

## CHINA: THE GROWTH OF A NEW SUPERPOWER AND THE EXTINCTION OF UNIVERSAL JURISDICTION

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### INTRODUCTION

Since World War II, approximately 170 million civilians have fallen victim to crimes such as genocide, crimes against humanity, and other human rights violations.<sup>1</sup> The principle of universal jurisdiction allows courts in any country to bring to trial those responsible for both crimes against humanity and war crimes.<sup>2</sup> In contrast to traditional

<sup>1</sup> See Mugambi Jouet, *Spain's Expanded Universal Jurisdiction to Prosecute Human Rights Abuses in Latin America, China, and Beyond*, 35 GA. J. INT'L & COMP. L. 496 (2006), available at [mugambijouet.com/wp-content/uploads/2011/06/Jouet-Spanish-Universal-Jurisdiction-Article.pdf](http://mugambijouet.com/wp-content/uploads/2011/06/Jouet-Spanish-Universal-Jurisdiction-Article.pdf).

<sup>2</sup> International Council on Human Rights Policy, *Hard cases: bringing human rights violators to justice abroad* –

A guide to universal jurisdiction, at 4 (1999), available at [http://www.ichrp.org/files/reports/5/201\\_report\\_en.pdf](http://www.ichrp.org/files/reports/5/201_report_en.pdf).

jurisdiction, which requires a connection between the prosecuting state and the crime,<sup>3</sup> the doctrine of universal jurisdiction ignores the nationality of criminals, the nationality of victims, and the location where the crime occurred, leaving only the nature of the crime as a basis for apprehension.<sup>4</sup> The international community, however, has differing views regarding the proper definition, legal status, scope, and application of universal jurisdiction.

Ethical and practical concerns justify the exercise of universal jurisdiction. Criminals who commit crimes against humanity in countries where the legal system cannot, or does not, punish them should be brought to justice by foreign legal systems that are able and willing to do so.<sup>5</sup> The assumption underlying this rationale is that extensive punishment of certain crimes will produce greater deterrence for committing such crimes and thereby lead to improved world order.<sup>6</sup> Moreover, certain international interests can only be protected by an enforcement mechanism that exceeds the reach of traditional sovereignty.<sup>7</sup>

The earliest examples of universal jurisdiction involved the arrest and prosecution of pirates.<sup>8</sup> The modern form of universal jurisdiction, however, took shape with the prosecution of World War II war crimes in the Nuremberg Trials.<sup>9</sup> The Nuremberg Trials paved the way for more recent instances of universal jurisdiction such as the Pinochet arrest. Both of these historical events helped shape modern laws surrounding universal jurisdiction and exposed both the advantages and problems related to exercising foreign legal jurisdiction.

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<sup>3</sup> See Palestinian Centre for Human Rights, *The Principle and Practice of Universal Jurisdiction: PCHR's Work in the occupied Palestinian territory*, at 9 (2010), available at [http://pchrghaza.org/files/Reports/English/pdf\\_spec/PCHR-UJ-BOOK.pdf](http://pchrghaza.org/files/Reports/English/pdf_spec/PCHR-UJ-BOOK.pdf).

<sup>4</sup> See Yana Shy Kraytman, *Universal Jurisdiction – Historical Roots and Modern Implications*, 2 BSIS J. INT'L STUD. 94, 94-95 (2005), available at <http://www.kent.ac.uk/brussels/journal/documents/2005/Kraytman%20-%20Universal%20Jurisdiction.pdf>.

<sup>5</sup> Christina Mateo-Yanguas, *Villains of the World Beware*, GLOBAL POST (June 8, 2009), available at <http://www.globalpost.com/dispatch/spain/090526/universal-jurisdiction-audencia-nacional>.

<sup>6</sup> M. Cherif Bassiouni, *Universal Jurisdiction for International Crimes: Historical Perspectives and Contemporary Practice*, 42 VA. J. INT'L L. 81, 90 (2001), available at <http://www.iranhrdc.org/english/human-rights-documents/legal-articles/3220-m-cherif-bassiouni-universal-jurisdiction-for-international-crimes-historical-perspectives-and-contemporary-practice.html#UJdK8m8Sd-c>.

<sup>7</sup> See *id.*

<sup>8</sup> Kraytman, *supra* note 4, at 97.

<sup>9</sup> *Id.* at 96.

China has a history of violating international human rights laws; the most famous event being the 1989 Tiananmen Square Massacre where hundreds, maybe thousands of Chinese protestors were killed by the Chinese military.<sup>10</sup> Chinese citizens have experienced imprisonment without trial, censorship, torture, harassment, religious repression, and ethnic persecution.<sup>11</sup> In 2008, the Chinese government violently repressed thousands of monks in Tibet for protesting China's discriminatory treatment.<sup>12</sup> In response, two lawsuits were filed in Spanish courts accusing Chinese officials of crimes against humanity and demanding their presence before the court for investigation.<sup>13</sup> The lawsuits were filed under the principle of universal jurisdiction.

To start my analysis of universal jurisdiction, Part I of my note will trace the historical evolution of universal jurisdiction. In Part II, I will analyze modern case studies of universal jurisdiction as well as the current laws and authorities that govern the topic. Part III will compare and contrast the use, or lack of use, of universal jurisdiction over China's violations of international law with other case studies. Additionally, I will review other instances of universal jurisdiction being exercised over China's human rights violations. Finally, I will conclude that China's growth as a superpower has weakened the practice of universal jurisdiction to a point that could result in the end of the universal jurisdiction doctrine entirely.

## I. HISTORICAL EVOLUTION OF UNIVERSAL JURISDICTION

### A. INITIAL DEVELOPMENT OF UNIVERSAL JURISDICTION IN INTERNATIONAL LAW

The doctrine of universal jurisdiction was created to address the crime of piracy.<sup>14</sup> Flag states of ships attacked by pirates used the doctrine of universal jurisdiction to justify defending and pursuing

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<sup>10</sup> *This Day in History*, HISTORY (June 27, 2005), <http://www.history.com/this-day-in-history/tiananmen-square-massacre-takes-place>.

<sup>11</sup> *See China Human Rights*. AMNESTY INTERNATIONAL, <http://www.amnestyusa.org/our-work/countries/asia-and-the-pacific/china>.

<sup>12</sup> *See generally 60 Years of Chinese Misrule: Arguing Cultural Genocide in Tibet*, INTERNATIONAL CAMPAIGN FOR TIBET (April 2, 2012), <http://www.savetibet.org/60-years-of-chinese-misrule-arguing-cultural-genocide-in-tibet/>.

<sup>13</sup> *Id.* at 138.

<sup>14</sup> Bassiouni, *supra* note 6, at 94.

pirates regardless of their nationalities.<sup>15</sup> The premise for this was that ships were considered extensions of their home country's territory and therefore attacks against a country's ships permitted retaliation over the non-national party for piracy crimes.<sup>16</sup> Additionally, because the right to navigate the high seas was universally available to every country, infringement of that right should be universally punishable.<sup>17</sup>

The next major historical example of universal jurisdiction occurred during the aftermath of World War II. Prior to World War II, individuals were not subject to international law.<sup>18</sup> Countries could handle their citizens in whatever way they wished and could only exercise power over a foreign citizen by cooperating directly with the citizen's home country.<sup>19</sup> It was only after the slaughter of millions during the Holocaust in World War II, that the necessity of operating outside of traditional jurisdictions to prosecute certain crimes became obvious.<sup>20</sup> As a result, the first modern form of universal jurisdiction manifested itself in the Nuremberg Trials, which were held to prosecute war criminals for crimes against humanity.<sup>21</sup> These trials would serve as the precedent for future cases of universal jurisdiction.<sup>22</sup>

The Nuremberg Trials resulted in the codification of certain crimes in international instruments.<sup>23</sup> Following the war, the 1948 Genocide Convention identified genocide as an international crime and required countries to "prevent and punish" instances of genocide.<sup>24</sup> The Convention, however, only obligated enforcement within the jurisdiction where the genocide occurred.<sup>25</sup> A few years after the Genocide Convention, the Geneva Conventions of 1949 first codified the concept

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<sup>15</sup> *Id.* at 95.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Kendra McGraw, *Universally Liable? Corporate-Complicity Liability Under the Principle of Universal Jurisdiction*, 18 MINN. J. INT'L L. 458, 460 (2009), available at [http://www.law.umn.edu/uploads/rR/O3/rRO3ojA\\_UIsJPYL54xOtaQ/Magraw-Final-Online-PDF-03.30.09.pdf](http://www.law.umn.edu/uploads/rR/O3/rRO3ojA_UIsJPYL54xOtaQ/Magraw-Final-Online-PDF-03.30.09.pdf).

<sup>19</sup> *See id.* at 460-61.

<sup>20</sup> *Id.* at 461.

<sup>21</sup> *Id.*

<sup>22</sup> *See* Madeline Morris, *Universal Jurisdiction in a Divided World: Conference Remarks*, 35 NEW ENG. L. REV. 337, 341 (2001), available at [http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1846&context=faculty\\_scholarship](http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1846&context=faculty_scholarship).

<sup>23</sup> *See* McGraw, *supra* note 18, at 461.

<sup>24</sup> *Id.*

<sup>25</sup> *See id.*

of universal jurisdiction.<sup>26</sup> The Geneva Conventions stated that parties have the right and the duty to prosecute or extradite individuals suspected of war crimes, crimes against humanity, and genocide.<sup>27</sup>

Yet these Conventions only served as a model to be ratified by states.<sup>28</sup> It was not until the 1984 Torture Convention—which expressly required party states to outlaw torture under their respective national laws—that an enforcement mechanism based on universal jurisdiction was created.<sup>29</sup> The Convention required parties to prosecute or extradite alleged criminals, which established a network between party states that prosecuted violators regardless of where the crime occurred.<sup>30</sup>

## B. THE INTERNATIONAL CRIMINAL COURT

After the Nuremberg Trials demonstrated the concept of universal jurisdiction by prosecuting war crimes,<sup>31</sup> the International Criminal Tribunal for Rwanda became the first court to convict a criminal under modern international genocide law in 1994.<sup>32</sup> The United Nations created the tribunal to prosecute criminals responsible for genocide and other crimes against humanity in Rwanda.<sup>33</sup> Another international response to human rights violations was the creation of the International Criminal Tribunal for the Former Yugoslavia, which was created by the United Nations to prosecute crimes of ethnic cleansing committed by political and military leaders during the Yugoslav Wars.<sup>34</sup> These two international tribunals were followed by the inception of the International Criminal Court in 1998 by the Rome Statute.<sup>35</sup>

The International Criminal Court (ICC) is a permanent tribunal created by the 1998 Rome Statute that prosecutes individuals who violate international law.<sup>36</sup> In addition to previous international crimes, the

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<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 461-462.

<sup>28</sup> *See id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 461.

<sup>32</sup> Bassiouni, *supra* note 6, at 114.

<sup>33</sup> INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA, <http://www.unictr.org/AboutICTR/GeneralInformation/tabid/101/Default.aspx>.

<sup>34</sup> *See McGraw, supra* note 18, at 463.

<sup>35</sup> Wolfgang Kaleck, *From Pinochet to Rumsfeld: Universal Jurisdiction in Europe 1998-2008*, 30 MICH. J. INT'L L. 927, 929 (2009).

<sup>36</sup> *Id.*

Rome Statute also criminalized aiding and abetting any war crimes, acts of genocide, or other crimes against humanity.<sup>37</sup> The ICC's jurisdiction is mixed with individual states' jurisdiction.<sup>38</sup> When a crime occurs, the ICC first defers to a state that has an interest in prosecuting the crime.<sup>39</sup> This state is usually either the state where the crime took place or the state where the criminal is from.<sup>40</sup> If the state's legal system fails to prosecute the criminal, either because it is unwilling or unable to do so, jurisdiction is conferred to the ICC.<sup>41</sup> The ICC, though, can only exercise its jurisdiction in three cases: when the criminal is a national of a party state, if the crime occurred within a party state, or if the United Nations Security Council refers the incident to the ICC.<sup>42</sup>

## II. MODERN DAY CASE STUDIES

### A. ADOLF EICHMANN

The first individual convicted under the modern concept of universal jurisdiction was Adolf Eichmann, a high-ranking Nazi officer who was one of the major orchestrators of the Holocaust.<sup>43</sup> Eichmann escaped prosecution under the Nuremberg Trials by fleeing to Argentina after World War II.<sup>44</sup> After living there for almost two decades without detection, Israeli intelligence discovered his whereabouts and executed a mission to capture him from within the borders of Argentina.<sup>45</sup> He was taken to Israel where he stood trial for war crimes and crimes against humanity and was subsequently found guilty and hung.<sup>46</sup>

The capture of Eichmann within Argentina's borders was met with heavy international protest.<sup>47</sup> Israel based its jurisdiction on its own Nazi and Nazi Collaborators Law of 1950, which provided for the death penalty against anyone who committed a crime against the Jewish people

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<sup>37</sup> McGraw, *supra* note 18, at 464.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> Rome Statute of the International Criminal Court, Art. 12-13, U.N. Doc. A/CONF.183/9 (July 17, 1988).

<sup>43</sup> McGraw, *supra* note 18, at 465.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> Hans W. Baade, *The Eichmann Trial: Some Legal Aspects*, 1961 DUKE L.J. 400, 401 (1961).

<sup>47</sup> *Id.*

during the Nazi regime.<sup>48</sup> Argentina considered Israeli infiltration of Argentina's borders a violation of its sovereign rights.<sup>49</sup> Generally, a country's territorial sovereignty is absolute under international law.<sup>50</sup> It is a violation of international law for any foreign country to exercise power over another country's territory without its consent.<sup>51</sup> Israel, however, was able to avoid violating this international law by claiming that the Israelis that captured Eichmann were private volunteers who were acting without the Israeli Government's knowledge or consent.<sup>52</sup>

## B. AUGUSTO PINOCHET

In 1998, ex-Chilean dictator General Augusto Pinochet was arrested for crimes against humanity while receiving medical treatment in the United Kingdom.<sup>53</sup> A Spanish court had issued an arrest warrant under Spain's universal jurisdiction law;<sup>54</sup> Article 23.4 of the Judicial Power Organization Act, enacted in 1985, allowed Spain to exercise jurisdiction over foreign citizens for crimes such as torture, genocide, hostage-taking, and crimes against humanity.<sup>55</sup> The arrest warrant demanded Pinochet's extradition to Spain where he would be charged with causing the disappearance, murder, and torture of thousands of supposed political opponents in the course of his seventeen-year reign as Chilean President.<sup>56</sup>

The Pinochet arrest resulted in mixed reactions from the global community. President Eduardo Frei Ruiz-Tagle, then President of Chile, opposed his arrest as well as his extradition to Spain for trial.<sup>57</sup> Former US President George H.W. Bush and former English Prime Minister Margaret Thatcher publicly condemned Pinochet's arrest.<sup>58</sup> While Mary

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<sup>48</sup> Orna Ben-Naftali and Yogev Tuval, *Punishing International Crimes Committed by the Persecuted*, 4 J. INT'L CRIM. JUST. 128 (2006).

<sup>49</sup> Baade, *supra* note 46, at 405.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> Naomi Roht-Arriaza, *The Pinochet Precedent and Universal Jurisdiction*, 35 NEW ENG. L. REV. 311 (2001).

<sup>54</sup> *Id.*

<sup>55</sup> *Id.* at 311-12.

<sup>56</sup> *Id.* at 311-312.

<sup>57</sup> *The arrest of Augusto Pinochet ten years on*. AMNESTY INT'L (Oct. 13, 2008), <http://www.amnesty.org.au/hrs/comments/18155/>.

<sup>58</sup> *See Thatcher pleads Pinochet's case*, BBC NEWS (Oct. 6, 1999), [http://news.bbc.co.uk/2/hi/uk\\_news/politics/467114.stm](http://news.bbc.co.uk/2/hi/uk_news/politics/467114.stm); *see also Former U.S. President Bush*

Robinson, the former United Nations High Commissioner of Human Rights, and Amnesty International praised Spain's effort to punish the international crime of torture.<sup>59</sup>

The arrest and extradition were challenged in English courts and made it to the United Kingdom's highest court, the House of Lords.<sup>60</sup> Pinochet argued that he had immunity under the State Immunity Act because the alleged acts were undertaken while he was performing official duties as head of state.<sup>61</sup> However, the House of Lords ruled that a former head of state does not enjoy immunity for crimes such as torture, genocide, hostage-taking, and crimes against humanity, even if they were performed in an official capacity.<sup>62</sup> The House of Lords explained that certain acts are "not acceptable on the part of anyone" and that immunity under the State Immunity Act only extends to acts that are internationally recognized as official functions of a head of state.<sup>63</sup> The House of Lords also ruled that since torture did not become an "extraterritorial offense" until the enactment of the 1988 Criminal Justice Act, they could only prosecute Pinochet for crimes that allegedly occurred after 1988.<sup>64</sup>

Ultimately, Pinochet was not extradited to Spain and instead was released because of health reasons in 2000.<sup>65</sup> Although Pinochet was never tried for his crimes, the Pinochet arrest was a historic event that helped shape modern laws surrounding universal jurisdiction in addition to exposing the advantages and problems related to exercising foreign legal jurisdiction.<sup>66</sup> It was the first time an official was arrested in a foreign country under the principle of universal jurisdiction for crimes

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urges *Pinochet* release, CNN (April 12, 1999), <http://www.latinamericanstudies.org/chile/bush.htm>.

<sup>59</sup> See Straw Considers *Pinochet* Case, BBC NEWS (Mar. 25, 1999), <http://news.bbc.co.uk/2/hi/302487.stm>; see also *Pinochet must go to Spain, says Amnesty*, BBC NEWS (Jan. 21, 1999), <http://news.bbc.co.uk/2/hi/260124.stm>.

<sup>60</sup> See Andrea Bianchi, *Immunity versus Human Rights: The Pinochet Case*, 10 EUR. J. INT'L L. 237, 239-40 (1999), available at <http://ejil.oxfordjournals.org/content/10/2/237.full.pdf>.

<sup>61</sup> *Id.* at 239-40.

<sup>62</sup> *Id.* at 240.

<sup>63</sup> *Id.* at 240-41.

<sup>64</sup> *Id.* at 244.

<sup>65</sup> See Richard Tyler, *Pinochet Returns to Chile after Britain halts extradition proceedings*, WORLD SOCIALIST WEB SITE, (Mar. 3, 2000), <http://www.wsws.org/en/articles/2000/03/pino-m03.html>.

<sup>66</sup> See Irit Kohn, *Universal Jurisdiction, in ISRAEL AT 60: CONFRONTING THE RISING CHALLENGE TO ITS HISTORICAL AND LEGAL RIGHTS* 46-48 (2009), available at [http://jcpa.org/text/Israel60\\_Kohn.pdf](http://jcpa.org/text/Israel60_Kohn.pdf).



allegedly committed in his home country. The arrest unveiled the competing values of a state's sovereignty and the prosecution of human rights violations.<sup>67</sup>

### C. DONALD RUMSFELD AND OTHER US OFFICIALS

In 2004, photos leaked to the public revealed US military personnel torturing Iraqi prisoners.<sup>68</sup> The photos were taken at the Abu Ghraib prison in Baghdad and showed military guards performing extreme acts of torture against suspected Iraqi terrorists.<sup>69</sup> After international and public outrage, several low-level officers were court-martialed and convicted for prisoner abuse and torture,<sup>70</sup> but the investigation into high-level US officials' involvement in the scandal was never pursued, prompting international lawyers to file criminal complaints on behalf of former Iraqi prisoners in 2004 and 2006.<sup>71</sup> The criminal complaints accused Donald Rumsfeld and other high-ranking US officials of prisoner abuse and torture and were filed under Germany's universal jurisdiction laws.<sup>72</sup>

The complaints cited the German Code of Crimes against International Law (CCAIL) of 2002, which was implemented by Germany to ensure that its criminal offenses paralleled the crimes outlawed by the Rome Statute.<sup>73</sup> The CCAIL's objectives include promoting "the fundamental principles of international criminal and humanitarian law," as well as ensuring prosecution of criminals who violate international laws.<sup>74</sup> Specifically, the CCAIL holds military and civilian officials liable for their subordinates' actions if the officials fail to prevent and stop the illegal acts.<sup>75</sup>

The CCAIL also states, "the investigation and prosecution duty is not limited to crimes which have a German connection."<sup>76</sup> Therefore,

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<sup>67</sup> *See id.*

<sup>68</sup> Katherine Gallagher, *Universal Jurisdiction in Practice: Efforts to Hold Donald Rumsfeld and Other High-level United States Officials Accountable for Torture*, 7 J. INT'L CRIM. JUST. 1087, 1088 (2009), available at <http://jicj.oxfordjournals.org/content/7/5/1087.full>.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.* at 1088–89.

<sup>72</sup> *Id.* at 1100–01.

<sup>73</sup> *Id.* at 1102.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.* at 1103.

<sup>76</sup> *Id.* at 1102.

the CCAIL enables prosecution of crimes committed outside of German borders without regard to the criminal or victim's nationality.<sup>77</sup> On the other hand, the CCAIL contains jurisdictional language that is similar to the International Criminal Court's mixed jurisdiction.<sup>78</sup> Jurisdiction is first given to states that have a traditional interest in the matter before being passed on to foreign authorities.<sup>79</sup>

Despite the language of the CCAIL, German prosecutors said that there was no link between the alleged crimes committed by Donald Rumsfeld and other high-ranking US officials and Germany.<sup>80</sup> They did not initiate investigation of Rumsfeld or other US officials and subsequently dropped the charges.<sup>81</sup> In response, the plaintiffs petitioned Germany's Higher Regional Court to review the prosecutor's refusal to pursue the charges.<sup>82</sup> Contrary to the CCAIL's emphasis on ending impunity, the court refused to consider the question of whether or not the United States sufficiently investigated and prosecuted the charges against the defendants so that jurisdiction could be conferred to German courts to prosecute the claims.<sup>83</sup> Instead, the court simply held that "the question can remain open whether the acts charged were sufficiently prosecuted by other states."<sup>84</sup>

Germany's reluctance to pursue action against Rumsfeld and the other US officials illustrates how political concerns often overlap with the legal requirements of universal jurisdiction laws. Prosecutors were required by both German law and international law to pursue the criminal complaints brought by the former detainees; however, the United States' status as a world power put political pressure on German prosecutors to drop the charges, even though they were legally obligated to pursue the charges.

### III. UNIVERSAL JURISDICTION IN CHINA

China is a relatively new world power and is one of the few remaining developed countries that still blatantly violates international

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<sup>77</sup> *Id.*

<sup>78</sup> *Id.* at 1102–03.

<sup>79</sup> *Id.* at 1103.

<sup>80</sup> *Id.* at 1108.

<sup>81</sup> *Id.* at 1107.

<sup>82</sup> *Id.* at 1108.

<sup>83</sup> *Id.* at 1108–09.

<sup>84</sup> *Id.*

human rights laws. Similar to the United States' status as a world power, China has substantial political influence that alters international treatment of Chinese affairs. International law might obligate countries to exercise universal jurisdiction over Chinese violations of human rights, acts of genocide, and other crimes against humanity, but actual prosecution of these crimes has been wholly unsuccessful.

#### A. ATTEMPTED EXERCISE OF UNIVERSAL JURISDICTION

##### 1. Tibet

China's history of violating international human rights laws is well known. In 1950, the People's Republic of China gained control over Tibetan land and incorporated Tibet into China by sending thousands of troops to invade the region and establish martial law.<sup>85</sup> After a failed anti-Chinese uprising in 1959, the Dalai Lama fled Tibet to India and established a government in exile.<sup>86</sup> Over the next twenty years, China would repress the Tibetan people by depriving them of human rights and denying them political and religious freedom.<sup>87</sup> China subjected the Tibetan people to torture, forced labor, and ethnic cleansing through sterilization, ethnic dilution, forced abortions, and infanticide.<sup>88</sup> Since 1950, over one million Tibetans have been killed by the Chinese government.<sup>89</sup>

In 2005, two lawsuits were filed under the doctrine of universal jurisdiction in Spanish courts accusing Chinese officials of crimes against humanity and genocide of the Tibetan people.<sup>90</sup> The Spanish Supreme Court in 2004 had tried to limit Spain's universal jurisdiction doctrine by requiring a link between national interests and prosecution of an alleged universal crime; more specifically, the court tried to require

<sup>85</sup> See *Tibet Profile*, BBC NEWS, [www.bbc.co.uk/news/world-asia-pacific-16689779](http://www.bbc.co.uk/news/world-asia-pacific-16689779) (last updated Aug. 13, 2013, 7:35 AM).

<sup>86</sup> *Id.*

<sup>87</sup> See Paul Ingram, *Introduction*, CAMPAIGN FREE TIBET, GENOCIDE IN TIBET - CHILDREN OF DESPAIR (1992), available at [http://www.crin.org/docs/resources/treaties/crc.12/China\\_CFT2\\_NGO\\_Report.pdf](http://www.crin.org/docs/resources/treaties/crc.12/China_CFT2_NGO_Report.pdf).

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> Mugambi Jouet, *Spain's Expanded Universal Jurisdiction to Prosecute Human Rights Abuses in Latin America, China, and Beyond*, 35 GA. J. INT'L & COMP. L. 495, 497 (2007), available at <http://mugambijouet.com/wp-content/uploads/2011/06/Jouet-Spanish-Universal-Jurisdiction-Article.pdf>.

that alleged victims and defendants of universal crimes be of Spanish citizenry.<sup>91</sup> The Spanish Constitutional Tribunal—Spain’s highest court for the interpretation of the Spanish constitution—however, held that a linkage between national interests and the alleged crime is not required when exercising universal jurisdiction.<sup>92</sup> The court reasoned that the concept of universal jurisdiction only considers the “substantive nature” of the alleged crimes and whether they affect the international community.<sup>93</sup> In particular, requiring that the alleged victims or defendants be Spanish citizens would contradict the universal jurisdiction doctrine’s objective of prosecuting crimes universally.<sup>94</sup> The Constitutional Tribunal also pointed out that no Spanish law or international law limits the exercise of universal jurisdiction by requiring a link between national interests and prosecution of the alleged crime.<sup>95</sup>

Shortly after this decision, the criminal complaints accusing Jiang Zemin, the former Chinese president, and other Chinese officials of crimes against humanity and genocide were filed.<sup>96</sup> The lawsuits demanded the presence of the former Chinese president and former prime minister before the Spanish High Court for investigation.<sup>97</sup> The Chinese government responded by condemning the lawsuits as attempts to interfere with Chinese sovereignty.<sup>98</sup>

Another lawsuit stemming from Chinese repression of Tibetans was filed in Spanish court in 2008.<sup>99</sup> Tibetan mobs had used the international attention of the 2008 Olympic Games in Beijing to protest China’s treatment of Tibet.<sup>100</sup> The Chinese government responded by imposing strict curfews and banning journalists from Tibetan populated areas, and arresting and interrogating thousands of protesters.<sup>101</sup>

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<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.* at 510.

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> *Id.* at 524-525.

<sup>98</sup> *Id.* at 525-26.

<sup>99</sup> Máximo Langer, *The Diplomacy of Universal Jurisdiction: The Political Branches and the Transnational Prosecution of International Crimes*, 105 AM. J. INT’L L. 1, 38 (2011).

<sup>100</sup> *Id.*; See also generally Amnesty International, THE PEOPLE’S REPUBLIC OF CHINA: THE OLYMPICS COUNTDOWN – CRACKDOWN ON TIBETAN PROTESTERS, available at <http://www.amnesty.org/en/library/asset/ASA17/070/2008/en/da75d11c-000a-11dd-b092-bdb020617d3d/asa170702008eng.pdf>.

<sup>101</sup> See generally Amnesty International, *supra* note 100.

The complaint accused then Chinese Minister of Defense Lian Guanglie, then Chinese Minister of State Security Geng Huichang, and other Chinese officials of committing crimes against humanity by brutally attacking the Tibetan civilian population after the protests.<sup>102</sup> The complaint claimed that approximately two hundred Tibetans were killed and thousands were injured, illegally arrested, and held in a “generalized and systemic attack” against the Tibetan population.<sup>103</sup> The Spanish courts admitted the complaint and requested permission from China to interrogate the defendants named in the complaint.<sup>104</sup> China refused and demanded immediate dismissal of the case.<sup>105</sup> The Chinese embassy stated that refusal to comply would result in damage to the relationship between Spain and China.<sup>106</sup> The Spanish legislature responded by passing a law that restricted Spain’s ability to exercise universal jurisdiction.<sup>107</sup> The law only allowed Spanish courts to investigate incidents that involved Spanish citizens, occurred on Spanish soil, or had some other link to Spanish affairs.<sup>108</sup>

## 2. *Falun Gong*

In 1999, the Chinese Communist Party initiated a crackdown of Falun Gong practitioners with the intention of eliminating the practice from the country.<sup>109</sup> Falun Gong is a peaceful, spiritual practice that emphasizes moral values and virtues combined with the practice of meditation and slow-moving relaxation exercises.<sup>110</sup> The Chinese government saw the practice of Falun Gong as a potential cause of social and political instability and therefore created an expansive plan to quash the movement that was becoming widely popular in China.<sup>111</sup> Then

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<sup>102</sup> See Langer, *supra* note 99, at 77-78.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> DPA, *Spanish court shelves Tibet human rights case against China*, PHAYUL.COM (Feb. 26, 2010, 20:58), [www.phayul.com/news/article.aspx?id=26740](http://www.phayul.com/news/article.aspx?id=26740).

<sup>108</sup> *Id.*

<sup>109</sup> Robert Bejesky, *United States Obligations under International Law and the Falun Gong v. Jiang Zemin Lawsuit: A Justified Reaction to a Threat to Public Security or Genocide? You Decide*, 11 U.C. DAVIS J. INT’L L. & POL’Y 295, 297 (2005), available at <http://jilp.law.ucdavis.edu/issues/volume-11-2/Bejesky.pdf>.

<sup>110</sup> *Id.* at 297, 299.

<sup>111</sup> THOMAS LUM, *Summary to CONG. RESEARCH SERV., RL33437, CHINA AND FALUN GONG*, (2006), available at <http://fpc.state.gov/documents/organization/67820.pdf>.

President Jiang Zemin classified Falun Gong as an “evil cult” that was an “anti-government, anti-society, family-wrecking organization.”<sup>112</sup> He ordered the police force to arrest all known Falun Gong leaders as well as any Falun Gong practitioners.<sup>113</sup> Authorities destroyed any Falun Gong materials such as books, posters, or tapes.<sup>114</sup> Zemin also issued directives to later legitimize the crackdown as a legal act of the legislature.<sup>115</sup> The Communist Party also enacted legislation that banned cult organizations and created media campaigns to gather public support for the government’s crackdown.<sup>116</sup>

The campaign to eradicate Falun Gong was met with fierce opposition from practitioners as well as the international community.<sup>117</sup> Immediately after the start of the crackdown, Falun Gong supporters erupted in mass protest across the country.<sup>118</sup> Some supporters protested through hunger strikes, while other supporters turned to more drastic measures of self-harm such as self-immolation and even suicide: seven Falun Gong supporters set themselves on fire in Tiananmen Square to protest the government’s crackdown.<sup>119</sup> To this day, however, Falun Gong followers and supporters have not turned to violence in their protests.<sup>120</sup> Their leader, Li Hongzhi, issued a public statement soon after the crackdown began, saying “we are not against the government now, nor will we be in the future. Other people may treat us badly, but we do not treat others badly, nor do we treat people as enemies.”<sup>121</sup>

The crackdown on Falun Gong is still happening to this day.<sup>122</sup> In response, supporters have been actively filing lawsuits against Jiang Zemin, the Chinese Communist Party, and the China.<sup>123</sup> As of 2006, over

<sup>112</sup> See Bejesky, *supra* note 109, at 304–05.

<sup>113</sup> *Id.*

<sup>114</sup> HUMAN RIGHTS WATCH, DANGEROUS MEDITATION: CHINA’S CAMPAIGN AGAINST FALUNGONG 16 (2002), available at <http://www.hrw.org/sites/default/files/reports/CHINA0102.pdf>.

<sup>115</sup> *Id.* at 19.

<sup>116</sup> *Id.* at 22–23, 26–27.

<sup>117</sup> *Id.* at 28.

<sup>118</sup> *Id.*

<sup>119</sup> *Id.* at 3, 38.

<sup>120</sup> *Id.* at 108.

<sup>121</sup> Li Hongzhi, *A Brief Statement of Mine*, MINGHUI.ORG (July 22, 1999), available at [http://en.minghui.org/emh/download/publications/peacereport\\_statement.html](http://en.minghui.org/emh/download/publications/peacereport_statement.html).

<sup>122</sup> Michael J. Greenlee, *A King Who Devours His People: Jiang Zemin and the Falun Gong Crackdown: A Bibliography*, 34 INT’L J. LEGAL INFO. 556, 566 (2006), available at <http://scholarship.law.cornell.edu/ijli/vol34/iss3/9>.

<sup>123</sup> See Bejesky, *supra* note 109, at 563.

seventy lawsuits have been filed in over twenty countries.<sup>124</sup> In the United States alone, seventeen lawsuits have been filed on behalf of Falun Gong.<sup>125</sup> These lawsuits attempt to implicate universal jurisdiction to remedy international law violations.<sup>126</sup>

## B. ALTERNATIVES TO UNIVERSAL JURISDICTION

While the United States often exercises universal jurisdiction over foreign affairs, it also often overlooks crimes depending on where the crimes occur.<sup>127</sup> An example of this double standard is the United States' relationship with China. China has often breached international human rights laws, but has managed to escape any sort of real punishment because of its political and economic clout.<sup>128</sup> Much like Germany's reluctance to prosecute Donald Rumsfeld and other US officials for prisoner abuse and torture,<sup>129</sup> the United States, as well as other countries, are hesitant to hold China accountable for human rights violations.<sup>130</sup> In these cases, the countries do not exercise universal jurisdiction over Chinese crimes, but may take indirect avenues to express their disapproval.<sup>131</sup>

### 1. Tiananmen Square

In 1989, Chinese protestors, consisting mostly of students and local residents, gathered in Beijing's Tiananmen Square to protest China's communist rule and to call for political liberalization and

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<sup>124</sup> *Id.* at 566.

<sup>125</sup> *Id.*

<sup>126</sup> *See id.*; *See also* Le Soir (Belgian newspaper): Under Universal Jurisdiction, Six Falun Gong Practitioners filed a Lawsuit (Aug. 21 2003), *available at* <http://www.clearharmony.net/articles/200308/14748.html>.

<sup>127</sup> *See* Jeffrey T. Smith, Jeffrey T. Smith, The Politics of Universal Jurisdiction, Legal Accountability and the Case against Donald Rumsfeld 27, *available at* [http://humanrights.uconn.edu/documents/papers/RumsfeldWarCrimesRevised\\_Smith\\_newemail.pdf](http://humanrights.uconn.edu/documents/papers/RumsfeldWarCrimesRevised_Smith_newemail.pdf).

<sup>128</sup> *See* SUSAN V. LAWRENCE & DAVID MACDONALD, CONG. RESEARCH SERV. R41108, U.S.-CHINA RELATIONS: POLICY ISSUES 5 (2012), *available at* <http://www.fas.org/sgp/crs/row/R41108.pdf>.

<sup>129</sup> *See supra* discussion at 12-15.

<sup>130</sup> *See* Jouet, *supra* note 90, at 524-28.

<sup>131</sup> *See* Keith Bradsher & Diane Cardwell, *U.S. Slaps High Tariffs on Chinese Solar Panels*, THE NEW YORK TIMES (May 17, 2012), *available at* <http://www.nytimes.com/2012/05/18/business/energy-environment/us-slaps-tariffs-on-chinese-solar-panels.html?pagewanted=all>; *see also* Mateo-Yanguas, *supra* note 5.

economic reforms.<sup>132</sup> The government responded by sending armed troops and tanks that ended the protests by killing hundreds and maybe thousands of civilians.<sup>133</sup> To this day, Chinese citizens are still denied freedom of speech.<sup>134</sup> Any attempt to memorialize or criticize the massacre is strictly prohibited by Chinese authorities and could lead to arrest and imprisonment.<sup>135</sup>

The international community denounced China's violent suppression by imposing arms embargos as well as economic sanctions.<sup>136</sup> The United Nations Commission on Human Rights and its subsidiary, the Sub-Commission on Prevention of Discrimination and Protection of Minorities, responded by adopting a resolution that criticized China's actions.<sup>137</sup> The resolution was the first of its kind.<sup>138</sup> A permanent member of the UN's Security Council had never before been denounced for its domestic human rights policy.<sup>139</sup> China responded by claiming that the resolution treaded on its sovereignty and was an attempt to interfere with China's internal affairs.<sup>140</sup> Additionally, China responded by using its economic power to disrupt support for the commission's resolution.<sup>141</sup> China utilized a strategy that simultaneously offered rewards and threatened punishment to UN member states.<sup>142</sup> For example, after persuading France, Germany, and Spain to withdraw their sponsorship for the resolution, China warned Denmark that its support of the resolution would significantly harm their bilateral relations.<sup>143</sup>

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<sup>132</sup> Andrew J. Nathan, *The Tiananmen Papers*, FOREIGN AFFAIRS (Feb. 2001), <http://www.foreignaffairs.com/articles/56670/andrew-j-nathan/the-tiananmen-papers>.

<sup>133</sup> *Id.*

<sup>134</sup> *Tiananmen Square: 21 Years Later Still No Justice or Freedom*, AMNESTY INTERNATIONAL USA (June 3, 2010), available at <http://blog.amnestysusa.org/asia/tiananmen-square-21-years-later-still-no-justice-or-freedom/>.

<sup>135</sup> *Id.*

<sup>136</sup> Sonya Sceats and Shaun Breslin, *China and the International Human Rights System*, THE ROYAL INSTITUTE OF INTERNATIONAL AFFAIRS 4 (2012), available at [http://www.chathamhouse.org/sites/default/files/public/Research/International%20Law/r1012\\_sceatsbreslin.pdf](http://www.chathamhouse.org/sites/default/files/public/Research/International%20Law/r1012_sceatsbreslin.pdf).

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> *Id.* at 6-7.

<sup>141</sup> *Id.* at 4.

<sup>142</sup> *Id.* at 5.

<sup>143</sup> *Id.*



The US publicly denounced and criticized China's brutal reaction to the protests.<sup>144</sup> Then President George H.W. Bush cutoff all high-level government exchanges with China and suspended all visits.<sup>145</sup> President Bush's actions were supposedly an attempt to appease Congress and prevent any sanctions that could be overly harsh.<sup>146</sup> Later, secret US State Department documents were released under the Freedom of Information Act that revealed the president's administration's true stance on the massacre.<sup>147</sup> The documents revealed that the US government was more concerned with the political and economic disruptions that might result from the turmoil as opposed to the suppression of innocent Chinese protestors.<sup>148</sup>

## 2. *Chen Guangcheng*

Chen Guangcheng is a blind Chinese self-made human rights lawyer who sued the Chinese government to stop the practice of forced abortions in his town.<sup>149</sup> On his way to trial one day, he was abducted by authorities and threatened with a long prison term.<sup>150</sup> After he failed to cooperate with negotiations, he was placed under indefinite house arrest.<sup>151</sup> When he attempted to go to trial to fight the charges being levied against him, he was denied representation by his lawyers and was represented against his will by two state-appointed attorneys instead.<sup>152</sup>

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<sup>144</sup> Robert D. McFadden, *The West Condemns the Crackdown*, THE NEW YORK TIMES (June 5, 1989), available at <http://www.nytimes.com/1989/06/05/world/the-west-condemns-the-crackdown.html>.

<sup>145</sup> *Case Studies in Sanctions and Terrorism*, PETERSON INST. FOR INT'L ECON., available at <http://www.iie.com/research/topics/sanctions/china.cfm>.

<sup>146</sup> *Id.*

<sup>147</sup> James Conachy, *A hand held out to Beijing: US policy after Tiananmen Square*, (July 15, 1999), available at <http://www.wsws.org/en/articles/1999/07/usch-j15.html>.

<sup>148</sup> *Id.*

<sup>149</sup> John B. Thompson, *Chen Guangcheng: Rebel of the Year 2012*, GENTLEMEN'S QUARTERLY (Dec. 2012), available at <http://www.gq.com/moty/2012/chen-guangcheng-rebel-of-the-year-moty-2012>.

<sup>150</sup> *Chronology of the case of Chen Guangcheng, a blind lawyer persecuted for exposing official abuses in China*, HUMAN RIGHTS WATCH (Nov. 30, 2010), available at <http://www.hrw.org/news/2006/07/18/chronology-chen-guangchengs-case>.

<sup>151</sup> *Id.*

<sup>152</sup> *China abortion activist on trial: The trial of a Chinese activist who raised concerns about forced abortion and sterilisation has taken place*, BBC NEWS (Aug. 18, 2006), <http://news.bbc.co.uk/2/hi/asia-pacific/5262748.stm>.

He was eventually sentenced to four years of prison.<sup>153</sup> When he was released in 2010, although he was legally a free man, guards and authorities constantly monitored his house and prevented him from leaving as well as preventing any guests from visiting.<sup>154</sup> The same guards would constantly beat him and his wife.<sup>155</sup> After a year and a half of this, he fled his house for the US embassy in Beijing.<sup>156</sup> The United States provided diplomatic protection and eventually Secretary of State Hillary Clinton negotiated a deal with the Chinese government that brought him to live and study in the United States.<sup>157</sup>

### 3. *Liu Xiabo*

Liu Xiabo is another human rights activist who is most famous for his involvement in the Tiananmen Square protests and his help in drafting Charter 08.<sup>158</sup> Charter 08 is a manifesto that calls for human rights reform in China.<sup>159</sup> It was drafted by Chinese intellectuals and signed by thousands of human rights activists.<sup>160</sup> Because of his involvement in drafting Charter 08, he was arrested and imprisoned for “political crimes.”<sup>161</sup> His arrest and imprisonment was met with wide spread protest.<sup>162</sup> In 2010, he was awarded the Nobel Peace Prize while he was still imprisoned.<sup>163</sup> By awarding the Nobel Peace Prize to a Chinese dissident who is currently imprisoned, the international community expressed its disapproval of Chinese’s human rights violations.

<sup>153</sup> Frank Ching, *Rights fight here to stay in China*, THE GLOBE AND MAIL (Aug. 29, 2006), <http://www.theglobeandmail.com/commentary/rights-fight-here-to-stay-in-china/article731567/>.

<sup>154</sup> John Jalsevac, *Details of brutal beating & torture of blind pro-life activist Chen Guangcheng emerge*, LIFESITE (Oct. 28, 2011), <http://www.lifesitenews.com/news/details-of-brutal-beating-torture-of-blind-pro-life-activist-chen-guangchen>.

<sup>155</sup> *Id.*

<sup>156</sup> *The Great Escape*, THE ECONOMIST (May 2, 2012), <http://www.economist.com/blogs/analects/2012/05/chen-guangcheng>.

<sup>157</sup> *Id.*

<sup>158</sup> *Liu Xiaobo - Biographical*, NOBELPRIZE.ORG, (Mar. 11, 2013) [http://www.nobelprize.org/nobel\\_prizes/peace/laureates/2010/xiaobo.html](http://www.nobelprize.org/nobel_prizes/peace/laureates/2010/xiaobo.html).

<sup>159</sup> Charter 08 For Reform and Democracy in China, CHARTER 08, <http://www.charter08.eu>.

<sup>160</sup> *Id.*

<sup>161</sup> Liu Xiabo, *supra* note 158.

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

## C. ASSESSING UNIVERSAL JURISDICTION IN CHINA

Generally, under international law, individuals cannot file lawsuits against a country in international tribunals.<sup>164</sup> Filing suit in a foreign court is therefore one of the few options available to victims of human rights violations.<sup>165</sup> This option is limited because courts are concerned about the possibility of a foreign state intervening in internal domestic affairs and upsetting a state's sovereign power.<sup>166</sup> Thus, the appropriate question is whether a universal jurisdiction crime is so egregious that it justifies impeding another state's sovereign power.<sup>167</sup>

China's position as a growing world power complicates this question by introducing additional factors. The international community has to account for the potential political and economic consequences of condemning or sanctioning China.<sup>168</sup> Additionally, China is a permanent, veto power wielding member of the UN Security Council.<sup>169</sup> Therefore, attempted international interference with China's affairs presents unique issues for the doctrine of universal jurisdiction.

China's position as a permanent member of the United Nations Security Council, as well as a growing world power, has made it difficult for the international community to sanction China through traditional methods.<sup>170</sup> For example, after the Tiananmen Square Massacre, China was able to pressure many member states into withdrawing their support for a formal resolution against China's actions.<sup>171</sup> Furthermore, it was revealed that harsher sanctions were not passed against China because the United States did not want to upset the political and economic relationship between the two countries.<sup>172</sup>

Nevertheless, the international community has been more blatant about protesting China's human rights violations and therefore more willing to upset the political and economic status quo that exists between China and the rest of the world.<sup>173</sup> For example, awarding the Nobel

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<sup>164</sup> Bejesky, *supra* note 109, at 336.

<sup>165</sup> *Id.*

<sup>166</sup> See Bianchi, *supra* note 60, at 237-39.

<sup>167</sup> See *id.*

<sup>168</sup> See Sceats & Breslin, *supra* note 136, at 41-44.

<sup>169</sup> *Current Members*, United Nations Security Council, <http://www.un.org/en/sc/members/>.

<sup>170</sup> See *supra* discussion at 22, 23.

<sup>171</sup> *Id.*

<sup>172</sup> See Peterson Institute, *supra* note 145.

<sup>173</sup> See *supra* discussion at 21-26.

Peace prize to Liu Xiabo, while he was still imprisoned by the Chinese government for his advocacy of human rights, was an indirect but clear message from the international community expressing its disapproval with China.<sup>174</sup> Another, less subtle, example is US Secretary of State Hillary Clinton's recent rescue of Chen Guangcheng from the hands of the Chinese government and the subsequent granting of US visas to his family.<sup>175</sup> Chen's rescue symbolizes a new willingness by the United States to directly interfere with China's domestic human rights policy.

The emergence of alternatives to universal jurisdiction signals a shift in the enforcement of human rights violations. Countries are steering away from the straightforward and sometimes intrusive exercise of universal jurisdiction and turning to more subtle, indirect alternatives.<sup>176</sup> China's repeated success in defeating universal jurisdiction actions, combined with China's unique characteristic of being both a fast growing international power and a continuous human rights violator, has catalyzed the shift to less intrusive alternatives and could minimize the practice of universal jurisdiction to a point of extinction.

### III. CONCLUSION

China's position as a global political and economic power makes the exercise of universal jurisdiction over human rights violations in China very difficult. China has defended its position using many different arguments. China insists that "it is natural for countries to differ on human rights" because of differing "level[s] of development and other social, cultural and historical particularities."<sup>177</sup> Furthermore, China has defended its ability to govern its own domestic affairs by stating that Asian values emphasize the well-being and stability of the collective as opposed to the rights of the individual.<sup>178</sup> Another argument used by China is that Chinese society prioritizes social and economic rights over civil and political rights.<sup>179</sup> China has used these arguments, along with their political and economic clout, to thwart attempts by foreign courts to

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<sup>174</sup> See *supra* discussion at 25.

<sup>175</sup> See *supra* discussion at 24-25.

<sup>176</sup> See *supra* discussion at 21-26.

<sup>177</sup> See *supra* note 137.

<sup>178</sup> See *Building harmonious society crucial for China's progress: Hu* (June, 27, 2005), [http://english.peopledaily.com.cn/200506/27/eng20050627\\_192495.html](http://english.peopledaily.com.cn/200506/27/eng20050627_192495.html).

<sup>179</sup> See *supra* note 137.

exercise universal jurisdiction over its domestic human rights policy.<sup>180</sup> The result of China's repeated success in defeating these universal jurisdiction actions is a weakened perception of universal jurisdiction's legitimacy and practicality.

Additionally, the failure of the international community to effectively use universal jurisdiction to enforce human rights laws in China has resulted in a shift to more subtle and less formal alternatives.<sup>181</sup> China has publicly expressed a desire to make progress with the international community when dealing with universal jurisdiction,<sup>182</sup> but China's characteristic of being both a growing superpower and a constant human rights violator has only magnified the existing problems with the universal jurisdiction doctrine.

With China acting as a catalyst, universal jurisdiction's legitimacy is being undermined and the foundational principles of the doctrine are being overlooked. Governments should not be able to escape responsibility for violating crimes against humanity, however, a court attempting to exercise jurisdiction over violations of universal jurisdiction crimes realistically has to consider the political and economic consequences of interference.<sup>183</sup> China's success in avoiding liability under universal jurisdiction actions, combined with China's rapid growth and habitual human rights violations, has increased the use of less intrusive alternatives and could drive the practice of universal jurisdiction to extinction.

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<sup>180</sup> *See id.* *See also supra* discussion at 24, 25.

<sup>181</sup> *See supra* discussion at 21 - 26.

<sup>182</sup> *See* U.N. GAOR, 67th Sess., 13th mtg. at 3-4, U.N. Doc. A/C.6/67/SR.13 (Dec. 24, 2012).

<sup>183</sup> *Id.*