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Global Governance and the State: Domestic Enforcement of Universal Jurisdiction

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Abstract The primary goal of this article is to analyze Belgium's universal jurisdiction law concerning humanitarian law violations and its relationship to global governance norms. When discussing the notion of universal jurisdiction, there are relatively few empirical situations that scholars can draw on to illuminate the debate. In general, there is a very theoretical orientation to the universal human rights debate. Belgium's 1993 universal jurisdiction law (expanded in 1999) brings a greater degree of empirical clarity to this debate. This law allowed Belgium to hear cases concerning violations of humanitarian law, including genocide and other crimes against humanity, which happened anywhere, without any connection to Belgium. In essence, this was an attempt at the protection of human rights on a universal basis and may be the way forward in the prevention of mass atrocities.

Keywords Global governance · Universal jurisdiction · Sovereignty · Genocide · Humanitarian law

Introduction

On June 8, 2001, a Belgian court found Alphonse Higaniro, Vincent Ntezimana, Sister Gertrude (Consolata Mukangano) and Sister Maria Kisito (Julienne Mukabutera) guilty for crimes committed during the 1994 Rwandan genocide (Reydams 2003). Although all of the accused were residing in Belgium at the time of their arrest, none of the *Butare Four* (as they are commonly known) were Belgian citizens, none of the victims were Belgian citizens, and none of the crimes were committed on Belgian soil. The trial

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and prosecution of the *Butare Four* was a case of pure universal jurisdiction, one of the few in human rights' legal history (Human Rights Watch 2000; Sriram 2005).

This case, the legislation from which it sprung, and the political aftermath should be of interest to both international relations (IR) and human rights scholars for a plethora of reasons—notions of authority, primacy of international law, the viability of mainstream international relations theory, among others—and yet, there is little to no analysis of this case or its contributing legislation outside of the international law literature.[1] Thus, one of the primary reasons for authoring this article is for informative purposes. Such cases and their causal legislation are critical to the study of world politics and examination of these cases should extend beyond the law journals.

Along with the aforementioned educational purpose, this article also engages several important theoretical aspects of Belgium's attempt at universal jurisdiction. The underlying facet concerns an examination of the relationship between global governance and the principle of universal jurisdiction. One could argue that global governance has become a foundational concept in the study of world politics and yet, this term lacks a socially accepted understanding among IR scholars. Along with the ambiguous nature of the concept, the field still lacks reasonable assessment of the role of states in the formation and perpetuation of global governance structures. In most discussions of global governance the tendency is to look beyond or below the state, but scholars often fail to look at the critical role of the state.[2] In this particular case, the primary role of the state appears clear; it was the state of Belgium that acted to uphold the principle of universal jurisdiction by prosecuting foreigners for a foreign crime within a Belgian national courtroom.[3] As this article will show, it is also a state that causes a significant alteration in the universal application of Belgium's law. Therefore, the primary goal of this analysis is to provide readers with a new empirical avenue for understanding the ambiguous concept of global governance and to provide a means for bringing the state back into the global governance literature, or at least assess whether such a reintroduction is necessary.

In order to accomplish these goals, this article begins with an examination of the concept global governance. The purpose of this discussion is to ascertain a clearly defined foundation for the theoretical portion of this analysis. The article then moves to a discussion of universal jurisdiction, in order to provide the same conceptual clarity for this term, along with a discussion of its relationship to global governance. Only with these two foundational pillars in place can the article move to a discussion of Belgium's universal jurisdiction law, the *Butare Four* case, and the importance of this case to the current dialogue on sources of global governance and the resulting structures of authority.

[1] One need only look at the references for the universal jurisdiction section of this article to recognize that the bulk of analysis concerning this concept is located in the law journals not the IR or human rights journals.

[2] The majority of global governance literature emphasizes non-state and/or transnational actors. If the state is discussed, it is typically as a subservient actor whose behavior is directed by these actors.

[3] This is not to say that certain human rights NGOs and individual actors did not influence the decision. In fact, it was the influential actions of NGOs in 1995 that moved the state of Belgium to begin proceedings. However, the final act of justice was undertaken by the Belgian state. The claim of this article is that one cannot think about the state and non-state actors as competitive and/or divisive, but in cases like this one, we might need to view them as collaborative.

Conceptual Clarity: Global Governance

In a seminal article on the concept, Klaus Dingwerth and Philipp Pattberg summed up the current state of "global governance" in the following way:

> Whether it is observable phenomena such as an NGO's worldwide campaign against corruption, political visions that are expressed in a call for a more powerful international legal system, or the ubiquitous talk about global governance itself, almost any process or structure of politics beyond the state—regardless of scope, content, or context—has within the last few years been declared part of a general idea of global governance (Dingwerth and Pattberg 2006, p. 185).

As these authors make clear, the primary problem in the global governance literature is the lack of a broadly accepted definition. Thus, when one examines the concept of global governance, it becomes immediately obvious that the application of a multiplicity of definitions is possible (Ba and Hoffmann 2005). This definitional range includes: the sum of ways in which individuals and institutions manage their common affairs through cooperative action (Commission On Global Governance 1995, p. 2); to the rules, norms, and organizations that address international problems that states cannot solve unilaterally (Mingst 1999, p. 268); to collective actions that establish norms and institutions for the purpose of dealing with multilevel problems (Vayrynen 1999, p. 25).[4]

As readers can see, most of the current definitions tend to center around the idea of global cooperation and the establishment of norms and/or institutions through a process of conflict management. Clearly, these attributes are a large part of global governance. However, what these definitions often fail to investigate is the basis for these norms and institutions, the actors that affect the type of governance pattern that exists, and the evolutionary nature of the concept. In short, most current definitions of global governance are too simplistic and more pointedly, too ambiguous.

Despite the simplistic and ambiguous nature of the current global governance literature, there remains one commonality among these divergent definitions—governance is not government on a global scale. Therefore, this analysis will not entail a discussion of an emerging, formalized, hierarchical form of global government. Instead, it centers on the notion of governance as it exists outside of formalized governmental institutions, at least on the global scale. It analyzes the concept as a new analytic approach and not as a liberal project or a new phenomenon (Ba and Hoffmann 2005). As a result, this analysis engages the concept at the level in which governance becomes established in accepted global norms and rules, and attempts to understand the impact of these norms and rules on the broader global system and its current governance pattern.

[4] These definitions are only a small example of the numerous definitions that have been posed over the past decade. The importance of these examples is the lack of cohesion surrounding a definition of this concept.

Means of Global Governance

In order to discuss global governance as an analytical approach any definition must start with a discussion of the means of governance. The means of governance refers to the mechanisms through which the norms and rules that guide international actors' actions are established.[5] In other words, it is the regimes, in the broadest understanding of the term, or institutions, that embody the current governance pattern.[6]

Although helpful in its definitional purpose, this logic still tends to uphold Lawrence Finkelstein's infamous critique of the global governance literature that "global governance appears to be virtually anything" (Finkelstein 1995, p. 367). Even James Rosenau argues that the means of governance can be state-sponsored, non-state sponsored, or jointly sponsored. They can exist within the boundaries of nation–states, in transnational institutions, or in subnational entities (Rosenau 1995, pp. 20–39). Nevertheless, if scholars and policymakers can understand the condition of global governance, as it exists within a particular global order, then it is feasible to make certain generalizations about the dominant pattern of governance and the means of governance. As a result, Finkelstein is correct—global governance can be "virtually anything," but what he failed to recognize is that global governance cannot be everything at any given time. According to this definitional addendum, it appears reasonable to assert that certain patterns of global governance emerge during certain historical moments, resulting in particular patterns of governance that are applicable to a particular period of time or historical epoch.[7]

One way to analyze the means of governance is to think of the world as being constructed of different "spheres of authority (SOAs)." Early in the debate on global governance James Rosenau used this term to refer to the existence of actors who possess the ability to both command others and require their obedience within a particular sphere (Rosenau 1997, pp. 39–41). He employed this terminology to refer to the loci of global governance existing within a particular historical moment; thus, he argued that no one sphere of authority embodies the governance patterns across global orders. Instead, this approach argues that new spheres of authority are rising to prominence and that these spheres coexist due to the diverse demand for forms of governance within any given period in history. As collective-choice problems continue to proliferate, the need for more governance arrangements increases. The result is an upsurge in the formation of SOAs or means of governance. This may even result in multiple spheres of authority co-existing within one pattern of global governance.[8] So if

[5] The reference of regimes as "sources of governance" can be considered synonymous with the idea of "means of governance" (Young 1997, 275–280).

[6] The classic definition of regimes is as follows: explicit or implicit norms, rules, and decision-making procedures around which international actors' interests converge within a given issue-area (Krasner 1983). According to this definition, institutionalization is not a required attribute of a regime. A regime can simply exist around a socially accepted norm that is adhered to by the community of actors. This broad understanding of regimes enables it to be a key aspect of the means of governance.

[7] The phrase "historical moment" is not meant to evoke images of a brief and fleeting historical period. In fact, a historical moment can be as long or as short as the governance pattern allows. But the important aspect of this phrase is that it remains defined by the dominant governance pattern.

[8] A pattern of global governance refers to an intersubjectively accepted set of norms or rules that dominate a particular historical moment. As discussed below, an example of this pattern is the state sovereignty rule that was a primary characteristic of the Cold War global governance pattern. It is important that global governance is understood as evolutionary. Therefore, global governance is not a new phenomenon but an understanding of authority that accepts change throughout the history of world politics.

we accept Rosenau's logic and apply it to the world today, what we see is that within each pattern there exists a more prominent sphere that tends to capture the norms and rules that are guiding the actions of the international community. This dominant sphere is thought of as the primary means of governance.

Rosenau defines four different types of SOAs, any of which may be the dominant sphere at any given moment. (1) Established SOAs, which refers to the continued dominance of states and state authority when constructing global policies; (2) accomodative SOAs, in which authority is constructed as part of a cooperative relationship between both nation–state governments and other non-state entities[9]; (3) contested SOAs, in which accommodation is not an option due to the contentious nature of the system (in a contested SOA, international actors consider the use of force a viable option); (4) transient SOAs, which result from an unclear location of authority due to domestic activities that cause cross-border spillover. If and when actors can resolve the consequences of the spillover, these domestic activities may prove transient (Rosenau 1997, pp. 154–172).

Bringing this back to the overarching discussion of global governance theory, it is fair to argue that the purpose of global governance theory is to understand the dominant sphere of authority or governance pattern for a particular period in history. Such an understanding allows global governance scholars to employ their knowledge not simply in a descriptive manner, but also as an analytical component to their understandings. This analytical component is found in the literature's ability to understand the means by which governance patterns can be categorized and assessed, not only for normative purposes, but also for understanding the change that occurs both between and within the governance pattern. The current state of universal jurisdiction laws may provide some insight into what many scholars describe as an emerging "postinternational" order; and the case of the *Butare Four*, along with the broader narrative surrounding Belgium's universal jurisdiction law, may provide scholars with an empirical example of this emerging order—particular within the area of humanitarian law. Thus, it appears that the concept of universal jurisdiction provides one way in which a global governance structure is either altering or being reified. However, before engaging in a discussion of the case it is important to first clarify the concept of universal jurisdiction.

Conceptual Clarity: Universal Jurisdiction

In a manner similar to the conceptual ambiguity surrounding the term global governance, universal jurisdiction also remains a vague, ill-defined, or more often than not, misapplied concept for international relations scholars.[10] One of the most notable definitional problems with this concept is its relationship to issues of extraterritoriality. Therefore, it is important to recognize, from the outset, that extraterritorial jurisdiction is not synonymous with universal jurisdiction. Instead, universal jurisdiction is one

[9] My use of the term cooperation does not connote an absence of conflict. It is cooperative in the sense that both state and non-state actors are working in coordination to manage the conflict that does exist.

[10] This misapplication and or ambiguity is less pronounced among the international law community (Princeton Project on Universal Jurisdiction 2001; Bassiouni, M. Cherif 2006).

form of extraterritoriality. This becomes apparent once one examines the defining conceptualizations of extraterritorial jurisdiction. In international law, there exist five bases or fundamental principles of jurisdiction: (1) territoriality; (2) nationality; (3) passive personality; (4) protection principle; (5) universality (Joyner 2005, pp. 149–151; Lemaitre, Roemer 2000). The first four forms of jurisdiction are predicated on some sort of territorial or national link to the prosecuting state. However, universal jurisdiction lacks such limitations, thus making it the most expansive, but also the least employed of these jurisdictional justifications. This also begins to exemplify the correlation between understandings of the emerging global governance pattern and the initiation of criminal proceedings based on the principle of universality.

Extraterritorial, Not Universal

As mentioned earlier, extraterritoriality does not necessitate universality. The only defining characteristic of extraterritoriality is that it entails jurisdiction that somehow extends beyond traditional state boundaries. The most widely accepted form of extraterritorial jurisdiction is based on the principle of territoriality. In these cases, the perpetration of a crime must occur within the territory of the prosecuting state. In other words, authority to prosecute is predicated on the location of the defendant's act. International law allows states to regulate the actions of any individual (regardless of nationality) and/or punish those individuals within its territorial boundaries. For instance, the USA can prosecute any individual who commits an illegal act (as defined by US legal statute) within its territory.

This principle has also evolved to include two other facets of territorial jurisdiction. First, a state may prosecute a non-national if the individual commences a crime within its territory but concludes the act outside of the territory (known as subjective territorial jurisdiction). Second, a state can also prosecute an individual if the act begins outside of the prosecuting state but concludes the act within its boundaries (known as objective territorial jurisdiction or effects doctrine). The general understanding is that in both instances, the offense is still affecting the state in question. Nevertheless, the underlying basis for all derivatives of this principle is its relationship to state sovereignty and the understanding that every state retains absolute legal authority within its borders.

Another widely accepted principle of extraterritorial jurisdiction is the nationality principle. This principle is predicated on a state's right to regulate and/or punish the actions of its citizens regardless of the location of the offense. For example, if a US citizen commits a crime (according to US legal statute) in a foreign territory, the US government retains the right to prosecute that individual in their domestic judicial system. The fundamental justification for this principle concerns the reciprocal obligations and rights that exist between the state and its citizens. The state must protect its citizens when abroad, but the state can also take punitive action when a citizen's conduct harms the interests of the state.

The third jurisdictional principle is the passive personality principle. This principle allows states to protect their citizens, through punitive action, from foreign nationals regardless of the location of the crime. Therefore, if a state's national is a victim of a crime that violates their domestic legal statutes, then the state may proceed with an investigation and prosecution of the perpetrator irrespective of where the crime was committed or who committed the crime.

The fourth form of jurisdiction is entitled the protective principle. According to this principle, the state retains the right to protect its security interests abroad. A state may

prosecute individuals, regardless of nationality, for acts that they deem a threat to national security, political independence, or even territorial integrity. As with the previous two forms of extraterritorial jurisdiction, this principle clearly undermines the Westphalian notion of sovereignty and provides states with the authority to prosecute for actions beyond its territorial jurisdiction.

Although all of these forms of jurisdiction are extraterritorial in nature, in that none of them espouses a right to prosecute for reasons beyond a territorial or national link to the prosecuting state, it is only with the inclusion of universal jurisdiction that extraterritorial principles extend beyond these traditional territorial or nationalistic links to a rationale that embodies the idea of *hostis humani generis* (enemies of humankind). This is not to discount the transnational nature of these jurisdictional principles or their importance to governance structures. However, they remain closely linked to a traditional Westphalian understanding of sovereignty and governance and thus do not provide us with an exemplification of an emerging postinternational governance structure.

Defining Universal Jurisdiction

Universal jurisdiction is simply that, instances in which jurisdiction is universal in nature—regardless of where the crime was committed, by whom the crime was committed, or whom the victim(s) might be.[11] As defined by Kenneth Randall:

> This principle provides every state with jurisdiction over a limited category of offenses generally recognized as of universal concern, regardless of the situs of the offense and the nationalities of the offender and offended. While the other jurisdictional bases demand direct connections between the prosecuting state and the offense, the universality principle assumes that every state has an interest in exercising jurisdiction to combat egregious offenses that states universally have condemned (Randall and Kenneth 1988, p. 788).

Unlike the other jurisdictional principles, universality does not require any relation to the prosecuting state, only that the crimes committed are considered *hostis humani generis*. Thus, the nature of prosecution is based solely on the crime itself and states are entitled, possibly even obligated, to the initiation of legal proceedings regardless of the perpetrators' or victims' nationality or the location/origin of the crime (Princeton Project on Universal Jurisdiction 2001, pp. 18–25). The crimes that may result in the initiation of universal jurisdiction are the most heinous and abhorrent within international law and therefore, remain limited in number. The widely accepted list of crimes that may trigger universal jurisdiction include: piracy, slavery, war crimes, crimes against humanity, genocide, and apartheid (Bassiouni, M. Cherif 2006).[12]

[11] Some scholars make the distinction between pure universal jurisdiction, which entails proceedings that rely solely on universal jurisdiction for their legitimacy, and universal jurisdiction plus, which relies on other jurisdictional bases to support the legality of the proceedings (Sriram 2005: 37–41). However, for the purpose of this paper, I am examining the role of pure universal jurisdiction with no reliance on other bases of jurisdiction.

[12] This list is not an exhaustive one. Other crimes that are often included in this list are crimes against peace and torture.

In regard to the initiation of universal jurisdiction proceedings, it is important to recognize that the primary actor in applying this principle is the state, via its national legal infrastructure. International tribunals, whether they are ad hoc in nature or permanent, tend not to fulfill the basic requirements of universality (Orentlicher and Diane 2006, pp. 214–239). Ad hoc tribunals such as the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) are predicated on the notion of universality but remain limited in their jurisdictional capacity to a particular territory. Therefore, these courts may exercise their jurisdiction over universally defined crimes, but the establishing states or institution (in the case of the ICTY and ICTR, the United Nations Security Council) has prescribed a territory in which the offense must have occurred thus creating a territorial limitation to the legal proceedings (UNSC 1994, 1993).

In the case of a permanent court, such as the International Criminal Court (ICC), only the UN Security Council can grant the court such jurisdictional reach.[13] In all other cases (meaning those referred by the prosecutor or state party), certain preconditions must be met prior to the court exercising its jurisdiction. These preconditions establish the territorial jurisdiction of the court and limit the application of its power. In short, Article 13 of the Rome Statute does not give the ICC universal jurisdiction because a state party cannot refer any situation to the prosecutor and the prosecutor cannot investigate any situation. Spatial and national considerations determine where and when the court may exercise its power. As stipulated in Article 12, the ICC has jurisdiction if the crime was committed within the territory of a party or on board a vessel or aircraft that is registered within a member state. The ICC's jurisdiction also extends to a situation in which the perpetrator of the crime is a national of a state that is party to the Rome Statute. Therefore, only in instances of UN Security Council referral, such as the Darfur case and the Libya case, does the ICC reflect the principle of universality.

This brings us back to the premise that national legal procedures are the most viable form of universal jurisdiction. However, this statement should not be construed to mean that the state is acting as an autonomous entity attempting to uphold their individualized understanding of norms. The state is acting as an agent of the international community and the norms/rules that this community holds are being inter-subjectively accepted. As stated by Anthony Sammons:

> [T]he right to exercise universal jurisdiction belongs to the international community acting collectively and not the respective, individual states. When an individual state undertakes the prosecution of a perpetrator pursuant to an assertion of universal jurisdiction, that state acts as the de facto agent for the international community (Sammons 2003, p. 137).

Thus, we see the possibility that the state is acting in accordance with the norms of the emerging global governance pattern and in fact, becoming an agent of the international community's desire to rectify a collective problem—that being violations of the core crimes of humanitarian law. This shows a clear link between the principle of universal jurisdiction and global governance. Universal jurisdiction can be viewed as

[13] A state, regardless of its member status, can also voluntary request an ICC investigation. Therefore, technically this is another form of universality contained in the Rome Statute.

the means of global governance, and if that principle is widely accepted it may mean an alteration in the governance structure. In an attempt to assess whether this shift in global governance and the emerging use of universality by states are an accepted norm, the next section of this article applies these contentious concepts to one particular state and its actions in regards to these emerging norms.

The Application of Universality

Belgium is one of only a handful of states that have attempted to initiate criminal proceedings based on the principle of universal jurisdiction.[14] When one discusses not only the attempt to prosecute, but also the successful prosecution and detention of individuals based on universality, Belgium finds itself in an even smaller group of states (Macedo 2006). This section of the article examines the Belgium law concerning universal jurisdiction, the application of this law in the *Butare Four* case and the aftermath of this law and its most high profile case. In the end, this will provide readers with a better understanding of where the current global governance order stands with regard to humanitarian law and the notion of universal jurisdiction.

Belgium's Universal Jurisdiction Law: 1993 and 1999

In 1993, the Belgian legislature passed a law (The Act Concerning the Punishment of Grave Breaches of the Geneva Conventions and their Additional Protocols) that provided Belgian courts with jurisdiction over 20 specific war crimes regardless of where they were committed, who committed them, or who the victim was. In essence, the 1993 statute implemented the Geneva Conventions and its two Protocols into Belgian domestic law and although it is not imperative that a state's domestic legislation contains a universal jurisdiction law, it certainly strengthens that state's right to prosecute. This truly was a first step towards universal jurisdiction although it remained limited in the crimes covered (only war crimes) in relation to the crimes considered universally abhorrent.

The 1999 amendment broadened the original act to cover the crime of genocide and crimes against humanity (now titled The Act Concerning Grave Breaches of International Humanitarian Law). This law stipulates that "[T]he Belgian courts shall be competent to deal with breaches provided for in the present Act, irrespective of where such breaches have been committed" (reprinted in Smis and Van der Borght 1999). As a result of this amendment, the new universal jurisdiction legislation now encompasses a larger number of crimes deemed *hostis humani generis* and entitles the Belgian legal system to pursue perpetrators of these crimes regardless of their location or the location of the offense (Roht-Arriaza 2004).[15] This law is the result of a long,

[14] Although the number of universal jurisdiction cases remains limited, the numbers are growing. Another recent case is Canada's prosecution of Rwandan national, Desire Munyaneza, also for crimes committed during the 1994 Rwandan genocide. Switzerland and France have also prosecuted individuals for crimes committed during the Rwanda genocide, while Denemark, Germany and the Netherlands have prosecuted individuals for crimes committed during the Yugoslavia conflict (Redress 1999).

[15] Originally, this Act even allowed for prosecution in *abstentia* however, a 2002 ruling by the Belgian Court of Appeals in the case concerning Ariel Sharon found that the defendant's presence was necessary for prosecution.

evolutionary process that dates back to Belgium's ratification of the Geneva Conventions (Vandermeersch 2005). In fact, the establishment of the 1999 law was simply the moment when Belgian domestic law conformed to long-standing international law, most of which comes in the form of treaties already ratified by the Belgian government. The only prosecuted case of this Act came in the spring of 2001 when four Rwandan citizens were placed on trial for war crimes committed during the 1994 Rwandan genocide.

Application: The Butare Four Case

From April 6–July 17, 1994, Rwanda was the site of one of the most heinous acts of genocide in human history. During the 100-day period of violence, the Hutu majority systematically eliminated close to one million minority Tutsi and moderate Hutu citizens. In the aftermath of the genocide, Rwanda and the international community initiated several forms of justice. The most prominent of these is the International Tribunal for Rwanda (ICTR). This tribunal began its first prosecution proceedings in January 1997 and has since completed its mandate, which included the completion of 52 cases and the transfer of ten cases to national jurisdictions.[16] A second form of justice is found in localized efforts called *gacaca* (Strain and Keyes 2003).[17] These proceedings are a form of community-based justice that deals with lower level crimes, while the most heinous crimes are still prosecuted in the national and international courts. These localized courts necessitate community participation at all points of prosecution and thus serve the purpose, at least in theory, of allowing for reconciliation of crimes at a personal level.

Along with these international and legal attempts at obtaining justice, the international community of states has also begun several proceedings based on universal jurisdiction. One of the most prominent of these is Belgium's use of its universal jurisdiction law to prosecute four Rwandan citizens for war crimes committed in the Butare region of Rwanda. Over an eight-week period in the spring of 2001, a Belgian national court sat in judgment over Alphonse Higaniro, Vincent Ntezimana, Sister Gertrude (Consolata Mukangano), and Sister Maria Kisito (Julienne Mukabutera) for crimes committed during the Rwanda genocide. None of the accused was a Belgian citizen, none of the victims were Belgian citizens, and none of the crimes were committed on Belgian territory. This truly was a case of universal, not simply extra-territorial, jurisdiction.

The trial itself began in the spring of 2001 and lasted for 8 weeks. The basis for the case was the original (1993) war crimes legislation. Although the 1999 legislation could have been employed, the fact that all of the allegations were considered war crimes made such measures unnecessary. The allegations brought against the defendants encompassed a broad range of crimes including: the establishment of ethnic lists, the drafting of document employed to incite mass killings, the passing of provisions to the Interhamwe militia, the delivery of Tutsis for killing, the failure to protect refugees, and personal responsibility for killings (Reydams 2003). In the end, all four defendants were found guilty and sentenced to between 12 and 20 years in prison.

[16] These numbers are accurate as of October 3, 2014 (http://www.unictr.org/Cases/tabid/204/Default.aspx).
[17] *Gacaca* is a Kinyarwanda term that loosely translates as "justice on the grass."

The Aftermath

In the aftermath of the trial, a plethora of possible cases were presented to the Belgian prosecutors. These included criminal complaints against former President George H. W. Bush, Vice President Dick Cheney, former Secretary of State Colin Powell, and retired General Norman Schwarzkopf, all for alleged crimes committed during the first Gulf War. There were also several legal complaints filed against numerous government officials, including Augusto Pinochet, Fidel Castro, Saddam Hussein, and Yasser Arafat. In the two instances where rulings were rendered, the courts limited the scope of the law, which was again amended in 2003.

The first ruling, the case against Yerodia Ndombasi, was brought before the International Court of Justice (ICJ). In its decision, the ICJ finding did not explicitly reject Belgium's claims for universal jurisdiction. However, the court did rule that the defendant had functional immunity because of his position as Minister of Foreign Affairs for the Democratic Republic of Congo (Winants 2003; Boister 2002). This established the sovereign immunity of sitting governmental officials and protected them from prosecution under Belgium's universal jurisdiction law.

The second case concerns the proceedings against Ariel Sharon for crimes committed during the Sabra and Chatila killing in 1982. In June 2002, a Belgian appeals court ruled that Sharon could not be prosecuted *in absentia*. However, the Belgian Prime Minister pressed for change in the law and in February 2003, the Belgian Supreme Court (Cour de Cassation) overruled the previous decision, stipulating that the presence of the accused was not necessary. Despite this fact, the court did concur with the ICJ in the Yerodia case and stated that a sitting official (at the time, Sharon was serving as Israeli Prime Minister) could not be prosecuted according to customary international law. In theory, this did not end the case against Ariel Sharon, it simply delayed proceedings until he was out of office.

As a result of the *Butare Four* case, the aforementioned rulings, and most notably the attempt to bring cases concerning US officials and other global leaders before the Belgian court, the USA and other prominent global actors felt it necessary to push for a change in the law. For the USA, this law was deemed too intrusive and a violation of the state sovereignty norm. In the end, Belgium made a final series of amendments to the law in April and August of 2003 (Ratner 2003). Unfortunately, for proponents of universal jurisdiction laws, this final amendment process altered the status of the Belgian law from one that embodies the principle of universal jurisdiction to a more limiting and restrictive forms of extraterritorial jurisdiction.

The first amendment, passed in April 2003, stipulated that only the federal prosecutor could initiate cases if the alleged crime did not occur on Belgian soil, the offender was not Belgian or located in Belgium, and/or if the victim was not a Belgian citizen or resided in Belgium for at least 3 years. At this point, the law limits the universal jurisdiction principle, but only in its trigger mechanism. If the prosecutor felt it prudent to initiate a case, then he/she has that right regardless of where the crime was committed, the national status of the accused or the national status of the victim. Therefore, the basic principles of universal jurisdiction remained; it was simply the means of initiating a case that was altered.

Although significant, this change did not placate the USA. Because Belgium was employing this law to investigate former US government officials, the USA felt it

imperative to push for real political change in the law; change that would prevent Belgium from pursuing cases predicated on the principle of universal jurisdiction. Secretary of State Donald Rumsfeld applied the political pressure in the form of withholding funds for a new NATO headquarters. He also considered barring US officials from traveling to Belgium for NATO meetings unless the law was amended (Ratner 2003). Ostensibly, Rumsfeld was threatening the future of Belgium hosting NATO within in its borders. Such political and economic pressure was too great for Prime Minister Verhofstadt and shortly after Rumsfeld's threat he called for the amendment of the 1999 law. He stated that Belgium's 1999 amendment had "ushered in a manifestly abusive political use of this law."

In the end, Belgium bowed to the political pressure and in August 2003 they passed an amendment that relinquished all universal elements of the original law. According to this amendment, Belgian courts can only proceed if the case involves a Belgian citizen—either in regards to the nationality of the defendant and/or the victim. In short, the Belgian law is no longer predicated on universal jurisdiction but extraterritorial jurisdiction. The Belgian law, as amended in August 2003, now necessitates territoriality, nationality, or passive personality. If none of these principles are present, then Belgium has no jurisdiction. Thus, the amended law would not have allowed for the prosecution of the *Butare Four*.

The Future of Universal Jurisdiction as Global Governance

So what does such initial legislative action, trial and further clarifying legislation mean for the current global governance structure? In order to understand this, it is important to extend the initial discussion of global governance to include an investigation of global order and its relationship to governance. Understandings of the "Westphalian order," or international society, are predicated on the norms and rules embodied in Rosenau's established SOA and have dominated the study of world politics since the outset. In other words, the system/pattern of governance is primarily determined by the action of states and the norms and rules that they established, most notably, the state sovereignty norm. It is hard to argue against the idea that since the formation of international relations as a field of social science, the dominant unit of analysis has been the state. This is due to the fact that throughout this time period, the norms and rules that guide global politics have been established by states.[18] But with the end of the Cold War it became obvious that a new way of thinking about global politics was afoot.[19] No longer could IR scholars and foreign policymakers consider states the sole vessel

[18] Since the formal establishment of the discipline in 1919, state-centered theories have tended to dominate the study of IR. This can be seen as a reflection of a state-centered world and a governance structure that was dominated by the action of these units. But over the past decade this foundational understanding of our field has come under increased scrutiny. The primacy of the state is under fire and this attack is well documented in a wide array of recent literature (Strange 1996; Rosenau 1997; Ferguson and Mansbach 2004; Holsti 2004).

[19] This is not to say that the end of the Cold War initiated an ontological shift, but that this event was simply part of an evolutionary process, albeit a proverbial watershed. In other words, the origins of this ontological shift are at least decades old. Within the issue-area of humanitarian law, the origin of the ontological shift stems back at least to the Holocaust. It was at this point in time that the international community began to alter their set of shared understandings on human rights. The shift evolved from that point and its culmination resulted in the ratification of the Rome Statute for an International Criminal Court.

of authority. The rise to prominence of numerous non-state actors, both transnational and subnational, necessitated a reformulation of how we study global politics. The result is the necessary acknowledgement by both scholars and policymakers that a new global order may be emerging and that this new order is predicated on the idea of global civil society and a new pattern of global governance that more closely accords with Rosenau's accomodative SOA.[20]

This emerging governance structure is the result of a collective response by the world's diverse set of actors in an attempt to overcome the world's collective problems—in this case, the problem of impunity. This diverse set of actors includes non-state and state-based entities, although it has become commonplace among global governance scholars to minimize the role of the state. This is primarily the result of the postinternational scholars and their tendency not to extol the power of the state and its ability to initiate governance structures on their own. Instead, these scholars focus their analysis on the ideational foundations of governance and the power of initiation held by numerous non-state actors. Thus, the emphasis in the accommodative SOA is not on the state or even the cooperative arrangements that exist between the state and non-state actors, but on the power/influence of these non-state actors. In many ways, the intensification, implementation and even repeal of universal jurisdiction legislation serve as empirical evidence of this emerging global governance structure.

However, what remains an interesting element of this case is the critical role that states play in the redefinition of the sovereignty norm and the confluence of norms that appear to exist between many of the world's state and influential non-state actors, including individuals. As often stipulated in the human rights literature, the role of non-state actors may be essential, but ultimately it is the state that has the power to initiate change. Thus, it is this role for the state in a seemingly accommodative governance structure that can ultimately affect the problem of impunity in either a positive and just manner or a negative one. We must not lose sight of the fact that in the end Belgium's law was amended as a result of great power politics. But does this mean that the notion of a new governance pattern surrounding impunity is premature? Or is this simply an aberration in the march towards a change in the Westphalian pattern?

Global Governance and Great Power Politics

The universal jurisdiction principle is clearly a reflection of an emerging global governance pattern. If the reader recalls the definition provided earlier, global governance is an intersubjectively accepted set of rules or norms that guide actors' behavior in their endeavor to solve collective problems. Universal jurisdiction appears to serve both as a means to the fulfillment and/or enforcement of certain norms or rules that exist within the current global order and as part of those norms and rules. The particular norm that this article is examining is the global problem of criminal violations of humanitarian law (war crimes, crimes against humanity, and genocide) and the

[20] This does not mean that accomodative SOAs are the only current form of governance or that established SOAs are the only form of governance. Other SOAs exist and there remains a significant amount of contestation among these SOAs. But the accomodative SOA appears to be the dominant one in this post-Westphalian order and the established SOA appears to have been the dominant one in the Westphalian order.

continued problem of impunity, while one of the means or methods of rectification is the domestic legal usage of the universal jurisdiction principle.[21]

In the case of Belgium, the issue came to a head because the emerging governance pattern ran directly into the interests of a hegemonic state. In the end the USA got what it wanted—Belgium stripped the law of its universal principles. However, it may be premature to claim that such action means a re-assertion of a Westphalian governance system that denies the notion of universal jurisdiction. The relationship between great power politics and a postinternational governance structure is simply more complex than that, as the Canadian conviction of Desire Munyaneza in 2009 exemplifies.[22]

The USA and their diplomatic pressure to alter Belgium's universal jurisdiction law is an exemplification of the continued relevance of great power politics. But the notion of universal jurisdiction remains a fundamental part of the international legal landscape of the current governance structure (CCIJ). Although the USA was able to pressure Belgium into altering the original set of laws, this does not discount the fact that a trial did take place and that this trial was predicated on the universal jurisdiction principle.

At this point, it is important to recall the primary purpose of this article—to examine the role of the state in the current global governance structure. In all facets of this case, it appears as if the state remains an important part of the global governance pattern. This article has shown this to be true via two interrelated reasons. First, the activity of states to implement an explicit form of global governance shows the need for global governance scholars to look not only above and below the state, but also directly at the state. In fact, it is imperative that scholars consider this actor a primary source of global governance initiatives, implementation and enforcement, whether that be in a Westphalian order or a postinternational one. This is seen in both the initiation of universal jurisdiction laws (as in Belgium, Canada, Spain, and others) and in their role as an obstacle to the emerging governance pattern as seen in the final amendments to the Belgium law along with alterations in universal jurisdiction laws in other states, such as Spain (Skeen 2009). Second, and possibly more contentious, this case also provides empirical evidence of the global community's movement to, although not full acceptance of, a post-sovereign world. However, unlike the majority of literature that discusses non-state actors as the primary causal factor of this shift, this case shows the continued importance, if not primacy, of the state in the decline and/or reapplication of sovereignty (Leonard 2005a).

The global governance literature is ripe with examinations of transnational, non-state actor and sub-national activity. One could argue that according to many definitions of global governance, the state is considered irrelevant or a secondary actor at best. However, the initiation of universal jurisdiction cases, like the *Butare Four* case, shows the need for global governance scholars to re-examine the role of the state in a postinternational world. There remains many IR scholars, in particular (neo)realist scholars, who continue to tout the importance of the state. In terms of the global

[21] This is certainly not the only means of rectification, but unlike the ad hoc tribunals, the ICC, or the hybrid or special tribunals in places like East Timor and Sierra Leone, this form of justice is truly universal in nature, not just transnational. It is also feasible that as the ad hoc systems begin to close down in the coming years we will see a reinvigoration of the domestic court systems as a means to end impunity.

[22] Munyaneza was convicted for his involvement in the Rwandan genocide under Canada's Crimes Against Humanity and War Crimes Act of 2000. Munyaneza appealed his case, but in May 2014 his 25-year sentence was upheld. It should be noted that Spain, who was an activist state in the fight for universal jurisdiction, began limiting its use of the principle in June of 2009.

governance literature, these scholars view the state as maintaining a Westphalian structure of governance.[23] However, the increased use of universal jurisdiction laws empirically illustrates a different role for states—a role that is not realist in its orientation and allows for their interests to be affected by the non-state actor community like those taking part in the human rights regime. However, this relationship is not causal but co-constitutive in that the interests of both sets of actors coalesce around an issue in an attempt to find a solution. It is this type of accommodative relationship, as found in the universal jurisdiction principle, which appears to be the future hallmark of global governance structures.

Conclusion

Universal jurisdiction is one of the more explicit principles/norms/rules that have (re)emerged with the current global governance pattern. It is a principle that allows states to disregard state sovereignty, pursue justice where it is needed (at least within the confines of those crimes that are considered *hostis humani generis*) and work towards an end to impunity. Therefore, the prosecutorial action of Belgium in the *Butare Four* case is a prime example of possibilities that exist within this new global governance pattern. However, what is truly intriguing about this case is not the fact that such cases predicated on notions of universal jurisdiction tend to undermine state sovereignty (as some might argue, this case is simply another nail in sovereignty's coffin), it is the source of these global governance means—the state.

In essence, this case provides IR and human rights scholars with an empirical case in which states acts to both undermine the defining principle of past global governance patterns and sustain that order for their benefit. This alone is not novel. In fact, one could formulate a viable argument that the establishment of all transnational institutions, that are so often referred to as the proof of sovereignty's demise, are both constructed and undermined by states. The ICC, for example, was constructed by states and yet retained a large number of state detractors. They had a tremendous amount of ideational assistance from other actors, such as the NGO coalition for the establishment of an ICC; but in the end states were the principle negotiators, the actor that voted on the statute, and the ones who signed and ratified the document (Leonard 2005b). However, the moment the ICC became functional, much of the implementation shifted to individual, substate actors within the institution. In regards to universal jurisdiction, the state remains the primary actor and its domestic legal structure the sole method by which the global community accomplishes a key component of the current global governance pattern. And although this does not minimize the role of other non-state actors, it does show the continued prominence of the state. Thus, it simply exemplifies the need to re-engage the state as a primary participant in the current global governance structure.

As a result, this article argues that the global governance literature needs to reexamine the role of the state in light of its complementary responsibility in the construction of new governance norms. Contrary too much of the current global governance literature, the state is a primary source of the global governance pattern,

[23] The United States' action against Belgium's universal jurisdiction law is a prime example of state backlash.

both current and past, and has contributed, in a positive manner, to its emergence and stability. The irony is that this case also provides further evidence that a new governance pattern is emerging and that one of the primary characteristics of this governance pattern is its post-sovereignty or newly oriented sovereign nature. The state is no longer the final arbiter of its domestic affairs and the emergence of universal jurisdiction laws in national legal proceedings is confirmation of that fact. Ultimately, this may be the most viable means to ending problems like impunity, but it will only occur with a coalescence of interests among state and non-state actors. And although the universal nature of the Belgium law was repealed, the continued applications of universal jurisdiction principles continue in other places. Such continued acceptance of this principle as a means to combat impunity only upholds the shifting nature of governance and the continued importance of the state, albeit in a more constructive role.

Compliance with Ethical Standards As sole author of this article, I have read and understand the journal's standards of ethics and believe that this article is in compliance with all standards.

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