



ICRC

United Nations General Assembly, 76th Session, Sixth Committee

General Debate on the Scope and Application of the Principle of Universal Jurisdiction

Statement by the International Committee of the Red Cross

Delivered by Christopher Harland, Legal Adviser

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[Madame Chair],

The principle of universal jurisdiction is one of the key tools for ensuring the prevention and repression 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.

Universal Jurisdiction is provided for in a number of core IHL treaties. 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) stipulates that States Parties have a legal obligation to provide for universal jurisdiction in their national legislation over those war crimes known as "grave breaches". 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 defined as grave breaches, and bring such persons before their own courts, regardless of the nationality of these persons, or 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, including those recognized in Article 8 of the Rome Statute of the International Criminal Court.

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>.

[Madame Chair],

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

Other relevant treaties have seen an increase in the ratification or accession by States since April 2020. Two States that were already a party to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict became party to its Second Protocol³. Four States became party to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment⁴ and two States became party to the Convention for the Protection of all Persons from Enforced Disappearance⁵.

As mentioned in previous ICRC's statements, many States have created specialized units to deal exclusively with the substantive and procedural specificities of international crimes, and the initiative that aims at drafting a multilateral treaty for mutual legal assistance and extradition for domestic prosecution of the most serious international crimes continues.

[Madame Chair],

The ICRC continues to support States in their implementation of IHL, including the obligation to repress serious violations of IHL through, among other things, the exercise of universal jurisdiction.

At the request of States, the ICRC Advisory Service on IHL offers legal advice and technical assistance on a bilateral basis to government experts on the 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 to expert discussions, peer exchanges, workshops and seminars, and is therefore cognizant of the efforts being made by States as well as the challenges encountered when prosecuting serious violations of IHL. In view of those challenges, the ICRC will launch in 2022 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, checklists, model laws, reports and technical documents, all of which are made available to States and to the public.

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

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 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.

Thank you, [Madame Chair].

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 Lebanon (8.10.2020) and Ukraine (30.6.2020).

⁴ Oman (9.6.2020) St Kitts and Nevis (21.9.2020) and Sudan (10.8.21).

⁵ Oman (12.6.2020) and Sudan (10.8.2021).