NOTES

PROSECUTING NAZI WAR CRIMINALS IN THE UNITED STATES: THE TIME IN WHICH TO PUNISH THEM IS RUNNING OUT

If we believe, as we must believe, that no one anywhere shall be allowed to perpetrate another Holocaust, we cannot content ourselves with promises that we will take stern action the next time, whilst we turn our backs on the criminals who are demonstrably guilty.

Allan A. Ryan, Jr., Director of the Justice Department's Office of Special Investigations, 1980-83.

I. INTRODUCTION

The time in which to punish Nazi war criminals is running out. This urgency emerges out of the growth of worldwide neo-Nazi movements, out of the recent deaths of Nazi war criminals, Rudolf Hess and Josef Mengele, and out of the public interest to punish these criminals for committing crimes against humanity. The need to punish Nazi war criminals can be compared to the need to punish terrorists. For example, in response to a rise in terrorism, the United States recently enacted legislation conferring jurisdiction upon its courts to prosecute terrorists committing acts of terrorism abroad that injure U.S. citizens. There is a similar need for the

2. See N.Y. Times, Sept. 17, 1987, at 12, col. 1. During a radio interview, Jean-Marie LePen, leader of the French right wing political group, the National Front, and presidential candidate, described Nazi gas chambers as a "minor point" in the history of World War II. This statement caused an uproar amongst French socialists, communists, and other political groups who fear a neo-Nazi revival in France with the growth of support for LePen. See id.
3. See N.Y. Times, Aug. 18, 1987, at 1, col. 1. Rudolph Hess was tried and convicted by the International Military Tribunal at Nuremberg in 1946. He was sentenced to life imprisonment at Spandau in West Berlin. After four decades at the prison, Hess died on August 17, 1987 at age 93, where rumor circulated that he probably committed suicide. Id.
4. See G. Posner & J. Ware, MENGELE, THE COMPLETE STORY (1986); see infra note 12.
United States to assert jurisdiction over the prosecution of Nazi war criminals who, in essence, committed terrorist acts against subsequently nationalized U.S. citizens.

Traditionally, the U.S. government has based assertions of jurisdiction on nationality or territoriality principles. If the criminal was not a U.S. citizen at the time of the crime, the U.S. government generally has refused to exercise jurisdiction under the nationality principle. Moreover, if the crime was committed outside U.S. territory, the U.S. government generally has refused to exercise jurisdiction under the territoriality principle. Accordingly, the United States never has conferred jurisdiction upon its federal courts to prosecute Nazi war criminals. Instead, the United States has chosen to waive all claims of jurisdiction in favor of nations recognizing jurisdiction to prosecute and punish the alleged criminal. Waiving jurisdiction, in effect, allows Nazi war criminals to go free, especially if no other nation chooses to prosecute. The purpose of this Note is to demonstrate that the United States can and must assert jurisdiction over Nazi war criminals in order to punish them properly.

In Part II, this Note describes the five principles of jurisdiction: nationality, territoriality, the protective principle, passive personality and universality, and also explains why the United States traditionally has not recognized the last principle, which would confer jurisdiction over Nazi war criminals.

In Part III, this Note compares U.S. jurisdiction as it is today with that of Germany and Israel, the former claiming national and territorial jurisdiction and the latter claiming universal jurisdiction over Nazi war criminals. This Note also compares U.S. jurisdiction

7. See infra notes 41-73 and accompanying text.
8. See infra note 42.
9. See RESTATEMENT (REVISED) OF FOREIGN RELATIONS LAWS OF THE UNITED STATES §402(1)(a) note 1 (Tent. Draft No. 6, 1985); see also RESTATEMENT (REVISED) OF FOREIGN RELATIONS LAWS OF THE UNITED STATES §403. [hereinafter REVISED RESTATEMENT]. The United States follows the territoriality principle. Id. at §402(1).
10. The United States "[h]as been reluctant to . . . recognize the possibility that its courts may exercise jurisdiction over international crimes." M. BASSIOUNI, INTERNATIONAL EXTRADITION: UNITED STATES LAW AND PRACTICE ch. 7, §7.4 (1983).
11. See infra notes 157-177 and accompanying text. The United States gladly accepts extradition requests for alleged Nazi war criminals from countries willing to exert jurisdiction over the criminals. See id.
12. See supra note 4. For example, the war crimes committed by Nazi doctor Josef Mengele, known as the "Angel of Death," went unpunished. Not until 1984 did the international community actively pursue Mengele's apprehension. The manhunt came too late to serve justice. Mengele died sometime in 1985, before being caught and sentenced for the atrocities he committed at Auschwitz. Id.
with that of Canada, a country facing similar circumstances regarding the prosecution of Nazi war criminals.

In Part IV, this Note discusses the trend in the United States to exercise jurisdiction over terrorists, although the terrorists are foreign nationals and have not physically committed any crimes within U.S. territory. This Note analogizes Nazi war crimes to terrorism, especially as pertaining to the universality and passive personality principles. It explains why it is proper for the United States to exercise jurisdiction over Nazi war criminals through an extension of the universality doctrine.

Finally, in Part V, this Note calls for the United States to pass legislation or to amend its current immigration and criminal laws restricting the bases of jurisdiction in order to allow the U.S. courts to prosecute and sentence Nazi war criminals. This proposal is patterned after the recent extension of jurisdiction over terrorists, and would greatly assist the worldwide effort to punish Nazi war criminals. 13

II. INTERNATIONAL PRINCIPLES OF CRIMINAL JURISDICTION

A. Overview

There are five principles of criminal jurisdiction in international law. 14 These principles are territoriality, nationality, the protective principle, passive personality and universality. 15 Each principle can be exercised in order to prosecute Nazi war criminals. 16

13. An example of a worldwide effort to punish Nazi war criminals is the belated manhunt of Josef Mengele. The search was led by the United States Department of Justice (Army Task Force to Hunt Mengele, N.Y. Times, Feb. 21, 1985, at 5, col. 5), with the help of West Germany, Israel (Three Nations Joining to Hunt Mengele, N.Y. Times, May 11, 1985, at 1, col. 1), and Paraguay (Paraguay is Said to Promise Manhunt for a Nazi Fugitive, N.Y. Times, Nov. 24, 1984, at 7, col. 2).


16. A war criminal is someone who has committed war crimes and/or crimes against humanity as defined by international law:

(b) WAR CRIMES: namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labor or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity;

(c) CRIMES AGAINST HUMANITY: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian popula-
The territoriality principle recognizes that states are competent to punish crimes committed within their territory.\(^{17}\) Underlying territorial jurisdiction is the notion that every state retains physical power as a necessary and sufficient condition for the exercise of jurisdiction over a defendant or his property.\(^{18}\) For example, a state has physical power over a defendant by virtue of his actions committed within that state or by virtue of his property located within that state, thereby justifying an exercise of territorial jurisdiction.\(^{19}\) This principle is the most fundamental and is regarded to be of primary worldwide importance.\(^{20}\)

By virtue of the second, the nationality principle, a state can prosecute its national,\(^{21}\) the alleged Nazi war criminal, regardless of where the crime was committed.\(^{22}\) For example, Germany could assert jurisdiction over any of its nationals accused of Nazi war crimes, because the majority of Nazi war criminals were German nationals.\(^{23}\) Underlying the nationality principle is the assumption
that a state has almost unlimited legal control over its nationals, which is why this principle is so widely accepted.24

Under the third, the protective principle, a state has jurisdiction with respect to a crime committed against the security, integrity or independence of its government, although committed extraterritorially.25 For example, the United States recently asserted jurisdiction over a foreign national on the ground that drug trafficking constituted a threat to U.S. security.26 The protective principle is recognized in the United States27 and also in international law.28 This principle, however, is often subject to abuse by states which stretch the concept of what constitutes a threat to their security in order to establish jurisdiction29 and, therefore, it is ranked as a basis for secondary, or auxiliary jurisdiction.30

The fourth, the passive personality principle, permits states whose nationals are victims of crimes, to assume jurisdiction regardless of where the crime occurred.31 Although it has been used to exercise jurisdiction over extraterritorial crimes,32 the passive personality principle has been more strongly contested than any other type of auxiliary competence.33 Accordingly, it has been rejected by the United States and other countries as the sole basis for establishing jurisdiction.34

24. The nationality principle finds expression in many national codes. For a complete listing, see Draft Convention, supra note 14, at 523-25.
25. See Draft Convention, supra note 14, at 543.
A State has jurisdiction with respect to any crime committed outside its territory by an alien against the security, territorial integrity or political independence of that State, provided that the act or omission which constitutes the crime was not committed in exercise of a liberty guaranteed the alien by the law of the place where it was committed. Id.
27. See Revised Restatement, supra note 9, at §402(3).
30. Draft Convention, supra note 14, at 445. Secondary, or auxiliary competence is defined as any type of jurisdiction other than national or territorial, which constitutes primary competence. See id.
31. Id.
33. See Draft Convention, supra note 14, at 579 (especially by the United States and Great Britain).
34. Id.; See B Mehrish, WAR CRIMES AND GENOCIDE: THE TRIALS OF PAKASTANI WAR CRIMINALS 16-19 (1972). It should be noted that the universality principle served as the basis of jurisdiction over Nazi war criminals at the Nuremberg Trials. The Nuremberg Tri-
The final principle of jurisdiction in international law, and perhaps the most important one with respect to the prosecution of war criminals, is the universality principle[^35], which determines jurisdiction by reference to the custody of the criminal[^36]. Therein the sole basis of such jurisdiction is the presence of the criminal within the state assuming jurisdiction, regardless of the perpetrator's or victim's nationality[^37]. Under this principle, the punishment of Nazi war crimes could be undertaken by any one state on behalf of all other states. Under the universality principle, however, jurisdiction may be invoked only after the state with custody has surrendered the alien for prosecution to other states and that offer has gone unaccepted[^38]. The universality principle is widely[^39], but by no means universally, accepted as a basis of auxiliary competence[^40].

**B. Principles Recognized by the United States**

The United States actively recognizes the jurisdictional principles of territoriality[^41], nationality[^42], and the protective principle[^43]. Traditionally, the United States recognized only the territorial principle of jurisdiction as set forth by the Supreme Court in 1909. In *American Banana Co. v. United Fruit Co.*,[^44] Justice Holmes stated the general rule that the character of an act as unlawful must be determined by the law of the country where it is committed[^45]. Accordingly, the perpetrator must be tried by the state in which he committed the crime to avoid interference with

[^35]: Draft Convention, supra note 14, at 573.
[^36]: Id.
[^37]: Id.
[^38]: See Draft Convention, supra note 14, at 582.
[^39]: The universality principle finds expression in many national codes. For a complete listing, see Draft Convention, supra note 14, at 574-76.
[^40]: Id. at 445. See also, Draft Convention, supra note 30 (for an explanation of “auxiliary competence”).
[^41]: The United States recognizes the territoriality principle of jurisdiction. See Revised Restatement, supra note 9, at §402(1)(a).
[^42]: See Revised Restatement, supra note 9, at §402(2).
[^45]: Id. at 347.
the authority of another sovereign. This rule remained the foremost principle of jurisdiction in the United States for over thirty years.

Over the last several decades, however, U.S. courts progressively have moved away from the narrow Holmesian principle of territorial jurisdiction. This trend suggests a more aggressive approach toward establishing jurisdiction and is evident in the cases decided since *American Banana,* which rendered *American Banana* virtually obsolete. For example, in *United States v. Aluminum Co. of America (ALCOA),* Judge Learned Hand stated that any state may hold a person liable for extraterritorial conduct having effects within its borders.

Similar to the movement away from purely territorial notions of jurisdiction, the movement away from quasi-in-rem proceedings, as a method of establishing jurisdiction over a defendant, has been replaced by a more practical emphasis on fairness. No longer will a court assert jurisdiction over a person solely because he happens to own property within that state. Instead, a court will look to the defendant's contacts with the state before approving an exercise of jurisdiction.

Originally, in *Pennoyer v. Neff,* Justice Field stated that the Oregon court lacked personal jurisdiction over the defendant, because he was neither domiciled in Oregon nor served with process there. The Supreme Court, however, held that the Oregon court could attach land owned by the defendant and located in Oregon, in order to enforce a personal judgment against him on an unrelated claim. The Supreme Court's use of quasi-in-rem jurisdiction, however, was later found to be unfair in light of due process

46. Id. at 355.
47. United States v. Aluminum Co. of America (ALCOA), 148 F.2d 416 (2d Cir. 1945). The current trend is toward expanding principles of jurisdiction.
49. Id. at 19.
50. Id. at 13.
51. ALCOA, 148 F.2d at 416.
52. Id. at 443.
56. Id.
57. Id. at 723. The Supreme Court found that the exercise of quasi-in-rem jurisdiction in no way infringed upon the sovereignty of the state in which Neff was domiciled. Id.
as set forth in *International Shoe Co. v. Washington.*

In *International Shoe,* 58 the Supreme Court held:

[d]ue process requires . . . that in order to subject a defendant to a judgment in personam, if he not be present within the territory of the forum, he [must] have certain minimum contacts within it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice'.

Not only did *International Shoe* expand the scope of jurisdiction, it changed the traditional concept of jurisdiction, as found in *Pennoyer,* from a narrow emphasis on territoriality to a more practical emphasis on fairness.

The trend of U.S. courts toward a more aggressive approach of extraterritorial jurisdiction, however, mainly has been exercised to prosecute antitrust cases concerning foreign commerce, 61 conspiracy cases, 62 and cases where fraud has been perpetrated abroad. 63 U.S. courts also take an aggressive role against actions concerning international terrorism committed against U.S. citizens. 64 All the above-mentioned crimes have occurred outside U.S. borders, but they have had a severe "effect" within, 65 which is why the United States has recognized jurisdiction to prosecute the perpetrators.

As for other methods, the United States traditionally has not recognized the principle of passive personality as the sole basis of

58. *International Shoe,* 326 U.S. at 310.
59. *Id.* at 316. The Supreme Court could have upheld jurisdiction, because the defendant was doing business in Washington. Instead, the Supreme Court destroyed the need to ground jurisdiction on territorial power absent the requisite minimum contacts. *Id.*
63. *See id.*
64. *See infra* notes 151-164 and accompanying text.
65. The "effect" within U.S. borders has been on U.S. citizens (for example, on family and friends of the U.S. victims injured abroad) and on U.S. policy (for example, the pressure of lobbyists in Congress calling for the United States to take action against extraterritorial crimes committed against U.S. citizens).
66. An example of the use of the "effects doctrine" is the *Cutting Case,* reprinted in 1887 Papers Relating To The Foreign Relations Of The United States 751 (1888). In *Cutting,* a Mexican court convicted an American journalist of libeling a Mexican citizen in a newspaper article printed in Texas. The Mexican court asserted jurisdiction under a Mexican long-arm statute which provided that "[p]enal offenses committed in a foreign country by . . . a foreigner against Mexicans, may be punished in the Republic." *Id.* at 856. Cutting was convicted by the Mexican court, because of the effect his libelous statement had on the plaintiff within Mexico. However, Cutting was later released under an order of the Mexican appellate court after the victim withdrew his complaint. *Id.*
Nazi War Criminals

jurisdiction,\(^{67}\) and generally considers the principle to be an anathema to U.S. federal law.\(^{68}\) The American repudiation of the passive personality principle is based upon the Restatement (Second) of Foreign Relations Law which provides that, "A State does not have the jurisdiction to prescribe a rule of law attaching legal consequences to conduct of an alien outside its territory merely on the ground that the conduct affects one of its nationals."\(^{69}\) Accordingly, the United States generally has refused to assert jurisdiction over extraterritorial crimes where the victim happened to be a U.S. national.\(^{70}\) Similarly, the U.S. government continues to protest assertions of jurisdiction by foreign courts over acts of U.S. nationals committed abroad.\(^{71}\)

The United States has been equally reluctant to assert jurisdiction under the universality principle.\(^{72}\) Instead of prosecuting and sentencing criminals residing in the United States who have committed extraterritorial crimes, the United States has regularly chosen to denaturalize, deport or extradite them to the country in which they committed the crime.\(^{73}\)

C. Conferring Jurisdiction Over Nazi War Criminals in the United States

Compliance with territoriality or nationality principles is not feasible in the case of Nazi war criminals, because Nazi war crimes were not committed within U.S. territory or by U.S. nationals. Nor is there an argument for the use of the protective principle, because Nazi war crimes were not committed against the security, territorial integrity or political independence of the United States. Furthermore, the passive personality principle is inapplicable, because the victims were not U.S. citizens at the time of the crimes. The most persuasive argument in favor of U.S. jurisdiction is under the universality principle, whereby the United States would have jurisdiction solely based on the presence of the alien within

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69. Restatement (Second) Of Foreign Relations Law Of The United States §30(2) comment e (1965).
70. See Blakesley, supra note 68, at 715.
71. See id. See also Cutting Case, reprinted in 1887 Papers Relating To The Foreign Relations of the United States 751, 856 (1888).
72. See infra notes 150-156 and accompanying text.
73. See infra notes 157-177 and accompanying text.
III. COMPARISON OF JURISDICTION: GERMANY, ISRAEL AND CANADA WITH THE UNITED STATES

The United States has yet to recognize the principle of universality which would confer jurisdiction over Nazi war criminals. Germany, Israel and Canada, on the other hand, have recognized jurisdiction over Nazi war criminals and have taken relatively active roles in prosecuting them.

A. Germany

Germany has territorial and national jurisdiction over Nazi war criminals, because many of the war crimes were committed on German soil and by German nationals. Therefore, Germany is perceived as having primary responsibility to prosecute and punish Nazi war criminals. With the flood of emigration from Germany following World War II, however, Germany would have to request the extradition of Nazi war criminals from the countries where the criminals have relocated. For the most part, the Federal Republic of Germany has failed to make many requests for the extradition of Nazi war criminals.

Germany is reluctant to seek the extradition of Nazi war criminals because many of the alleged criminals were non-German citizens at the time they committed their crimes. Furthermore, Germany claims that these non-Germans committed crimes outside the territory of Nazi Germany during World War II, although acting under the authority of the Nazi government. The Federal Republic, therefore, claims that it lacks the required jurisdiction to prosecute many Nazi war criminals. Despite its reluctance, the Federal Republic of Germany has attempted to prosecute Nazi war criminals who committed war crimes on German soil.

74. Draft Convention, supra note 14, at 573.
75. See supra notes 41-73 and accompanying text.
76. The terms “Federal Republic of Germany,” “West Germany” and “Germany” are used interchangeably herein.
77. See supra note 30. Nations possessing national and territorial jurisdiction over the alleged criminals are viewed as having primary responsibility to prosecute.
78. See infra notes 150-153 and accompanying text.
79. See Moeller, supra note 29, at 810. Only one individual has ever been extradited from the United States to West Germany. See infra note 86 and accompanying text.
80. See A. Ryan, supra note 1, at 8-14, 192-93, and 353-61.
81. See Moeller, supra note 29, at 811.
82. See id.
One attempt by Germany to punish Nazi war criminals occurred in 1973, when the Federal Republic requested the extradition of Hermine Braunsteiner Ryan from the United States pursuant to a 1930 treaty of extradition. Ryan, a naturalized American citizen at the time of the request, was being charged by Germany with murder committed while a guard at Maidanek, a concentration camp near the city of Lublin in Poland. Ryan, a native Austrian, was not a German citizen when she committed her crimes. Nonetheless, the Federal Republic asserted criminal jurisdiction over her and convicted her of committing war crimes during the Nazi regime.

Following Ryan, forty-eight cases were pending in German courts against Nazi war criminals during the mid-1970s. It was reported that German prosecutors were no longer interested in this work. They felt that the Nazi crimes committed during World War II were a thing of the past. Accordingly, approximately 3,000 Nazi war criminals who had not yet been brought to trial would escape prosecution in Germany when the statute of limitations on Nazi crimes expired in 1979.

Germany's waning commitment to prosecute Nazi war criminals is exemplified by Klaus Barbie. In 1945, the year after
the Allied armies forced the Nazi troops out of France, Barbie, an SS first lieutenant, fled to La Paz, Bolivia to escape prosecution for the crimes he committed in Lyon. 93 France filed a formal extradition request with the Bolivian government, charging Barbie with war crimes. 94 In 1974, the Supreme Court of Bolivia rejected France's request, because Bolivia had no formal extradition treaty with France. 95 Barbie, by then a Bolivian citizen, could not be extradited to France. 96

In 1982, the West German government was pressured to request Barbie's extradition from Bolivia. 97 Bolivia rejected the request for the same reason it had almost a decade earlier with France: the absence of an extradition treaty between Bolivia and West Germany. 98 On January 25, 1983, however, Barbie was arrested by the Bolivian government, expelled from that country, and sent directly to West Germany. 99 The Germans protested taking in Barbie under such short notice. 100 Although the West Germans filed the extradition request, they never expected to get Barbie, nor did they want him. 101

Germany refused to cooperate with any attempts to expel Barbie from Bolivia. 102 Germany, the country with primary responsibility to punish Barbie, failed to assert national jurisdiction. Accordingly, Barbie's crimes remained unpunished until recently, when France was finally able to obtain him. 103

93. See id. at 275.
94. Id.
95. See id. at 277.
96. Id.
97. Id. West Germany was chosen by the international community to request Barbie's extradition, because Germany had primary competence - national jurisdiction - to prosecute. See id.
98. See id.
99. See id. at 278. Bolivia finally agreed to extradite Barbie to Germany.
100. See id.
101. See id.
103. Bolivia took the chance of violating legal norms and made a new attempt at extradition with France. The gamble worked and the French government brought Barbie to stand trial in Lyon. Barbie was charged with "... eight counts of crimes against humanity; the liquidation of the Union Generals of Jews in France; the deportation of 650 French men, women and children on the last convoy to Auschwitz; the arrest and torture and execution of scores of Lyon's Jews; the deportation of fifty-two orphaned children from Isieux." See A. Ryan, supra note 1, at 279. If France had not fervently pursued the extradition, Barbie's war crimes probably would have gone unpunished.
Unlike Germany, Israel recognizes international criminal jurisdiction under the passive personality\textsuperscript{104} and universality\textsuperscript{105} principles. Israel, however, actively exercises the latter in order to prosecute Nazi war criminals.\textsuperscript{106}

In 1950, the Israeli Knesset enacted the Nazi and Nazi Collaborators (Punishment) Law.\textsuperscript{107} Under the Nazi Punishment Law, an Israeli court can impose the death penalty\textsuperscript{108} upon any person it convicts of committing crimes against the Jewish people,\textsuperscript{109} for war crimes\textsuperscript{110} and for crimes against humanity.\textsuperscript{111}

An example of the use of the Nazi Punishment Law was Adolph Eichmann's criminal trial in Israel.\textsuperscript{112} The Israeli Mossad fervently hunted down Eichmann, kidnapped him in Argentina and brought him to Israel to stand trial on fifteen counts of criminal acts under the Nazi Punishment Law.\textsuperscript{113} Thirteen months after

\textsuperscript{104} In 1972, Israel amended its criminal laws to provide:

2B. (a) The courts of Israel shall be competent to try in Israel under Israeli law a person who has committed abroad an act which would be an offense if it had been committed in Israel and which harmed or was intended to harm the life, person, health, freedom or property of a national or resident of Israel.


\textsuperscript{105} See Goldie, supra note 48, at 17-18.

\textsuperscript{106} See id. at 18.


\textsuperscript{108} See Moeller, supra note 29, at 855 n.393 (citing Law of August 1, 5710-1950 [1950] 4 Laws of the State of Israel No. 64, at 154, §1(a)(1)-(3)). The Nazi Punishment Law states:

A person who has committed one of the following offences-
1) did, during the period of the Nazi regime, in a hostile country, an act constituting a crime against the Jewish people;
2) did, during the period of the Nazi regime, in a hostile country, an act constituting a crime against humanity;
3) did, during the period of the second World War, in a hostile country, an act constituting a war crime;

is liable to the death penalty. Id. at §1(a)(1)-(3).

\textsuperscript{109} The definition of "crimes against the Jewish people" is similar to the definition of "genocide" defined in the Genocide Convention. See Convention on the Prevention and Punishment of the Crime of Genocide, art II(a)-(e), opened for signature Dec. 9, 1948, 78 U.N.T.S. 277 [hereinafter Genocide Convention].

\textsuperscript{110} The definition of "war crimes" is the same as that in the Charter of the International Military Tribunal, supra note 16.

\textsuperscript{111} The definition of "crimes against humanity" is the same as that in the Charter of the International Military Tribunal, supra note 16.


\textsuperscript{113} Moeller, supra note 29, at 855 n.397 and accompanying text (citing 36 I.L.R. at
the trial began, Eichmann was convicted and sentenced to death.114

The District Court of Jerusalem relied upon the univerality, passive personality, and protective principles to affirm Israel's exercise of extraterritorial jurisdiction in the Eichmann case.115 Although the Supreme Court of Israel agreed with the District Court's rationale,116 the former based the claim of jurisdiction solely upon the univerality principle.117

The Eichmann trial raised important legal issues;118 for example, Eichmann's abduction from Argentina to stand trial in Israel, the jurisdiction of Israeli courts, and the retroactivity of Israeli law.119 The District Court of Jerusalem resolved each of these issues based upon international and Israeli law and in light of public policy.120

The District Court refused to find the Mossad's abduction of Eichmann illegal.121 Instead, the Court relied on a general rule of international law which prohibits a criminal to use the method by which the forum has obtained him as a defense to his being tried in that state.122 The District Court went on to validate jurisdiction over Eichmann, once he was present in Israel.

Counsel for Eichmann objected to the jurisdiction of the Israeli court and its application of Israeli law on grounds of international law. Eichmann contended that his prosecution, after being kidnapped from Argentina and brought to stand trial in Israel, violated international law and exceeded the jurisdiction of the Israeli court.123 The District Court, however, rejected Eichmann's contention and held that jurisdiction to try the case was based on the Nazi Punishment Law,124 "a statutory law the provisions of which

235-53 (District Court Judgment)).

115. Moeller, supra note 29, at 856 n.402 and accompanying text.
116. Id. at n.403 and accompanying text. Jurisdiction over Eichmann's crimes could not be based upon the protective principle of jurisdiction, because Israel was not a nation at the time of Eichmann's crimes. Jurisdiction could not be based upon the passive personality, because none of the victims were Israeli nationals at the time of the crimes. Id. at n.405 and accompanying text.
117. Id. at n.404 and accompanying text.
119. Id. at 48-101.
121. Id. at 835.
122. Id.
123. Oliver, supra note 120, at 805.
are unequivocal."125 The District Court found no violation of international law in giving effect to the law of the Knesset.126

The District Court also rejected Eichmann's argument concerning the retroactivity of Israeli law. The Nazi Punishment Law, which was enacted in 1950 to punish those who had committed Nazi war crimes, covered a specified period which had ended five years prior to the enactment of the law.127 The District Court compared the retroactive application of the Nazi Punishment Law to the laws used to prosecute Nazi war criminals at Nuremberg: a compilation of universal principles of justice.128 Similarly, the District Court upheld the Nazi Punishment Law on grounds of universal jurisdiction, because "no principle of international law could have denied the new State [Israel] the natural power to put on trial all those killers of [her] people who fell into [her] hands."129

The Federal Republic of Germany protested against Eichmann's trial,130 based upon what it saw as the danger inherent in claims of universal jurisdiction.131 Most other countries found no problem with Israel's punishing "one of history's greatest persecutors of the laws."132

Another example of Israel's use of the Nazi Punishment Laws, as applied through the universality principle, is the trial of Ivan Demjanjuk.133 In 1983, Israel requested that the United States extradite Demjanjuk134 to Israel to stand trial for the atrocities he committed while a guard at Treblinka.135 According to the U.S.-

125. Oliver, supra note 120, at 807.
126. Id.
127. Id. at 832.
128. Id. "Many of the national courts now functioning in the liberated countries have been established recently, but no one has argued that they are not competent to try the cases that arose before their establishment. . . . No defendant can complain that he is being tried by a Court which did not exist when he committed the act." Id. (quoting Goodhart in The Legality of the Nuremberg Trial, JURID. REV. 8, (April 1946)).
129. Oliver, supra note 120, at 834.
130. Goldie, supra note 48, at 18.
131. Id.
133. See A. RYAN, supra note 1, at 94-141.
134. Id. at 102. In 1958, Demjanjuk and his wife became American citizens. Id.
Israeli extradition treaty, the United States agreed and Israel began a criminal trial for Demjanjuk's prosecution.

The examples of Eichmann and Demjanjuk are the most prominent cases in which Israel has taken an active role in prosecuting individuals who have harmed and tortured her nationals. Recognition of universal jurisdiction ensures Israel's rights to punish heinous crimes committed against her citizens. The effects of Nazi war crimes, however, are not unique to Israel. These abhorrent crimes afflicted mankind as a whole and, as violations of the law of nations, every nation has a legal obligation to punish the perpetrators.

C. Canada

Canada is yet another country that has acknowledged its obligation to prosecute Nazi war criminals. In September of 1987, Canada enacted a statute which confers jurisdiction upon its courts to prosecute every person who commits an act or omission outside of Canada that constitutes a war crime or a crime against humanity. The statute covers acts or omissions committed at a time in which "Canada could, in conformity with international law, exercise jurisdiction over the person with respect to the act or omission on the basis of the person's presence in Canada, [or] subsequent to the time of the act or omission the person is present in Canada." Thus, the statute bases jurisdiction upon the universality principle.

Like the universality principle, if someone has committed a

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138. N.Y. Times, Apr. 19, 1988, at 1, col. 1. An Israeli court convicted Demjanjuk of committing war crimes. An appeal of this judgment is currently pending.
139. The victims were not Israeli citizens at the time of the war crimes, because Israel did not become a state until 1948. The State of Israel's "right to punish" Nazi war criminals, however, is derived from:
[A] universal source (pertaining to the whole of mankind) which vests the right to prosecute and punish crimes of this order in every State within the family of nations; and a specific or national source which gives the victim nation the right to try any who assault their existence.
Oliver, supra note 120, at 828.
140. Id. at 808.
141. See id. at 811.
143. Id.
criminal act and that person is present in Canada, then such presence triggers jurisdiction in Canada so to allow prosecution of the offender.\textsuperscript{144} Moreover, the Canadian statute does not create retroactively any new crimes. Unless the offense was one under international or Canadian law when committed, it is not considered criminal at the time of prosecution.\textsuperscript{146} Such requirements comply with those under international and Canadian laws.

The purpose of the Canadian statute is to prevent Canada from becoming "a haven for those persons who have committed acts...which are rightly condemned throughout the civilized world."\textsuperscript{146} One parliamentarian commented that "[i]t is difficult to characterize Canada as a just society or civilized place without a strong policy to bring to justice those who have committed crimes which can be characterized as war crimes or crimes against humanity."\textsuperscript{147} In passing this legislation, the Canadians sent a strong message about its civilization. The message conveyed suggests that this type of conduct will not go unpunished.\textsuperscript{148}

Under international law, every nation has jurisdiction to prosecute war criminals in its custody regardless of the victim's nationality or of the place where the crime was committed.\textsuperscript{149} Accordingly, the United States is obligated to recognize universal jurisdiction and to prosecute Nazi war criminals, especially where, for some reason, the crime would otherwise go unpunished.

\textbf{D. The United States}

After World War II, the United States became the home to refugees, many of whom were imprisoned, tortured or otherwise abused by Nazi war criminals. Through U.S. immigration law, those refugees became citizens and nationals of the United States.\textsuperscript{150}

\begin{itemize}
  \item \textsuperscript{144} An Act to amend the Criminal Code, the Immigration Act, 1976 and the Citizenship Act, H.C. 33d Parl., 2d Sess. 1:35 (1987).
  \item \textsuperscript{145} Id. at 1:14. Prior to enacting the law, the House of Commons worried that the statute would not be in conformity with international law or Canadian law. \textit{Id.}
  \item \textsuperscript{146} 129 \textit{PARL. DEB., H.C.} (2d Sess.) 159 (1987).
  \item \textsuperscript{147} \textit{Id.}
  \item \textsuperscript{148} \textit{Id.} Mr. Nelson Riis commented, "Clearly after 42 years of inaction we owe it not only to the memories of those who have died but also to their families who have suffered in surviving. \textit{Id.}
  \item \textsuperscript{149} Cowles, \textit{Universality of Jurisdiction Over War Crimes}, 33 \textit{CALIF. L. REV. }177, 218 (1945). The author states the jurisdictional principle of universality is applicable to the punishment of war crimes. \textit{Id.}
  \item \textsuperscript{150} See The Immigration and Nationality Act of June 27, 1952, Pub. L. No. 82-414, 66
\end{itemize}
Nazi war criminals also fled Europe for the United States after World War II in order to escape prosecution and to facilitate changing their identities to survive unnoticed. Many Nazi war criminals found it easy to enter the United States, because of the flood of immigration into the country, especially with the enactment of the Displaced Persons Act.

With the large number of Nazi war criminals in the United States since World War II, the United States, like Canada, could establish jurisdiction over these criminals under the universality principle. The United States, however, has avoided exercising jurisdiction over Nazi war criminals by using alternative means to trying and sentencing the criminals in the United States.

1. Denaturalization, Deportation and Extradition as Alternatives to Prosecution of Nazi War Criminals

Almost all legal actions brought against Nazi war criminals in the United States are denaturalization proceedings. Denaturalization deprives the individual of citizenship and subjects him to deportation. Congress in 1978 amended the Immigration and Nationality Act to include Nazi war criminals as a class of excludable and deportable aliens.

151. A. Ryan, supra note 1, at 276.
152. Allan Ryan, Jr., investigator for the Justice Department's Office of Special Investigation commented: "How did Nazi war criminals come to the United States? We invited them in." Id. at 28.
154. See supra notes 142-149.
156. See infra notes 157-177 and accompanying text.
158. Id.
160. Id. The 1978 amendment subjects to deportation:
Any alien who during the period beginning on March 23, 1933, and ending on May 8, 1945, under the direction of, or in association with:
(A) the Nazi government in Germany,
(B) any government in any area occupied by the military forces of the Nazi government of Germany,
Under the amendment, a U.S. district attorney must prove by clear and convincing evidence\textsuperscript{161} that the alien fits into one of the enumerated classes before an immigration judge can find him deportable.\textsuperscript{162} The alien, however, can appeal an adverse decision to the Board of Immigration Appeals\textsuperscript{163} as well as to the federal courts for further review.\textsuperscript{164}

Once the court finally determines that the alien is deportable, the alien may choose the country to which he is sent.\textsuperscript{165} If the alien makes no choice, he may be deported to the country of his birth, to the country from which he came or to any country that will take him.\textsuperscript{166} Deportation is complicated, because few countries want to take in Nazi war criminals.\textsuperscript{167} As such, the United States gladly grants requests for extradition in order to get rid of Nazi war criminals.\textsuperscript{168}

Extradition is a bilateral process. The United States requires a formal request for the return of a criminal by a nation with whom the United States has a valid treaty.\textsuperscript{169} For example, the United States granted the extradition of Ivan Demjanjuk upon Israel’s request pursuant to the Convention on Extradition Between the Government of the United States and the Government of the State of Israel.\textsuperscript{170}

(C) any government established with the assistance or cooperation of the Nazi government of Germany, or

(D) any government which was an ally of the Nazi government of Germany, ordered, incited assisted, or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion.


168. See supra notes 134-138 and accompanying text.


Although denaturalization and deportation represent the extent of prosecution of Nazi war criminals under current U.S. immigration\textsuperscript{171} and criminal\textsuperscript{172} laws, these two processes serve only to remove the criminals from the United States, but do not ensure proper punishment. Extradition is the other, yet less frequently available, alternative.\textsuperscript{173} All three processes are tedious,\textsuperscript{174} often unreliable\textsuperscript{175} and exemplify the fact that immigration law should not be used as a substitute for the criminal justice system.\textsuperscript{176} Accordingly, the United States must extend the trend of asserting jurisdiction over other crimes committed abroad\textsuperscript{177} to Nazi war crimes.

IV. THE GROWTH OF EXTRATERRITORIAL JURISDICTION OVER TERRORISTS EXTENDED TO CONFER U.S. JURISDICTION OVER NAZI WAR CRIMINALS

A. Growth of Jurisdiction Over Terrorists

The escalation of international terrorism during the past few years has led the United States to actively pursue extraterritorial jurisdiction in order to protect its citizens from acts of terrorism committed abroad.\textsuperscript{178} The Omnibus Diplomatic Security and Anti-terrorism Act of 1986 ("Anti-terrorism Act") expands U.S. jurisdiction over foreign nationals committing acts of international terrorism against U.S. citizens.\textsuperscript{179} The Anti-terrorism Act bases jurisdic-

\textsuperscript{171} See Note, Nazi War Criminals in the United States, supra note 164, at 884.
\textsuperscript{173} See supra notes 168-170 and accompanying text.
\textsuperscript{174} For a detailed look at the tedious processes of denaturalization, deportation and extradition, see Note, Nazi War Criminals in the United States, supra note 164, at 872-892.
\textsuperscript{175} The denaturalization, deportation and extradition processes are unreliable, because they do not ensure that the Nazi war criminal will be prosecuted for his crimes. They simply serve to rid the United States of the problem.
\textsuperscript{176} Note, Nazi War Criminals in the United States, supra note 164, at 885.
\textsuperscript{177} See infra notes 178-199 and accompanying text.
\textsuperscript{178} See N.Y. Times, Jan.19, 1986, at 1, col. 4 (discusses rise in terrorism in 1985 and recent proposals to prevent terrorist attacks).
(a) HOMICIDE. - Whoever kills a national of the United States, while such national is outside the United States, shall - . . . be fined under this title or imprisoned for any term of years for life. . . Id. at §2331(a).
tion on the universality and passive personality principles, a significant departure from the traditional concepts of territoriality and nationality.\textsuperscript{180}

A prerequisite of exercising universal jurisdiction is that the crime committed is so heinous and of such universal magnitude that any nation obtaining personal jurisdiction over the accused may prosecute.\textsuperscript{181} Congress recognized that the Anti-terrorism Act should be based upon the universality principle, because universality would justify expansion of extraterritorial jurisdiction by implying that international terrorism should be treated as a crime of universal magnitude.\textsuperscript{182} The Anti-terrorism Act, however, is not based upon the universality principle, because terrorism has "not yet achieved sufficient intensity of interest to warrant recognition as a true basis for universal jurisdiction."\textsuperscript{183}

Unlike terrorism, the crimes of piracy,\textsuperscript{184} slave trading,\textsuperscript{185} hijacking or attacks on civil aircraft,\textsuperscript{186} genocide,\textsuperscript{187} and war crimes\textsuperscript{188} (emphasis added).


\textsuperscript{181} See Draft Convention, supra note 14.


\textsuperscript{183} Blakesley, supra note 68, at 719.


\textsuperscript{185} Id. at arts. 13, 22.


\textsuperscript{187} Genocide has been recognized as a universal crime, punishable by any state signatory to The Convention on the Prevention and Punishment of the Crime of Genocide [hereinafter Genocide Convention], Dec. 9, 1948, 78 U.N.T.S. 277. The United States ratified the Genocide Convention in October 1988. See Genocide Convention Implementation Act of 1987 (The Proxmire Act), Pub. L. No. 100-606, 1988 U.S. CODE CONG. & ADMIN. NEWS (101 Stat.) 4156-4166 (codified at 18 U.S.C. §§ 1091-1093 (1988)) [hereinafter Proxmire Act]. The Act makes genocide a "basic offense" punishable by (1) a fine of not more than $1,000,000 and imprisonment for life, and (2) a fine of not more than $1,000,000 or imprisonment for not more than twenty years, or both, depending upon the offense. Proxmire Act, 18 U.S.C. § 1091(a)-(b). Subsection 1091(d) sets forth that the circumstances required for the U.S. courts to exercise jurisdiction over the conduct proscribed by a basic offense. Such circumstances are where the offense is committed within the United States, or where the alleged offender is a national of the United States. Proxmire Act, 18 U.S.C. § 1091(d)(1)-(2). Thus,
have been acknowledged as of such universal interest and intensity that "international conventions have been aimed at their elimination." There is a trend to recognize terrorism as a crime of universal magnitude, but the international community has not yet found the crime serious enough to justify the exercise of universal jurisdiction. As such, the Anti-terrorism Act alternatively bases jurisdiction on the passive personality principle.

The Anti-terrorism Act proscribes terrorism committed abroad by foreign nationals against U.S. citizens. Although U.S. courts traditionally rejected the use of passive personality jurisdiction, more recent decisions have acknowledged this principle as a valid basis for exercising jurisdiction. These cases support the proposition that, even without explicit congressional authority, courts can apply the passive personality principle to exercise extraterritorial jurisdiction. The growth of U.S. jurisdiction over extraterritorial crimes under the passive personality principle led to the Anti-terrorism Act's enactment.

The Anti-terrorism Act precedent is narrowly tailored to proscribe terrorism and has not been applied to other criminal acts

the Nazi war criminals who, as displaced persons, became nationalized U.S. citizens after World War II are subject to criminal liability under U.S. law.

188. See generally, In re Yamashita, 327 U.S. 1 (1945) (War crimes are punishable in the United States).


192. Id.

193. See supra notes 41-73 and accompanying text.


195. For cases that assert that United States can exercise jurisdiction under any of the principles of jurisdiction, including the passive personality, see United States v. Smith, 680 F.2d 255, 257 (1st Cir. 1982), cert. denied, 459 U.S. 1110 (1983); see United States v. Rodriguez, 182 F. Supp. 479 (S.D. Cal. 1960), aff'd in part sub nom. Rocha v. United States, 288 F.2d 545 (9th Cir. 1961), cert. denied, 366 U.S. 948 (1961); but see United States v. Columbia-Colella, 604 F.2d 356 (5th Cir. 1979).

196. For a detailed look at the growth of extraterritorial jurisdiction based on the passive personality, see Donnelly, supra note 190, at 616-619.

committed abroad. This statute, however, is proof that "... [t]he expansion of extraterritorial jurisdiction is justifiable within the framework of existing United States and international law." There is no reason why this precedent cannot be applied to base U.S. jurisdiction over Nazi war criminals.

B. Expanded Jurisdictional Principles Vis-a-Vis Terrorists Extended to Nazi War Criminals

The United States has come a long way toward expanding jurisdiction since the days of American Banana, especially with the enactment of the Anti-terrorism Act. No longer are the principles of territoriality and nationality the limits of jurisdictional reach by the U.S. courts. Courts will actively assert any of the five principles of jurisdiction in order to bring terrorists to justice. This growth of extraterritorial jurisdiction must similarly be extended to confer jurisdiction over Nazi war criminals.

The United States does not assert jurisdiction over Nazi war criminals because the crimes did not occur within U.S. territory, yet ironically it will prosecute terrorists who commit extraterritorial crimes. The different characteristics of terrorists and Nazi war criminals should not account for the different treatment by the United States.

Many terrorists are foreign nationals who have committed acts of terrorism abroad against U.S. citizens. All Nazi war criminals, on the other hand, were foreign nationals who committed war crimes abroad against non-U.S. citizens. The basic difference is, therefore, the victim. With terrorists, the victim was, at the time of the crime, a U.S. citizen. The U.S. government is quick to assert jurisdiction over acts of violence against its citizens, because the

199. Donnelly, supra note 190, at 611.
200. See supra notes 44-47 and accompanying text.
202. See supra notes 178-199 and accompanying text.
203. See supra notes 14-40 and accompanying text.
government has a primary interest in the welfare of its citizens. With Nazi war criminals, the victim was, at the time of the crime, a non-U.S. citizen. The U.S. government, therefore, has a secondary interest in the victim's welfare. Accordingly, the United States leaves punishment to states with primary responsibility. Unfortunately, the states whose nationals were persecuted have not consistently asserted jurisdiction over the prosecution of Nazi war criminals.

Terrorists and Nazi war criminals should not be treated differently due to the status of their victims, because none of the five principles of jurisdiction are based solely on the victim's nationality. In actuality, terrorists and Nazi war criminals are similar. Both are foreign nationals who have committed violent acts outside U.S. territory and and therefore they must be treated the same.

The most common characteristic of terrorists and Nazi war criminals is the violent extraterritorial crimes they have committed. For example, terrorists commit acts of terrorism. Although there has been difficulty in actually defining terrorism, the Foreign Intelligence Surveillance Act defines international terrorism as "... violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or any State." Moreover, the only limit the Anti-terrorism Act puts on the definition of terrorism is that it does not include normal street crimes or barroom brawls. Either definition of terrorism is, therefore, broad enough to encompass Nazi war crimes.

205. All of the victims of the Holocaust were East and West Europeans.
206. The primary interest is of the states whose nationals, at the time of the crimes, were persecuted.
207. See Moeller, supra note 29, at 839. See, e.g., In re Valerian Trifa, No. a 7-819-396 (Imm. Ct., Detroit, Mich., Oct. 4, 1982), in which the United States obtained a deportation order for Trifa. Nevertheless, the United States tried for over one year to find a state willing to accept him, because Rumania, the country of his birth, refused.
208. See supra notes 14-40 and accompanying text.
209. See supra note 197.
Nazi war crimes were not ordinary crimes. Nazi war crimes were violent acts dangerous to human life. They were acts in violation of the criminal laws of the United States and of other states. It is arguable that the definition of war crimes encompasses terrorism. The U.S. government, however, would argue that the distinction between crime and terrorism is that the former is motivated by self-interest and the latter seeks to effect political change. This distinction is not dispositive, because terrorism is a crime which can both stem from self-interest and seek to result in political change. Thus, this distinction by definition must not be used by the United States as an excuse from prosecuting Nazi war criminals.

While there are differences between Nazi war criminals and terrorists, the similarities are compelling. Moreover, there is room within the broad definition of terrorism proscribed by the Anti-terrorism Act to include Nazi war crimes as extraterritorial offenses punishable by the United States. The U.S. Congress can thereby pattern new legislation after the Anti-terrorism Act, explicitly conferring jurisdiction on the federal courts over Nazi war criminals.

Even if Congress refuses to extend the universality principle as ultra vires U.S. law, this principle is still applicable, because crimes against humanity are similar to the old crimes of piracy and he who commits such crimes becomes like the pirate in international law. Piracy is the exception to the territorial principle which, in the absence of an international penal code, would remain the primary legal principle for responsibility in trying Nazi war criminals. This principle would confer U.S. jurisdiction to prosecute and punish Nazi war criminals, although the crime was committed outside U.S. territory. The prosecution of Nazi war criminals demands immediate attention and the United States must assert jurisdiction over them if its resolve to preserve justice is genuine.

215. See supra note 16 for the definition of “war crimes.”
216. See Donnelly, supra note 190, at 613.
217. See supra notes 205-216 and accompanying text.
218. See supra note 179 for the broad definition of terrorism punishable by the Anti-terrorism Act.
220. See Draft Convention, supra note 14, at 563.
C. U.S. Legal and Moral Obligations for Prosecuting Nazi War Criminals

Legally, the United States has a duty under international law to punish Nazi war criminals. As a signatory to the London Agreement\(^\text{221}\) and a member of the International Military Tribunal ("Tribunal"),\(^\text{222}\) the United States is obligated to assist in trying and punishing the major war criminals of the European Axis.\(^\text{223}\) Under the London Agreement, the United States was required either to extradite the Nazi war criminal to stand trial in the state recognizing jurisdiction or to deliver the criminal to the Tribunal at Nuremberg.\(^\text{224}\) Although the Tribunal is now defunct,\(^\text{225}\) the U.S. government still views the London Agreement as a binding international instrument.\(^\text{226}\)

In the absence of the Tribunal - as a supranational court in which to prosecute Nazi war criminals - the alternative available to the United States under the London Agreement is extradition. In the absence of a state requesting the criminal’s extradition, the U.S. duty, under customary international law - pursuant to the maxim *aut dedere aut judicare* - is to place the criminal on trial under its own law.\(^\text{227}\) Thus, the United States is legally obligated to prosecute Nazi war criminals where the alternative is setting the criminal free.

The United States is also morally obligated to punish Nazi war criminals. Nazi war crimes are not unique to any country, but are, in fact, violations of the laws of nations.\(^\text{228}\) "It is therefore the moral duty of every sovereign state to...enforce the natural right to punish, possessed by the victims of the crime whoever they may

\(^{221}\) See Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, Aug. 8, 1945, 59 Stat. 1544, E.A.S. No. 472, 82 U.N.T.S. 279 [hereinafter London Agreement]. The London Agreement was signed by the United States, France, Great Britain, and the Soviet Union as a formal pledge "...to deliver Nazi war criminals to a swift and sobering justice." Note, supra note 164, at 858.


\(^{223}\) See Moeller, supra note 29, at 799.

\(^{224}\) Id. at 802; see also London Agreement, 59 Stat. 1544, E.A.S. No. 472, 82 U.N.T.S. 279.

\(^{225}\) See Moeller, supra note 29, at 799. The Tribunal disbanded on Oct. 1, 1946. See Note, supra note 157, at 858.


\(^{228}\) Oliver, supra note 120, at 812.
be, against criminals whose acts have ‘violated in extreme form the law of nature or the law of nations.’” 229 Thus, the United States must enforce its citizens’ 230 rights to bring the criminals to sobering justice. The moral obligation of the United States also has roots in the Genocide Convention.

The Genocide Convention 231 affirmed that genocide 232 is a crime under international law, and invited the signatories to enact the necessary legislation for prevention and punishment of the crime. 233 The Genocide Convention codifies a moral re-awakening of an acknowledgment that every state is obligated under international law to use all necessary measures to bring the Nazi criminals responsible for World War II atrocities to justice. 234

The member states of the Genocide Convention, therefore, made a moral commitment by signing the Convention. The United States ratified the Convention in 1988. 235 The U.S. moral obligation to preventing and punishing such a heinous and universal crime certainly is sincere.

V. CONCLUSION

The United States does not recognize the universality principle that would confer jurisdiction over Nazi war criminals. Current U.S. immigration law limits its bases of jurisdiction over foreign nationals committing extraterritorial crimes. 236 Without the United States’ active and effective participation in the search for and prosecution of Nazi war criminals, most of those crimes will continue to go unpunished.

229. Id. at 810 (emphasis added).
230. See supra notes 150-156 and accompanying text for a discussion of the victims of Nazi war crimes and the perpetrators who emigrated to the United States following World War II and are now naturalized citizens.
231. Oliver, supra note 120, at 810. The United Nations General Assembly affirmed, invited, and recommended these goals in its resolution to prevent and punish the crime of genocide. See id. at 813. See also Genocide Convention, Dec. 9, 1948, 78 U.N.T.S. 277.
232. Genocide is:
    . . . a denial of the right of existence of entire human groups, a denial which shocks the conscience of mankind and results in great losses to humanity, and which is contrary to moral law . . .
Oliver, supra note 120, at 813 (citing Resolution 96(I) of the General Assembly, Dec. 11, 1946).
233. See Oliver, supra note 120, at 815.
234. Moeller, supra note 29, at 797.
235. See supra note 187.
236. See supra note 150 and accompanying text. The Immigration and Nationality Act limits United States legal action over Nazi war criminals to denaturalization, deportation and extradition. See id.
The United States must pass legislation that affirmatively asserts jurisdiction over Nazi war criminals. For example, the Israeli statute asserting Israeli jurisdiction over crimes committed extra-territorially and by aliens against Israeli citizens,\(^{237}\) is used by Israel to confer jurisdiction over Nazi war criminals. And Canada - a country in many ways similar to the United States - recently has enacted a law allowing its courts to prosecute Nazi war criminals. Yet another example of an active commitment to redress harm to a nation’s citizens is the Anti-terrorism Act, discussed above.\(^{238}\) Likewise, Congress must not “close the chapter” on Nazi war crimes and allow the persecutors of the laws to go free.\(^{239}\)

The United States must prosecute and punish Nazi war criminals. There are legal bases for U.S. jurisdiction.\(^{240}\) There are also moral bases for jurisdiction.\(^{241}\) Perhaps the U.S. government has inhibitions, because it is a relatively political area of the law. Protecting and preserving its citizens’ faith in jurisprudence, however, must be a prime incentive to enact legislation to prosecute and punish the Nazi terrorists who have permanently affected the lives of many U.S. citizens.\(^{242}\)

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\(^{237}\) See supra note 108 and accompanying text for a discussion of the Nazi Punishment Laws.


\(^{239}\) N.Y. Times, Feb. 4, 1988, at A5, col. 1. For example, Australia, a nation possessing neither territorial nor national jurisdiction, is in the midst of amending its criminal code to include Nazi war crimes (committed abroad) as an offense punishable under Australian law. Id.

\(^{240}\) See supra notes 150-156 and accompanying text.

\(^{241}\) See A. Ryan, supra note 1, at 344 and accompanying text. The moral bases for jurisdiction include the U.S. belief “in the injustice of persecution and the integrity of the law.” Id.