



the global voice of
the legal profession^{*}



Universal Jurisdiction: Accelerating Progress on Justice and Accountability for the War in Ukraine and Beyond

The Prague Statement on Universal Criminal Jurisdiction¹

Tuesday 8 October 2024

CEELI Institute, Villa Grebovka, Havlíčkovy sady 58, 120 00 Prague 2, Czech Republic



¹ This statement was developed during a conference organised by the International Bar Association, the CEELI Institute, and the Center for International Law and Policy in Africa held at the CEELI Institute, in Prague, on 7-8 October 2024, with input from participants.

Universal jurisdiction is a principle that secures justice and accountability for core international crimes. However, despite the growing use of universal jurisdiction, the potential of the principle remains unfulfilled.

Russia's war of aggression against Ukraine has triggered a mosaic of unprecedented legal responses, including utilising the principle of universal jurisdiction, which can be used as a blueprint for Ukraine and other regions. However, gaps in the law and practice have stalled progress in a more comprehensive implementation of the principle of universal jurisdiction.

Changes are needed to strengthen the effect of the principle of universal jurisdiction to support justice and accountability for core international crimes as both a punitive means and a victim/survivor-centric response to these crimes. Any such changes must be in accordance with applicable international law, including the international guarantees on the right to a fair trial.

Accountability for core international crimes using universal jurisdiction at the national level must be carried out in a fair and consistent manner across different situations in different parts of the world. The selective application of universal jurisdiction, especially on a global north versus global south axis, should be avoided in order not to undermine support for the principle and its use as a legitimate ground for the exercise of criminal jurisdiction under national and international law.

Below are suggested essential requirements to bring about change:

Responding to legal challenges

- **Domestic legislation on universal jurisdiction:** Domestic laws must be comprehensive to enable the prosecution of core international crimes, applying either conditional or absolute ("pure") universal jurisdiction.² This includes the need to engage with procedural bars to the prosecution of core international crimes, such as nationality and residence requirements, statute of limitations, blanket amnesty laws, and the issue of personal and functional immunities of state officials.
- **The crime of aggression:** While currently most States have not codified the crime of aggression, steps are being taken to close this gap, including by amending the Rome Statute. In the meantime, and in response to Russia's crime of aggression against Ukraine, States must support the establishment of a special tribunal for the crime of aggression targeted at Russia's leaders, and as such, reinforce the principle that there should be no impunity for this crime.
- **Victim/survivor-centric approach:** A comprehensive victim/survivor-centric approach must be adopted, including laws on victim/survivor and witness protection and provision of assistance including psycho-social support for victims/survivors and witnesses, and coordination with relevant civil society organisations.

Building capacity

- **Specialised prosecution units:** Specialised prosecution units for the investigations and prosecution of core international crimes could help to ensure more effective and tailored

² The exercise of conditional jurisdiction may rest on, for example, the presence of the accused in the territory of the investigating/prosecuting country, while "pure" jurisdiction does not impose such requirements.

responses to international crimes. Such specialised prosecution units require resources and appropriate capacity to enable their continuous operation. Such units must also fully cooperate with other domestic mechanisms and government agencies.

- **Expertise and resources:** Training for lawyers, prosecutors, judges, investigators, and other justice sector actors is crucial to ensure the highest standard of the processes.
- **Evidence:** Preserving evidence of core international crimes is key to ensuring justice and accountability. Evidence must be preserved in a way that would make it admissible in court. Modern international crimes now regularly generate a high volume of electronic, pictorial and social media evidence (e.g. the IBA's eyeWitness to Atrocities project). It is crucial to develop the rule of evidence and protocols for managing such evidence (including the handling of battlefield evidence and conversion of intelligence into courtroom evidence) to avoid overwhelming investigative bodies while prioritising the prosecution of provable criminal cases.

Cooperation and coordination

- **Complementarity:** National authorities engaging in accountability efforts based on universal jurisdiction are to pursue complementarity with international bodies, including in accordance with the Office of the Prosecutor's Policy on Complementarity and Cooperation (2024),³ and where possible, in horizontal complementarity with other States engaged in investigation and prosecution of core international crimes.
- **Mutual legal assistance and extradition:** States must ensure swift and comprehensive cooperation and information sharing on international criminal matters including by way of a robust use of mutual legal assistance, extradition, and police-to-police sharing systems for core international crimes, and fugitive tracking. This should be further reinforced through the ratification without reservations of relevant treaties that advance accountability such as the Ljubljana-Hague Convention.
- **Civil society engagement:** Civil society plays a central role in addressing core international crimes through universal jurisdiction in all its forms through their public advocacy, evidence gathering, support of victims/survivors and witnesses, cooperation with law enforcement, critical research on universal jurisdiction developments, and direct participation in strengthening universal jurisdiction in all relevant fora.

Wider engagement

- **Education and communication:** Greater education on the importance of justice and accountability for core international crimes is key to strengthening understanding among the general public and affected communities. Communication on the efforts can help to galvanise the support, including by way of judicial outreach.
- **Action in international fora:** Support and encourage initiatives in international fora in the universal jurisdiction field, such as the Council of Europe's work on eradicating impunity

³ Office of the Prosecutor's Policy on Complementarity and Cooperation (2024). See: <https://www.icc-cpi.int/sites/default/files/2024-04/2024-comp-policy-eng.pdf>.

for serious human rights violations, with a view to creating or improving international consensus and instruments. Similar initiatives could be undertaken in other fora including the European Parliament, among others.

- **Strengthen international legal frameworks:** States should support the clarification of international law on questions of accountability for core crimes under international law, through the ratification and adoption of benchmark treaties on war crimes, crimes against humanity, genocide, torture, and enforced disappearances, without reservation. They should further promote consensus on key prohibitions at the international level through universal mechanisms such as the United Nations, including the Sixth Committee of the UN General Assembly and the International Law Commission. The Sixth Committee could consider referring the question of universal criminal jurisdiction to the International Law Commission. A group of UN Member States, ideally representative of the world's regions, could also consider together requesting the Commission's assistance on the topic. The International Law Commission, for its part, even in the absence of Sixth Committee or State requests, should play a role in clarifying the scope and application of the principle of universal jurisdiction in line with its statute, working methods and procedures, including acting proprio motu to take forward such a study.

The exercise of universal jurisdiction is an important instrument in the toolbox of legal avenues for justice and accountability for core international crimes. In addition to universal criminal jurisdiction, other legal avenues should be attempted by States to ensure that there are no safe havens for gross human rights violators including by employing where possible additional or alternative administrative, civil, asset freezing and forfeiture, visa and immigration, and other legal accountability measures.