

Criminal responsibility of the leaders of the Zionist entity in accordance with the provisions of international treaties related to human rights



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Abstract:

Since October 7, 2023, there have been serious violations of international humanitarian and human rights laws in the occupied Palestinian territories, which are examined in this article, encompassing war crimes, genocide, and crimes against humanity. It underscores the necessity of a strong legal response to hold Israel and its leaders accountable, while providing reparations for the victims. As recognized by the International Court of Justice (ICJ) as customary international law, the Second Hague Convention of 1907, the Genocide Convention, and the Geneva Conventions of 1949 are among the key international treaties that are discussed. Together, they constitute the legal foundation for accountability. The article explores the incorporation of these international standards within national legal frameworks to establish criminal liability. It highlights the dual culpability of the Hebrew state in failing to prevent and prosecute these heinous crimes. The principle of universal jurisdiction is emphasized, enabling states to prosecute

Key Words: International humanitarian law, Universal jurisdiction, Palestinian territories, War crimes, Genocide, Crimes against humanity, State accountability, Reparations for victims.

المسؤولية الجنائية لقادة الكيان الصهيوني وفقاً لأحكام المعاهدات الدولية المتعلقة بحقوق الإنسان
ملخص: منذ 7 أكتوبر 2023، وقعت انتهاكات خطيرة للقانون الإنساني الدولي والقانون الدولي لحقوق الإنسان في الأراضي الفلسطينية المحتلة، والتي يتم تناولها في هذا المقال، والتي تشمل جرائم الحرب والإبادة الجماعية والجرائم ضد الإنسانية. وتؤكد على ضرورة وجود استجابة قانونية قوية لمساءلة إسرائيل وقادتها، مع تقديم تعويضات للضحايا. وكما اعترفت محكمة العدل الدولية متقيدة بالقانون الدولي العرفي، بأن اتفاقية لاهاي

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الثانية لعام 1907، واتفاقية الإبادة الجماعية واتفاقيات جنيف لعام 1949 هي من بين المعاهدات الدولية الرئيسية التي تتم مناقشتها. وتشكل معاً الأساس القانوني للمساءلة. ويستكشف المقال دمج هذه المعايير الدولية في الأطر القانونية الوطنية لتحديد المسؤولية الجنائية. ويسلط الضوء على المسؤولية المزدوجة للدولة العبرية في الفشل في منع هذه الجرائم الشنيعة وملاحقة مرتكبيها. يتم التأكيد على مبدأ الولاية القضائية العالمية، مما يُمكن الدول من مقاضاة مرتكبي الجرائم الدولية.

الكلمات المفتاحية: القانون الإنساني الدولي، الولاية القضائية العالمية، الأراضي الفلسطينية، جرائم الحرب، الإبادة الجماعية، الجرائم ضد الإنسانية، مساءلة الدولة، تعويضات الضحايا.

La responsabilité pénale des dirigeants de l'entité sioniste conformément aux dispositions des traités internationaux relatifs aux droits de l'homme

Résumé :

Depuis le 7 octobre 2023, de graves violations du droit international humanitaire et des droits de l'homme ont été commises dans les territoires palestiniens occupés. Cet article examine ces violations, notamment les crimes de guerre, le génocide et les crimes contre l'humanité. Ce constat souligne la nécessité d'une réponse juridique forte pour tenir Israël et ses dirigeants responsables, tout en accordant réparation aux victimes. Reconnues comme faisant partie du droit international coutumier par la Cour internationale de Justice (CIJ), la deuxième Convention de La Haye de 1907, la Convention sur le génocide et les Conventions de Genève de 1949 figurent parmi les principaux traités internationaux abordés. Ensemble, elles constituent le fondement juridique de la responsabilité. L'article explore l'intégration de ces normes internationales dans les cadres juridiques nationaux afin d'établir la responsabilité pénale. Il met en évidence la double culpabilité de l'État hébreu, qui n'a pas su prévenir et poursuivre ces crimes odieux. Le principe de compétence universelle est mis en avant, permettant aux États de poursuivre.

Mots clés : Droit international humanitaire, compétence universelle, territoires palestiniens, crimes de guerre, génocide, crimes contre l'humanité, responsabilité des États, réparations pour les victimes.



Introduction:

Since October 7, 2023, serious violations of international humanitarian law, the laws and conventions of war, international human rights law, and general international law have been reported by the media in the occupied Palestinian territories.

These violations include war crimes, genocide, and crimes against humanity, targeting civilians, public facilities, international relief missions (particularly the International Red Cross), press missions, and the United Nations Mission UNRWA. These attacks necessitate a legal and judicial response, activating the legal mechanisms within international conventional and customary law to ensure accountability for the Hebrew state and its leaders, and to provide reparation for the victims. **What are the legal provisions that guarantee the criminal responsibility of the leaders of the Zionist entity and what mechanisms do they contain?**

We answer this using a number of approaches, the most important of which are descriptive, inductive and comparative, and we address the problem in two main points:

- International human rights treaties that include the legal basis for holding the leaders of the Zionist entity accountable.
- Responsibility stemming from international treaties on which the legal accountability of the leaders of the Zionist entity is based.

The first axis: International human rights accords that provide the legal foundation for holding Zionist leaders responsible

The second axis: Responsibility stemming from international treaties on which the legal accountability of the leaders of the Zionist entity is based

When someone commits a crime legally punishable, its criminal culpability is established. Anything that is criminalized in accordance with international law is a crime that needs to be prosecuted and punished when the State agree to bind itself by this provisions, either because it is an organization of the treaty or because it is governed by customary international law. This is because international treaties are part of the internal law of all States and take precedence over legislation.



THE FIRST TOPIC:

Treaties establishing the criminal responsibility of the leaders of the Zionist entity

A variety of international treaties that limit the rules of combat and the treatment of non-combatants, as well as those that deal with the protection of the right to life, provide the legal foundation for us to establish the responsibility of Zionist leaders, These legal texts include the following ones.

First requirement: International conventions that guarantee the criminal accountability of Zionist leaders:

Article 3 from The Hague Convention (II) of 1907 Concerning the Laws and Customs of War on Land stipulates that in addition to being held accountable for all acts carried out by members of its armed forces, a belligerent party that violates this regulation will be required to make compensations if necessary.

Article 4 from the convention on the Prevention and Punishment of the Crime of Genocide also stipulates that whether they are individuals, public officials, or constitutional rulers, those who commit genocide or any of the other crimes listed in Article III will face consequences. Article 5 from the same convention states that the Contracting Parties pledge to enact the laws required by their respective constitutions to guarantee the application of this Convention's provisions, particularly to impose strong criminal penalties on those who commit acts of genocide or any other crimes listed in Article III. While Article 6 specifies that A competent court of the State whose territory the act was committed or an international criminal court with jurisdiction over any of the Contracting Parties whose jurisdiction has been acknowledged will try anyone accused of genocide or any of the other crimes listed in Article III.

Article from the convention on the Prevention and Punishment of the Crime of Genocide 7 affirms that the Contracting Parties agree to comply with extradition requests in line with their current laws and treaties, and Genocide and the other acts mentioned in Article III will not be considered political crimes for the purposes of extradition. In the same context Article 8 articulates that in line with the United Nations Charter, any Contracting Party may ask the UN's competent organs to take whatever actions they believe are necessary to prevent and suppress acts of genocide or any other acts listed in Article III. At the judiciary level article 9 asserts that on the request of any disputing party, the International Court of Justice will hear disputes between the Contracting Parties concerning the interpretation, application, or implementation of this Convention, including those pertaining to a State's liability for genocide or any other acts specified in Article III.

Finally article 49 of the First Geneva Convention, Article 50 of the Second Geneva Convention, Article 129 of the Third Geneva Convention, Article 146 of the



Fourth Geneva Convention⁽¹⁾ state that the High Contracting Parties pledge to pass all necessary laws to effectively punish those who commit or order to be committed any of the serious violations of this Convention. Regardless of nationality, each High Contracting Party must find those who are suspected of committing or ordering the commission of such serious violations and bring them before its own tribunals.

As an alternative, if a *prima facie* case has been established, each Party may, in line with its own laws, send such individuals to another High Contracting Party for trial. With the exception of the serious violations, each High Contracting Party shall take the appropriate steps to suppress any conduct that violate the terms of this Convention. Under the Fourth Geneva Convention of 1949, which deals with the Treatment of Prisoners of War of August 12, 1949, the accused must always be given the protections of a fair trial and defense, which cannot be less favorable than those guaranteed by Article 105 and in the other legal provisions that adopt the same logic.

Second requirement: The extent to which these treaties are binding on the state of the leaders of the Zionist entity

It is a well-established customary principle that the provisions of conventions aimed at protecting human rights are binding upon the signatory parties, and any violations thereof necessitate international criminal accountability as stipulated by the convention. However, what is the situation for countries that have not ratified these agreements? How do international and global declarations fit into this context? As non-binding instruments, can their rules be violated without repercussions?

To answer these questions, it is essential to ascertain whether these rules are obligatory for all states, which is only true if they have become customary international law. Are all legal norms relating to the protection of human beings during peacetime and wartime considered customary international law?

Referring to the principles of public international law, customary rules are composed of two elements: the state practice and the *opinion juris*. The material element is established through the consistent repetition of a precedent over a period of time by multiple states, without objection from other states concerned with the precedent, indicating its acceptance by the international community. The *opinion juris* is the belief by states in the obligatory nature of the rule in question.⁽²⁾

¹ - The four Geneva Conventions of 12/08/1949 (the First Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field - hereinafter the First Geneva Convention -, the Second Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces at Sea - hereinafter the Second Geneva Convention -, the Third Geneva Convention relative to the Treatment of Prisoners of War - hereinafter the Third Geneva Convention-, the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War - hereinafter the Fourth Geneva Convention-).

² - Rousseau (Ch), *Droit international Public*, 8^{ème} éd, Dalloz, Paris, 1976, pp78-81. Ruzié (D), *Droit international Public*, 18^{ème} éd, Dalloz, Paris, 2006, p 57..



International agreements can form the basis for customary rules if they meet the following criteria :

- Ratification and accession by a significant number of states.
- Active implementation of the treaty's provisions by these states.
- The treaty's provisions that constitute the customary rule have not been objected to by the affected governments⁽¹⁾.

Applying these requirements to peacetime human rights agreements, we find that many human rights conventions replicate the same tenets found in the UN Charter and the Universal Declaration of Human Rights. States view these regulations as binding, as evidenced by the fact that this repetition meets the requirements of practice, generality, and length. As a result, the majority of experts in international law agree that the laws pertaining to the defense of human rights during times of peace are considered customary international law⁽²⁾.

Similarly, rules pertaining to the protection of human rights during wartime demonstrate repeated practice through their incorporation into national legislation by various countries. However, some jurists argue that the psychological element—the belief in the obligatory nature of these rules—is more crucial in international humanitarian law, given the frequent violations of these norms.⁽³⁾

The International Court of Justice (ICJ) highlights the customary nature of international humanitarian law in its 1996 Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons. The ICJ stated that because international humanitarian law rules represent inviolable principles of customary international law, they are binding on all States, regardless of whether they have ratified the relevant conventions.⁽⁴⁾

In its Advisory Opinion on the Legal Consequences of the Construction of the Separation Wall in the Occupied Palestinian Territory⁽⁵⁾, the International Court of

¹ - Rousseau (Ch), Op. Cit, pp 82-84. Ruzié (D), Op. cit, p. 360.

² - Hijazi Abdel Fattah Bayoumi, International Criminal Court, Dar Al-Fikr Al-Jami Alexandria, 2004, pp. 444-445.

³ -Kolb (R), Droit international pénal, questions générales, in Kolb (R) et autres, Droit international pénal, édition Helbing lichtenhahn, Bale, édition Bruylant, Bruxelles, 2008, pp 127-128.

⁴ -ICJ, Legality of the threat or use of nuclear weapons, advisory opinion of 8 July 1996, reports of judgments, advisory opinions and orders, 1996, in: <http://www.icj-cij.org/docket/index.php?p1=3&p2=2&case=95>, le 03/02/2011.

For more details see: Shawki Samir, International Court of Justice and International Humanitarian Law, Research for a Master's Degree in International Law and International Relations, University of Algiers, Faculty of Law, Algeria, 2006-2007, pp. 06-17. Salhab Sami, The Role of the International Court of Justice in Establishing the Rules of International Humanitarian Law, International Humanitarian Law "Prospects and Challenges", Annual Scientific Conference of the Faculty of Law, Beirut Arab University, Halab Law Publications, Lebanon, 2010, pp. 37-38.

⁵ -ICJ, Legal consequences of the construction of a wall in the occupied palestinian territory, advisory opinion of 9 july 2004, para 93-101,



Justice (ICJ) further supported this tendency. The Court came to the conclusion that Israel did not violate international humanitarian law after noting that its actions in the occupied areas are consistent with the application of the four Geneva Conventions and the 1907 Hague Convention on the laws and customs of land warfare.

No state has declared opposition to these rules, which underscores the customary nature of human rights rules in both peacetime and wartime.

The extent to which these rules are mandatory and considered *jus cogens* remains a contentious issue, as there is ongoing debate regarding whether all customary rules attain the status of *jus cogens*. According to the International Court of Justice (ICJ), certain rules of international humanitarian law, particularly those concerning the protection of civilians and civilian property, as well as the obligation to distinguish between combatants and civilians, are indeed recognized as *jus cogens*.¹⁾ Other rules are regarded as binding on all states (*erga omnes*) but not as *jus cogens*.²⁾ The ICJ's jurisprudence in this area lacks precision, and the text of the four Geneva Conventions alone does not provide a definitive list of which rules are peremptory and which are not³⁾.

Our conclusion is that rules related to the protection of human beings are customary rules, and therefore they are binding on everyone, regardless of international conventions, and violating them must be considered a crime.

Third requirement: Mechanisms that allow the application of the provisions of international treaties by the national judiciary

Most state constitutions stipulate the supremacy of international law, both conventional and customary, over national legislation, thereby making international law nationally applicable. However, states differ in terms of their mechanisms of application, with some adopting direct application and others indirect application.

International conventions are directly applied by national judges when they base their judgments on the provisions of a ratified convention without the need for corresponding national legislation. For example, a national judge can establish criminal responsibility for the crime of genocide based on the provisions of the

<http://www.icj-cij.org/docket/index.php?p1=3&p2=2&case=131>, le 21/09/2009.

¹ -ICJ, case concerning military and paramilitary activities in and against Nicaragua (Nicaragua V. United States of America), judgment of 27 June 1986, reports of judgments, advisory opinions and orders, 1986, in:

<http://www.icj-cij.org/docket/index.php?p1=3&p2=2&case=70>, le 03/02/2011.

For more details, see Dupuy (P-M), Normes internationales pénales et droit impératif *Jus-Cogens*, in Ascensio (H), Decaux (E), Pellet (A) (s.dir), *Droit international pénal*, Pedone, Paris, 2000, pp 76-78.

² - **Shawki Samir**, op. Cit. P.42-77.

³ -Quirico (O), Réflexion sur le système du droit international pénal (la responsabilité pénale des états et des autres personnes morales par rapport à celle des personnes physiques en droit international), thèse de doctorat, université des sciences sociales-Toulouse1 faculté de droit, Toulouse, 2005, pp 8-11.



Genocide Convention, without requiring these provisions to be stipulated in domestic law. In Algerian law, it is sufficient for a convention to be ratified and published in the Official Gazette of the Algerian Republic for it to become binding on Algerian judges. Dutch and Belgian laws follow similar practices.

Indirect application occurs when a state's constitution requires the provisions of a convention to be incorporated into domestic law before they can be applied by the judiciary. In such cases, it is not enough for the state to ratify the convention; its provisions must be enacted into national legislation. Penal laws must specifically address genocide, war crimes, and crimes against humanity, detailing the elements and penalties. Criminal procedure laws must include procedural mechanisms for the arrest and trial of the accused, based on traditional, personal, regional, and universal jurisdiction—the latter being the most effective mechanism for international crimes, as exemplified by French law.

Based on this framework, international agreements can be relied upon as part of national law to establish criminal responsibility for the Zionist entity, provided the aforementioned conditions are met. Follow-up actions should be carried out based on either universal jurisdiction due to the international nature of the crime or personal jurisdiction if the individual holds dual nationality with a country that criminalizes such acts in addition to Israeli nationality¹.

THE SECOND TOPIC:

Criminal responsibility stemming from international treaties on which the legal accountability of the leaders of the Zionist entity is based

First requirement: Responsibility of the Hebrew State for crimes committed by its leaders

Article 1 of the Genocide Convention mandates that State parties commit to the prevention and punishment of this crime when it occurs, as articulated in the common text of Article 1 from the four Geneva Conventions.⁽²⁾, where the State is required to

¹-See for example: Avraham Russel Shalev, Hamas' October 7th Genocide legal analysis and the weaponisation of reverse accusations –A study in modern genocide recognition and denial, Cambridge university press, N°01, vol.40, 2025, pp, 6-10.

²-Article 49 from Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Geneva, 12 August 1949. "The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article. 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. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a prima facie case. Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the grave breaches defined in the following Article. In all circumstances, the accused persons shall benefit by safeguards of proper



take the appropriate actions to stop war crimes from being committed. The responsibility of the State in this case is based on two areas: its responsibility for not preventing these crimes and its responsibility for not suppressing them.

This obligation stems from an established rule in international law that the state is responsible for what happens in its territory and affects others in his money or himself. If the state fails to take the necessary steps, in accordance with its international obligations, to prevent the commission of war crimes and genocide, it is responsible for failing to enact legislation criminalizing these acts or for failing to exercise the necessary control over its employees and leaders to prevent them from committing them.⁽¹⁾.

The judges of the International Court of Justice have affirmed the responsibility of the State when it does not take the necessary measures to prevent harm to others⁽²⁾ as a general rule, and its obligation to prevent the commission of war crimes and genocide as a special rule, as it considered that since the prevention of human rights violations in wartime is considered as customary rules, States, regardless of their accession to the four Geneva Conventions, have the duty to prevent these

trial and defence, which shall not be less favourable than those provided by Article 105 and those following 220 FOURTH GENEVA CONVENTION OF 1949 Penal sanctions I. General observations Translations. Rules of application Dissemination of the Convention of the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949."

¹-Since 1927, the Institute of International Law has affirmed that the State bears responsibility for injuries to aliens themselves or their property in its territory. The Third Committee for the Codification of International Law in The Hague in 1930 also affirmed that the State is responsible for the failure of its organ employees and judicial and legislative authorities to take the necessary measures to avoid harming aliens which is the same trend taken by the International Law Commission when it reviewed the rules of international responsibility of States at its sessions in 1956 and 1969 for more details see : Sicilianos (L-A) , La responsabilité de l'Etat pour absence de prévention et de répression des crimes internationaux , in Ascensio (H), Decaux (E), Pellet (A) (ed.), Droit international pénal, Pedone, Paris, 2000, pp 116-117 .

²-In the cases of "Corfu" and "American Hostages", where it confirmed in the first that Spain is responsible for not complying with the rules of international law of the sea, and in the second on the responsibility of Iran because it did not take the necessary measures to resolve the hostages issue, for more details see the judgments of the International Court of Justice on the following websites:

ICJ, The Corfu channel case, Judgment of April 9th, 1949, reports of judgments, advisory opinions and orders, in, <http://www.icj-cij.org/docket/index.php?p1=3&p2=2&case=1>, le 11/05/2010.

ICJ, case concerning United states diplomatic and consular staff in Teheran (United States of America v. Iran), judgment of 24 may 1980, reports of judgments, advisory opinions and orders, 1980, in: <http://www.icj-cij.org/docket/index.php?p1=3&p2=2&case=64>, le 11/05/2010.



violations and that they bear responsibility if they do not take the necessary measures to that end⁽¹⁾.

In accordance with Article 2 of the Convention, the International Court of Justice has also rendered a decision regarding States' duties to take the appropriate precautions to stop genocide. The Court opined that a State must implement practical measures when it becomes evident that there is an imminent danger of committing genocide.⁽²⁾, and that the duty to punish the perpetrators of these crimes does not mean exempting them from the duty of prevention, because each of them is independent of the other.

Referring to both the Genocide Convention and the four Geneva Conventions, we find that they urge States to include in their domestic laws rules that ensure their application and the enactment of deterrent penalties that would ensure that the crimes they attend⁽³⁾ are not committed.

But if a State does not take these measures, or has taken them and is not yet able to prevent the commission of crimes, is it then responsible? Jurisprudence in this field agrees that the inability of the State to prevent the commission of human rights crimes does not necessarily assess its responsibility, so that the matter differs according to whether the duty of prevention imposed on it is such as the obligation to achieve a result, or the obligation to pay attention⁽⁴⁾.

If the state's task is to pass laws that make abuses of human rights crimes, then it has an obligation to accomplish a goal, and if it doesn't, it will be held accountable internationally⁽⁵⁾. However, if the content of the obligation of the State is to take practical measures to prevent the commission of crimes and to protect persons threatened by them, the obligation is to exercise diligence⁽⁶⁾, in which case the

¹ - See: ICJ, case concerning military and paramilitary activities in and against Nicaragua (Nicaragua V. United States of America), judgment of 27 June 1986, reports of judgments, advisory opinions and orders, 1986.

² - Application of the Genocide Convention case Bosnia and Herzegovina v. Serbia, judgment of 26/02/2007, paragraph 431, 436 where the Court held that the Republic of Serbia should have been aware of what happened in Srebrenica, and that it should have taken the necessary measures to prevent it.

³ -See Articles: 5 of the Genocide Convention, 47 et seq. of the First Geneva Convention, 48 et seq. of the Second Geneva Convention, 126 et seq. of the Third Geneva Convention, 142 et seq. of the Fourth Geneva Convention.

⁴ -Jurisprudence disagreed with the members of the International Law Commission entrusted with the project of the international responsibility of the State on the criteria that must be applied to distinguish between the obligation of the State to prevent the commission of crimes on the basis that it is an obligation to achieve a result or to exert care as the members of the Commission considered that the obligation of the State is to achieve a result if it does not have a choice, while jurists believe that the obligation to achieve a result is when the success rate of the State in preventing crime is high, but if it is low the obligation to exert care but both criteria are inaccurate, for more details see: Sicilianos (L A) , Op.Cit, P 122.

⁵ - Ibid, p123.

⁶ -Ibid, p 123.



responsibility of the State shall arise if negligence and insensitivity to the existence of a risk of committing crimes are proven alongside it.

According to the International Court of Justice, where there are indications that a crime is dangerous, the state has an obligation to stop it from happening.⁽¹⁾ If the State fails to take the appropriate and reasonable steps to prevent the crime or must unavoidably be aware of it, then it is accountable. The court made its decision because it believed that the Serbian government had to have known that there was a significant risk of genocide in the Bosnian region of Srebrenica⁽²⁾.

In view of the organized attack launched by the army of the Zionist entity, which clearly targets a large number of Palestinians, the crime of genocide is clear, and by targeting houses, schools and hospitals, which are considered civilian targets, war crimes are also very clear, and because those who order these attacks are already civilian leaders, this is evidence of the failure of the state of the Zionist entity to take the necessary measures to prevent the commission of these crimes, and therefore its international responsibility is carried out because it has not made any effort to prevent them.

The State's obligation is also predicated on its failure to bring war crimes and genocide criminals to justice, as stipulated by the four Geneva Conventions and the Convention on the Prevention of Genocide⁽³⁾, outlines the duty of states to bring legal action against anyone who break their laws. Thus, it is necessary for states to prosecute people who commit war crimes and genocide, and part of the state's duty to prevent these crimes is to turn them over to those who ask for their prosecution⁽⁴⁾.

The state has the authority to assess the measures to be taken to arrest, prosecute, or extradite the accused, but in the end, it bears responsibility if the perpetrators escape from its grip, and it neglects to take the necessary measures to arrest them, as its obligation in this case is an obligation to exercise care - the care of

¹-Judgment of the International Court of Justice on the Application of the Genocide Convention, Bosnia and Herzegovina v. Republic of Serbia, 26/02/2007 paragraph 431.

²-Court judgment of 26/02/2007, paragraph 436.

³-Article 49 from Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Geneva, 12 August 1949. Article 50 of Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea. Geneva, 12 August 1949, Article 109 of Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949. Article 146 of Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949, and Article 87 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.

⁴ -This was previously confirmed by the International Criminal Tribunal for Yugoslavia in the Furundzija case: One of the consequences of the international community's recognition of the prohibition of torture as a jus cogens norm is that every State has the right to investigate, prosecute, punish, and extradite individuals accused of torture who are present on its territory. For more details see: ICTY, Case of prosecutor v. auto Furudzija, judgment of 10/12/1998 para156.



the ordinary man -, so its responsibility is not proven unless it is proven to be in default.

However, if the perpetrators are arrested, their obligation to prosecute or extradite them is an obligation to achieve a result, and therefore they bear responsibility if they do not fulfill their obligation without having to prove negligence on their part. The obligation of a State to extradite perpetrators of war crimes and genocide is established in the international conventions that criminalize it, in addition to bilateral or multilateral international conventions that oblige States to extradite to other States parties to the Convention.

However, extradition is not a peremptory norm of international law, as the State remains free to assess the necessity of extraditing the offender to those who request him first, but if it decides not to extradite, it has an obligation to follow up. This obligation, as we have seen, requires the extension of jurisdiction to international crimes regardless of where the crime was committed, the nationality of the perpetrators, or the nationality of the victims, which is termed “universal jurisdiction”.

Regardless of the presence of a regional or personal organization, states are expressly required under the four Geneva Conventions to suppress violations of international humanitarian law⁽¹⁾, which means that States parties to these conventions can exercise universal jurisdiction even if it is not provided for in their domestic legislation, as it is sufficient to have ratified them. While the Convention against Torture requires that the exercise of this jurisdiction be included in national legislation, which means that this jurisdiction can only be exercised by States that have enacted it in their laws.

Therefore, regardless of the nationality of the offenders, the victims, or the location of the crime, states party to the four Geneva Conventions are required to prosecute war criminals. States are not required to pursue legal action outside of these conventions².

Since no nation, including the Zionist state, has yet to prosecute those responsible for these crimes, the state of the Zionist entity has international responsibility. This has the advantage of allowing the state to sue the International Court of Justice to compensate the victims and revoke international legal recognition of the crimes committed on the occupied territories.

¹ - See Articles 49 of the First Convention, 50 of the Second Convention, 129 of the Third Convention, 146 of the Fourth Convention.

²-Antonio Cassese, On the current trends towards criminal prosecution and punishment of breaches of international humanitarian law, European Journal of international law, N° 09, 1998, pp, 8-10.



Second requirement: The legal mechanism emanating from international treaties that allows the prosecution of the leaders of the Zionist entity and the establishment of individual criminal responsibility against them

With reference to the legal texts relied upon in this study, we observe that the parties to these treaties, and all states in general—considering that these treaties have become part of customary international law—are obligated to prosecute perpetrators of war crimes and genocide. Consequently, these states can rely on traditional jurisdictional standards, the most important of which is personal jurisdiction, as stipulated by all states. This jurisdiction is applicable when the perpetrator holds the nationality of the prosecuting state.

Notably, it is possible for those who are dual citizens of Israel and Zionism to be held responsible for their actions on the basis of personal jurisdiction. This includes well-known people including the Chief of Staff, Prime Minister Benjamin Netanyahu, and other authorities. Interestingly, despite what other nations need in terms of universal jurisdiction, this does not require the accused to be present on the prosecuting state's territory.

The second legal mechanism derived from the treaty texts under consideration is universal jurisdiction, which mandates that the State have the power to pursue those responsible for war crimes and genocide regardless of the perpetrator's identity, the location of the crime, and the victim's nationality. This enables a broader discussion of issues pertaining to egregious human rights violations in Palestine and other places as based on the four Geneva Conventions and their first Additional Protocol, the Belgian legislator issued Law 16/06/1993 on the suppression of grave violations of the four Geneva Conventions and their Protocol⁽¹⁾, regardless of the place of commission of the crime⁽²⁾. The Law 10/02/1999⁽³⁾ added crimes against humanity and the crime of genocide to the jurisdiction of the Belgian judiciary⁽⁴⁾.

In accordance with the 1993 and 1999 statutes, the Belgian prosecutor has the power to open an investigation into war crimes, crimes against humanity, and genocide against any person responsible for such crimes, regardless of the nationality of the offender, the victims, or the place where the crime was committed. Additionally, under Article 9/3 of both acts, which forms the basis for initiating an

¹ - Although universal jurisdiction according to the Geneva Conventions and their First Protocol relates only to war crimes during international armed conflicts, this law has extended it to include war crimes during non-international armed conflicts as mentioned in the Second Protocol.

² - Art 7¹ from the law of 1993 states that: «Les juridictions belges sont compétentes pour connaître des infractions prévues à la présente loi, indépendamment du lieu où elles-ci auront été commises >>.

³ - relating to the repression of serious violations of international humanitarian law supplementing the law of 16/06/1993.

⁴ - -Martens (P), l'expérience belge de la compétence pénale internationale, acte du colloque organisé à Limoges le 22-23 novembre 2001, éd pulim, 2001, pp 192-193.



inquiry, victims have the right to file complaints with the Belgian investigating judge and request compensation⁽¹⁾.

The Belgian judge possesses the authority to initiate investigations beyond Belgian territory, provided that the authorities of the foreign state grant permission.⁽²⁾ The Belgian judge has the authority to demand the extradition of the accused. Should extradition not occur or arrest prove unfeasible, the lawsuit may be initiated, proceedings commenced, and the accused even sentenced in absentia. Consequently, some jurists regard universal jurisdiction under Belgian law as the "optimal legal mechanism" for the suppression of gross human rights violations.

However, Belgian law was amended in 2003 to impose restrictions on universal jurisdiction, with the first amendment enacted on April 23, 2003.⁽³⁾ with a number of conditions for exercising universal jurisdiction, and accepting the lawsuit without prejudice to its essence, that is, with jurisdiction remaining absolute, all that is necessary for victims to be able to file their cases before the Belgian judiciary is the availability of one officer out of five⁽⁴⁾:

commit the crime in Belgium.

- The accused must be Belgian.
- The accused must be in Belgium.

The victim must be Belgian.

- The victim has been a resident of Belgium for three years prior to the filing date of the complaint.

Furthermore, the Belgian federal prosecutor has the authority to initiate an investigation into war crimes and genocide in accordance with the jurisdiction established by the 1993 law in any case, notwithstanding the aforementioned controls, unless the prosecutor feels that Belgian justice and international obligations

¹ - Most of the cases before the Belgian judiciary are based on complaints by victims. For further details : D'Argent (P), L'expérience belge de compétence universelle: Beaucoup de bruit pour rien?, R.G.D.I.P, N°3, A. Pedone, Paris, 2004, pp598 – 599. Martens (P), Op.Cit, pp 194-198. Jadali (S), pp104 – 110.

² - This is linked to bilateral cooperation agreements or concluded under the cover of the European Union.

³ - Related to the amendment of the law of 16/06/1993 and 144 bis 1 of the codification of the judiciary - that is, the codification of civil procedures - mentioned by: Jadali (S), Op.Cit, pp110 – 114. D'Argent (P), Op.Cit, p 608

⁴ - D'Argent (P), Ibid. David (E) Eléments de droit pénal international et Europeen, Op.Cit pp. 261-262.



necessitate waiving the case in favor of the International Criminal Court⁽¹⁾, or in support of a foreign court, as long as it is unbiased, independent, and competent. The Minister of Justice makes this decision with the Court of Cassation's consent⁽²⁾.

However, Law 05/08/2003 on significant violations of international humanitarian law invalidated the 1993 Law and its revisions³, and the 1993 Law's contents were incorporated into the Belgian Code of Criminal Procedure⁽⁴⁾, but with some substantive amendments, which led to the change of Belgian universal jurisdiction, which is no longer absolute.

The jurisdiction remained grounded in the five stipulations outlined in the amendment of April 23, 2003. Consequently, this framework ensures the possibility of prosecuting the accused, even if they are outside Belgian territory, when the federal prosecutor decides to initiate an investigation.⁽⁵⁾ This is confirmed by Article 12- amended - of the Belgian Code of Criminal Procedure.

In the same context, Article 12 bis of the aforementioned law asserts that the Belgian judiciary shall possess jurisdiction over every serious infraction of international law—be it conventional or customary—that constitutes a crime, provided that these rules obligate the Belgian authorities to pursue the perpetrators⁽⁶⁾, which reaffirms an absolute universal jurisdiction if there is a basis for it in international law, and this basis is found in the four Geneva Conventions⁽⁷⁾.

However, the Belgian Court of Cassation ruled that the case is inadmissible because Sharon is not in Belgium, and that saying otherwise is contrary to the international conventions to which Belgium is a party, which require the presence of the accused in its territory to exercise jurisdiction⁽⁸⁾.

¹ - Otherwise, if the crime is committed in Belgium or by a person of Belgian nationality, because otherwise it is contrary to the rules of complementarity that require States to exercise their jurisdiction initially, and that the International Criminal Court does not undertake a case unless the State is unable or unwilling to undertake it which cannot be described as Belgian jurisdiction.

² - According to which the Belgian authorities waived the cases against former US President G.Bush and some of his associates in favor of the S judiciary, see: David (E), *Elements de droit penal international et europeen*, Op.Cit pp. 269-270.

³-See : Loi du 5 août 2003 relative à la répression des infractions graves au droit international humanitaire

⁴ - D'Argent (P), Op.Cit, pp 610 -611.

⁵ - The commission of the crime in Belgium, by a Belgian, or by a foreign party who has a domicile in Belgium the Belgian victim, or the foreign victim who has resided in Belgium for at least three years prior to the date of commission of the crime, and not the date of filing the complaint as in the law of April 23, 2003, according to Article 611 bis of the Belgian Code of Criminal Procedure. Mentioned by Dr. Tariq Serour, Op. Cit., P. 259-261. D'Argent (P), Op.Cit pp 611 - 614.

⁶ - D'Argent (P) Op.Cit, P. 614- 617. David (E), *Eléments de droit pénal international et europeen*, Op.Cit, pp.244-253.

⁷ - Articles 49.

⁸ - D' Argent (P), Op.Cit, P.R 615 - 617. David (E), *Eléments de droit pénal international et europeen*, Op.Cit, pp. 266.



If we examine the conventions that impose the duty to 'extradite or prosecute,' we find that, although they form the basis for criminal prosecution under universal jurisdiction, they do not mandate the state to prosecute except in the absence of extradition. This leads to the inference that the trial is contingent upon the presence of the accused. However, we assert that the conventions based on the duty to 'prosecute or extradite,' specifically the four Geneva Conventions and their first Additional Protocol, as well as the Convention against Torture, which is binding on Belgium,⁽¹⁾ recognize the contrary. We do not find in these conventions what requires the presence of the accused in Belgian territory to pursue him in accordance with universal jurisdiction.

We conclude that for war crimes committed in an international armed conflict, and for crimes of torture, the Belgian judicial authorities exercise absolute universal jurisdiction without the need for the presence of the perpetrator in their territory, nor for the presence of an officer linking the crime to Belgium.

However, the law enacted on August 5, 2003, precludes victims from directly filing their cases before the Belgian judiciary courts, as the prerogative to initiate cases pertaining to the exercise of universal jurisdiction is vested solely in the Federal Public Prosecutor (Article 10bis/1). Victims are required to submit their complaints to him. Nonetheless, the filing of a complaint and the pursuit of compensation are feasible only if the jurisdiction is based on certain criteria: the crime was committed in Belgium, the perpetrator was Belgian, or the perpetrator was a foreign national with legal and primary residence in Belgium⁽²⁾, but only the federal prosecutor decides whether there is a face to follow or not⁽³⁾.

Pursuing heads of state, leaders of government, foreign affairs ministers, and anyone else who enjoys immunity under an international agreement or international law regulation is prohibited, and this is in accordance with Article 1bis/1⁽⁴⁾. Which

¹ - These agreements are binding on Belgium because they are part of customary international law, and Article 12 bis of the Belgian Code of Criminal Procedure stipulates the competence of the Belgian judiciary to exercise universal jurisdiction if it is obliged to do so by customary international law. - In addition to international conventional law - considering that these conventions stipulate the need to prosecute violators of their rules regardless of the place of commission of the crime or the nationality of the perpetrator and the victim, they therefore oblige the Belgian judicial authorities to exercise their jurisdiction with regard to war crimes and crimes of torture.

² - D'Argent (P), Op.Cit, p 612.

³ - The law of 05/08/2003 gave absolute powers to the federal plaintiff to assess the complaints submitted to him, and the decision he issued thereon was not subject to appeal but the arbitral tribunal annulled paragraph 2 of Article 10 bis 1 which gives this power to the federal plaintiff, so its decisions became subject to appeal, and if he was arbitrary in rejecting the complaints submitted to him the victims can resort to the European Court of Human Rights, cf.: Dr. Tariq Serour, Op.Cit, p. 262-264.David (E), Elements de droit penal international et europeen, Op.Cit pp. 267-269.

⁴ -Art. 1bis1. « <inserted by L 2003-08-05/32, art. 13; in force : 07-08-2003> § 1st.

In accordance with international law, legal proceedings are prohibited against:



prevents any judicial follow-up procedure for those in the period in which they assume these functions. That is, the inadmissibility of opening an investigation, receiving a certificate or a permit, or even issuing an international arrest warrant⁽¹⁾.

Article 1 bis/2 of the ⁽²⁾ adds that no person visiting Belgium in an official capacity may be arrested or summoned at the invitation of the Belgian authorities, or any international organization based in Belgium, and linked to a headquarters agreement.

The rules for the application of universal jurisdiction are the same as those determined by Belgian law, notwithstanding the fact that Swiss law rests them on the requirements of international law. When the inquiry is only initiated if the accused is located in Switzerland and has a connection to Switzerland, and the holders of immunity cannot be prosecuted ⁽³⁾, and the prosecutor has the authority to assess the existence of a face to initiate an investigation first⁽⁴⁾.

Pursuant to Article 689 bis 11 of the French Code of Criminal Procedure⁽⁵⁾, the exercise of universal jurisdiction by French authorities over genocide, war crimes, and crimes against humanity is contingent upon five conditions:

- foreign heads of state, heads of government, and foreign ministers, during their term of office, as well as other persons whose immunity is recognized under international law;
- persons who enjoy total or partial immunity based on a treaty to which Belgium is a party.

¹ - Contrary to the Belgian Court of Cassation, which held that immunity takes effect only at the stage of the arrest warrant, see: D'Argent (P) Op.Cit, p624.

² - Art 1bis2. « <inserted by L 2003-08-05/32, art. 13; in force : 07-08-2003> § 2. In accordance with international law, no coercive action related to the exercise of public prosecution may be taken against any person who has been officially invited to stay on the territory of the Kingdom by the Belgian authorities or by an international organization established in Belgium with which Belgium has concluded a host-state agreement, during the duration of their stay.

³ - This is stipulated in the Swiss Military Penal Code, which is a condition, albeit vague, but which is interpreted in the light of the five controls required by Swiss law for the exercise of universal jurisdiction over the crime of genocide and crimes against humanity.

⁴ - Its motives are the same as those of Belgium, as Geneva is an international capital, and Switzerland wanted to avoid the pressure on Belgium, for more details about Swiss universal jurisdiction. See:

(R), Droit international pénal, questions générales, Op.Cit, pp. 224-231.

⁵ - Art 689-11 : « Peut être poursuivie et jugée par les juridictions françaises toute personne qui réside habituellement sur le territoire de la république et qui s'est rendue coupable à l'étranger de l'un des crimes relevant de la compétence de la cour pénale internationale en application de la convention portant statut de la cour pénale internationale signée à Rome le 18 juillet 1998, si les faits sont punis par la législation de l'Etat où ils ont été commis ou si cet Etat ou l'Etat dont elle a la nationalité est partie à la convention précitée.

La poursuite de ces crimes ne peut être exercée qu'à la requête du ministère public si aucune juridiction internationale ou nationale ne demande la remise ou l'extradition de la personne. A cette fin, le ministère public s'assure auprès de la cour pénale internationale qu'elle décline expressément sa compétence et vérifie qu'aucune autre juridiction internationale compétente pour juger la personne n'a demandé sa remise et qu'aucun autre Etat n'a demandé son extradition. » created with the law n°2010-930 du 9 August 2010 - art. 8.



1. The accused must ordinarily reside within French territory.
2. The aforementioned actions must be crimes that are criminal by the laws of the state in which they took place, or the accused's country or this state must be parties to the International Criminal Court's Statute⁽¹⁾.
3. A competent foreign judicial authority must not have requested the extradition of the accused.
4. No international judicial body must request that the accused be presented before it.
5. The accused must not possess immunity.

Investigations can only be initiated by the Public Prosecutor.

Similarly, the Spanish judiciary adheres to these conditions of universal jurisdiction. The Spanish judiciary decided to prosecute seven Israelis for crimes committed during Israeli military operations in Gaza in 2002, only after confirming that Israeli authorities had not initiated any investigation into the matter.⁽²⁾

We therefore draw the conclusion that it is possible to hunt down the Zionist entity's leaders outside of Palestinian territory and outside the permanent International Criminal Court's jurisdiction. This is predicated on the universal jurisdiction notion that has been embraced by numerous nations. These nations may permit victims or the Public Prosecution, which is authorized by international laws and treaties, to determine whether to launch an investigation if they are sufficiently convinced. It is still the victims' responsibility to bring the offenders before these nations' courts.

Conclusion

The International Court of Justice (ICJ) has confirmed in its rulings and advisory opinions that the four Geneva Conventions of 1949, the Second Hague Convention on the Laws and Customs of War of 1907, and the Convention on the Prevention of Genocide of 1948 are binding on all states and constitute customary international law. States are therefore required to put these conventions into effect and take all appropriate legal, legislative, and administrative actions to guarantee adherence.

Accordingly, states are obligated to prosecute their nationals suspected of committing war crimes or genocide. Although it is unlikely for the Hebrew state to do so, it is feasible for countries that support the Palestinian cause, where leaders of the Zionist entity hold dual nationality, including Israeli nationality. These countries are also obliged to incorporate universal jurisdiction into their legislation to ensure the

¹ - This is because Article 689 bis 11 was created by the August 2010 law, which includes amending French laws in line with the court system.

² - The Spanish judiciary decided to open the investigation on 29/01/2009, about six years later which is not an easy period. See: F.L.D.H, Une approche par étapes de l'exercice de la compétence universelle (pénale) dans les pays de l'Europe de l'ouest, Ibid.



prosecution of Hebrew state nationals, which becomes possible when there is alignment between the victims' efforts and political will.

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