

هيثم مناع  
غزة : عين العدالة الدولية

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Gaza: Eye of International Justice

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BHRS- ACHR-SIHR- One Justice

# The beginnings of international tribunals

- The end of World War II marked the transition of the concept of supranational or global jurisdiction from the literature and philosophy books to application through the approval of the victorious parties in World War II for the Tokyo and Nuremberg courts. **This step had three negative points and three positive dimensions.**

**Negative points of the Allied courts:**

- **Exceptional**
- **Military**
- **It is composed exclusively of judges from the countries victorious in the war**

# Three basic principles entered the Concept of International Justice

- Individual criminal responsibility before international law, regardless of the contrary legal data in national law.
- Benefiting from immunity for a head of state or a minister loses its meaning in crimes called international from the moment these crimes are judged in the name of the international community.
- The duty to obey the highest echelons of the state is no longer an excuse for those who commit crimes against peace, crimes against humanity, and war crimes

# In the beginning

In 1947, a law project was enacted on crimes against peace and against the security of humanity. One year later, the UN General Assembly invited the International Law Commission (CDI) to discuss the necessity and feasibility of forming a criminal judicial body, and at that time put forward the idea of a criminal chamber affiliated with the International Court of Justice.

The drafters of the **Convention on the Prevention and Punishment of the Crime of Genocide** in 1948 took into account the establishment of an international court Art. VI, which states: “Persons charged with genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction”.

## Accountability and International Humanitarian Law

The first paragraph of Articles 49, 50, of the four Geneva Conventions of 1949 stipulates: “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.**

# Sovereignty and international justice

Whether in the origin of the concept or the reasons for its development, sovereignty is Western in origin and definitions. It has been accepted in both academic and diplomatic senses as a regulator of political life and legal procedures between states. This matter, which was discussed several times in the first half of the twentieth century, became more ambiguous and relative in the second half after Tokyo and Nuremberg, so that sovereignty was no longer absolute and many supranational forms were devised, whether in trade agreements, financial and industrial projects, or in media revolution, and finally with regard to the International law: With the establishment of regional and international judicial authorities and universal Jurisdiction

## International Law: Between philosophy and justice

A significant number of intellectuals early called for a return to the idea of an international criminal court that would go beyond the shortcomings of Nuremberg and the shortcomings of universal criminal jurisdiction. Hannah Arendt, after her experience in the Eichmann trial, registered this solution to respond to the contested objectivity of trying a war criminal. In contemporary criminal legal schools, Mahmoud Sharif Bassiouni must be placed at the forefront of defenders of an international criminal court since the 1970s. Human rights organizations presented several practical studies before the 1993 Vienna Conference.



# UN General Assembly and Accountability

“Affirms that refusal by States to cooperate in the arrest, extraditing, trial and punishment of persons guilty of war crimes and crimes against humanity is contrary of the purposes and principles of the Charter of the United Nations and contrary to generally recognized norms of international law.”

United Nations General Assembly Resolution 2840 of  
December 18, 1971

# Special declaration of principles

1. War crimes and crimes against humanity, wherever they are committed, shall be subject to investigation and the persons against whom there is evidence that they have committed such crimes shall be subject to tracing, arrest, trial and, if found guilty, to punishment.

**General Assembly Resolution 3074 dated 3.12.1973**

# Convention Against Torture

The crime of torture itself became the subject of the International Convention dated December 10, 1984, which also establishes the principle of universal criminal jurisdiction. Member States are obligated to establish and exercise their jurisdiction (Article 6) to prosecute (Article 6), convict (Article 7), or hand over a person suspected of committing the crime of torture to the state requesting him for prosecution (Article 8). The Convention, in its Article 5-2, obligates each state party to the Convention to have jurisdiction “in the event that the suspect is present in its sovereign territory.”

# factors in the development of global criminal law :

- Defining the scope of State authority in serious crimes
- Rejection of hegemony in world-System
- The interdependence of independent States that characterizes our era
- Crises and war in post-colonial States
- National complicity with war criminals
- The absence of accountability has become an element of disruption to global peace
- The role and influence of global civil society

# Forms of struggle against impunity

- National courts and commissions for reconciliation, justice and equity
- International Criminal Court
- International justice Court
- Regional courts and special courts of the United Nations
- Universal jurisdiction
- Courts of conscience and international citizenship

# Rooting accountability in customary law

“The national courts of the states belonging to the former Yugoslavia are obligated, as is the case for every State, to try or extradite those suspected of committing serious violations of international humanitarian law on the basis of international customary law. The binding priority is in favor of the court of instance stipulated in Article 9.2 (of the Statute The basic principles of the court) are binding on all national courts, and if those courts abandon their customary duties, the court of instance has the right to intervene and decide.”

International Criminal Tribunal for the Former Yugoslavia,

Case 95-14-R, paragraph 29, ruling 10/29/1997

## The Secretary-General of the UN and the lack of accountability

“As a result of the recent development of international law, States now have the right to exercise their jurisdiction in accordance with international law against all persons suspected of committing serious crimes who are present on their territory, regardless of the place where the crime was committed or the nationality of the victim or victims.”

Report of 19 July 2000 of the Secretary-General

# Human Rights Council and Accountability

The Goldstone Report calls on all national courts in the world to activate universal criminal jurisdiction and addresses directly the Prosecutor of the International Criminal Court in order to form a preliminary chamber to investigate Gaza. It also addresses the General Assembly and the Security Council requesting intervention in order to respond in an appropriate legal manner to the war crimes and crimes against humanity that occurred during Cast lead process

Recommendations of the UN investigative mission, October 2009



## Accountability between theory and practice

The experiences of the special international criminal tribunals were not without drawbacks. France insisted on limiting the jurisdiction of the Special Court for Rwanda and not including the powers of the Europeans, as for the Tribunal for the Former Yugoslavia. The arrest of the two major whales (Radovan Karadzic and Ratko Mladic) was avoided for ten years. It is necessary to remember that Slobodan Milosevic was received at the Elysee with a visit organized by Bernard Kouchner at the end of the reign of François Mitterrand, and the Cambodian court waited for the death of Pol Pot to begin its sessions.

# Accountability between theory and practice

Many war criminals and criminals against humanity were also protected according to universal criminal jurisdiction in Paris, Brussels, Madrid and Berlin in cases related to Palestine and Rumsfeld. This is the case of presidents involved in serious crimes who attended the French-African summit in Paris during the era of Jacques Chirac (the French public prosecutor rejected the request of human rights organizations). National law has declined in Spain and Belgium under Israeli and American pressure, and we fear that the phenomenon will spread to other European countries to protect Israeli war criminals. Last but not least, Norway changed the modality of Universal Jurisdiction after our attacks on Justice against Israel's war criminals.

# Interesting lessons learned

- A State that does not respect the independence and integrity of the judiciary is the subject of national, regional and international accountability
  - The Security Council is the main party in the weakness of the independence of the ICC (It used from above?) -
- The General Assembly's failure to fulfill the role and powers entrusted to it.
  - The weakness of regional courts in the Arab and Islamic worlds
  - The weakness of universal criminal jurisdiction and its applications in Arab countries.
  - The idea of courts of conscience is subject to political will

ليفني تلغي زيارة لبريطانيا خوفاً من اعتقالها كمجرمة حرب!

إذا زرتِ بريطانياً بحبسوكِ؟!  
أحنا بنحبس نهن الشعب عشان  
تزورينا يا شيخه!! يا هلا يا هلا!!



# ICC: its advantages and disadvantages

- The International Criminal Court system was the result of a compromise between those adhering to national sovereignty and supporters of international justice, which allowed “the introduction of several procedures that protect state sovereignty.” Court capacity is only a “subsidiary” issue. According to Article 17 of its statute, the court is not granted the capacity to intervene when a case is the subject of prosecution by a state “except in the event that the state does not have the desire or ability to investigate the facts as it is supposed to or carry out prosecutions.” Likewise, if this state has conducted investigations into the case but refuses to carry out the required prosecutions, “unless this decision stems from a lack of desire or the result of the state’s inability to actually carry out the prosecutions.” The principle of complementarity is still shrouded in ambiguity, especially in the event that the Security Council requests the court to intervene.

# ICC: its advantages and disadvantages<sup>2</sup>

- Secondly, the court does not have the capacity to decide on cases that preceded their implementation, that is, the beginning of July 2002.
- Third, its jurisdiction only includes crimes committed on the territory of a member state or if the accused is a citizen of a member country (unless the Security Council assigns the Public Prosecutor to look into the crime or the Public Prosecutor initiates an investigation into jurisdictional crimes on his own initiative).
- Fourth, the Security Council continues to turn a blind eye to or accept the idea of forming international and mixed courts despite the presence of the court even for crimes falling within its jurisdiction, which the Iraqi government, for example, is trying to exploit by requesting international intervention from its allies, that is, political intervention instead of ratifying the Rome Statute and allowing the Public Prosecutor to By pursuing war crimes instead of its politicized criminal court?

# Palestine: Political obstacles

Since the Oslo Accords, Western decision-makers have lived with four concerns

- What they called terrorism and the Islamic movement
- Protecting Israel and covering Israeli crimes.
- The accelerating influence of pro-Israeli pressure groups
- Giving priority to what they called: the peace process, Peacekeeping.

Palestinian Rights Protection is not in their agenda

# Palestine: Judicial Obstacles

- The legal ceiling universal criminal jurisdiction, which declined in European legislation as a result of American and Israeli pressure.
- Intervention by executive and legislative authorities to stop judicial proceedings.
- Personal behavior of judges and political pressures:  
“If European countries allow universal criminal jurisdiction to be implemented without hindrance, it will be difficult for any Israeli to travel.” - Dr Avi Bell



# Legal supports for Gaza victims in 2009

- More than sixty excellent reports
- More than 26 investigation missions with quality and well-known personnel
- Outstanding work by Palestinian NGOs in Gaza
- Good cooperation from the *de facto* government in Gaza
- The Goldstone Report as a roadmap for a successful legal campaign against Israeli aggression, including the issue of individual prosecutions.

# International networking for Gaza 2009

One hundred intellectuals demand that the Palestinian President ratify the Rome Statute of the International Criminal Court on 12/12/08.

01/22/2009: Palestinian Minister of Justice Ali Khashan and Haytham Manna Transmitted the Letter of President Abbas Ratifying Rome Statute and asking for Palestinian membership of ICC.

- 240 non-governmental organizations moved under the slogan “No peace without justice and together against Impunity” on 1/7/2009.

- **350 NGOs** file a lawsuit before the Prosecutor of the International Criminal Court (01/22/2009) carried by a delegation of lawyers (Photos coming after)

# The State of Palestine requests membership in the International Criminal Court 22/01/2023



# 2010 :New Year Strategy

- Follow up on judicial struggles for accountability
- Extrapolating advanced means of struggle to lift the siege on Gaza, including intergovernmental organizations, European legislative authorities, and public opinion.
- Extrapolating means of accountability in order to rebuild the Palestinian infrastructure, stop the Judaization of Jerusalem, and besiege settlement as a war crime.
- Achieving integration between the political, civil and human rights struggle to emphasize that the issue of Palestine is not only an issue of victims, relief and aid, but rather it is the issue of a people who have the full right to determine their fate on their land and to struggle by all legitimate means to achieve this goal..

# 2009 - ICC The Hague



# Malakoff



# ICAWC MRAP PARIS



# A la violence doit répondre la justice





# In the UN

**Gaza, universal jurisdiction and the ICC**

**Arab Commission for Human Rights**

**One Justice & Justice International**

**Geneva - 17 march 2009**



# In South Africa



# Mission in Gaza 1



# Mission in Gaza 2



# Oslo Complaint



# Manama lecture was also delivered in Gaza



# Istanbul: Banned flechette bombs were used in Gaza



# Spain: Justice for Gaza





# Mr General Prosecutor



Gaza 2009





