international subject matter, and the universalist ambitions of UJ proceedings has been especially apparent in the Al-Khatib trial in Koblenz, Germany. In this case, two secret service members of the Syrian Assad regime were consecutively convicted of crimes against humanity.[17] However, a key point of contention emerged when the Higher Regional Court rejected a motion by Syrian journalists to allow them to utilize the court's translation system, prompted by the unavailability of whisper interpreting due to COVID-19 restrictions. The court maintained that it was not responsible for ensuring that the applicants could follow the trial, citing the legal requirement that the proceedings be conducted in German and asserting that no adjustment to procedural norms was warranted by the special jurisdiction for international crimes.[18]

However, the German Federal Constitutional Court issued a preliminary injunction, thereby granting the journalists the right to use the translation system.[19] The court held that the exceptional public interest must be taken into account, 'all the more given that Germany is claiming jurisdiction under international criminal law, which it would not have under general principles governing jurisdiction and which derives from the fact that the offenses in question affect the international community'.[20] Notably, for the announcement of the verdicts, the Higher Regional Court subsequently provided consecutive interpretation into Arabic for the courtroom audience and translated its press release into English and Arabic — both unprecedented steps.

[16] Similar, Hovell, *supra* note 3, at 428. The following conception of UJ takes up and generalizes the account set forth in M. Boe, 'Weltrechtspflege ohne Weltbezug?—Überlegungen zum Konzept stellvertetender Weltrechtspflege am Beispiel einer Pflicht zur Urteilsübersetzung in Verfahren auf Grundlage des § 1 S. 1 VStGB', 134 *Zeitschrift für die gesamte Strafrechtswissenschaft* (2022) 926–981.

[16] Similar, Hovell, *supra* note 3, at 428. The following conception of UJ takes up and generalizes the account set forth in M. Boe, 'Weltrechtspflege ohne Weltbezug?—Überlegungen zum Konzept stellvertetender Weltrechtspflege am Beispiel einer Pflicht zur Urteilsübersetzung in Verfahren auf Grundlage des § 1 S. 1 VStGB', 134 *Zeitschrift für die gesamte Strafrechtswissenschaft* (2022) 926–981.

[17] Cf. Aboueldahab and Langmack, *supra* note 5, at 3.

[18] Oberlandesgericht Koblenz, Beschluss vom 09. Juli 2020, 1 StE 9/19, BeckRS 2020, 19854, at paras 9–10.

[19] German Federal Constitutional Court, Order of 18 August 2020–1 BvR 1918/20; English Summary, available online: https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2020/08/rk20200818_1bvr191820en.html (last visited 12 September 2025).

[20] German Federal Constitutional Court, Order of 18 August 2020–1 BvR 1918/20, para. 11.

Two distinct mindsets, grounded in different conceptions of UJ, are clearly at play. The reasoning of the criminal court in Koblenz implicitly treats UJ as an extension of national criminal jurisdiction, reflecting a 'domestic mindset' rooted in a state-focused understanding of international law. Conversely, the Constitutional Court's injunction appears to reflect an 'international mindset', recognizing that reliance on UJ may necessitate utilizing or adapting the domestic procedural framework to accommodate the interests of the international community.[21] The following sections will further explore this contrast, developing it into two contrasting 'ideal types' of conceptualizing UJ: state-focused and community-focused. While current UJ practice is largely grounded in, and justified by, an (implicit) community-focused understanding, its scholarly analysis often remains tethered to the traditional doctrines and assumptions of a state-focused conception of jurisdiction. To bridge this divide, UJ should be conceptualized as a distinct form of vicarious jurisdiction, thereby providing greater theoretical and conceptual clarity in distinguishing between the derivative right to adjudicate crimes under international law and a state's primary right to prescribe crimes under its domestic law.

A. Classic, State-focused Understanding

In the traditional understanding, 'jurisdiction' is framed primarily in horizontal terms, referring to a state's 'competence under international law to assert control and authority over (extraterritorial) conduct; as a set of principles that regulate inter–sovereign relations by coordinating the scope of domestic law'.[22] From this perspective, UJ has often been viewed as just another extraterritorial extension of domestic penal power — an addition to the traditional set of jurisdictional titles grounded in sovereignty.[23] This is also reflected in how the different aspects of jurisdiction have been interpreted in relation to UJ. While enforcement jurisdiction is generally understood to be inherently territorial, prescriptive and adjudicative jurisdiction are often considered inextricably linked in relation to extraterritorial criminal jurisdiction.[24] Arguing that distinguishing between these aspects is indeed 'unnecessary',[25] O'Keefe, in a highly influential article, consequently confined UJ to a form of prescriptive jurisdiction, defining it as a 'state's authority under international law to assert the applicability of its criminal law'.[26] This widely shared view is rooted in the traditional, often implicit assumption that domestic criminal courts — unlike civil courts — may only apply domestic criminal law,[27] reflecting the belief that criminal law is inherently tied to a (local) community's values and is a natural prerogative of the state or, more abstractly, the (local) sovereign.[28]

[21] Cf. E. Benvinisti, 'Judicial Misgivings Regarding the Application of International Law: An Analysis of Attitudes of National Courts', 4 *EJIL* (1993) 159–183.

[22] Boe, *supra* note 1, at 21.

[23] Cf. Hovell, *supra* note 3, at 438–441.

[24] See e.g. M.B. Akehurst, 'Jurisdiction in International Law', 84 *British Yearbook of International Law* (1975) 145, at 179; B.H. Oxman, 'Jurisdiction of States', in R. Wolfrum (ed.), *MPEPIL*, November 2007, at para. 5; cf. K.S. Gallant, *International Criminal Jurisdiction* (OUP, 2022) at 155 *et seq.*; Kreß, *supra* note 10, at 564 ('generally congruent in scope'); J. Geneuss, 'Fostering a Better Understanding of Universal Jurisdiction—A Comment on the AU-EU Expert Report on the Principle of Universal Jurisdiction', 7 *JICJ* (2009) 945, at 949–950.

[25] R. O'Keefe, *International Criminal Law* (OUP, 2015), at para. 1.11 ('simple binary division between jurisdiction to prescribe and jurisdiction to enforce').

[26] R. O'Keefe, 'Universal Jurisdiction—Clarifying the Basic Concept', 2 *JICJ* (2004) 735, at 736, 740; similar M. Langer, 'The Archipelago and the Wheel—The Universal Jurisdiction and the International Criminal Court Regimes', in M. Minow, C.C. True-Frost and A. Whining (eds), *The First Global Prosecutor—Promise and Constraints* (University of Michigan Press, 2015) 204, at 218–219.

[27] Cf. C. van den Wyngaert, 'Double Criminality as a Requirement to Jurisdiction', 76 *Nordic Journal of Criminology* (1989) 43, at 45.

[28] See e.g. G. Fletcher, 'Against Universal Jurisdiction', 1 *JICJ* (2003) 580, at 583 ('principle of local concern'); J. Rabkin and C. Lerner, 'Criminal Justice is Local: Why States Disregard Universal Jurisdiction for Human Rights Abuses', 55 *Vanderbilt Journal of Transnational Law* (2022) 375, at 425 *et seq.*; cf. M.D. Dubber, 'Common Civility—The Culture of Alegality in International Criminal Law', 24 *LJIL* (2011) 923, at 928–930.

B. Modern, Community-focused Understanding

However, the concept of jurisdiction has undergone profound transformations since the mid-20th century, mirroring the broader evolution of the international legal order.[29] Sovereignty, once considered the absolute prerogative of the state and the inviolable foundation of international relations, has evolved into a more constrained and relational concept.[30] States are no longer merely independent entities; they can now be seen as 'trustees of humanity', bearing responsibilities that transcend their borders and serve the interests of the broader international community.[31] In light of this evolution, it is unsurprising that Berman described UJ as the 'most striking challenge to international law's traditional jurisdictional scheme'.[32] Echoing this sentiment, Judges Higgins, Buergenthal, and Kooijmans, in their Joint Separate Opinion in the *Arrest Warrant* Case, emphasized that the 'vertical notion of the authority of action' often associated with UJ — namely, its exercise on behalf of the international community — 'is significantly different from the horizontal system of international law envisaged in the "Lotus" case'.[33]

3. UJ AS VICARIOUS ADJUDICATIVE JURISDICTION

When analysing contemporary UJ practice, which increasingly highlights the need for domestic actors to consider the interests of the international, inter-state, and victim communities,[34] it is therefore crucial 'to reflect the more complex realities of an international legal order under which states possess both jurisdictional rights and obligations and are no longer the exclusive actors'.[35] Accordingly, UJ *sensu strictu* should be understood as a right belonging to the international community to adjudicate and enforce *its* norms.[36] As Sammons aptly noted, it 'belongs truly to the international community acting collectively and not the respective, individual states'.[37] Unlike state jurisdiction, which is limited by certain international principles, the jurisdiction of the international community is inherently unlimited; it is a jurisdiction without territory[38]; truly *universal*, grounded in the universal applicability and

[29] Cf. B Simma, 'From Bilateralism to Community Interest in International Law', 250 *Recueil des Cours de l'Académie de Droit International* (1994) 217, at 233, 242–243. A separate discussion would be needed to explore the potential repercussions of the current crises and transformations in the international (legal) order on criminal jurisdiction, particularly UJ. See generally, M. Hakimi and J. Katz Cogan, 'The End of the U.S.-Backed International Order and the Future of International Law', 119 *American Journal of International Law* (*AJIL*) (2025) 279–290; N. Tzouvala, 'International law as a discipline in crisis', 79 *Australian Journal of International Affairs* (2025) 71–78.

[30] Cf. A. Peters, 'Humanity as the A and Ω of Sovereignty', 20 *EJIL* (2009) 513–544; see also the ongoing efforts to rethink and challenge the traditional understanding of 'jurisdiction' as an exclusive right of states, A. Mills, 'Rethinking Jurisdiction in International Law', 84 *British Yearbook of International Law* (2024) 187–239; B. Chimni, 'The International Law of Jurisdiction: A TWAIL Perspective, 35 *LJIL* (2022) 29–54; C. Ryngaert, *Selfless Intervention: The Exercise of Jurisdiction in the Common Interest* (OUP, 2020).

[31] E. Benvinisti, 'Sovereigns as Trustees of Humanity: On the Accountability of States to Foreign Stakeholders', 107 *AJIL* (2013), 295, at 305 *et seq*.

[32] P.S. Berman, 'The Globalization of Jurisdiction', 151 *University of Pennsylvania Law Review* (2002) 311, at 360.

[33] ICJ, *Case concerning the Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo vs. Belgium)*, Judgment, 14 February 2002, ICJ Reports (2002) 3, joint sep. op. Higgins, Kooijmans and Buergenthal, at para. 51.

[34] Hovell and Malagodi, *supra* note 4, at 1497.

[35] Mills, *supra* note 30, at 187.

[36] Similar Davidovic, *supra* note 10, at 124; O. Triffterer, 'Security Interests of the Community of States, Basis and Justification of an International Criminal Jurisdiction Versus "Protection of National Security Information", Article 72 Rome Statute', in H. Roggemann and P. Šarčević (eds), *National Security and International Criminal Justice* (Martinus Nijhoff, 2002) 53, at 61 ('An *international* criminal jurisdiction to exercise the inherent *ius puniendi* of the community of nations needs as its basis substantial law of *this community*.'); cf. G. Werle and F. Jeßberger, *Principles of International Criminal Law* (4th edn., OUP, 2020), at para. 259; Mégret, *supra* note 6, at 740; L.N. Sadat, 'Redefining Universal Jurisdiction', 35 *New England Law Review* (2001) 241, at 245 *et seq*.

[37] A. Sammons, 'The "Under-Theorization" of Universal Jurisdiction: Implications for Legitimacy on Trials of War Criminals by National Courts', 21 *Berkley Journal of International Law* (2003) 111, at 137.

[38] Cf. A. Orford, 'Jurisdiction Without Territory: From the Holy Roman Empire to the Responsibility to Protect', 30 *MichJIL* (2009) 981, at 988; Colangelo, 'False Conflict', *supra* note 10, at 882 ('limitless').

enforceability of 'pure' international crimes, which — originating in international legal institutions — are 'punishable as such, whether or not they are punishable under national law'.[39]

Acknowledging the primary role of the international community in grounding, shaping, and enforcing ICL *sensu strictu* has profound implications for the role of individual states in exercising UJ. The frequently invoked idea that the forum state engaging in UJ acts 'as the *de facto* agent for the international community'[40] is most accurately captured by the concept of vicarious or representational jurisdiction: When an individual state indirectly enforces ICL *sensu strictu*, it does so *vicariously*, asserting a *derivative* right — originally belonging to the international community — to ensure accountability for violations of universally binding norms.

In general, the concept of vicarious jurisdiction represents a 'somewhat neglected basis of criminal jurisdiction'.[41] In its *inter-state* form, it rests on the idea 'that the forum state represents the territorial state in cases where extradition is not feasible or where there is no functional criminal justice system at the place of commission'.[42] Common law scholars tend to view the principle as a sub-principle within a broadly and negatively defined principle of UJ, not limited to core international crimes, whereas civil law jurisdictions traditionally treat it as a distinct category.[43] While distinctions can be drawn between the two concepts, such as the entity represented and their respective scope, the focus here is on recognizing the common structure and normative rationale that underpin both principles.[44] Specifically, in both instances, the forum state assumes adjudicative jurisdiction while derivatively relying on the prescriptive jurisdiction and normative authority of another legal system.

Conceptualizing UJ in this way offers a normative framework for better understanding and reconstructing current practices. Most importantly, and contrary to certain theoretical assertions, contemporary practice already demonstrates that UJ does not entail prescriptive jurisdiction in a conventional sense. States cannot unilaterally create new UJ crimes, even if they argue that such crimes may be in the interest of the international community.[45] Instead, UJ *sensu strictu* is widely acknowledged as being constrained to a specific set of internationally defined or recognized crimes. When states incorporate ICL into their domestic legal systems, they do not purport to establish norms solely in their name.[46] Rather, they

[39] Quote: International Law Commission, Draft Code of Crimes Against the Peace and Security of Mankind, Art. 1 (2), in Report of the International Law Commission on the Work of its Forty-Eighth Session, X 50, Draft Code of Crimes Against the Peace and Security of Mankind, GAOR Supp. 10, UN Doc A/51/10 (1996); Nuremberg Principle I, IV, in 'Principles of International Law Recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal' (1950), 2 *Yearbook of the International Law Commission* (1950), at para. 97 ('punishable under international law'); Cf. L.N. Sadat, 'The Conferred Jurisdiction of the International Criminal Court', 99 *Notre Dame Law Review* (2023) 549, at 598–599; D. Luban, 'Fairness to Rightness: Jurisdiction, Legality, and the Legitimacy of International Criminal Law', in S. Besson and J. Tasioulas (eds), *The Philosophy of International Law* (OUP, 2010) 569, at 572; C. Kreß, 'Preliminary Observations on the ICC Appeals Chamber's Judgment of 6 May 2019 in the Jordan Referral re Al-Bashir Appeal', *TOAEP Occasional Papers Series* (2019), at 14–16.

[40] Sammons, *supra* note 37, at 137; Cf. B. Broomhall, 'Towards the Development of an Effective System of Universal Jurisdiction for Crimes Under International Law', 35 *New England Law Review* (2001) 399, at 405.

[41] A. Chehtman, 'Jurisdiction', in M.D. Dubber and T. Hörnle (eds), *The Oxford Handbook of Criminal Law* (OUP, 2014) 399, at 411–412.

[42] Boe, *supra* note 1, at 38; Cf. C. Ryngaert, *Jurisdiction in International Law* (2nd edn., Oxford, 2015), at 120–122.

[43] Cf. Gallant, *supra* note 24, at 466, 518 *et seq*.

[44] Similar Jeßberger, *Geltungsbereich*, *supra* note 10, at 224–225, 270; B. Swart, 'Le place des critères traditionnels de compétence dans la poursuite des crimes internationaux', in A. Cassese and M. Delmas-Marty (eds), *Jurisdictions nationales et crimes internationaux* (Presses universitaires de France, 2002) 567, at 579; see also Ryngaert, *Intervention*, *supra* note 30, at 102 ('some sort of "vicarious" jurisdiction'); on derivative jurisdiction, see M. Böse, 'Choice of Forum and Jurisdiction', in M. Luchmann (ed.), *Choice of Forum in Cooperation Against EU Financial Crime* (Eleven, 2013) 73, at 77–79.

[45] R. Wolfrum, 'The Decentralized Prosecution of International Offences through National Courts', 24 *Israel Yearbook of Human Rights* (1995) 183, at 185; Kreß, *supra* note 10, at 576; Langer, *supra* note 3, at 751; Colangelo, 'False Conflict', *supra* note 10, at 890; cf. Boe, *supra* note 1, at 28.

[46] Cf. Langer, *supra* note 3, at 743 ('dual nature'); Ryngaert, *Intervention*, *supra* note 30, at 103; Mégret, *supra* note 6, at 732; cf. on the domestic implementation of ICL, Werle and Jeßberger, *supra* note 36, at paras 461 *et seq*.

explicitly reference and rely on pre-existing international law.[47] The concept of vicarious jurisdiction may serve to explain this practice, as it helps to distinguish between the derivative right of a state to adjudicate and punish crimes under international law from a state's primary right to freely prescribe, adjudicate, and punish crimes under its domestic law.[48]

Thus, when enforcing crimes established under customary international law, states are not, in substance, engaging in prescriptive lawmaking of their own, even though the process of domestic adjudication will often necessitate a corresponding legal basis within their domestic legal framework.[49] Rather, as the court in *United States v. Hasan* observed, a state's 'ability to invoke universal jurisdiction is inextricably intertwined with, and thus limited by, the substantive elements of the crime as defined by the consensus of the international community'.[50] More precisely, when adjudicating core international crimes, domestic courts effectively apply the *same law* as international tribunals and refer to the same prescriptive authority: customary international law.[51]

Consequently, under a norm-centred reconceptualization, UJ is not about advancing amorphous interests of a nebulous entity termed the 'international community'.[52] Rather, its primary focus is the enforcement of a set of universally recognized international crimes, which are discernible norms of customary international law.[53] These norms, and the legal system arising from them, are represented in UJ trials.[54] It is unnecessary to trace these norms back to potential moral foundations or abstract community interests. Instead, the international community should be primarily understood as a legal or 'juristic community'.[55] Under this framework, crimes are deemed 'international' not because of certain abstract 'interests' but 'by virtue of their source and foundation being international'.[56] Accordingly, it should be clarified that the forum state does not act merely on behalf of the 'international community', but specifically 'on behalf of the international legal order'.[57]

Thereby, conceptualizing UJ as vicarious jurisdiction also helps address concerns that its assertion might illegitimately interfere with the sovereignty of the territorial state. Since the forum state vicariously enforces a *ius cogens* norm with *erga omnes* effects, the territorial state — if unwilling or unable to prosecute — cannot claim that such enforcement constitutes an

[47] See e.g. Art. I Sec. 8 Cl. 10 US Constitution ('[o]ffences against the Law of Nations'); S. 1 German Code of Crimes Against International Law ('criminal offences against international law designated herein'); Netherlands International Crimes Act (2003), Preamble ('rules concerning serious violations of international humanitarian law').

[48] Boe, *supra* note 1, at 28–29; cf. A. Chehtman, *The Philosophical Foundations of Extraterritorial Punishment* (OUP, 2011), at 116; M.C. Bassiouni, 'The History of Universal Jurisdiction and Its Place in International Law', in S. Macedo (ed.), *Universal Jurisdiction—National Courts and the Prosecution of Serious Crimes under International Law* (University of Pennsylvania Press, 2004) 39, at 42; Werle and Jeßberger, *supra* note 36, at paras 482–483.

[49] Ryngaert, *Intervention*, *supra* note 30, at 107.

[50] US District Court, *United States v. Hasan*, 747 F. Supp. 2d (2010), 599, at 608 (para. 18), cf. 609 (paras 21–22).

[51] Cf. Colangelo, 'False Conflict', *supra* note 10, at 889 with n. 25; Jeßberger, *Geltungsbereich*, *supra* note 10, at 272.

[52] For this criticism against Duff's approach, see e.g. E. van Sliedregt, 'International Criminal Law and Legal Pluralism', in P.S. Berman (ed.), *The Oxford Handbook of Global Legal Pluralism* (OUP, 2020) 575, at 593.

[53] Similar Hovell and Malagodi, *supra* note 4, 1485; Davidovic, *supra* note 10, at 120, 123–127; A. Nollkaemper, 'Universality', in R. Wolfrum (ed.), *MPEPIL*, March 2011, at paras 26–29; A. Zimmermann, 'Violations of Fundamental Norms of International Law and Exercise of Universal Jurisdiction in Criminal Matters', in C. Tomuschat and J.-M. Thouvenin (eds), *The Fundamental Rules of the International Legal Order* (Brill, 2006) 335, at 337–339.

[54] Davidovic, *supra* note 10, at 125; cf. Kreß, *supra* note 2, at paras 10 *et seq*.

[55] Cf. Q. Wright, 'War Criminals', 30 *AJIL* (1945) 257, at 282; Davidovic, *supra* note 10, at 125.

[56] Mégret, *supra* note 6, at 732; Kreß, *supra* note 10, at 568. The concept of 'international crime' remains as contested as the substantial scope of UJ, cf. Boe, *supra* note 1, at 40–43. In line with the customary international law (CIL) approach to UJ adopted here, crimes beyond the established core crimes (genocide, crimes against humanity, and war crimes) — such as piracy, torture, slavery, and the crime of aggression — may fall within its ambit, but only if, at the time of commission, they constituted discernible norms of customary international law with *jus cogens* and *erga omnes* status. By contrast, 'treaty crimes', as manifestations of state-based transnational criminal law, do not fall within the scope of UJ as understood here, cf Boe, *supra* note 1, at 41–42.

[57] For this phrasing see M.T. Kamminga, 'Lessons Learned from the Exercise of Universal Jurisdiction in Respect of Gross Human Rights Offenses', 23 *HRQ* (2001) 940, at 943; cf Colangelo, 'False Conflict', *supra* note 10, at 882 ('decentralized enforcer of international law on behalf of the international legal system').

infringement on its domestic affairs.[58] In this framework, there is no conflict of equal state jurisdictions; rather, the issue revolves around which state holds the prerogative to enforce ICL, a 'choice of forum' question.[59] While determining the appropriate forum remains a complex issue, UJ *sensu strictu* does not prioritize one state's prescriptive authority over another's. Instead, the notion of vicarious jurisdiction can elucidate the current tendencies to transcend the traditional confines of sovereignty-based jurisdiction by allowing for shared and cooperative jurisdiction in the context of UJ.[60] Recent innovations, such as 'structural investigations' and 'joint investigation teams' reflect this collaborative and anticipatory approach, enabling states to contribute critical evidence and support investigations without the self-serving imperative of necessarily hosting the trial within their own justice system.[61]

Finally, the conception of UJ proposed here provides a more robust framework for legitimizing the action of domestic courts in prosecuting individuals who were not subject to the forum state's domestic legal system at the time of the offence. The notion of vicarious jurisdiction can establish the requisite link between the defendant and the court asserting accountability for international crimes. Specifically, it is precisely because the domestic court represents the international community, of which the offender was, and remains, a member, and substantively relies on a system of international norms that were binding on the defendant and foreseeable, that it can legitimately assert the authority to hold the offender accountable, thereby also addressing concerns related to the principle of legality.[62]

4. SUBSTANTIATING UJ AS VICARIOUS JURISDICTION

The potential implications of conceptualizing UJ as vicarious jurisdiction on our understanding of its appropriate application remain largely unexplored. The following analysis builds on the premise that constraints traditionally associated with the derivative structure of *inter-state* vicarious jurisdiction, such as 'double criminality' and 'subsidiarity',[63] may also apply — albeit in an adapted form — to *international* vicarious jurisdiction, that is UJ. It outlines key structural principles of vicarious UJ, which, in turn, may give rise to more specific duties and obligations of the forum state. While this exploration offers only a preliminary framework, it aims to highlight the essential elements that should guide the application and enforcement of UJ over core international crimes.

A. Structural Principles

The *principle of representation* asserts that UJ should be conceived as a vicarious action and as a delegation of authority, whereby the international community's capacity to act is indirectly established through the action of a state acting as its representative.[64] The tension

[58] Cf. Colangelo, 'False Conflict', *supra* note 10, at 883, 898, 903.

[59] Cf. Colangelo, 'False Conflict', *supra* note 10, at 900–901; Mégret, *supra* note 6, at 751.

[60] On the divisible nature of jurisdiction, R. Clark, 'Some Aspects of the Concept of International Criminal Law: Suppression Conventions, Jurisdiction, Submarine Cables and The Lotus', 22 *Criminal Law Forum* (2011) 519, at 522–523; on the idea of 'dual or multiple ownership', Mégret, *supra* note 6, at 739–741; on the idea of a 'jurisdictional joint venture', see C. Soler, *The Global Prosecution of Core Crimes under International Law* (T.M.C. Asser, 2019), at 311 *et seq*.

[61] Cf. M. Ingeson, 'Structural Criminal Investigations in Sweden—Reinventing Investigations of International Crimes', 66 *Scandinavian Studies in Law* (2020) 357–367; F. Jeßberger, 'A Short History of Prosecuting Crimes under International Law in Germany', 21 *JICJ* (2023) 779, at 786–787, 790–791; A. Furger, 'Can They Deliver? The Practice of Joint Investigation Teams in Core International Crimes Investigations', 22 *JICJ* (2024) 43–58.

[62] Cf. A. Duff, 'Authority and Responsibility in International Criminal Law', in S. Besson and J. Tasioulas (eds), *The Philosophy of International Law* (OUP, 2010) 589, at 590, 594; M. Gur-Ayre and A. Harel, 'Taking Internationalism Seriously: Why International Criminal Law Matters', in K.J. Heller et al. (eds), *The Oxford Handbook of International Criminal Law* (OUP, 2020) 215, at 226–231; Jeßberger, *Geltungsbereich*, *supra* note 10, at 158; cf. European Court of Human Rights, *Jorgic v. Germany*, No. 74613/01, Judgment, 12 July 2007, at paras 103 *et seq*.

[63] Cf. van den Wyngaert, *supra* note 27, at 47–50.

[64] Addis, *supra* note 10, at 132, 145.

between the international character of the crimes, the appropriate forum for their adjudication, and the necessary international dimension of these proceedings has long been recognized.[65] Eagleton, in 1943, argued that international crimes are 'crimes against the United Nations, indeed against all humanity', and therefore 'should not be open to punishment by any one nation'.[66] Instead, he emphasized that '[t]he procedure adopted should be in the name of the law and of the community of nations'.[67] Similarly, Silving, in her analysis of the Eichmann trial, noted that because certain crimes 'affect mankind' they 'may be tried by any state *representing mankind*'.[68] The philosopher Hannah Arendt further warned that international crimes may be 'minimized before a tribunal that represent[s] one nation only', and 'that consequently the verdict can be handed down only by a court of justice representing all mankind'.[69]

These statements highlight the enduring importance of the international character of both the crimes and the adjudicating body in fulfilling the promise of international criminal justice. The administration of UJ, and its inherent claim of international authority, is thus 'agent-dependent'.[70] The distinctive censure of ICL can only be adequately expressed by an actor who is authorized and entitled to judge in this regard. Consequently, national courts must assume a 'dual role', being imbued with a partial international legal status.[71] They assert not only domestic legal authority but also assume a broader international mandate.[72] In turn, by virtue of a trial that acknowledges its international dimension, vicarious UJ can indeed serve as a means of constituting and imagining the international community through the representational enforcement of its laws.[73]

Rather than advancing national interests, states engaging in UJ trials should be guided by the *principle of international solidarity*. Vicarious UJ should be conceptualized as an altruistic act, wherein states offer their domestic justice systems as a means to support the international community's pursuit of justice for international crimes while assisting the states, communities, and victims most directly affected.[74] In its derivative nature, vicarious UJ can thus be understood as a form of legal assistance extended to the international community and as a means of solidaristic cooperation among states to repress international crimes.[75] This solidarity must also extend specifically to the territorial state and the victim communities, which serve as the most immediate representations of the international community impacted by

[65] Cf. Mégret, *supra* note 6, at 735–738.

[66] C. Eagleton, 'Punishment of War Criminals by the United Nations', 37 *AJIL* (1943) 495, at 496.

[67] *Ibid*.

[68] H. Silving, 'In Re Eichmann: A Dilemma of Law and Morality', 55 *AJIL* (1961) 307, at 337 (note 89).

[69] H. Arendt, *Eichmann in Jerusalem: A Report of the Banality of Evil* (Viking Press, 1963), at 269.

[70] Gur-Ayre and Harel, *supra* note 62, at 233.

[71] P.-M. Dupuy, 'International Law and Domestic (Municipal) Law', in R. Wolfrum (ed.), *MPEPIL*, April 2011, para. 145; cf. Gur-Ayre and Harel, *supra* note 62, at 224, 230, 235; G. Scelle, 'Le Phénomène juridique du dédoublement fonctionnel', in W. Schätzel and H.J. Schochaucher (eds), *Rechtsfragen der internationalen Organisationen: Festschrift für Hans Wehberg* (Vittorio Klostermann, 1956) 324–342.

[72] Sammons, *supra* note 37, at 141 ('implied mandate'); A. Eser, 'For Universal Jurisdiction: Against Fletchers Antagonism', 39 *Tulsa Law Review* (2004) 955, at 976 ('silent behest').

[73] Mégret, *supra* note 6, at 743, 751, cf. Addis, *supra* note 10, at 132, 145 *et seq*., 156.

[74] See generally, D. Campanelli, 'Principle of Solidarity', in R. Wolfrum (ed.), *MPEPIL*, March 2011, at para. 8, 12; C. Nyst, 'Solidarity in a Disaggregated World—Universal Jurisdiction and the Evolution of Sovereignty', 8 *Journal of International Law and International Relations* (2012) 36, at 58.

[75] Cf. Böse, *supra* note 44, at 79; K. Welles, 'Solidarity as a Constitutional Principle: Its Expanding Role and Inherent Limitations', in R. Macdonald and D.M. Johnston (eds), *Towards World Constitutionalism—Issues in the Legal Ordering of the World Community* (Brill, 2005) 775, at 804.

the crimes in question.[76] The notion of solidarity calls for the inclusion of those affected by the crimes through transparent proceedings.[77]

The *principle of subsidiarity* reinforces the conceptualization of UJ as a collaborative and solidarity-driven framework for pursuing international criminal justice.[78] By virtue of its derivative nature, vicarious UJ does not authorize the forum state to act if a state more closely connected to the crime is both capable and willing to adjudicate, or if an international criminal tribunal has taken over the proceedings.[79] This mirrors, on the international level, the subsidiarity or 'forum of necessity' rationale often associated with inter-state vicarious jurisdiction.[80] However, in the context of ICL *sensu strictu*, it is crucial to recognize that even states with a territorial or personal link derive their authority to prosecute international crimes *as such* not from sovereignty, but from a prerogative granted by the international community. This prerogative reflects an acknowledgment of both the value of sovereign self-determination and the importance of realizing justice at a local level. Yet, where the territorial state fails to meaningfully address international crimes, the international community — and by extension, states acting on its behalf — may step in.

As a result, subsidiarity can be positively interpreted as a foundational principle for the evolving multilevel international criminal justice system. In this context, the concept of vicarious jurisdiction not only provides a normative framework for justifying the development of an international criminal *ne bis in idem* principle — given that *all* states involved derive their authority from the same international source[81] — but also illuminates the evolving practice of states collaboratively supporting UJ proceedings in other jurisdictions.[82] While a more detailed examination of the complex issues surrounding vertical and horizontal coordination exceeds the scope of this article,[83] the proposed (re-)conceptualization offers a coherent explanation for UJ's often assumed subsidiary character and may provide valuable analytical tools for integrating domestic courts into a cohesive international criminal justice framework.

Finally, the *principle of openness* functions as a corollary guarantee to maintain the representational nature of vicarious UJ. The theoretical premise is that in the cases of vicarious action, the entity represented must remain visible to sustain the legitimacy of the delegated authority. When applied to UJ trials, this implies that the international character of both the proceedings and the substantive norms applied must be readily recognizable and accessible, particularly to those subjected to their enforcement.[84] Genuine representation of the international community thus demands certain measures to ensure transparency and inclusivity

[76] Galand, *supra* note 15, at 187–192; Hovell, *supra* note 3, at 455; Frode, *supra* note 15.

[77] Cf. Art. 7(4) Draft Declaration on the Right to International Solidarity, in UNGA, 'Report of the Independent Expert on Human Rights and International Solidarity' (2017) UN Doc A/HRC/35/35, at 15.

[78] Jeßberger, 'Complementary Preparedness', *supra* note 10, at 1; cf. C. Ryngaert, 'Universal Jurisdiction over International Crimes and Gross Human Rights Violations: The Role of the Principle of Subsidiarity', *The Global Community Yearbook of International Law and Jurisprudence* (2015) 275–289.

[79] Jeßberger, 'Complementary Preparedness', *supra* note 10, at 6 *et seq*.; Colangelo, 'Double Jeopardy', *supra* note 10, at 827; Kreß, *supra* note 10, at 579–581; C. Kreß and S. Garibian, 'Laying the Foundations for a Convention on Crimes Against Humanity—Concluding Observations', 16 *JICJ* (2018) 909, at 928–929.

[80] Cf. Gallant, *supra* note 24, at 161–167, 466, 518–520.

[81] Colangelo, 'False Conflict', *supra* note 10, at 919 *et seq*.

[82] See also the recently adopted 'Ljubljana–The Hague Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes Against Humanity, War Crimes, and Other International Crimes', which clearly reflects this emerging trend.

[83] See e.g. L. Burens, 'Universal Jurisdiction Meets Complementarity: An Approach towards a Desirable Future Codification of Horizontal Complementarity between the Member States of the International Criminal Court', 27 *Criminal Law Forum* (2016) 75–97; E. van Sliedregt, 'A New ICC Policy on Complementarity? Let's Fast Forward to Universal Jurisdiction Allocation', *Just Security*, 12 August 2024, available online at https://www.justsecurity.org/98221/icc-policy-complementarity-universal-jurisdiction/(last visited 12 September 2025).

[84] Cf. Ryngaert, *Intervention*, *supra* note 30, at 102–103.

in the administration of international justice.[85] These measures, which emphasize the international nature and derivative foundation of UJ trials, are essential for fostering global support and legitimacy, especially within affected societies, by presenting and affirming domestic UJ trials as authentic manifestations of the indirect enforcement of ICL.[86] In this way, openness also introduces a layer of public accountability, enabling both the international community and the affected states to scrutinize the actions of the forum state, thereby strengthening trust in the vicarious administration of UJ.[87]

B. Duties of the Forum State

Shifting perspective, these structural principles translate into a set of more concrete duties on the part of the forum state. Acting as a representative of the international community, its derivative claim of authority is accompanied by corresponding obligations to ensure that its actions align with the broader objectives and values of international criminal justice.

The most fundamental obligation may be termed the *duty of legality*,[88] which encompasses both the obligation to faithfully apply international law and the responsibility to prevent secondary violations of international law arising from the indirect enforcement of ICL.[89] Since vicarious UJ operates within the normative framework established by the international community,[90] the forum state must adhere strictly to substantive ICL as recognized under customary international law.[91] This duty imposes two key limitations: First, when domestic law on international crimes extends beyond customary international law, reliance on UJ can no longer be justified.[92] Secondly, the application of 'ordinary' domestic criminal law alone is insufficient.[93] Although there is no general obligation to incorporate norms of ICL into domestic law, and a territorial state may fulfil its international duties by prosecuting international crimes as 'ordinary' offences,[94] the situation differs when a third state, lacking primary jurisdiction, invokes UJ. The requirement for the use of international crimes in this context acknowledges that UJ is substantively limited, as its justification rests on the idea that the same international law may be enforced across different fora.[95] This limitation also aligns with the 'double criminality' requirement traditionally associated with vicarious jurisdiction.[96]

Accordingly, the prescriptive jurisdiction retained by the forum state is inherently limited, primarily serving to empower the forum state to adjudicate international crimes, which are ultimately grounded in the prescriptive authority of the international community.[97] Given

[85] Cf. Colangelo, 'Double Jeopardy', *supra* note 10, at 801; Gur-Ayre and Harel, *supra* note 62, at 219; Langer, *supra* note 3, at 746; S. Bock, 'The National Prosecution of International Crimes and the (International) Public', in M. Freymuth, A. Sauermoser and K. Stavrou (eds), *International Criminal Law before Domestic Courts* (MANZ: 2024) 153, at 163 *et seq.*

[86] Cf. A. Klein, '"No Historical Significance for the Federal Republic of Germany" – Public Participation in International Criminal Proceedings Using the Al-Khatib Trial as an Example', in W. Kaleck and P. Kroker (eds), *Syrian State Torture on Trial* (Bundeszentrale für politische Bildung, 2023) 177–187.

[87] Similar I.B. Cordero, 'Universal Jurisdiction—General Report', 79 *Revue internationale de droit pénal* (2008) 59, at 100.

[88] Not to be confused with the broader 'principle of legality', which encompasses various legal doctrines ensuring fairness and predictability in (international) criminal law.

[89] Cf. Colangelo, 'False Conflict', *supra* note 10, at 901 ('Faithful Application of International Law').

[90] Cf. Ryngaert, *Intervention*, *supra* note 30, at 105–106 (international 'embeddedness').

[91] Cf. A.J. Colangelo, 'The Legal Limits of Universal Jurisdiction', 47 *Virginia Journal of International Law* (2006) 149, at 153; H. Van Der Wilt, 'Domestic Courts' Contribution to the Development of International Criminal Law: Some Reflections', 46 *Israel Law Review* (2013) 207, at 230.

[92] Colangelo, 'False Conflict', *supra* note 10, at 901; cf. O'Keefe, *ICL*, *supra* note 25, at paras 9.11–9.12.

[93] Comp. Colangelo, 'False Conflict', *supra* note 10, at 922–923; cf Geneuss, *supra* note 10, at 97 *et seq.*

[94] Cf. Werle and Jeßberger, *supra* note 36, at paras 89, 277–279; 464–5.

[95] Colangelo, 'False Conflict', *supra* note 10, at 895.

[96] Cf. C. Ryngaert, 'International Jurisdiction Law', in A. Parrish and C. Ryngaert (eds), *Research Handbook on Extraterritoriality in International Law* (Elgar, 2023) 13, at 25; Ryngaert, *Jurisdiction*, *supra* note 42, at 122; Gallant, *supra* note 24, at 161 *et seq.*, 518 *et seq.*

that international law, at present, primarily defines crimes and only addresses select aspects of criminal liability, complex follow-up issues arise concerning the application of domestic modes of liability, general principles of criminal law, and rules governing sanctions and sentencing.[98] While a more detailed exploration of these challenges must be left to future research, the concept of vicarious UJ offers a compelling framework for navigating the tension between the rudimentary international criminal legal order, which requires further concretization and supplementation, and its enforcement through domestic legal systems. Recognizing the derivative nature of vicarious UJ facilitates a more nuanced balance between the interests of the international community and the particularities of domestic criminal justice systems, while reaffirming the universally binding nature of substantive ICL.

Finally, the international community cannot plausibly endorse the indirect enforcement of ICL through UJ if such enforcement entails the breach of other customary norms.[99] This is especially significant with respect to human rights guarantees and the procedural protections enshrined in international law,[100] which, among other requirements, mandate adherence to fair trial principles and the functioning of an independent and impartial judiciary.[101] While a thorough examination of these procedural requirements is beyond the scope of this article, their binding nature under the proposed framework may serve to address earlier criticisms that UJ risks stripping the accused of fundamental procedural protections.[102]

The second dimension can be articulated as the 'duty to properly administer universal jurisdiction', or, more succinctly, a *duty of good governance*.[103] This duty arises from the fact that the international community has yet to prescribe specific procedural requirements for UJ proceedings. Unlike substantive ICL, no comprehensive body of international criminal procedural law exists. Instead, tribunal-specific frameworks attempt to strike a balance between different legal traditions suitable for international criminal adjudication.[104] As such, a key structural feature of vicarious UJ is that it confers adjudicative jurisdiction.[105] While the forum states consequently enjoy considerable discretion in using their procedural law,[106] they must meet certain minimum standards to ensure the effective administration of ICL.[107]

First, states must apply their procedural law holistically, in a way that is functionally equivalent to an international trial. Secondly, the national justice system must possess the institutional capacity and resources to conduct a trial that meets internationally recognized standards of fairness and effectiveness.[108] Thirdly, and finally, the application of domestic

[97] Cf. Colangelo, 'Limits', *supra* note 91, at 154, 163–166; Colangelo, 'False Conflict', *supra* note 10, at 894; cf. Oxman, *supra* note 24, at para. 6 (adjudicative jurisdiction 'implicates the legislative jurisdiction of the forum to prescribe the applicable procedural, evidence, and choice of law rules.').

[98] See e.g. H. van der Wilt, 'Equal Standards? On the Dialectics between National Jurisdictions and the International Criminal Court', 8 *ICLR* (2002) 229–272; van Sliedregt, *supra* note 52, at 584 *et seq*.; Sadat, *supra* note 36, at 256–257; A.K. A. Greenwalt, 'The Pluralism of International Criminal Law', 86 *Indiana Law Journal* (2011) 1063, at 1124–1126, 1127–1128; Langer, *supra* note 3, at 753–755.

[99] See UNGA, *UJ Report*, *supra* note 2, at para. 9 (UJ 'should be exercised in accordance with recognized rules of international law, not least those providing fundamental rights and guarantees for the accused.').

[100] Institut de Droit International, *Resolution on Universal Criminal Jurisdiction With Regard to the Crime of Genocide, Crimes against Humanity, and War Crimes* (2005), C. Tomuschat (Rapporteur), available online at https://www.idi-iil.org/app/uploads/2017/06/2005_kra_03_en.pdf (last visited 12 September 2025), Art. 4 (Forum state 'is bound to comply with the generally recognized standards of human right and international humanitarian law.'); cf. V. Nerlich, 'Daring Diversity—Why There Is Nothing Wrong with "Fragmentation" in International Criminal Procedure', 26 *LJIL* (2013) 777, at 779.

[101] Principles 1 (4), 13 (1) Princeton Principles; cf. Kreß, *supra* note 10, at 582–583 (referring to Art. 21 (3), 55, 63 ICCSt. as possible indications for the required human rights standard in UJ proceedings).

[102] See e.g. Fletcher, *supra* note 28, at 582–583.

[103] Cf. E. Brown Weiss and A. Sornarajah, 'Good Governance', in A. Peters (ed.), *MPEPIL*, April 2021, esp. at para. 67.

[104] Cf. B. Schmitt, 'Legal Diversity at the International Criminal Court', 19 *JICJ* (2021) 485–510.

[105] Cf. Nerlich, *supra* note 100, at 779 ('procedural diversity'); O'Keefe, *ICL*, *supra* note 25, at para. 9.34.

[106] W. Burke-White, 'A Community of Courts: Toward a System of International Criminal Law Enforcement', 24 *MichJIL* (2002) 1, at 81 *et seq*.

[107] I.B. Cordero, *supra* note 87, at 99 ('*minimum standards for national courts* and authorities' exercising UJ).

procedural law in UJ proceedings serves not as an end in itself, but as a means to advance the overarching objectives of international criminal justice.[109] This requires a context-sensitive approach to interpreting and applying domestic procedural rules — where their wording permits — to ensure they effectively promote the interests of the international community while accommodating the unique character and purpose of UJ trials.[110] For example, provisions allowing for the audiovisual documentation of court proceedings deemed of 'exceptional historic importance' should not have been narrowly construed in relation to public attention within the forum state alone, but should have considered the international significance of Germany serving as the forum for an international crimes trial.[111]

It could even be argued that domestic courts exercising UJ should adhere to the general procedural principles established by international criminal tribunals, even if these principles have not crystallized into customary international law.[112] A notable example, as highlighted by Kreß, concerns the death penalty. Since this form of punishment has been excluded from the sanctions framework of contemporary international criminal tribunals, one might contend that states exercising UJ should similarly refrain from imposing it, despite the absence of a general prohibition of the death penalty under international law and the lack of international sentencing rules.[113] Such a limitation would indeed align with the *lex mitior* principle traditionally associated with vicarious jurisdiction, which posits that the sentence should not exceed the severity of the punishment prescribed by the law of the primary jurisdiction.[114]

Finally, a *duty of loyalty* arises from the trust-based relationship between the authorized state and the international community it represents.[115] The theoretical idea is simple: When an actor claims to represent an entity, and the legitimacy of their actions is contingent on the attribution of their actions to that entity, the actor is obliged to go beyond the explicit legal duties to protect the entity's interests to maintain the legitimacy of their actions arising from that relationship. It would be contradictory for a state to claim to act on behalf of the international community yet fail to safeguard and advance its interests. Accordingly, as the Princeton Principles state, '[a] state shall exercise universal jurisdiction in good faith and in accordance with its rights and duties under international law'.[116] In the context of UJ, the duty of loyalty, which can be understood as an extension of the principle of solidarity, serves a dual function. First, it prevents abuse by reinforcing the altruistic purpose of UJ and reaffirming the forum state's responsibility to act on behalf of the international community.[117] Secondly, it acts as a normative constraint on the forum state's broad discretion, obliging it to exercise its discretion in a manner that best serves the interests of the international community.

[108] K.F. Gärditz, *Weltrechtspflege—Eine Untersuchung über die Entgrenzung staatlicher Strafgewalt* (Duncker & Humblot, 2006), at 280–281; with examples Kreß, *supra* note 10, at 581–584.

[109] Comp. Hovell, *supra* note 3, at 455.

[110] See, more generally, Werle and Jeßberger, *supra* note 36, at paras 482–482.

[111] Cf. Klein, *supra* note 86; S. Bock, 'The German Code of Crimes Against International Law at Twenty—Overview at Assessment of Modern "German International Criminal Law"', 21 *JICJ* (2023) 793, at 810–812.

[112] Kreß, *supra* note 10, at 582.

[113] Kreß, *supra* note 10, at 583.

[114] Cf. Böse, *supra* note 44, at 81; on the question of whether the *lex mitior*-principle also demands to apply a more lenient domestic sentencing rule, see van der Wilt, *supra* note 98, at 260–261.

[115] Cf. A. Kiss, 'Abuse of Rights' in R. Wolfrum (ed.), *MPEPIL*, December 2006, at para. 22 ('[G]eneral obligation to fulfill in good faith the rights and obligations resulting from membership or institutional competences … .').

[116] Principle 1(5) Princeton Principles; cf. M. Kotzur, 'Good Faith (Bona Fide)', in R. Wolfrum (ed.), *MPEPIL*, January 2009, at paras 7 *et seq*.

[117] Geneuss, *supra* note 10, at 81, 141.

5. CONCLUSION AND OUTLOOK

Past trials have demonstrated that UJ cannot be treated as merely a procedural formality to be ticked off at the outset of a domestic trial and then forgotten. Rather, it has become increasingly evident that the international foundation and subject matter of cases concerning international crimes permeate every aspect of these trials. This article conceptualized UJ as a distinct form of vicarious jurisdiction and explored the procedural consequences that follow from this conception. What has hitherto been referred to as UJ is more accurately understood as the vicarious domestic adjudication and indirect enforcement of the international community's UJ over core international crimes. Conceiving UJ in this way can, in particular, help clarify concerns with the current, often parochial practice of UJ, while offering normative guardrails against the potentially expansive and intrusive tendencies that an unlimited concept of UJ presents.[118] Although presented in broad terms, the proposed normative framework of principles and duties aims to support the implementation of UJ as a tool for collective, decentralized international law enforcement. While further refinement is needed in future scholarship, it may serve to structure and inform ongoing debates regarding UJ, which often risk devolving into confusion and disagreement.[119]

More specifically, future research could delve deeper into a key consequence of conceptualizing UJ as vicarious jurisdiction — the necessary internationalization of the domestic UJ trial. For example, acknowledging the derivative nature of vicarious UJ provides a compelling rationale for why publicity in UJ trials must extend beyond the national realm.[120] As the forum state attempts to speak on behalf of the international community and asserts the global legitimacy and finality of its judgment on an international crime,[121] strong arguments emerge for ensuring the accessibility and transparency of UJ proceedings.[122] Current practices, such as the translation of judgments and other trial documents, reflect these considerations, albeit to varying degrees across different forum states.[123] For example, a recent reform of the German Code on International Crimes explicitly aims to improve the outreach of UJ trials, further exemplifying the growing recognition of the unique nature.[124] However, further research is needed to determine the most effective and legally required measures in individual cases. The gradual development of 'best practices' in this regard would also help integrate forum states into the emerging system of international criminal justice, thereby also strengthening the legitimacy of the domestic UJ trials.[125]

Ultimately, states invoking the authority of UJ bear the responsibility of demonstrating that they are indeed acting on behalf of and in alignment with the international community.[126] The normative framework of vicarious UJ proposed here provides a first set of guidelines for assessing whether states fulfil this obligation. Arguably, past UJ trials have not

[118] Cf. on such objections to UJ, Chehtman, *Foundations*, *supra* note 48, at 135 *et seq*.

[119] Cf. Boe, *supra* note 1.

[120] Cf. regarding the Lama trial in the UK, Hovell and Malagodi, *supra* note 4, at 1489.

[121] Similar O. Kavran, 'International Criminal Courts and the Right to Information', 15 *JICJ* (2017) 953, at 963.

[122] G.S. Gordon, 'The Nuremberg Trials Public Communications Apparatus', 20 *JICJ* (2022) 11, at 54; Hovell and Malagodi, *supra* note 4, at 1508, 1514–1515; Langer, *supra* note 3, at 760–761.

[123] Cf. Kavran, *supra* note 3 at 31–46.

[124] Cf. M. Boe, 'Progress or Patchwork—Increasing the Impact and Outreach of German Universal Jurisdiction Trials', *Völkerrechtsblog*, 17 January 2024, available online at https://voelkerrechtsblog.org/progress-or-patchwork/ (last visited 12 September 2025).

[125] Cf. A-M. Slaughter, 'Defining the Limits: Universal Jurisdiction and National Courts', in S. Macedo (ed.), *Universal Jurisdiction: National Courts and the Prosecution of Serious Crimes under International Law* (University of Pennsylvania Press, 2004) 168, at 187; Burke-White, *supra* note 106, at 98 *et seq*.; F. Jeßberger, 'International v. National Prosecutions of International Crimes', in A. Cassese (ed.), *The Oxford Companion to International Criminal Justice* (Oxford University Press, 2009) 208, at 213–215; cf. H. Dickerson, 'Best Practices', in R. Wolfrum (ed.), *MPEIL*, October 2010, at paras 1, 21 *et seq*.

[126] Cf. E. Benvinisti, 'The Paradoxes of Sovereigns as Trustees of Humanity: Concluding Remarks', 16 *Theoretical Inquiriess in Law* (2015) 535, at 545.

always succeeded in meeting this standard. Therefore, states should exercise caution before claiming the role of a 'trustee', 'agent', or 'guardian'. They must remain mindful of the profound responsibilities they assume when acting on behalf of the international community in the vicarious administration of its UJ over core international crimes.

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