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 (ref. LA/COD/59/2) dated 23 December 2023, regarding General Assembly Resolution 78/113 of 7 December 2023, entitled "The scope and application of the principle of universal jurisdiction."

The ICRC is pleased to provide its contribution, enclosed, in its capacity as a Permanent Observer of the UN General Assembly for the report of the Secretary-General as requested in operative paragraph 4 of the above-mentioned 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

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Information and Observations

on the Scope and Application of the Principle of Universal Jurisdiction

Contribution of the International Committee of the Red Cross

1. General Overview

The International Committee of the Red Cross (ICRC) makes this submission to share its observations on the principle of universal jurisdiction as it relates to both treaty and customary international humanitarian law (IHL). This submission also records some of the recent developments in State practice and initiatives taken by the ICRC to support the efforts of States to implement IHL in their domestic legal regimes. To this end, the ICRC also refers to its previous submissions to the Secretary-General on this subject.

2. Universal Jurisdiction and IHL

Based on the notion that certain crimes are so grave that they affect the international community as a whole, the principle of universal jurisdiction, which entitles a State to prosecute offenders even in the absence of a link between the crime committed and the prosecuting State, is one means of facilitating and securing the repression of such crimes. The rationale of universal jurisdiction is to avoid impunity and to prevent those who committed serious crimes from finding a safe haven in third countries. When it comes to IHL, universal jurisdiction enables all States to fulfil their duty to prosecute and punish the perpetrators of war crimes. In order to make this principle effective, States are required to establish universal jurisdiction in their national legislation for certain violations of treaty law (mandatory universal jurisdiction), and States additionally have the right to establish universal jurisdiction for all other war crimes (permissive universal jurisdiction). In IHL, the principle of universal jurisdiction is therefore closely linked to the obligations of States to respect and ensure respect for IHL and to repress serious violations of IHL.

2.1. Treaty law

As noted in previous submissions, the principle of universal jurisdiction is one of the key tools for ensuring the prevention and repression of serious violations of IHL and ending impunity. 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 State Parties have a legal obligation to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches as defined in the Conventions and the Protocol; to search for persons alleged to have committed, or to have ordered to be committed such 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.[1]

The value placed on this objective is evident in the universal acceptance of the Geneva Conventions. It is also evidenced by the large acceptance of Additional Protocol I (174 States Parties).[2] It is worth mentioning that this year marks the 75th anniversary of the four Geneva Conventions of 1949. The Geneva Conventions have been fundamental in protecting persons affected by armed conflict over the past 75 years and IHL remains highly relevant for all

[1] As defined in Article 49 of Geneva Convention I, Article 50 of Geneva Convention II, Article 129 of Geneva Convention III, Article 146 of Geneva Convention IV, and Article 85 of Additional Protocol I.

[2] A list of 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.

contemporary armed conflicts. States' compliance with the four Geneva Conventions of 1949, including respective articles relating to universal jurisdiction, has a key role in limiting suffering in conflicts and preserving our shared humanity. The ICRC therefore calls on all States who have not yet done so, to consider ratifying the Additional Protocols to the Geneva Conventions.

Other international instruments place a similar obligation on State Parties to vest some form of universal jurisdiction in their courts over the serious violations of the rules they contain. These include, for example, the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict ("The Hague Convention"), its Second Protocol of 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 ("ICPPED").

2.2. Customary International Law

State practice and *opinio juris* have helped to consolidate a customary rule whereby States have the right to vest their courts with universal jurisdiction over other serious violations of IHL committed in both international and non-international armed conflict.[3] 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 enumerated in Article 8 of the Rome Statute of the International Criminal Court.

The right of States to vest universal jurisdiction in their national courts for war crimes is supported extensively by national legislation and many States have additionally created specialised units to deal exclusively with the substantive and procedural specificities of international crimes.[4] There have also been a number of cases of suspected war criminals being tried by national courts on the basis of universal jurisdiction not linked with grave breaches of the Geneva Conventions[5]. Several military manuals further support the customary rule that war crimes jurisdiction may be established on the basis of the principle of universal jurisdiction.[6]

3. Recent developments

States continue to recognise the principle of universal jurisdiction as an important means to end impunity for the commission of serious violations of IHL and other international crimes. These efforts also send an important message to victims and survivors that accountability is not just an aspirational goal, but a tangible commitment made by the international community.

While the Geneva Conventions are already universally ratified and there have been no new accessions to their Additional Protocol I since the ICRC's last submission to the Secretary-General, there have been other developments that should be highlighted. Mauritania acceded to the Hague Convention and its Second Protocol in July 2023,[7] and Yemen in June 2023

[3] See the ICRC study on customary international humanitarian law (2005), rule 157, at https://ihl-databases.icrc.org/en/customary-ihl/v1/rule157.
[4] A compilation of national practice is available at https://ihl-databases.icrc.org/en/customary-ihl/v2/rule157.
[5] Ibid.
[6] Ibid.
[7] A list of signatories and parties to the treaty can be found at https://www.unesco.org/en/heritage-armed-conflicts/convention-and-protocols/states-parties.

ratified the Second Protocol of the Hague Convention.[8] Maldives ratified the ICPPED in July 2023.[9]

Finally, the international initiative[10] aimed at the development of a mechanism for mutual legal assistance in the investigation and prosecution of the crimes of genocide, crimes against humanity, war crimes, and other international crimes resulted in the adoption of the Ljubljana-The Hague Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity, War Crimes and other International Crimes in May 2023. The ICRC welcomes the Ljubljana-The Hague Convention adopted on 26 May 2023, which includes an express reference to universal jurisdiction within its scope[11]. Currently, more than 30 States have signed the Ljubljana-The Hague Convention.[12]

4. 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, 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 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 is cognisant of efforts being made by States as well as the challenges they face in prosecuting serious violations of IHL. The ICRC continues to develop specialised tools to assist States to understand and implement their obligations under IHL. These tools take the form of databases, reports and technical documents – all of which are made available to States and to the general public.

In August 2022, the ICRC also published an explainer on universal jurisdiction for war crimes committed during non-international armed conflicts, highlighting relevant treaty and customary law provisions.[13]

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, promotes the application of universal jurisdiction over these violations, and works toward a universal culture of compliance with IHL.

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[8] A list of signatories and parties to the treaty can be found at https://www.unesco.org/en/legal-affairs/second-protocol-hague-convention-1954-protection-cultural-property-event-armed-conflict#item-4.
[9] A list of signatories and parties to the treaty can be found at https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280058a5a.
[10] The Mutual Legal Assistance and Extradition (MLA) initiative.
[11] See Article 8(3) of the Ljubljana-The Hague Convention, available at https://www.gov.si/assets/ministrstva/MZEZ/projekti/MLA-pobuda/konvencija-dokoncna/The-Ljubljana-The-Hague-Convention-Final-English.pdf.
[12] See Slovenia, Ministry of Foreign Affairs https://www.gov.si/en/registries/projects/mla-initiative/.
[13] International Committee of the Red Cross, ICRC Explainer: What Does International Law Say About Universal Jurisdiction for War Crimes Committed in Non-International Armed Conflicts? August 22, available at https://www.icrc.org/en/document/icrc-explainer-what-does-international-law-say-about-universal-jurisdiction-war-crimes.

5. 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 recognises 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.

26 April 2024
International Committee of the Red Cross