



— EUROPEAN UNIVERSITY INSTITUTE —
DEPARTMENT OF LAW

EUI Working Group on International Criminal Law
Minutes of the 19.01.2006 session on Universal Jurisdiction

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At the previous meeting it was decided among the members of the group to devote the following session to an update on the issue of universal jurisdiction, in light of recent jurisprudential developments. The session was organized around presentations on this topic by Patricia Pinto Soares and Silvia D'Ascoli, their submissions are attached separately, these minutes therefore contain the main points of the discussion around them, which focused on four main themes: the legal basis and criteria for universal jurisdiction; the issues raised by conflicts of jurisdiction; the relationship between international criminal law and international human rights; and finally a discussion of the recent *Scilingo* case.

1. The Principle of Universal Jurisdiction: Legal Basis and Criteria.

Following an introduction on the principle of complementarity by Patricia on the topic of the relation between the ICC and the criteria for universal jurisdiction [see Annex 1 attached], the discussion was started by Christine Bakker on the emerging trend in case law and among scholars that universal jurisdiction should be considered as a 'last resort'. Professors Cassese and Abi-Saab, among others, refer to specific conflicts in this respect and cite the necessity for a somewhat strict exercise of universal jurisdiction, while underlining that the ICC still faces the problem of choosing which cases to prosecute. Christine mentioned a recent German case against Donald Rumsfeld which confirmed the subsidiarity of Germany's exercise of universal

jurisdiction vis-à-vis the United States' exercise of jurisdiction and that of the ICC, with arguments drawing on the Rome Statute.

Professor Pierre-Marie Dupuy suggested that it was first necessary to return to Article 12 and consider which States are concerned before referring to universal jurisdiction specifically. Dov Jacobs then raised the question of '*l'état compétent*' and what options the ICC had at its disposal to possibly go beyond rules governing jurisdiction. Professor Francesco Francioni recalled that the historical context for the development of universal jurisdiction is clear, as an exception to the rules on the treatment of aliens. This evolution occurred in the context of customary international law, and confronted the issue of state sovereignty. Professor Dupuy took up the chronology of its development and pointed out that universal jurisdiction was also elaborated as a means to address voids left by the absence of a centralized international judicial body, and thus constituted an exception to the principles of territorial or personal jurisdiction. In this regard, universal jurisdiction also illustrates one of the oldest examples of George Scelle's theory of '*dédoublement fonctionnel*'. Following the entry into force of the Rome Statute, the existence of a permanent international criminal court transformed the existing conditions under which universal jurisdiction operated, and raised the issues of the respective roles of the international courts and states. Professor Stefan Oeter observed that the two fora stood apart but raised the problem of third parties, added to which the ICC cannot exercise universal jurisdiction, while the parties to the Rome Statute can.

Christine commented that there is a clear link between the ICC and universal jurisdiction through the question of subsidiarity between three levels of jurisdiction: that of the ICC, of states exercising jurisdiction on traditional territorial and personal grounds, and that of states exercising universal jurisdiction. The Rome Statute does not explicitly exclude universal jurisdiction but instead offers some avenues for interpretation: for example, the Preamble reaffirms the states' duty to prosecute international crimes. In addition, the Court's intervention functions in a complementary way to national prosecution, thus leaving the states as primary actors. The OTP's policy includes the possibility of encouraging states to recognize the exercise of universal jurisdiction insofar as it complies with the requirements of Article 17 concerning genuine prosecutions.

2. Conflicts of Jurisdiction.

The aforementioned issues lead to the question of competing claims to jurisdiction by different states or states and international judicial bodies, raised by Professor Francioni, adding that the classical rules of jurisdiction could not be applied and it was necessary to maintain a preference and precedence for territorial jurisdiction. Professor Oeter raised this point but questioned whether there is in fact such a clear-cut hierarchy between jurisdictional bases. Professor Dupuy referred to the *Congo vs France* case currently before the ICJ and the problem of *res judicata*. In this case, as long as Congo, being the territorial state, had not initiated proceedings, any other state could intervene, within a reasonable understanding of the principle of universal jurisdiction, *i.e.* relative not absolute universal jurisdiction. However, as had been raised in a previous session and by a number of commentators (including Ronny Abraham, the French advocate for the case before the ICJ, who stated that ‘France recognizes the principle of *ne bis in idem*’ at the oral stage of pleadings), all Congo had to do was to initiate prosecution, to pre-empt the exercise of universal jurisdiction by another state (which is precisely what the Congolese authorities did).

Returning to the starting point of the discussion, Christine pointed out that the relationship between the ICC and universal jurisdiction hinges on the extent to which the exercise of universal jurisdiction by state parties would be considered as fulfilling the requirements under complementarity (if states exercise jurisdiction in a proper manner, the OTP leaves the option of national prosecutions open). Professor Dupuy pointed out that the Rome Statute gives priority to territorial and personal jurisdiction, without a real mention of universal jurisdiction. During the course of a special session of the WG on international criminal law on 6 June 2005, guest speaker Morten Bergsmo from the OTP of the ICC had pointed that the Court itself was divided on the issue, both within Chambers and the OTP. In any case, however, the governing aim is to prevent instances of impunity. Professor Annalisa Ciampi added that in the context of this discussion, as quoted by Mr. Bergsmo during his talk, the judges of the ICC had drafted an internal document addressing guidelines devoted to situations where states exercise universal jurisdiction. The very fact they distinguish this basis for jurisdiction from the others underscores the inherent difficulties in its approach, and the judges concluded that while the criteria for exercising jurisdiction remained the

same as for other bases, the exercise of universal jurisdiction called for a particularly strict scrutiny in applying it. It seems there is a hierarchy, or order of priority in the exercise of jurisdiction, from the national level, to the international, and reverting back to the national through the means of universal jurisdiction. Christine brought up the German law governing the exercise of universal jurisdiction, which is an interesting to much-discussed Belgian law: it contains broad grounds for jurisdiction but excludes the possibility of absentee proceedings, thus conditioning the exercise of jurisdiction on the presence of the accused.

3. Discussion on George Fletcher's Editorial 'Against Universal Jurisdiction'¹ and the Issue of Human Rights in International Criminal Trials.

Pursuing the presentation, Patricia referred to George Fletcher's article criticizing universal jurisdiction, explaining that his opposition to it stemmed from the need to grant priority to the rights of the accused, which is a problematic aspect of universal jurisdiction, particularly as far as the prohibition of double jeopardy is concerned. Professor Francioni observed that the discussion over Fletcher's arguments focuses on two points. The first raises the question of whether customary international law has set standards for criminal justice. The second regards the principle of *ne bis in idem*: most states have incorporated it in their domestic legal orders, but *quid* of foreign prosecutions and judgments? In this respect, some members of the WG pointed out the ICC could potentially offer guiding principles for use by national courts, though it might necessarily go so far as to renounce administering international criminal justice itself. It could provide and/or confirm standards for national courts to follow.

Compliance with international human rights standards remains a key issue and directly affects the area of international criminal law through the avenue of an emerging and evolving concept of the duty to prosecute. The right of access to justice, guaranteed in the European and Inter-American Conventions on Human Rights is one such example, but how should states apply it? In Argentina, amnesty laws were set aside on the basis of the right of access to justice, but the issue of what constitutes

¹ **George P. Fletcher**, 'Against Universal Jurisdiction', in *Journal of International Criminal Justice*, vol.1, n.3, 2003, pp.580-584.

effective recourses and remedies still remain. Patricia followed by commenting that despite Fletcher's assertion that the exercise of universal jurisdiction directly violates the essence of the principle of *ne bis in idem*, she disagrees on the basis that the universal jurisdiction is certainly difficult to apply but does not violate the mentioned principle. Dov pointed out the possible ambiguity of the link between the ICC and human rights standards as regards the access to justice, for example when it comes to considerations of *ordre public*, or the status of victims. This is due in part, as Christine noted, to the fundamental difference in concepts: international criminal law addresses individual criminal responsibility whereas human rights aim at state responsibility. In this respect, access to justice forms a clear link between the two fields, as human rights courts are increasingly interpreting human rights standards as being guarantees for victims including the obligation for states to prosecute international crimes. Professor Francioni added that the concept of denial of justice and the right to a decent administration of justice were expanded from laws governing the protection of aliens. Amna Guellali noted that human rights clearly have an influence on international criminal law both substantive and procedural, but that the opposite is also true, and the issue of the duty to prosecute crystallizes the link between the two bodies of law: states incur obligations vis-à-vis the accused but also have a duty to prosecute international crimes. Professor Francioni commented that this embodies the shift from individual entitlement to an overall characterization of what constitutes a decent state, of which the duty to prosecute is a necessary element. Annalisa Ciampi then argued standards do exist for international justice, both substantive and procedural, for example Article 14 of the ICCPR containing rules for fair trials rights for both victim and accused. Their existence being proven, the main problem lies with their effective implementation.

4. Discussion of the *Scilingo* case.

Silvia D'Ascoli presented the 19 April 2005 case before the Spanish *Audiencia Nacional* in the *Scilingo* affair [see Annex 2 attached], which offers a rare jurisprudential example of practice in the area of universal jurisdiction and crimes against humanity. The judgement applied the notion of crimes against humanity as peremptory norms

imposing *erga omnes* obligations, with the consequence that – in case of their violation – there exists a universal claim to the repression of such violations.

Spain's jurisdiction had been asserted on the basis of a double legal basis: customary international law and domestic law. Professor Christian Tomuschat, in commenting the case, argued that the real grounds for proceeding with the case was the presence of the accused, who had surrendered himself to the Spanish judiciary.

The *Scilingo* case could be part of an emerging trend confirming the existence of a duty under customary international law to prosecute crimes against humanity. This reasoning was also applied in the *Simón* case, before the Argentine courts. The *Simón* judgement was delivered by the Argentine Supreme Court on 14 June 2005. In a case concerning the forced disappearance of persons during 1978, it declared unconstitutional and void the so-called 'amnesty laws', the *Ley de Punto Final* (1986) and the *Ley de Obediencia Debida* (1987).

Christine observed that the interesting aspect of both decisions (*Scilingo* and *Simón*) revolved around the question of whether a court can exercise jurisdiction over a case without a national legal basis existing at the time the crime was committed (the principle of *nullum crimen sine lege*) by directly applying a rule of international law prohibiting that crime. The ECHR has also confirmed this possibility, for example in the *Streletz* case.

At the end of the meeting, the WG fixed a date for the next session, which will be held on **Thursday, 23 February 2006**, in Sala Belvedere, Villa Schifanoia, from **15,00 to 17,00**.

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ANNEX 1

The relation between the ICC and the universal jurisdiction criterion

By Patricia Pinto Soares

This presentation consists of some brief considerations regarding the articulation between the universal jurisdiction criterion in national legal systems and the ICC's jurisdiction.

The ICC's system is based on the principle of complementarity, meaning that the Court will only intervene after national remedies are exhausted, *rectius*, when States are not capable or not willing to exercise their jurisdiction over the most serious crimes of international concern. The aim is to create some sort of subsidiary mechanism to be activated in case of incapacity or unwillingness of a State to act in order to avoid impunity of the perpetrators of grave offences.

In order to be able to intervene, States have to be equipped with instruments allowing them to exercise jurisdiction over the crimes envisaged by the ICC Statute. One of those instruments is the criterion of universal jurisdiction regarding crimes provided by article 5 of the Rome Statute. What will be here considered is the case of a jurisdiction without any specific link to the crime, such as the place where it took place or the nationality of the perpetrator. The first question arising regards the normative aspect of complementarity concerning the implementation of the Statute. Are States free not to implement it or are they obliged to do so? Besides the answer that one can provide through teleological and systematic interpretation of the Statute, the fact remains that it does not provide for an immediate answer to this question and States (Spain is against such obligation; while Holland is in favor of it) and academic writers (D. Robinson vs. M. Politi) differ on the answer. However, the fact remains that for the efficient performance of the ICC, a comprehensive implementation of the Statute is indispensable.

It is clear that States run the risk of being considered "unable" if they do not establish in their internal law criteria of jurisdiction that permit their courts to persecute crimes envisaged by the Statute. One could think that complementarity may function as an incentive for States to establish universal jurisdiction. Still, practice reveals some disparity. Some States had limited their jurisdiction to grounds that base the action of the ICC itself, namely territoriality or active nationality (for instance, section 51 of the UK International Criminal Court Act 2001). Others have chosen a broader approach and have established universal jurisdiction (for example, Germany or New Zealand).

On one hand, one can say that the entry into force of the ICC makes the envisagement of universal jurisdiction, regarding crimes committed by a national of a State Party or in the territory of a State Party in the Statute, obsolete. Universal jurisdiction aims to fill the gap raised when a State linked by traditional jurisdiction criteria with the crime is not willing or is unable to persecute the perpetrators. In such cases the ICC could act on behalf of the international community. One can then immediately argue that universal jurisdiction is, however, crucial to the persecution of perpetrators who have committed crimes which are not covered by ICC's jurisdiction. In this way, States could provide for universal jurisdiction criterion by differentiating between crimes under the jurisdiction of the ICC and those which are not, confining universal jurisdiction to the last ones.

This perspective may be attractive in some points but can also lead to few gaps by which perpetrators could escape justice even though the ICC have, theoretically, jurisdiction over them. This will be the case when the ICC does not exercise its jurisdiction because, for instance, the cases do not achieve the gravity threshold or because cases are so numerous that the Court can not deal with all of them.

It seems that universal jurisdiction has an important role in these cases and that a committed cooperation between the ICC and States would call for the envisagement of the universal jurisdiction's criterion.

The solution can probably be implemented by determining specific cases in which States can exercise universal jurisdiction, namely and for example, when States with a narrower *nexus* are "unwilling" or "unable" or when the ICC cannot or does not exercise its jurisdiction. A similar model would, or at least could, prevent gaps of punishment of some of the most serious crimes.

George P. Fletcher, in his article "Against Universal Jurisdiction",² strongly opposes to universal jurisdiction. Considering that in a trial there are always in confront 1) the interests of the accused, 2) the interests of the victims, 3) the interests of the State, the prosecution, and 4) the interests of the community where the crime has occurred, this author defends that the priority should always go to the accused's interests. He argues that injustices and gaps derived from such model are "*the price we pay for ensuring fair trials and respecting the elementary dignity of the criminally accused*". Universal jurisdiction will then not be acceptable due to the difficulties of procedure as well as to the disrespect of the *ne bis in idem* principle, which will most likely destroy all the possibilities of due process and impartial investigation. The author refuses to accept the legitimacy of universal jurisdiction through a reference to the interest of the community where the crime took place. He states that "... *every alleged crime generates conflicts of priorities among the accused, the victim and the State. The local*

² **George P. Fletcher**, 'Against Universal Jurisdiction', in *Journal of International Criminal Justice*, vol.1, n.3, 2003, pp.580-584.

community must confront the crime that has occurred among its people and seek a nuanced resolution that they can live with”.

As far as I am concerned, I do not think the Statute forgets the rights of the accused. In fact, the treaty has several provisions established in order to ensure those same guaranties (namely, articles regarding admissibility conditions, challenge to the jurisdiction of the Court and to the admissibility conditions, *nullum crimen sine lege*, *nulla poena sine lege*, non retroactivity *ratione personae*, article 55 regarding the rights of persons during investigation...etc.). I am not even sure if it is possible to supportively affirm that the Statute gives priority to the interests of the victim. It seems more likely to sustain that it draws an equilibrated commitment between the right of the accused to have a fair trial and the rights of not only the direct victims but of all the international community, strongly affected by the conduct practiced. One does not deal here only with the victims’ dignity derogation but also with the total disrespect for all the Common Conscience of Humanity.

This is also the reason why the judgment of a case outside the country where it had occurred does not, in my opinion, violate the interests of the community as defended by Fletcher. One shall not forget that crimes envisaged by the Statute – and for which universal jurisdiction criterion may be a fundamental tool of prosecution – are characterized, according to article 5 of the Statute, as being the most serious crimes of concern to the mankind as a whole. It is not only a specific local community the one which is aggressed, but the whole humankind. This is the fundamental reason why the ICC was created, and the principle of complementarity was envisaged exactly to permit States (and local communities) to exercise firstly their jurisdiction.

Universal jurisdiction within national legal systems can be exercised when a State with a closed link with the crime and better equipped from a procedural point of view (regarding, for instance, evidences, custody of the perpetrator) is not willing or not able to act.

Even understanding the critics made to universal jurisdiction based on the *ne bis in idem* principle, one shall have in mind that, at the international level, the cooperation between States is or should be based on a principle of good faith. Moreover, International Law is not supposed to derogate from fundamental pillars of the States’ legal systems, and countries’ actions shall be coherent with the essence of their legal and constitutional systems. Portugal, for instance, recognizes the *ne bis in idem* principle in its Constitution. At the same time, the Constitution establishes Courts’ obligation to judge in a democratic and impartial manner in full accordance with the law in order to apply justice to the concrete cases.

Thus, the Portuguese criminal legislation permits a new trial in specific occasions, namely when fundamental new evidences emerge as well as when it is evident that the first trial was conducted by a partial or corrupt Court.

A similar model can be applied to the international level, regarding universal jurisdiction. If a State does not have evidences of partiality by the Court which has first trialed the accused, then it should not proceed with a new trial. If, instead, those evidences exist, it would be legitimate for the Court to do so. This performance is normal within national legal systems and does not seem to affect negatively the essence of the *ne bis in idem* principle. It is true that there might be some practical misapplications of this principle, which, however, does not mean that theoretically universal jurisdiction derogates to it. The *ne bis in idem* principle is not meant to constitute a legal escape for perpetrators but to ensure legality, due process and certainty.

The coming into force of the Statute of Rome and the creation of the ICC represent a step forward in the edification of a democratic and impartial international criminal order, which demands a strong articulation and cooperation with and by national systems. The functioning of the ICC will permit to detect shortcomings and difficulties as well as remedies to them. It is a stage which has just begun and will certainly need improvements. Nevertheless, the ICC seems to present a great potential to serve the aims envisaged by its creation.

In his article, Fletcher argues that the judgment by a court of a country not closely linked with the crime makes it impossible for other courts, more closely connected to the occurrence of the unlawful conduct, to accept the first trial. Therefore, the accused will always be submitted to an unbearable level of uncertainty since there is no security that he will not be trialed again. One can, on this point, recognize the potential of the ICC to correct or to avoid such situations, since its action will be based upon the consent of States.

The practice of the ICC will also show the exact consequences of the coming into force of the Statute regarding the criterion of universal jurisdiction. The Statute does stress a preference for domestic prosecutions. How States will in fact react to this position and which will be the exact outline of the articulation between the ICC and national courts is not completely clear yet.

The universal jurisdiction in pure and absolute terms may be in crisis or even condemned but a hybrid model of it does not seem to be. It might be that, in the end, the universal jurisdiction, instead of the ICC, will become a last resource mechanism. A close and committed cooperation between States and the ICC is likely to lead to a structure able to efficiently prosecute the most serious crimes as well as to impede perpetrators going unpunished.

ANNEX 2

Issues of Universal Jurisdiction in the *Scilingo* case

By Silvia D'Ascoli

This briefing, prepared for the 19-01-2006 session of the WG on international criminal law, is meant to give an update to the WG on the *Scilingo* judgement delivered by the Spanish *Audiencia Nacional* on 19 April 2005, and is largely based on the interesting articles devoted to the judgement in the latest number of the *Journal of International Criminal Justice*.³

The *Scilingo* judgement represents an important case in which a national court sentences a foreigner citizen for crimes against humanity perpetrated abroad. It is, moreover, noteworthy as it relies upon the principle of universal jurisdiction, commenting on the applicability of this principle in the prosecution of crimes against humanity.

The accused, **Adolfo Francisco Scilingo**, former Argentinean officer who acted during the military dictatorship in Argentina in 1976-1983, had surrendered to the Spanish Court in 1997. He was charged of having participated in two death flights during which 30 persons were thrown into the sea from an airplane.

Spain's jurisdiction had been asserted on the basis of a double legal basis: customary international law and domestic law. As for the former, the court asserted that state practice demonstrates the existence of an international customary rule granting national courts jurisdiction over crimes against humanity, being those norms of *jus cogens* whose violation brings about an *erga omnes* obligation to address them. In the Court's view it is the very nature of the rules violated that authorized and legitimized the extraterritorial jurisdiction by national courts.

Concerning the latter legal basis, the Court made reference to Article 23 paragraph 4 of the *Ley orgánica del poder judicial* (LOPJ), granting Spanish courts universal jurisdiction over specific crimes (genocide, terrorism, piracy, counterfeiting of foreign currency), but not over crimes against humanity, which are not mentioned by Art.23(4). Moreover, at the time of the charges of Mr. Scilingo, crimes against humanity had not even been incorporated into domestic law.⁴

³ See JICJ, vol.3, n.5, Novembre 2005: **Christian Tomuschat**, 'Issues of Universal Jurisdiction in the *Scilingo* case', pp.1074-1081; **Alicia Gil Gil**, 'The Flaws of the *Scilingo* Judgement', pp.1082-1091; **Giulia Pinzauti**, 'An Instance of Reasonable Universality', pp.1092-1105.

⁴ It is the new **Article 607 bis** of the Spanish Criminal Code which introduced, only in 2004, the category of crimes against humanity into the Spanish legal system.

The question is whether the notion of genocide upheld in Art.23(4) was broad enough as to encompass also crimes against humanity. This is precisely what the *Audiencia Nacional* stated, underlining that the Spanish notion of genocide was broader than that enshrined in the Genocide convention. Therefore, according to the Court, the Spanish notion of genocide embraced the facts attributed to Scilingo, who could be prosecuted by Spanish courts on grounds of extraterritorial jurisdiction.

Professor Tomuschat, in commenting the case, criticized this reasoning by arguing that the atrocities committed could not qualify as either genocide or terrorism (the only ones over which Spain would have extraterritorial jurisdiction under the relevant Spanish legislation); he argues that the real grounds for proceeding with the case was exclusively the presence of the accused, who had surrendered himself to the Spanish judiciary, neither the principle of universal jurisdiction (Spanish law does not provide for universal jurisdiction for crimes against humanity), nor the passive personality principle (surely among the victims of the Argentinean dictatorship there were around 610 persons of Spanish nationality, but no specific findings could be made regarding the nationality of the 30 victims of the two death flights in which Scilingo participated).⁵

Another delicate issue arising from the judgement is the alleged violation of the principle of *nullum crimen, nulla poena, sine lege*. In fact, Mr. Scilingo was initially charged with the crimes of genocide, terrorism and torture (as crimes against humanity were not mentioned in the Spanish Penal Code) ...but was then convicted for crimes against humanity pursuant to the new **Article 607 bis**, which in the meantime (in 2004) introduced this category of crimes into the Spanish legal system.

The *Audiencia Nacional* maintained that this did not imply a violation of the *nullum crimen, nulla poena sine praevia lege* principle, since crimes against humanity already existed in customary international law at the time the events allegedly occurred.

In the opinion of Professor Alicia Gil Gil, the Spanish legal system (Article 2 Penal Code) provides for a strict principle of legality, thus precluding criminal tribunals from directly applying customary international law, since this does not meet the formal and material requirements that the Spanish legal system ascribes to the principle of legality.⁶

Other scholars believe that, being the crimes ascribed to Scilingo unquestionably banned by customary international law, the Court in any case did not act *ultra vires*. In fact, it could be argued that from the principle that states must endeavor to prosecute and punish those crimes which breach the fundamental values of the international community, it can be inferred that

⁵ See **Christian Tomuschat**, 'Issues of Universal Jurisdiction in the *Scilingo* case', JICJ, vol.3, n.5, November 2005, pp.1074-1081.

⁶ See **Alicia Gil Gil**, 'The Flaws of the *Scilingo* Judgement', JICJ, vol.3, n.5, November 2005, pp.1082-1091.

states are entitled to exercise universal jurisdiction at least with regard to those classes of crimes against humanity which are indisputably prohibited by customary international law.⁷ Moreover, one could always argue that at least customary international law does not ban a reasonable exercise of universal jurisdiction by national courts.

In sum, it is surely possible to find in the reasoning of the Spanish court elements with positive implications: the *Audiencia Nacional* has pursued an objective that the current legal system of the international community puts to all states, the one of contributing to ending impunity for very serious international crimes. The decision also constitutes a meritorious effort to bypass the indisputable defects of the Spanish legal order, especially the lack of a statutory provision granting extraterritorial jurisdiction over crimes against humanity.

The judgement, therefore, could be legitimately part of an emerging trend towards a duty to prosecute, as showed also by the *Simón* case, decided on 14 June 2005 by the Argentine Supreme Court which, in a case concerning the forced disappearance of persons during 1978, it declared unconstitutional and void the so-called ‘amnesty laws’, the *Ley de Punto Final* (1986) and the *Ley de Obediencia Debida* (1987), which were adopted to shield the authors of serious human rights violations committed during the so-called ‘Dirty War’ (1976-1983).

The Supreme Court upheld the judgments of the Federal Appeals Court and of the court of first instance which, in March 2001, had declared that the amnesty laws violated both the national Constitution and international law.

In practice, the decision definitively clears the path to the reopening of judicial actions against the authors of serious crimes committed under the military regime. The Argentine courts’ willingness to address that case was arguably increased by the fact that foreign courts seemed ready to take on cases on the basis of universal jurisdiction (as in the *Scilingo* case). Judges of the Argentinean Supreme Court noted that the prosecution and trial of Argentinians by foreign countries and courts on the basis of universal jurisdiction resulted from the non-compliance of Argentina with its international obligations. It was felt that such a reality required urged action, as extradition requests’ presented by third states highlighted the country’s incapacity to exercise the state’s territorial jurisdiction.

Both judgments represent a laudable attempt to contribute to the fight against impunity for crimes that have gone unpunished for too long in the state in which they were perpetrated.

⁷ See **Giulia Pinzauti**, ‘An Instance of Reasonable Universality’, JICJ, vol3, n.5, November 2005, pp.1092-1105.