



# ICRC EXPLAINER: WHAT DOES INTERNATIONAL LAW SAY ABOUT UNIVERSAL JURISDICTION FOR WAR CRIMES COMMITTED IN NON-INTERNATIONAL ARMED CONFLICTS?

---

*The rationale of universal jurisdiction is to avoid impunity and to prevent those who commit such crimes from finding a safe haven in third countries*

## 1. WHAT IS UNIVERSAL JURISDICTION?

The principle of ‘universal jurisdiction’ entitles a state to prosecute offenders even in the absence of any link between the crime committed and the prosecuting state. It is based on the notion that certain crimes are so grave that they affect the international community as a whole, and that every state therefore has an interest in prosecuting them. The rationale of universal jurisdiction is to avoid impunity and to prevent those who commit such crimes from finding a safe haven in third countries.

Universal jurisdiction enables all states to fulfil their duty to prosecute and punish the perpetrators of war crimes. The principle of universal jurisdiction is therefore closely linked to the obligation of states to respect and ensure respect for international humanitarian law (IHL) and repress serious violations of IHL.

The [Geneva Conventions and Protocol I of 8 June 1977 additional to the Geneva Conventions \(Additional Protocol I\)](#) require states to adopt legislation that provides universal jurisdiction for certain war crimes – called ‘grave breaches’ – committed during international armed conflicts (i.e. conflicts between states).<sup>1</sup> Although universal jurisdiction is not explicitly mentioned in Article 3 common to the Geneva Conventions or in Protocol II of 8 June 1977 additional to the Geneva Conventions (Additional Protocol II), states have a right, under customary IHL, to vest universal jurisdiction for war crimes committed during non-international armed conflicts. Let us look at this in more detail.

## 2. WHAT ARE NON-INTERNATIONAL ARMED CONFLICTS?

Under IHL, non-international armed conflicts involve either governmental armed forces fighting one or more non-state armed groups, or such groups fighting each other. Not every armed confrontation involving non-state armed groups amounts to non-international armed conflict. To be governed by IHL, the conflict must reach a certain level of intensity and the non-state parties involved must show a certain level of organization.

---

<sup>1</sup> See in particular Art. 49 of Geneva Convention I, Art. 50 of Geneva Convention II, Art. 129 of Geneva Convention III, Art. 146 of Geneva Convention IV and Art. 85 of Additional Protocol I.

Non-international armed conflicts are governed by:

- common Article 3
- Additional Protocol II, if the conditions for its application are met
- other applicable treaties, such as those regulating the use of weapons
- customary IHL.

### 3. DOES INTERNATIONAL TREATY LAW ADDRESS UNIVERSAL JURISDICTION FOR WAR CRIMES COMMITTED IN NON-INTERNATIONAL ARMED CONFLICTS?

International treaties provide for universal jurisdiction for a limited amount of crimes.

The 1949 Geneva Conventions and Additional Protocol I do not impose an obligation on states to establish universal jurisdiction for war crimes committed in non-international armed conflicts. However, as will be seen further below, prosecutions of these crimes based on the exercise of universal jurisdiction have been conducted in the last 25 years<sup>2</sup>.

Furthermore, other treaties applicable in non-international armed conflicts do establish such an obligation in relation to certain crimes. The 1999 Second Protocol to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict explicitly requires States Parties to vest universal jurisdiction in their courts for the most serious attacks against cultural property, including when committed in non-international armed conflicts. Certain international human rights instruments that are equally applicable during armed conflict also require the exercise of universal jurisdiction. These include 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.

### 4. AND WHAT DOES CUSTOMARY IHL SAY?

Customary international law is a source of international law and consists of rules that come from “a general practice accepted as law”. Such practice can be found in official accounts of military operations and in a variety of other official documents. The requirement that this practice be “accepted as law” is what sets it apart from practices followed as a matter of usage or policy. In principle, customary IHL binds all states and, in non-international armed conflicts, non-state parties to conflict.

---

*States have a right, under customary IHL, to vest universal jurisdiction for war crimes committed during non-international armed conflicts*

In 2005, based on a mandate from the 26th International Conference of the Red Cross and Red Crescent, the ICRC published its [Study on Customary International Humanitarian Law](#). The aim was to identify customary law in this area and thereby clarify the legal protection it offered victims of war. In the study, one of the customary rules identified is that states have the right (not the obligation) to vest universal jurisdiction in their national courts over war crimes ([Rule 157](#)). This rule was found to be applicable to war crimes committed in both international and non-international armed conflicts.

While the scope and application of the principle of universal jurisdiction for international crimes is being discussed among states, at least 50 states<sup>3</sup> from throughout the world have legislated at some

---

<sup>2</sup> ICRC, Updated Commentary to the First Geneva Convention, Geneva, 2016, §§ 878–880, available at <https://ihl-databases.icrc.org/ihl/full/GCI-commentary>.

<sup>3</sup> Azerbaijan, Australia, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Burkina Faso, Burundi, Canada, Comoros, Costa Rica, Croatia, Cyprus, the Czech Republic, the Democratic Republic of Congo, Denmark, Ecuador, El Salvador, Ethiopia, Finland, France (in relation to war crimes as defined in the statute of the ICTR), Georgia, Germany, Hungary, Kenya, Lithuania, Luxembourg (in relation to war crimes as defined in the statute of the ICTR), Mauritius, Moldova, the Netherlands, New Zealand, Nicaragua, Niger, Norway, Panama, the Philippines, Portugal, the Republic of Korea, Rwanda, Samoa, Senegal, Slovenia, South Africa, Sweden, Switzerland, Tajikistan, Timor Leste, Trinidad and Tobago, Uganda, Uruguay.

point for universal jurisdiction to be established for war crimes committed during non-international armed conflicts. In some cases, they have explicitly extended their universal jurisdiction over crimes committed during these conflicts. In others, they have established their universal jurisdiction over war crimes, other violations of the laws and customs of war or offences against international law, without specifying the type of conflict in which they take place. This number would increase if we were to take into account instances of states extending their jurisdiction to cover foreigners who committed a crime abroad and subsequently became residents of those states.

States have also initiated proceedings on the basis of universal jurisdiction for war crimes committed in non-international armed conflicts. Since 1997, at least 21 cases concerning the commission of war crimes in non-international armed conflicts have been adjudicated on the basis of universal jurisdiction.<sup>4</sup> Importantly, in none of these 21 cases was the state's exercise of universal jurisdiction over war crimes committed during non-international armed conflicts contested by the alleged perpetrator's state of nationality. Moreover, on other occasions some national courts have made statements on the applicability of universal jurisdiction over war crimes without distinguishing between international and non-international armed conflicts<sup>5</sup>.

## 5. CONCLUSION

The rationale of universal jurisdiction is to avoid impunity and to prevent those who commit serious crimes from finding a safe haven in third countries. In order to fulfil their duty to prosecute and punish the perpetrators of certain war crimes contained in treaty law, states are required to establish universal jurisdiction over those crimes in their national legislation. In addition, a review of state practice shows that states have the right to establish universal jurisdiction for all other war crimes – including, under customary international law, for those committed in the context of non-international armed conflict.




---

<sup>4</sup> Belgium, Canada, Finland, Germany, the Netherlands, Sweden and Switzerland.

<sup>5</sup> See for example the practice section of rule 157 on the customary IHL database, available at [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2\\_rul\\_rule157](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_rul_rule157)

### MISSION

The International Committee of the Red Cross (ICRC) is an impartial, neutral and independent organization whose exclusively humanitarian mission is to protect the lives and dignity of victims of armed conflict and other situations of violence and to provide them with assistance. The ICRC also endeavours to prevent suffering by promoting and strengthening humanitarian law and universal humanitarian principles. Established in 1863, the ICRC is at the origin of the Geneva Conventions and the International Red Cross and Red Crescent Movement. It directs and coordinates the international activities conducted by the Movement in armed conflicts and other situations of violence.

 facebook.com/icrc  
 twitter.com/icrc  
 instagram.com/icrc

International Committee of the Red Cross  
19, avenue de la Paix  
1202 Geneva, Switzerland  
T +41 22 734 60 01  
shop.icrc.org  
© ICRC, August 2022

