



ICRC

The Delegation of the International Committee of the Red Cross (ICRC) to the United Nations presents its compliments to the Legal Counsel of the United Nations and has the honour to refer to the letter (LA/COD/59/2) dated 6 January 2020 regarding UN General Assembly Resolution 74/192, entitled “The scope and application of the principle of universal jurisdiction.” The ICRC is pleased to provide its contribution, enclosed, in its capacity as an Observer of the UN General Assembly for the report of the Secretary-General as requested in operative paragraph 3 of the above mentioned General Assembly Resolution.

The Delegation of the International Committee of the Red Cross to the United Nations avails itself of this opportunity to convey to the Legal Counsel of the United Nations the renewed assurance of its highest consideration.

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Encl: ICRC Submission

Information and Observations
on the Scope and Application of the Principle of Universal Jurisdiction
General Assembly Resolution 74/192

Contribution of the International Committee of the Red Cross

Overview

The International Committee of the Red Cross (ICRC) makes this submission to share its observations on recent developments in State practice concerning the use and importance of universal jurisdiction over serious violations of international humanitarian law (IHL). This submission also records some of the initiatives taken by the ICRC to support the efforts of States to implement IHL in their domestic legal regimes, including by establishing mechanisms for the exercise of universal jurisdiction for such violations. To this end, the ICRC also refers to its previous submissions to the Secretary-General on this subject.

Universal Jurisdiction in International Humanitarian Law

The principle of universal jurisdiction is a key tool for ensuring the prevention and repression of serious violations of IHL.

In particular, the grave breaches regime laid down in the four Geneva Conventions of 1949 and further developed in Protocol I of 8 June 1977 additional to the Geneva Conventions (Additional Protocol I) provides that States Parties have a legal obligation to search for persons alleged to have committed, or to have ordered to be committed, those violations of the Conventions and the Protocol defined as grave breaches, and to bring such persons before their own courts, regardless of the nationality of these persons, or to hand them over for trial by another State Party concerned.

Other international instruments place a similar obligation on States Parties to vest some form of universal jurisdiction in their courts over the crimes they contain. These include, for example, the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its Second Protocol (1999), the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the 2006 International Convention for the Protection of All Persons from Enforced Disappearance.

In addition, State practice and *opinio juris* have consolidated a customary rule whereby States have a right to vest their courts with universal jurisdiction over serious violations of IHL.¹ This would include, in particular, serious violations of Article 3 common to the four Geneva Conventions of 1949 and Protocol II of 8 June 1977 additional to the Geneva Conventions, as well as other serious violations of IHL,

¹ See the ICRC study on customary international humanitarian law (2005) at <https://www.icrc.org/eng/resources/documents/misc/customary-law-rules-291008.htm>. Note, in particular, Rules 156 and 157.

including both the grave breaches mentioned above and the crimes recognized in Article 8 of the Rome Statute of the International Criminal Court.

The principle of universal jurisdiction under IHL is closely linked to the obligation of States to respect and ensure respect for IHL and to repress serious violations of IHL. In accordance with their international obligations, States must take active steps to investigate serious violations of IHL, and, if appropriate, prosecute the suspects. This entails adapting domestic legislative and regulatory frameworks to grant jurisdiction over all alleged grave breaches and other serious violations of IHL to national judicial authorities. Specifically, States must ensure that their domestic legislation allows for the effective activation of the principle of universal jurisdiction in respect of grave breaches.

State Practice

States have increasingly recognized the principle of universal jurisdiction as an important means to end impunity for the commission of serious violations of IHL and other international crimes. The value placed on this objective is evident in the universal acceptance of the Geneva Conventions (with 196 States Parties) and States' continued ratification or accession to Additional Protocol I (174 States Parties).²

While there have been no new accessions to the Geneva Conventions of 1949 or the Additional Protocol I of 1977 since the last submission, the Republic of Angola acceded on 7 October 2019 to Protocol II of 1977 additional to the 1949 Geneva Conventions, and on 2 October 2019 to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, while the Republic of Kiribati acceded on 26 November 2019 to the Statute of the International Criminal Court.

In addition, the ICRC welcomes the increase in domestic prosecutions based on universal jurisdiction for serious IHL violations. According to the information available to the ICRC since October 2019 when the ICRC made a statement to the Sixth Committee on this topic³, at least 6 extra-territorial investigations, in relation to international crimes alleged to have been committed in situations of armed conflict, have been initiated by national prosecution services in Argentina, France and the Netherlands. In addition, at least 10 cases have seen procedural steps being taken in Finland, France, Germany, Italy, the Netherlands, Spain and Switzerland, including a civil case in the United States, and at least 7 cases have been concluded based on universal jurisdiction in Belgium, France and the United Kingdom, comprising 2 convictions and 5 dismissals.⁴

² A list of States signatories and parties to the Geneva Conventions and their Additional Protocols is available at <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/vwTreaties1949.xsp>.

³ See the Statement at <https://www.icrc.org/en/document/universal-jurisdiction-key-tool-ensuring-serious-violations-ihl-are-prevented-investigated>.

⁴ See the 2020 Universal Jurisdiction Annual Review done by Trial International at https://trialinternational.org/wp-content/uploads/2020/03/TRIAL-International_UJAR-2020_DIGITAL.pdf, and the ICRC's national implementation of IHL database at <https://ihl-databases.icrc.org/ihl-nat>.

According to the ICRC database on national implementation of IHL database, no new legislation directly related to universal jurisdiction has been recently adopted.⁵ As reported in previous submissions, the ICRC has observed that the number of States that have established some form of universal jurisdiction legislation over serious violations of IHL in their national frameworks has grown over recent years. Many States have created specialized units to deal exclusively with the substantive and procedural specificities of international crimes. The International Law Commission on the one hand⁶, and a group of States on the other⁷, have proposed draft treaty elements which aim at further facilitating mutual legal assistance and extradition for domestic prosecution of the most serious international crimes. The latter “Draft MLA Convention” negotiations have been postponed due to the COVID-19 pandemic.⁸

The ICRC and Universal Jurisdiction

The ICRC continues to support States in their implementation of IHL, including the obligation to repress serious violations of IHL through, *inter alia*, the exercise of universal jurisdiction.

At the request of States, the ICRC Advisory Service on IHL offers legal advice and technical assistance to government experts on national implementation of IHL. Among the topics on which it provides advice and assistance are the incorporation of serious violations of IHL and other international crimes into domestic criminal law and procedure, and the application of the principle of universal jurisdiction. The ICRC continues to provide expertise on IHL to national judicial authorities through its participation in trainings, workshops and seminars, and is therefore cognizant of the efforts being made by States as well as the challenges they face in prosecuting serious violations of IHL. In view of those challenges, the ICRC is currently drafting an IHL Manual specifically addressed to judicial authorities. Other tools to assist States to understand and implement their obligations under IHL take the form of databases, reports and technical documents, all of which are made available to States and to the public. The Geneva Academy of International Humanitarian Law and Human Rights together with the ICRC published, in September 2019, *Guidelines on Investigating Violations of International Humanitarian Law: Law, Policy, and Good Practice*.⁹

The ICRC also continues to promote its Manual on Domestic Implementation of IHL, which as noted in previous reports provides policy-makers, legislators and other stakeholders a practical tool to implement IHL, including the repression of serious violations of IHL and the application of universal jurisdiction.

⁵ ICRC database on national implementation of international humanitarian law (IHL): <https://ihl-databases.icrc.org/ihl-nat>.

⁶ UN General Assembly Resolution 74/186. Report of the International Law Commission on the work of its seventy-first session. Available at: <https://legal.un.org/docs/?symbol=A/RES/74/186>.

⁷ More information at: Slovenia, Ministry of Foreign Affairs - <https://www.gov.si/en/news/2020-01-29-informal-consultation-on-draft-mla-convention/>.

⁸ More information at: Slovenia, Ministry of Foreign Affairs - <https://www.gov.si/en/news/2020-04-02-postponement-of-the-mla-diplomatic-conference-819-june-2020/>.

⁹ Geneva Academy, ICRC. Guidelines on investigating violations of IHL: Law, policy and good practice. Available at: https://www.icrc.org/en/download/file/104871/guidelines-investigating-violations-ihl_policy_good-practice.pdf

In its various national, regional and multilateral engagements on IHL throughout the world, the ICRC continues to address issues relating to the prevention and repression of serious IHL violations and promotes the application of universal jurisdiction over these violations.

Conclusion

The ICRC reiterates its support to States to establish appropriate national legislation to respond to serious IHL violations on the basis of all grounds of jurisdiction, including universal jurisdiction. The ICRC nonetheless recognizes the judicial, procedural and practical challenges that States face regarding the efficient exercise of the principle of universal jurisdiction.

In view of the importance of the principle of universal jurisdiction, the ICRC reiterates its willingness to continue to contribute to future reports of the Secretary-General on this subject.

April 2020
International Committee of the Red Cross