



ICRC

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On the Scope and Application of Universal Jurisdiction

Statement of the

International Committee of the Red Cross

delivered by

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The International Committee of the Red Cross (ICRC) is grateful to be given the opportunity to address the Sixth Committee of the United Nations General Assembly on *the scope and application of universal jurisdiction*.

As the ICRC has previously underscored before this forum, and recently in its 2013 written submission to the Secretary-General pursuant to UNGA Resolution 65/33, universal jurisdiction is an essential tool for bringing to justice perpetrators of war crimes, crimes against humanity and genocide.

The basis for universal jurisdiction over serious violations of international humanitarian law (IHL) can be found both in treaty law and in customary IHL.

The treaty basis for universal jurisdiction over war crimes was laid down in the 1949 Geneva Conventions for the protection of war victims in relation to those violations of the Conventions defined as grave breaches. As the ICRC has noted in previous reports, although the Geneva Conventions do not expressly state that jurisdiction is to be asserted regardless of the place of the offence, they have generally been interpreted as providing for universal jurisdiction.

Moreover, although the relevant provisions of the Geneva Conventions are restricted to 'grave breaches', State practice has confirmed as a norm of customary IHL the rule that States have the right to vest their courts with universal jurisdiction over all violations of the laws and customs of war that constitute war crimes (Rule 157, ICRC Study on Customary International Humanitarian Law, 2005). This includes serious violations during non-international armed conflict of Article 3 common to the Geneva Conventions and of Additional Protocol II of 1977, as well as other war crimes, such as those recognized in Article 8 of the Statute of the International Criminal Court.

A number of other instruments provide a similar obligation for States to vest universal jurisdiction over certain crimes when they are committed during armed conflict. These include the Second Protocol of 1999 to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and the 2006 International Convention for the Protection of All Persons from Enforced Disappearance.

Under these instruments, it remains the responsibility of States to bring to justice those who commit serious violations of IHL. In some instances, States may be unable and unwilling to prosecute their citizens or other individuals who committed such crimes on their territory or under their jurisdiction. State practice has shown that in these instances, where international courts are unable to act, the exercise of universal jurisdiction by other States can be effective in overcoming this impunity gap.

Numerous States have given effect to their obligations in domestic legislation. The exercise of universal jurisdiction may take the form either of the enactment of domestic laws or the investigation and trial of alleged offenders. More than 100 States have vested their domestic courts with universal jurisdiction over serious violations of IHL.

In recent years, an increasing number of suspected perpetrators of war crimes, committed during international and non-international armed conflict, have been tried in domestic courts on the basis of universal jurisdiction. It is significant that in most cases, the States to which the accused were affiliated by nationality did not object to the exercise of universal jurisdiction.

The ICRC recognizes that States may want to attach conditions to the application of universal jurisdiction, such as the existence of a *link* to the forum State. The ICRC wishes to emphasize that the aim of applying conditions should be to increase the predictability and effectiveness of universal jurisdiction, and not to limit possibilities for prosecuting suspected offenders. The ICRC would also like to remind everyone concerned that whilst application of universal jurisdiction may involve taking into account matters of national policy, the independence of the judiciary and fair-trial guarantees must be respected at all times.

Effective protection of victims of armed conflict also requires the adoption of domestic laws for prosecuting those who commit war crimes, with the appropriate jurisdictional framework. The principle of universal jurisdiction is part of this legal framework. A concept firmly rooted in IHL, it remains crucial for closing the impunity gap for all serious violations of IHL.

In accordance with its mandate under the Geneva Conventions, the ICRC has produced numerous tools to aid States in their efforts to implement a system for suppressing serious violations of IHL. To be truly effective, all systems of this kind must include the principle of universal jurisdiction.

In conclusion, the ICRC would like to reiterate its readiness to contribute to any future efforts by the United Nations in this regard.

Thank you.