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United Nations General Assembly

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General debate on

**The scope and application of the principle of universal jurisdiction
[agenda item 85]**

Statement by the

International Committee of the Red Cross (ICRC)

October 2016

*This statement will soon be available, in all six official UN languages,
on the ICRC website:*

www.icrc.org

Mr. Chair,

The principle of universal jurisdiction is one of the key tools for ensuring the prevention, criminalization and punishment of serious violations of international humanitarian law (IHL). The International Committee of the Red Cross (ICRC) welcomes the continued interest of the United Nations General Assembly in this principle and takes note with appreciation of the Secretary-General's most recent report on this topic, to which the ICRC contributed.

The "grave breaches" regime, as outlined in the four Geneva Conventions of 1949 and further developed in Additional Protocol I of 1977, stipulates that States Parties must search for persons alleged to have committed, or to have ordered to be committed, those violations of the Conventions and the Protocol that are defined as grave breaches, and either bring them before their own courts – regardless of these persons' nationality – or hand them over for trial by another State Party concerned.

The effective implementation of these obligations requires that each State Party extend universal jurisdiction to the list of grave breaches in its national legislation. When States are aware that persons who have allegedly committed a serious violation of IHL are present on their territory or in places under their jurisdiction, it is their responsibility to ensure that such persons are investigated and, when so warranted, presented and brought to trial.

In addition, State practice and *opinio juris* have helped to consolidate a customary rule whereby States can vest their courts with universal jurisdiction over other serious violations of IHL.

Mr. Chair,

The ICRC continues to work to prevent serious violations of IHL and bring about the implementation of adequate sanction mechanisms at the domestic level, with an emphasis on universal jurisdiction. We also offer legal and technical assistance to States in establishing such mechanisms and developing related criminal legislation. In addition, the ICRC develops technical documents and practical tools for the application of universal jurisdiction, among other principles.

To this end, the ICRC is currently updating its commentaries on the Geneva Conventions and their Additional Protocols. The updated commentary on the First Geneva Convention was published online in March 2016 and contains valuable material on universal jurisdiction within the framework of Article 49 of the Convention. It provides a detailed explanation of the various methods available to States to fulfil their obligation to enact legislation on grave breaches.

In addition, the updated commentary considers in detail the principle of universal jurisdiction contained in the grave breaches regime and the ways that States Parties have implemented it in recent decades. While States may attach conditions to the application of universal jurisdiction to grave breaches or other serious violations of IHL - such as the presence of the alleged offenders on their territory or special prosecutorial discretion - such conditions must, in all circumstances, seek to increase the effectiveness and predictability of universal jurisdiction and must not unnecessarily restrict the possibility of prosecuting suspected offenders.

The updated commentaries also address other fundamental issues, such as the time frame for fulfilling the obligation to investigate alleged grave breaches and either prosecute or extradite those responsible; the challenges encountered by States when implementing universal jurisdiction; the state of international law today with regard to the potential immunities from

jurisdiction and prosecution for alleged perpetrators of serious violations of IHL; and the possible applicability of the grave breaches regime to serious violations of IHL in non-international armed conflict.

Mr. Chair,

States bear the primary responsibility for investigating and prosecuting alleged perpetrators of serious violations of IHL. When they do not take legal action against individuals suspected of committing such crimes based on other grounds of jurisdiction, the use of universal jurisdiction can serve as an effective mechanism to ensure accountability and limit impunity.

The ICRC will continue to follow the discussion on this topic with great interest, and remains available to support States' efforts in enacting appropriate legislation to respond to serious violations of IHL on the basis of all principles of jurisdiction – including universal jurisdiction.

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