ZHU Lijiang, *Dui Guonei Zhanzhengzui de Pubian Guanxia yu Guojifa* [*Universal Jurisdiction over War Crimes in Non-International Armed Conflicts and International Law*], Law Press, China, 2007, 8 + 464 pp., ISBN 978-7-5036-7766-3 (Paperback)

1. The above book was published by one of the most prestigious presses on law in China, i.e. Law Press, in December 2007. It is based on the author's doctoral dissertation, *Dui Guonei Zhanzhengzui de Pubian Guanxia Wenti Yanjiu* (*Universal Jurisdiction over War Crimes in Non-International Armed Conflicts by Individual States*), undertaken at the Peking University School of Law from 2003 to 2006. As the author acknowledges, part of the dissertation was written in the Peace Palace Library sponsored by The Hague Academy of International Law in the Doctoral Program from July to September 2004, and in the Raoul Wallenberg Institute of Human Rights and Humanitarian Law at Lund University in Sweden from September 2004 to October 2005. Part of this book has been, and will be, published in foreign journals of international law in English, including the *Netherlands International Law Review*[1] and in Chinese domestic journals of international law in Chinese.[2]

2. The book is not only the first monograph on the topic of universal jurisdiction over war crimes

1 ZHU Lijiang, The Chinese Universal Jurisdiction Clause: How Far Can It Go?, 52 *Netherlands ILR* (2005), 85–107.

2 ZHU Lijiang, Universal Jurisdiction *in Absentia* over Core International Crimes and International Law, 3 *Journal of Xi'an Politics Institute of the People's Liberation Army* (2007), 69–73.

in non-international armed conflicts in China, but also the first one in the world on this topic, though it was written in Chinese. It is also the only monograph on the more general topic of universal jurisdiction in China. The author examined and explored this topic very systematically, comprehensively and deeply in this book. Although the book focuses on universal jurisdiction over war crimes in non-international armed conflicts, many aspects of the conclusion in the book could be generalized to other core international crimes. The topic is a very hot one in international criminal law and international humanitarian law. It also involves other branches of international law and comparative law, including the rights of States, international human rights law, comparative criminal law and comparative criminal procedural law. It even involves the disciplines of international relations and politics. The author successfully focuses on this very specific topic, and presented the fruits of his research to his readers.

3. Apart from the Introduction and Conclusion, the book contains eight chapters. The analysis and conclusion were based on the materials available prior to March 2006. The author provides the definition of universal jurisdiction in his book. Whereas the academic debates on universal jurisdiction result from its definition *per se*, it is very important to give a definition of this term at the very beginning of the book. In addition, it is also very necessary to make clear the concept of scientific research even as a general rule. There are indeed considerable definitions of universal jurisdiction in the field of international legal theory. Some are based on the nature of the crimes, while others are based on the presence of the accused in the jurisdictional State or the law applicable to the crimes. Nevertheless, the common features of those definitions are that it would be impossible for the jurisdictional State to exercise criminal jurisdiction if it was based on personal, territorial or protective principles. Therefore, I agree with the author on the comments and analysis of those various definitions (pp. 11–12). However, in my own view, some ''definitions'' listed by the author do not actually define universal jurisdiction, but merely provide the conditions for the exercise of such kind of criminal jurisdiction, such as the presence of the accused in the territory of the custodial State, which is a common precondition for a State to exercise any form of criminal jurisdiction. Therefore, it should not have been included as one element of universal jurisdiction.

4. The author's definition of universal jurisdiction at the next step, namely, ''the jurisdiction exercised by a State over a criminal conduct, which is neither against its own citizens nor against its State interest, committed by a non-citizen outside its territory'' (p. 14), is precise. It does not only grasp the key words of the concept, namely, ''non-citizen'', ''outside its territory'' and ''State interest'', but also makes clear the controversial concept. The author used ''one State'' on purpose, rather than ''any State'' or ''every State'', to demonstrate his understanding of the subject of universal jurisdiction, namely ''the meaning of 'universal' refers to neither the subject nor the geographical scope of such a jurisdiction, but to the non-existence of a particular link between the jurisdictional State and the conduct'' (p. 16).

5. Two points have to be made on the definition of universal jurisdiction. First, the purposeful use of ''non-citizen'' by the author excludes the possibility of exercising universal jurisdiction over foreign States and groups. It is very necessary to make such an exclusion in terms of the research subject of this book, otherwise the research of universal jurisdiction over these two objects could not have been successful in this subject. Secondly, the author repeatedly stressed that universal jurisdiction is one form of the criminal jurisdictions of State. This is also very necessary, since there has been extensive research on civil universal jurisdiction of State.

6. The second chapter is on the research of war crimes in non-international armed conflicts. The author initially recalled international law and practice on war crimes prior to the 1990s, and then presented a developmental route of war crimes in non-international armed conflicts by introducing the relevant practice of the International Criminal Tribunal for Former Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR), the Draft Code of Crimes against the Peace and Security of Mankind and the Rome Statute of the International Criminal Court. The main content of this chapter is the

concept of war crimes in non-international armed conflicts and their elements. Chapters III and IV form the core of the book, which mainly discusses universal jurisdiction over war crimes in non-international armed conflicts in conventional and customary international law. Comparing the length of the two chapters, the author apparently put emphasis on the latter, namely customary international law, since the part on conventional international law only occupies 20 pages, while the part on customary international law occupies 170 pages. Such an arrangement is purely due to the fact that there are only a few conventions providing universal jurisdiction over war crimes in non-international armed conflicts. Only one international convention, namely the 1999 Second Protocol to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, contains such a provision. Nevertheless, the Second Protocol came into force as late as 2004, and only 46 States have been parties to it as of October 2007. ''Therefore, the issue of the legal status of universal jurisdiction over war crimes in non-international armed conflicts in international law basically depends on customary international law'' (p. 113).

7. However, it is not an easy task to prove the existence of such a customary rule. The author initially examined State practice of more than 26 representative States, including China, and then made summaries and analysis from the perspectives of universal jurisdiction and war crimes in non-international armed conflicts, respectively. With regard to universal jurisdiction, the result of the examination demonstrates that ''there are some kinds of universal jurisdiction provisions in all those States'', though the categories of universal jurisdiction provisions vary (p. 230).

8. With regard to war crimes in non-international armed conflicts, the author's analysis demonstrates that there are huge varieties in the legislative and judicial practices of those States. However, the general situation is that there is no provision for universal jurisdiction over war crimes in non-international armed conflicts in the majority of States. The author is of the opinion that ''there must be three preconditions at the same time to test whether a State is capable of exercising universal jurisdiction over war crimes in non-international armed conflicts: first, there must be a universal jurisdiction provision in the criminal law of that State; secondly, there must be provisions of war crimes in non-international armed conflicts in the criminal law of that State; and finally, the universal jurisdiction provision in the criminal law of that State must be applicable to the provisions of war crimes in non-international armed conflicts in the criminal law of that State'' (p. 217). According to the author's analysis, only 9 of those 26 States meet such preconditions. Could a customary rule on universal jurisdiction over war crimes in non-international armed conflicts be presumed to have been crystallized? The answer is definitely not. The author further examined the judicial practice of the International Court of Justice (ICJ) and the ICTY, the resolutions of other main bodies of the UN, as well as the reports of the non-governmental organizations and the teachings of publicists. The author came to the conclusion that ''at the present stage, there has been no general customary rule authorizing any State to exercise universal jurisdiction over war crimes in non-international armed conflicts. However, the trend is that just such a rule is emerging; in particular in the case where the suspect is present in the jurisdictional State'' (p. 274).

9. Chapters V–VII contain a discussion on international legal issues and on theoretical foundations regarding universal jurisdiction over war crimes in non-international armed conflicts, including *jus cogens* in international law, obligations *erga omnes* (Chapter V) and the prohibitive norms of international law (Chapter VI). The author holds unique opinions on *jus cogens* in international law and obligations *erga omnes*, in particular, the sources of *jus cogens*. He argues that they neither come from conventional international law nor from customary international law or general principles of law, because he agrees that they are norms *sui generis*. However, what is the source of such norms *sui generis*? The author seems not to provide a clear answer. In the chapter on universal jurisdiction over war crimes in non-international armed conflicts and the prohibitive norms, the author analysed the relationship between universal

jurisdiction over war crimes in non-international armed conflicts and the integrity of international law, the equality of state sovereignty, non-intervention of internal affairs and the territorial sovereignty of other States. His conclusion is that "since the war crimes in non-international armed conflicts have been international crimes in customary law . . . war crimes in non-international armed conflicts are not internal affairs of a State, but matters which concern the international community as a whole" (p. 369). In the extreme cases, namely, in the case that no relevant States and international tribunals claim jurisdiction, "the jurisdiction exercised by a State shall not be considered as a violation of the State where the war crimes were committed". Therefore, such kind of jurisdiction "is not a kind of 'intervention'; on the contrary, it is even required by international law" (p. 370). In Chapter VII, the author specially discussed the theoretical foundations of universal jurisdiction over war crimes in non-international armed conflicts. Although it was made from the perspective of *lex ferenda*, the description of the theoretical debates on universal jurisdiction over core international crimes, in which war crimes in non-international armed conflicts are simply a part, is comprehensive, and the summaries and analysis of various opinions from the perspectives of law and politics are proper and thorough. For instance, the author summarized "Ten Anxieties" which are against universal jurisdiction, and rebutted each one by one (pp. 372–382). He also summarized "Three Schools" for universal jurisdiction, namely the natural law school, the positive law school and the functionalism or pragmatism school, and made comments on them one by one. The author apparently neither opposes universal jurisdiction, nor agrees with all those schools in favour of it. Nevertheless, he came to the conclusion that "at present, what could be most robustly used to justify universal jurisdiction is the functionalism or pragmatism school" (p. 398).

10. The readers should, in particular, take Chapter VIII seriously, because the author has made some recommendations to the international law community, based on the study of previous chapters. They include: first, the jurisdictional State should respect the immunity from jurisdiction enjoyed by some individuals conferred by international law, such as the incumbent Head of State, Head of Government, Foreign Ministers and diplomats; secondly, the suspect must have been present in the territory of the jurisdictional State, namely universal jurisdiction *in presentia*; thirdly, universal jurisdiction could only be exercised as a last resort in order to prevent impunity, namely, "only when the territorial State, the State of the suspect's or victims' citizenship, or international tribunals are unable, or unwilling to exercise jurisdiction, can universal jurisdiction by a State be considered" (p. 407); fourthly, the jurisdiction State *per se* should have a high standard for human rights protection, in particular the protection of the accused in the criminal proceedings; finally, the jurisdictional State should mutually communicate with other relevant States. The author further suggested that a special convention on universal jurisdiction shall be drafted and adopted; the 1977 Additional Protocol II to the four Geneva Conventions should be amended; the UN General Assembly should adopt a resolution on universal jurisdiction; the ICJ should express its legal opinion on this issue when the opportunity is available; every State should become a party to the Rome Statute; and every State should keep its national criminal law consistent with international law. These proposals are raised by the author on the basis of his several years' worth of careful study. They are very valuable to develop universal jurisdiction over core international crimes in conventional and customary international law, not only for the reference of those working in international society, but also for those working in practical works on this subject.

11. Finally, I would like to comment on the whole monograph, which is not necessarily correct, in order to share with the readers. First, I think this is an academic monograph covering multiple disciplines and many branches of international law, and the quality is considerably high. The author's discussion could be conducted in the same level with the contemporary publicists in international law, and make great contributions to the promotion of international law, in particular international humanitarian law and international criminal law. If it could be translated into English, it would have greater influence.

12. Secondly, I think there are some problems in this book, and hope the author will take them into consideration when he decides to translate it into English or re-print it. For instance, the margin of conventional international law in Chapter III is disproportional to that of customary international law in Chapter IV in terms of the structure of the book, and it would be better to merge these two chapters into one in the future. For another instance, in terms of the logic of the book, the author pointed out, in Chapter IV, that "at the present stage, there has not been any general customary rule authorizing any State to exercise universal jurisdiction over war crimes in non-international armed conflicts" (p. 274). In other words, there is no such customary rule in international law. There is only one international convention, namely the 1999 Second Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict, which came into force in 2004 and has only 46 State parties at present. Therefore, the universal jurisdiction which is touched upon by the book is simply "an emerging customary rule" (Section V of Chapter IV). However, the author discussed the relationship between universal jurisdiction over war crimes in non-international armed conflicts and international *jus cogens*, obligations *erga omnes*, the prohibitive norms of international law and the theoretical foundations of universal jurisdiction in the next three chapters. It has to be pointed out that the author's discussion on these relations is not limited to war crimes in non-international armed conflicts, but is extended to all core international crimes. I personally feel that there is no very close logical relationship between the subject of the book and these issues, because we should always keep in mind that universal jurisdiction over war crimes in non-international armed conflicts is, after all, simply "an emerging customary rule" in international law.

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