

How serious international crimes can be prosecuted

Normally, crimes are prosecuted in the country where they are committed, or in some cases in the country of the perpetrator or the victim.

In cases of international crimes where there is no prospect of justice in the territory where the alleged crimes took place, international tribunals can be established, and there is the permanent International Criminal Court.

However, the effectiveness of the International Criminal Court as a court of last resort is hampered by the fact that only 123 of the 193 members of the United Nations are State Parties. Although the United Nations Security Council has the authority to refer non-State Parties to the International Criminal Court, its ability to do so is hampered in part by a general unwillingness of members to act on international crimes, and in part by the fact that even in the exceptional cases where there is majority support for action such as an ICC referral, China and Russia have in the past and are likely to continue to use their veto power to block resolutions for referrals.

Universal Jurisdiction

The principle of universal jurisdiction allows courts in any country to prosecute perpetrators of the most serious violations of international law regardless of where they happened and the nationality of those involved. It is based on the understanding that the most serious international crimes, such as genocide, war crimes, crimes against humanity, torture and other crimes as defined by the Rome Statute, are so serious that they affect the international community as a whole and the international community has a responsibility to act. It is in each country's own national interest to do so.

The obligations of the British government

The British government is obliged by international conventions and resolutions to investigate and prosecute the most serious international crimes.

These obligations include:

- The Rome Statute of the International Criminal Court (https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf)

“Recalling that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes”

- General Assembly Resolution 60/147 of 16 December 2005: Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.
(<https://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>)

“In cases of gross violations of international human rights law and serious violations of international humanitarian law constituting crimes under international law, States have the duty to investigate and, if there is sufficient evidence, the duty to submit to prosecution the person allegedly responsible for the violations and, if found guilty, the duty to punish her or him. Moreover, in these cases, States should, in accordance with international law, cooperate with one another and assist international judicial organs competent in the investigation and prosecution of these violations. To that end, where so provided in an applicable treaty or under other international law obligations, States shall incorporate or otherwise implement within their domestic law appropriate provisions for universal jurisdiction.”

- The Geneva Conventions
(<https://www.icrc.org/eng/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm>)

“Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts.”

- Convention on the Protection of all Persons from Enforced Disappearances
(<https://www.ohchr.org/EN/HRBodies/CED/Pages/ConventionCED.aspx>)

“Each State Party shall likewise take such measures as may be necessary to establish its competence to exercise jurisdiction over the offence of enforced disappearance when the alleged offender is present in any territory under its jurisdiction...”

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
(<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>)

“Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture. 2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

“Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases:

- (a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;
- (b) When the alleged offender is a national of that State;
- (c) When the victim is a national of that State if that State considers it appropriate.

Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph 1 of this article.”

Universal Jurisdiction in the UK

Opportunities for the application of universal jurisdiction in the UK are severely limited. The government currently only has the ability to prosecute alleged war criminals and those who have committed torture. This ability does not cover all serious international crimes as outlined in the Rome Statute.

The current application of universal jurisdiction is based on changes to British law following the signing of various treaties or conventions. There is no single law governing the application of universal jurisdiction in the UK. This has created a situation whereby it is technically possible for the police to investigate individuals for torture of an individual, but not for the far greater crime of genocide.

The war crimes unit of the Counter Terrorism Command of the Metropolitan Police investigates cases relating to war crimes and torture, but the evidence bar for going ahead with prosecutions is so high that it is rare for cases to go to court. There also appears to be a severe lack of resources given to the investigations of such crimes.

The British government appears to prefer deporting alleged war criminals to prosecuting them. In 2012 the UK Border Authority stated that none of the cases of possible war criminals it was assessing had been prosecuted in the UK. (<https://www.gov.uk/government/publications/war-criminals>)

Opportunities for individuals to use the UK courts to seek justice under universal jurisdiction are even more limited. As well as the legal limits on which crimes can be prosecuted, following a change in the law in 2011, the consent of the Director of Public Prosecutions is required before an arrest warrant is issued in the case of individuals. The DPP in turn has stated that they will consult the attorney general, a government minister. This means the government effectively has veto power over cases brought forward by individuals, enabling them to put political considerations as a 'public interest test' ahead of that of applying the law impartially and holding perpetrators to account.

The change followed the issuance of an arrest warrant against Tzipi Livni, former Foreign Minister of Israel. The Justice Secretary at the time, Kenneth Clarke said: "These changes are essential to ensure we do not risk damaging our ability to help in conflict resolution or to pursue a coherent foreign policy." (<https://www.gov.uk/government/news/universal-jurisdiction>)

Foreign Secretary William Hague stated: "The law as it stands has been abused in relation to visitors from several other countries." (<https://www.theguardian.com/commentisfree/2011/mar/30/coalition-criminal-justice-universal-jurisdiction>)

At the time of the change there had been only ten applications for arrest warrants in ten years, and only two were successful, indicating that there is little evidence that the courts were issuing politically motivated arrest warrants, and instead were evaluating the evidence.

UK falling behind

In 2017, 126 cases based on the principle of universal jurisdiction were opened in 14 countries, more than double the previous year. In 2016, 13 different countries opened 47 cases. That in turn was 7 more than in 2015 and 10 more than in 2014.

https://redress.org/wp-content/uploads/2018/03/UJAR_2018.pdf &
https://trialinternational.org/wp-content/uploads/2017/03/UJAR-MEP_A4_012.pdf

The 2017 Universal Jurisdiction Annual Review listed only two universal jurisdiction cases being investigated in the UK.

Justice denied

Conflict and human rights violations are increasing across the world. Dictators act with impunity while authoritarian regimes are on the increase. International mechanisms for upholding international law are hamstrung by political agendas of powerful countries. Impunity encourages further atrocities.

While in some cases the problem is obstruction from Russia and China, in others it is the lack of willingness of any state, including the UK, to seek accountability for those responsible. This is why any new universal jurisdiction law in the UK must be open to individuals to take out cases without the British government being able to veto it.

The cost of impunity, in lives lost and in financial terms for the cost of humanitarian assistance, is far higher than the potential costs of broadening universal jurisdiction in the UK.

Burma

In August 2017 the Burmese military used the pretext of attacks on border guard posts to launch a pre-planned military offensive against Rohingya civilians, driving almost 700,000 Rohingya into neighbouring Bangladesh. The United Nations and others have documented the mass use of rape as a weapon of war, and estimates are that thousands were killed. Mass executions took place and children and babies were deliberately targeted, including being thrown into fires or drowned.

There have been no moves by members of the UN Security Council to refer Burma to the International Criminal Court, despite the UN stating that human rights violations against the Rohingya amount to crimes against humanity, and possibly even genocide. In April 2018, the Prosecutor of the International Criminal Court has requested the Court to allow jurisdiction for the deportations to Bangladesh, which is a State Party. Even if this request is granted, it is likely to be limited to certain abuses against the Rohingya communities, and will not include the rest of the country, including the situation in Kachin and Shan states where the United Nations has stated war crimes may be being committed.

Syria

Syria is at the centre of a humanitarian and human rights catastrophe since the ruling regime began a brutal crackdown against an uprising in 2011, leading to years of conflict. At least 400,000 people have been killed, 5 million forced abroad as refugees and 6 million more are internally displaced.

Amnesty international has stated:

“Government and allied forces, including Russia, carried out indiscriminate attacks and direct attacks on civilians and civilian objects using aerial and artillery bombing, including with chemical and other internationally banned weapons, killing and injuring hundreds. Armed opposition groups indiscriminately shelled civilian areas and subjected predominantly civilian areas to prolonged sieges, restricting access to humanitarian and medical aid. The armed group Islamic State (IS) unlawfully killed and shelled civilians and used them as human shields.”

<https://www.amnesty.org/en/countries/middle-east-and-north-africa/syria/>

At the UN Security Council, Russia has used its veto five times to block investigations into human rights violations in Syria.

<https://www.rte.ie/news/world/2018/0411/953637-russia-syria-un-veto/>

Yemen

Civilians are caught between two sides, both of which are violating international law, in the conflict in Yemen, Human Rights Watch has reported:

“The coalition has conducted scores of indiscriminate and disproportionate airstrikes hitting civilian objects that have killed thousands of civilians in violation of the laws of war...As of November, at least 5,295 civilians had been killed and 8,873 wounded, according to the UN human rights office... Both sides are unlawfully impeding the delivery of desperately needed humanitarian aid.”

<https://www.hrw.org/world-report/2018/country-chapters/yemen>

There have been no moves at the UN Security Council to refer the situation to the International Criminal Court.

What is needed in the UK

A specific new universal jurisdiction law is needed in the UK enabling all crimes listed under the Rome Statute to be prosecuted in the UK. The war crimes unit should be expanded and given adequate resources. Individuals should be able to use the British courts to initiate cases without ministerial interference and veto.

Further reading

House of Lords, House of Commons, Joint Committee on Human Rights: Closing the Impunity Gap: UK law on genocide (and related crimes) and redress for torture victims, 21 July 2009:

<https://publications.parliament.uk/pa/jt200809/jtselect/jtrights/153/153.pdf>

House of Commons Library: Universal Jurisdiction, published 25 March 2010:

<http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN05422#fullreport>

FIDH paper on universal jurisdiction - A Step by Step Approach to the Use of Universal Jurisdiction in Western European States:

<https://www.fidh.org/en/region/europe-central-asia/FIDH-PAPER-ON-UNIVERSAL>

More briefings are available here:

www.burmacampaign.org.uk/burma-briefing

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