



THE NATIONAL JUDICIARY AS AN EXCEPTIONAL MEASURE IN THE FACE OF THE CRIMES OF THE ZIONIST ENTITY IN THE GAZA STRIP

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ARTICLE INFO

Article History:

Received 26.12.2024
Accepted 11.02.2025
Published 31.02.2025

Keywords:

International peace and security,
War crimes, International justice,
Universal jurisdiction

ABSTRACT

In light of the inability of the United Nations to stop the Israeli aggression on the Gaza Strip, as the official sponsor of international peace and security, many countries are calling for the application of the law of war between states to occupied Palestine. However, reality proves that the application of this law was and still is merely ink on paper in the Palestinian case, because the international will is very much in solidarity with the occupier, this does not prevent Israel's crimes from being documented to be put before international courts in the future, as happened in the war crimes of Bosnia and Herzegovina, Sierra Leone, and Rwanda, or national courts as the alternative or available option for states in accordance with what was stipulated in the four Geneva Conventions. Therefore, it must direct the national judiciary towards what is known as universal jurisdiction to pursue war criminals in the Gaza Strip.

INTRODUCTION

The Palestinian issue is one of the most complex international issues for decades, due to its historical importance related to the rights of the Palestinian people and their existence in occupied Palestine and the Middle East region. This issue is linked to a series of events and developments that the region has witnessed since the Balfour Declaration, from a bloody conflict that has affected the lives of millions of people after the establishment of Zionism and the immigration of Jews to Palestine and the settlement of the region, due to the role played by the major powers in these events.

What happened in the Gaza Strip starting in October 2023 is nothing more than a series of uprisings against the Israeli occupation of Palestine since the 1950s. However, the Israeli response this time has reached its peak with direct targeting of civilians due to Israel's sense of humiliation in the wake of the operation led by the resistance factions, which was named the Al-Aqsa Flood, and the accompanying invasion of several settlements and the capture of army personnel.

All of this was documented through various Arab and foreign media outlets, which played a significant role in conveying the inhumane situation that the Gaza Strip has descended into. This prompted the international community to demand a cessation of hostilities in the Strip, in the face of the inability of various international bodies to solve the humanitarian disaster, or at least for senior leaders to follow up on their violations of the customs and laws of war.

From this standpoint, the following issue can be raised: How can the national judiciary be an effective mechanism for curbing crimes committed in the Gaza Strip, given the inability of international mechanisms?

The paramount importance of the study's subject matter is manifested in clarifying the role of the national judiciary in limiting the Israeli crimes against the Gaza Strip, as an auxiliary alternative to the international mechanisms that have failed due to the lack of genuine willingness in the international community. This has been proven through the resolutions of the Security Council when they collide with a state that has a permanent seat, and the recommendations of the General Assembly in

the organization.

The subject will be studied according to the requirements of the analytical approach, which is the methodology imposed by such studies and which encompasses all aspects of the subject. This necessitates the analysis of international legal texts, but nevertheless, there is nothing that prevents us from utilizing some other approaches that the elements of the subject matter dictate, such as the descriptive method.

To address the topic from all angles, we have divided this study into two sections. In the first section, we discussed the role of international mechanisms in stopping the Israeli aggression on the Gaza Strip. In the second section, we touched upon studying universal criminal jurisdiction as a mechanism to limit the crimes committed in the Gaza Strip.

Section One: The Role of International Mechanisms in Stopping the

With the continuation of the Israeli aggression on the Gaza Strip, and the unprecedented crimes it has left against the Gaza residents without distinction between civilians and combatants, various international bodies, led by the United Nations General Assembly and Security Council, have attempted to stop the military actions of Israel while seeking a ceasefire between the parties to the conflict. Based on this, we have divided this section into two demands:

The First Demand: Israel's Crimes Against the Palestinian People

In this demand, we examined the deteriorating situation in the Gaza Strip after the Al-Aqsa Intifada, and then proceeded to clarify the Israeli crimes that accompanied the armed aggression. This is what we will study in succession:

The First Branch: The Background of the Events of 07 October 2023

Despite Israel's 2005 withdrawal, the Gaza Strip remains under Israeli occupation, gaining control over land, sea, air, population registry, and com-

munication networks. This has allowed Israel to seize daily life and infrastructure, violating international human rights law.¹

On October 7, 2023, Palestinian resistance fighters launched the largest attack on Israel in decades, codenamed “Operation Al-Aqsa Tempest”. The attack, also known as the “Third Intifada”, involved thousands of rockets and Palestinian armed men advancing towards Israeli settlements. Israel declared a “state of war” and launched “Iron Sword”, causing extensive aerial bombardment and evacuation of civilians.²

Second Section: Israel’s Violation of International Humanitarian Law

Since the beginning of the aggression on the Gaza Strip on October 7, 2023, the Israeli occupation forces have carried out orders for forced mass displacement against the civilian population in the Gaza Strip, which has seriously affected their lives and safety, and forced them to live in unprecedented inhumane conditions. The forces have also repeatedly targeted the shelters for the displaced with bombardment, affecting many of them, including those belonging to the United Nations. This constitutes a serious and systematic violation of the rules of international humanitarian law,³ particularly the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War dated August 12, 1949, which grants special protection to civilians and prohibits exposing their lives to danger, threatening them, and forcing them to evacuate.

In fact, many well-known international human rights and humanitarian organizations have already pointed to potential war crimes, including crimes against personnel, and even the International Committee of the Red Cross has expressed its concern in a rare public statement about the Israeli military actions and acts prohibited under the Geneva Conventions and Additional Protocols.⁴

1 Euro-Mediterranean Observatory for Human Rights. Available at: <https://euromedmonitor.org/ar/gaza>. [Last seen: 3.07.2024].

2 TRT Arabic channel. The Palestinian issue... a Tale of Steadfastness and the Pursuit of Rights. Available at: <https://www.trtarabi.com/explainers> [Last seen: 11.03.2024].

3 Al Jazeera. (26.12.2023). French Researcher: War crimes in Gaza... Is it genocide? Available at: <https://www.aljazeera.net> [Last seen: 9.03.2024].

4 UN Human Rights Office of the High Commissioner.

UN experts warn that Israel is attempting to change Gaza’s demographic composition through increasing eviction orders and attacks on infrastructure. 85% of the population has been internally displaced since October 7, 2023, facing overcrowded conditions, infectious diseases, and struggles to access basic necessities. The Israeli military operation has targeted hospitals, schools, and shelters without considering proportionality or distinction between civilians and combatants. The UN Secretary-General has called for Israel to halt its campaign, implement a permanent ceasefire, and allow unimpeded humanitarian assistance, while prioritizing dialogue for the safe release of civilians.⁵

From the foregoing, we infer that Israel not only treated the lives of the population in the Gaza Strip with disdain, but also deliberately inflicted the greatest possible harm on civilians to commit genocide, which led to the exacerbation of the humanitarian crisis that provoked widespread condemnation from the international community. The international community has called for the necessity of finding a just and comprehensive solution to the Palestinian issue and ensuring accountability for those responsible for international crimes.

The Second Demand: The Role of United Nations Bodies in Stopping the Israeli Aggression on the Gaza Strip

There are more than 560 multilateral treaties on human rights, terrorism, international crime, refugees, disarmament, and many other issues that have been negotiated and concluded through the efforts of the United Nations.⁶ Despite this large number, there are still major violations of international law

(22.12.2023). Israel Working to Expel Civilian Population of Gaza, UN Expert Warns. Available at: <https://www.ohchr.org> [Last seen: 9.03.2024].

5 UN High Commissioner for Human Rights, press release. (15.09.2009). The report of the United Nations Fact-Finding Mission on the Conflict in Gaza. Available at: <https://www.ohchr.org/ar/press-releases> [Last seen: 26.05.2024].

6 Anadolu Agency. (07.12.2023). The United Nations Voted on 5 Resolutions in Favor of Palestine, the Palestinian Ministry of Foreign Affairs and Expatriates called for “Urgent action at this time to impose a ceasefire on the Israeli aggression and a cessation of hostilities”, Turkey. Available at: <https://www.aa.com.tr/ar/> [Last seen: 12.03.2024].

by Israel in Gaza. Therefore, in this section, we will study the role of the two most important bodies in the United Nations in curbing the Israeli aggression against the Gaza Strip, as follows:

The First Branch: Evaluating the Efforts of the United Nations General Assembly in Stopping the Israeli Aggression on Gaza

The UN Fact-Finding Mission's report on Gaza conflict reveals Israel violated international law by not taking necessary precautions, using prohibited weapons, targeting Al-Quds and Al-Wafa hospitals, and mass detaining Palestinians in Israeli prisons, violating human rights requirements and the International Covenant on Civil and Political Rights.⁷

The United Nations General Assembly adopted by an overwhelming majority five resolutions on Palestinian issues related to refugees, settlements, and Israeli practices.⁸ The Palestinian Ministry of Foreign Affairs and Expatriates reported that 168 countries supported a resolution assisting Palestinian refugees, while occupying states voted against it. The resolution also passed on the UNRWA's operations, with 165 countries supporting it. The Special Committee investigating Israeli human rights practices against Palestinians and other Arabs was supported by 86 countries, with 12 countries opposing it.⁹

Based on the above, we can conclude that the General Assembly plays an important role in spreading global awareness by expressing the will of the international community in support of the rights of the Palestinian people, although its ability to stop the Israeli aggression is still very limited, and this is due to several reasons, the most important of which can be summarized as follows:

- The resolutions issued by the General Assembly are not legally binding,¹⁰ which

means that states are not obligated to comply with their recommendations;

- The conflicting political and economic interests of the members in the General Assembly often influence their positions, leading to an inability to form a strong and unified consensus on issues such as the Israeli-Palestinian conflict;
- Diplomatic pressure from powerful states, particularly the United States and European countries, weakens and limits the General Assembly's ability to take strong actions against Israel;
- The General Assembly takes a long time to reach decisions due to bureaucracy. This delay can be more harmful than beneficial, especially in situations that require a rapid response to stop violence;
- The General Assembly does not have its forces or executive mechanisms to implement its resolutions, which primarily depend on the member states, making it often powerless to impose its will;
- The political divisions among the member states on how to deal with Israel and Hamas have resulted in the adoption of weak and ineffective decisions.

The Second Branch: The Security Council's Failure to Stop the Israeli Aggression on Gaza

The Security Council resolution issued on March 25, 2024¹¹ calling for a ceasefire and opening the door for the flow of humanitarian aid to the Gaza Strip, is considered the most prominent sign of the international shift towards intensifying pressure on Israel, in line with the Council's previous resolutions numbered 2712 and 2720 of 2023. However, upon a careful reading of the wording of this resolution in comparison to the previously issued Security Council resolutions, it is notable that the term "demands" has been replaced with "calls upon" or "urges", which is something we have not been ac-

7 Al Jazeera. (29.03.2024). After the Security Council resolution.. Will the Pressure Succeed in Stopping the Israeli Aggression on Gaza? Available at: <https://www.aljazeera.net> [Last seen: 25.05.2024].

8 Al-MasryAl-Youm channel. (27.03.2024). Israel Disregards the Security Council Resolution and Continues its Operations in Gaza (details). Available at: <https://www.almasryalyoum.com> [Last seen: 25.05.2024].

9 Al Jazeera. (26.05.2024). The War on Gaza live.. Massacre in Rafah as the Occupation Targets Tents Near an UNRWA Facility. Available at: <https://www.aljazeera.net> [Last seen: 26.05.2024].

10 Al-Masrychannel. (26.05.2024). New massacre. The Oc-

cupation Bombs the Tents of the Displaced in Rafah. Available at: <https://www.masrawy.com> [Last seen: 26.05.2024].

11 Ayoub, N. (31.01.2024). The South Africa v. Israel Case Regarding the Application of the Convention on the Prevention of Genocide in Gaza. Arab Center for Research and Policy Studies, pp. 5-6.

customed to in Security Council resolutions, which have traditionally included the phrase “decides”. There is a distinct difference between the phrases “the Security Council calls upon/urges” and “the Security Council decides”. Furthermore, the resolution was not even attributed to Chapter VII of the Charter, which deals with the maintenance of international peace and security, as stipulated in Article 25 of the United Nations Charter.

All of this has led several parties, foremost among them the United States of America, to interpret and construe the resolution according to its wording, considering it to be lacking in the mandatory character.¹²

Regardless of the format in which the resolution was formulated, in the end all parties must respect it and abide by it, as it was issued by an executive body of the United Nations, which is empowered under the Charter with very broad powers, represented mainly in the maintenance of international peace and security.

However, Israel did not care about the resolution, and the evidence of this is that only two days after it was issued, it began what it is accustomed to doing in terms of crimes against civilians in Gaza, by committing 8 massacres against Palestinian families, from which 81 martyrs and 93 injuries were reported to have reached the hospitals, according to what the Palestinian news agency (WAFA) reported.¹³

Based on the aforementioned data, it can be said that Israel has not respected the UN Security Council resolution, failing to maintain international peace and security. This confirms that the Zionist entity has somehow ensured the suspension of any subsequent action that the Council may take against it due to its violation of this resolution, since the entity’s allies have permanent seats on the Council, which enables them to use the veto power. The best evidence of this is the continued acts of genocide to this day.

The confirmed event was the bombing of the refugee camp north-west of Rafah, southern

Gaza Strip, by the occupation army’s aircraft on 26/05/2024. The target was the tents of the displaced people near the headquarters of the United Nations Relief and Works Agency for Palestine Refugees (UNRWA) in an area claimed to be “safe”. This resulted in dozens of casualties with burns and amputations, as well as deaths,¹⁴ 27 civilians.¹⁵

The Second Requirement: Practical Measures Taken by International Courts to Prosecute Israel for its Crimes in Gaza

The interest has been growing in international human rights circles regarding the idea of prosecuting Israel before international courts, due to the estimated civilian death toll of over 15,000 caused by its military forces in the Gaza Strip. Human rights organizations consider this a systematic crime and killing of civilians.¹⁶ In fact, Israel has been condemned by the two most prominent international courts – the first being the International Court of Justice, which rules on disputes between states according to the principles of state responsibility, and the second being the International Criminal Court, which holds individuals criminally responsible. We will explain these in more detail:

The First Section: Condemnation of Israel by the International Court of Justice

On December 29, 2023, the Republic of South Africa filed a lawsuit against Israel before the International Court of Justice to determine Israel’s responsibility for acts of genocide against Palestinians in the Gaza Strip, thereby violating its obligations under the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. It is noteworthy that this is the only treaty in which Is-

12 UN Human Rights Office. (31.01.2024). Experts from the United Nations: The International Court of Justice Ruling Instills Hope in Protecting Gaza Civilians Suffering from Dire Humanitarian Conditions. Available at: <https://www.ohchr.org> [Last seen: 22.03.2024].

13 Al-Masry Al-Youm Channel. (27.03.2024). Israel Disregards Security Council Resolution and Continues its Operations in Gaza (details) <https://www.almasryalyoum.com>

14 Sudani, N. The Preliminary Investigation of the International Criminal Court on the Crimes of the Israeli Occupation in Palestine. Journal of Legal and Political Sciences, University of El Oued, Algeria, vol. 12, issue 1, p. 785.

15 RT Arabic Channel. (21.05.2024). What Does the International Criminal Court Issuing Arrest Warrants Against Netanyahu and Gallant Mean? Available at: <https://arabic.rt.com/world/> [Last seen: 24.05.2024].

16 University of Youssef Ben Khedda, Faculty of Law. (2007/2008). The Principle of Universal Jurisdiction in International Criminal Law Master’s Thesis. Algeria, pp. 30-35.

rael has recognized the Court's jurisdiction to settle disputes arising between it and other parties regarding the interpretation or application of the treaty, while reserving its jurisdiction in the rest of the international treaties it has signed.

South Africa's request included a plea to the Court to impose provisional (precautionary) measures, which are of utmost importance in ensuring the urgent and full protection of Palestinians who are still facing serious dangers as a result of the ongoing acts of genocide in the Gaza Strip. This is also to preserve the rights of either party as stipulated in Article 41 of the Statute of the Court.¹⁷

The International Court of Justice has ordered Israel to cease acts deemed genocide, including those listed in the Convention on the Prevention and Punishment of Genocide. Despite this, Israel continues to face high civilian casualties and injuries. The targeting of three hospitals in Khan Yunis and the targeting of displaced civilians indicate Israel's rejection of the court's decision.¹⁸

Israel reaffirmed its intention to continue its aggression against the Palestinian people, ignoring the International Court of Justice's ruling, after 124 days of aggression, resulting in 70% of children and women's deaths and war crimes.¹⁹

It is therefore clear that the escalation of Israeli attacks aims to commit further war crimes and genocide, with the blatant disregard for the decisions of the International Court of Justice that oblige it to take measures to prevent this crime.

The Second Branch: The Efforts of the International Criminal Court in Pursuing War Criminals in the Gaza Strip

Israel was one of the seven countries that voted against the establishment of the International Criminal Court²⁰ and opposed the Rome Statute,

citing some legal arguments in an attempt to conceal its true political motives that led it to oppose the establishment of the Court. However, despite this, Israel signed the Statute of the International Criminal Court on December 31, 2000, but has not ratified it yet.²¹ The International Criminal Court can still pursue political and military leaders in Israel at the request of Palestine, as long as Palestine is a member of the International Criminal Court. This is in accordance with Article 13 of the Rome Statute. The case could also be referred to the Court by the United Nations Security Council, as per the same article. However, this latter scenario is unlikely to occur given the blessing of some influential states in the Security Council for the military actions on Gaza.

The Pre-Trial Chamber of the International Criminal Court is currently examining the Prosecutor Karim Khan's request for arrest warrants against 3 Hamas leaders and the Israeli Prime Minister "Benjamin Netanyahu" and his Defense Minister "Yoav Gallant". If the Pre-Trial Chamber judges are convinced that the evidence presented provides reasonable grounds and that the necessary criteria for issuing the arrest warrants have been met, they will approve the issuance of arrest warrants against them, which will include details of the suspects, a description of their alleged crimes, and the legal basis for issuing them. These warrants will then be sent to the 124 States Parties to the Rome Statute, who are obliged to cooperate with the Court to execute the arrest warrants. This means that Netanyahu and Gallant will have to think carefully before travelling to any of these countries, unlike the Hamas leaders who are permanently based in the Gaza Strip, with Haniyeh currently residing in Qatar.

The International Criminal Court's Prosecutor has called on all Rome Statute States to handle requests for judicial decisions with the same seriousness as in previous cases. Israeli Foreign Minister Yisrael Katz has ordered a special committee to combat Khan's decision, intending to speak with world foreign ministers to oppose the Prosecutor's decision.²²

17 International Committee of the Red Cross. (2014). *La Compétence Universelle en Matière de Crimes de Guerre, Services Consultatifs en Droit International Humanitaire*, p. 1.

18 Varney, H., Zdu, K. (2020). *Advancing Global Accountability The Role of Universal Jurisdiction in Prosecuting International Crimes*. International Center for Transitional Justice, p. 5.

19 Bouchet-Saulnier, F. (2006). *The Practical Dictionary of Humanitarian Law, on the Universal Jurisdiction* (translated by: Mohamed Masoud, reviewed by: Dr. Aamer Al-Zamali and Madiha Masoud). Dar Al-Ilm for Millions, 1st edition.

20 Al-Aini, T.Y., Al-Hassanawy, A.J. (2009). *The International*

Criminal Court: A Legal Study in Determining its Nature, Legal Basis, Formations, and Membership Rules, with Identifying the Guarantees of the Accused. Dar Al-Yazouri Scientific Publishing and Distribution, Jordan, p. 53.

21 International Committee of the Red Cross. (2005). *Rule 157 of Customary International Humanitarian Law*.

22 International Committee of the Red Cross. (13.10.2024).

There is a serious desire on the part of the prosecutor of the International Criminal Court to issue an arrest warrant, although this matter is initially subject to the approval of the Pre-Trial Chamber judges according to the provisions of Article 15 of the Rome Statute. However, if the arrest warrant is issued, we believe it will significantly impact Israeli politicians and leaders, at least in their constant travels, which they are accustomed to. As for the leaders of Hamas, they do not travel extensively; nevertheless, the warrant may place Palestine in a dilemma due to its obligations towards the Court, as it has ratified the Court's Statute.

In general, and based on judicial precedents, the International Criminal Court remains constrained by several obstacles, primarily related to the provisions of its Statute, especially Article 82 concerning a set of conditions that require the approval of certain states regarding judicial cooperation. Therefore, states must strive to impose international criminal justice through what is known as universal jurisdiction in the prosecution of various international crimes, and this is what we will devote to studying in the following section.

The Second Topic: Universal Criminal Jurisdiction as a Mechanism to Reduce Crimes Committed in the Gaza Strip

In the face of restricting the jurisdiction of the International Criminal Court to several conditions, some of which are objective and others are territorial, the national judiciary needed to strive to take its place, as it is the original jurisdiction for the prosecution of international crimes, in accordance with the various international documents, foremost of which are the Geneva Conventions of 1949. Not only that, but even the United Nations bodies, including the Security Council, urged states to exercise universal criminal jurisdiction to tighten the noose on perpetrators of international crimes. Based on this, we have divided this topic into two demands as follows:

The Scope of the Principle of Universal Jurisdiction and its Application. Available at: <https://www.icrc.org> [Last seen: 24.05.2024].

The First Requirement: The Global Criminal Jurisdiction is a Mandatory Obligation to Achieve Criminal Justice

It is important to note the distinction between universal legislative jurisdiction and universal judicial jurisdiction. The former refers to the enactment of domestic legislation that incorporates international crimes, while the latter involves taking measures to prosecute, investigate, and try the accused. Both fall under the umbrella of universal criminal jurisdiction,²³ whereby all states have the right to pursue and suppress perpetrators of international crimes. This is sometimes referred to as the global repressive system or the system of universal jurisdiction. This jurisdiction is considered an indirect application of international law through domestic laws.²⁴

The First Section: The Concept of Universal Criminal Jurisdiction

The jurist "Grotius" is considered the first to establish the principle of the universality of the right to justice in the face of crimes that affect the rights of peoples, based on the idea that crimes violate the natural law that is originally unwritten but firmly rooted in the human conscience,²⁵ International law allows states to extend their national law to events outside their territory, known as universal jurisdiction. This principle, which allows states to prosecute war crimes even without a state connection, aims to suppress crimes and prevent perpetrators from seeking refuge in third states. To implement this principle, states must integrate universal jurisdiction into their national legislation.²⁶

This allows it to even request the extradition of the suspects from another country if it is proven that there has been a delay in the trial".²⁷

23 Al Jazeera. (17.06.2001). Survivors of Sabra and Shatila sue Sharon in Brussels. Available at: <https://www.aljazeera.net/news/> [Last seen: 25.05.2024].

24 Hassan, M.S. (2024). The Effectiveness of the Principle of Universal Jurisdiction. Journal of Legal and Social Sciences, ZianeAchour University, Djelfa, vol. 9, issue 1, p. 594.

25 Al-Quds Al-Arabi newspaper. (31.01.2009). The Decision of the Spanish Judge Against an Israeli Minister and Six Military Leaders on Charges of War Crimes Causes Uproar in Tel Aviv. Available at: <https://www.alquds.co.uk> [Last seen: 25.05.2024].

26 Al Jazeera. (14.12.2009). A British Court Order for the Arrest of Livni. Available at: <https://www.aljazeera.net/> [Last seen: 25.05.2024].

27 The Covenant of the League of Nations in 1919 and then

In February 1999, the Security Council requested that states amend their legislation to incorporate the principle of universal jurisdiction into their domestic laws, to enable the monitoring and prosecution of those who violate international humanitarian law. The same matter was emphasized in the report of the UN Secretary-General issued on September 8, 1999, regarding the protection of civilians in armed conflicts.²⁸

We can conclude that universal criminal jurisdiction can be considered an exceptional measure to enforce criminal justice, as it allows states to prosecute perpetrators of international crimes, even if the state has no connection to the accused or their conduct. Consequently, any person accused of committing violations of international humanitarian law can be tried.

The Second Branch: The Principle of Universal Criminal Jurisdiction as a Precautionary Measure

At first glance, upon reading the texts of the Rome Statute of the International Criminal Court, one might understand that they constitute a violation of national sovereignty, especially with regards to its exclusive jurisdiction.²⁹

In fact, the principle of universal jurisdiction was codified in the Geneva Conventions of 1949, to fill a gap in international law resulting from the lack of an effective formula for international jurisdiction. Universal jurisdiction applies to all serious violations of the Geneva Conventions, most of which fall under the categories of “war crimes” or “crimes against humanity”. These crimes have been defined within the framework of “war crimes/crimes against humanity” (Section 3), and include other crimes over which states may exercise uni-

versal jurisdiction, such as genocide (committed during war), torture, slave trade, aircraft attacks and hijackings, and acts of terrorism. The right of states to grant universal jurisdiction to their courts over war crimes is a rule of customary international law.³⁰

Even if the states with jurisdictional competence do not investigate serious violations of international humanitarian law and prosecute those responsible, universal jurisdiction can be an effective mechanism for other states to ensure accountability and put an end to impunity. In fact, the International Committee of the Red Cross has counted more than 110 countries that have established some form of universal jurisdiction over serious violations of international humanitarian law in their national legislation. Other countries have also applied the principle of universal jurisdiction through decisions and initiatives of their national courts, such as setting up assistance mechanisms and networks, and establishing specialized units within prosecution or competent judicial bodies tasked with investigating war crimes.

It is observed that there is an increase in judicial proceedings based on universal jurisdiction against war crimes. This reflects the efforts of states in utilizing universal jurisdiction to effectively address the prevailing gaps that enable impunity, and to move towards accountability for serious violations of international humanitarian law committed outside their borders, whether during past or ongoing armed conflicts.³¹

The Second Requirement: The Extent of the Effectiveness of the Universal Criminal Jurisdiction Practiced on Israeli War Criminals

Determining the effectiveness of universal criminal jurisdiction mainly depends on studying judicial precedents and international efforts made to establish this principle. This is followed by outlining the key obstacles that limit the effectiveness of this principle, which can be considered one of the most important mechanisms to achieve global

the Paris Peace Pact (Briand-Kellogg Pact) in 1928 attempted to outlaw war, and the UN Charter in 1945 reaffirmed this trend, “All Members shall refrain in their international relations from the threat or use of force (...)”. Refer to: What is the meaning of “the law on the use of force” and “the law in war”?, from: International Committee of the Red Cross. (01.01.2004). International Humanitarian Law: Answers to Your Questions. Available at: <https://www.icrc.org> [Last seen: 8.05.2024].

28 Maki, O. (13.11.2022). Elements of the International Crime: An Applied Study on the UAE Law of International Crimes, International Committee of the Red Cross, p. 4. Available at: <https://www.icrc.org/ar/publication/> [Last seen: 6.11.2024].

29 Varney, H., Zdu, K. op cit, p. 5.

30 Ibid, p. 1.

31 International Committee of the Red Cross. (13.11.1024). The Scope and Application of the Principle of Universal Jurisdiction. Available at: <https://www.icrc.org> [Last seen: 14.11.2024].

criminal justice without the need for international courts, if adopted by all countries in the world. Based on this, we have divided this requirement into two parts as follows:

The First Branch: International Efforts to Activate Universal Jurisdiction and Follow Up on the Criminals of the Zionist Entity

Some countries have laws that allow them to prosecute international crimes even if they were committed outside their territories and against non-citizens, based on the principle of universal criminal jurisdiction. Victims or their representatives can file complaints in these countries.

In practice, universal jurisdiction has been activated by some countries by issuing arrest warrants against Israeli leaders due to their actions in Palestine. Among the most prominent of these countries, we can mention:

1 – In 2001, survivors of the Sabra and Shatila massacre in Beirut filed a complaint against Israeli Prime Minister Ariel Sharon, accusing him of covering up Christian militia violations, under the Geneva 1949 Conventions provisions related to international humanitarian law³², Therefore Belgium is considered one of the first countries to have used the principle of universal jurisdiction effectively.

However, the Belgian laws were later amended to restrict this jurisdiction. The amendment limiting the universal jurisdiction to only those crimes that have a direct link to Belgium has raised concerns about the restriction of universal jurisdiction to the interests of states.³³

2 – Spain: In 2009, a Spanish judge issued arrest warrants against a group of Israeli military leaders, accusing them of committing war crimes during the “Cast Lead” operation in Gaza in 2008-2009. However, the case was later closed after Spain amended its laws to restrict the principle of universal jurisdiction.³⁴

32 Le Temps journal, Sabra et Chatila: la plainte contre Ariel Sharon embarrasse la Belgique. Available at: <https://www.letemps.ch/monde/sabra-chatila-plainte-contre-ariel-sharon-embarrasse-belgique> [Last seen: 9.11.2024].

33 Hassan, M.S. (2024). The Effectiveness of the Principle of Universal Jurisdiction. *Journal of Legal and Social Sciences*, 2024, p. 594.

34 Al-Quds Al-Arabi newspaper. (31.06.2009). Spanish Judge’s Ruling Against Israeli Minister and Six Military

3 – Britain: The British courts have issued several arrest warrants against Israeli leaders based on complaints from human rights activists. For example, in 2009, an arrest warrant was issued against former Israeli Foreign Minister Tzipi Livni, but it was not executed because Livni was not in Britain at the time.³⁵

It is observed that such procedures have not achieved deterrence due to the legal and diplomatic obstacles they face, as a result of political and international pressures that have led to the closure of cases or the amendment of laws to restrict the possibility of using them in the future. However, there are at least attempts by Western countries, even if they do not bear fruit. In contrast, our research has shown that there is no precedent of exercising universal criminal jurisdiction against Israeli leaders by Arab states, which have long condemned the crimes of the Zionist entity and called for the cessation of serious violations of international humanitarian law and human rights against the Palestinian people.

The Second Branch: Challenges in the Application of Universal Criminal Jurisdiction over War Criminals in Gaza

Although national courts have the original jurisdiction to prosecute perpetrators of international crimes, the 1948 Convention on the Prevention and Punishment of the Crime of Genocide provided for the possibility of establishing an international criminal court that the States Parties to the Convention would accept jurisdiction. However, this does not mean that international criminal courts have the original jurisdiction to follow up on these crimes, as national criminal prosecutions are a fundamental tool for enforcing laws related to international crimes, and they are also a politically, legally, and practically preferred choice given the national courts’ broader connection to trial procedures in terms of gathering evidence, hearing victims and witnesses, and perhaps also in terms of lower costs compared to international trials³⁶, De-

Leaders on Charges of War Crimes Stirs Tel Aviv. Available at: <https://www.alquds.co.uk> [Last seen: 9.11.2024].

35 Al Jazeera. (24.12.2009). British Court Order to Arrest Livni. Available at: <https://www.aljazeera.net> [Last seen: 10.11.2024].

36 UN General Assembly Resolution A/65/181 of 29.07.2010.

spite the international community's commitment after World War II to not allow serious violations to occur, and the prohibition of war in the United Nations Charter. While conflicts have become widespread across the globe, national prosecutions remain very limited, which has led the international criminal justice system to complement national justice systems in imposing punishment. This is primarily due to the inadequacy of national legislation capable of granting subject-matter jurisdiction to national courts, enabling them to initiate criminal proceedings for international crimes³⁷.

The national judge has the right to consider international crimes that may be brought before them, as international conventions have the same rank as the constitution in some countries or even supersede it in others. Upon ratifying international conventions, the state has the right to prosecute individuals involved in violating these conventions. However, the national judge may encounter a legislative void, as the convention may not have a punitive provision to apply to each of the criminalized acts. Hence, the importance of national legislatures adopting laws for international crimes, by establishing an appropriate penal system for each crime, becomes evident.³⁸

Based on the information provided, the main obstacles to the practice of universal criminal jurisdiction can be summarized in the following points:

- Since the principle of sovereignty is the cornerstone of international law, this means that states are always hesitant to allow another state to exercise its judicial powers over its citizens or over acts that occurred within its territory;
- The difficulty of collecting evidence and witnesses from other countries, especially if those countries are uncooperative or have different legal systems, all of which can lead to the complexity and prolongation of trials;

- Sometimes, political interests and the political influence exercised by government entities at all levels can interfere to tarnish the reputation of the court;³⁹
- What impedes the application of universal criminal jurisdiction is, for example, that the prosecution of individuals from other countries may lead to tensions in diplomatic relations;
- The difficulty in enforcing judgments issued by national courts, if the state where the suspect is located does not cooperate with the judicial authorities of the state exercising universal criminal jurisdiction;
- States exercising universal criminal jurisdiction may be accused of selectively choosing cases for political or racial reasons, which weakens the credibility of this practice.

All these obstacles may make the exercise of universal criminal jurisdiction a challenge, requiring strong cooperation and genuine political will from states to strengthen international justice and combat impunity.⁴⁰

Even though universal jurisdiction faces serious challenges at the conceptual, legal, political and practical levels, it often remains the only avenue available to victims to achieve justice and address the accountability gap.

CONCLUSION

The national judiciary remains ineffective in curbing international crimes, despite all the privileges granted to it under the rules of international law. This is primarily due to the political considerations and interests that have long stood in the way of achieving international criminal justice, even though universal criminal jurisdiction is a guaranteed right for the national judiciary. It is an additional means of providing redress for victims and deterring war criminals, whether they are Israeli leaders or politicians, or at least restricting their international movements, which greatly assist them in communicating and uniting with their

37 The Influence of the Nuremberg Trial on International Criminal Law. Available at: <https://www.roberthjackson.org/speech-and-writing/the-influence-of-the-nuremberg-trial-on-international-criminal-law/> [Last seen: 12.03.2024].

38 Makki, O. (13.11.2022). Elements of International Crime: An Applied Study on the UAE International Crimes Law. International Committee of the Red Cross. Available at: <https://www.icrc.org/ar/publication/> [Last seen: 13.11.2024].

39 Varney, H., Zdu, K. (2020). Advancing Global Accountability. The Role of Universal Jurisdiction in Prosecuting International Crimes. International Center for Transitional Justice, p. 5.

40 Ibid, p. 1.

allies. Universal criminal jurisdiction is a last resort when all other options, including UN bodies and international courts, fail.

This research has produced a set of results that can be summarized as follows:

- The General Assembly and the Security Council have failed to curb the serious violations of human rights and international humanitarian law committed by Israel against the residents of the Gaza Strip;
 - Although the decision of the International Court of Justice is considered part of the binding decisions since Israel is a party to the 1948 Genocide Convention, in practice the decision has not been respected, and therefore there is a flagrant violation of the rules of public international law by Israel;
 - The Prosecutor of the International Criminal Court has performed admirably by requesting the issuance of arrest warrants against Israeli war criminals, despite all the political pressures from Israel's allies against the court's judges;
 - Universal criminal jurisdiction is a measure of great importance due to its impact and restriction on all war criminals in the Gaza Strip, but in the absence of international cooperation, this principle cannot curb international crimes;
 - The Arab states in particular, and the countries of the world in general, did not resort to the principle of universal criminal jurisdiction to issue arrest warrants against war criminals in the Gaza Strip after the Al-Aqsa Intifada and the accompanying egregious violations and breaches of international law by Israel.
- members to adopt guidelines that encourage and promote the effective and practical use of universal jurisdiction in the most serious crimes under international law, including war crimes, genocide, and crimes against humanity;
 - The United Nations should establish guidelines to determine the minimum standards for the application of universal jurisdiction; provided that this threshold does not reach the dilution of the local legal frameworks that provide for the strong application of universal jurisdiction;
 - Research institutions should cooperate with civil society to develop model laws for criminal jurisdiction, which would greatly facilitate advocacy initiatives with policy-makers and governments;
 - States must comply with their international obligations to prosecute or extradite persons convicted of committing international crimes, in accordance with the principles of international law.

Based on the above, a series of recommendations can be made:

- To facilitate the application of universal criminal jurisdiction at the local level, states should adopt specific policies and guidelines regarding public prosecution;
- In line with calls for "clarity" regarding the application of universal jurisdiction by states at the international level, the United Nations should encourage states to exercise universal criminal jurisdiction, urge

BIBLIOGRAPHY:

1. Ayoub, N. (31.01.2024). The South Africa v. Israel Case Regarding the Application of the Convention on the Prevention of Genocide in Gaza. Arab Center for Research and Policy Studies.
2. Sudani, N. The Preliminary Investigation of the International Criminal Court on the Crimes of the Israeli Occupation in Palestine. Journal of Legal and Political Sciences, University of El Oued, Algeria, vol. 12, issue 1.
3. University of Youssef Ben Khedda, Faculty of Law. (2007/2008). The Principle of Universal Jurisdiction in International Criminal Law Master's Thesis. Algeria.
4. International Committee of the Red Cross. (2014). La Compétence Universelle en Matière de Crimes de Guerre, Services Consultatifs en Droit International Humanitaire;
5. Varney, H., Zdu, K. (2020). Advancing Global Accountability The Role of Universal Jurisdiction in Prosecuting International Crimes. International Center for Transitional Justice.
6. Bouchet-Saulnier, F. (2006). The Practical Dictionary of Humanitarian Law, on the Universal Jurisdiction (translated by: Mohamed Masoud, reviewed by: Dr. Aamer Al-Zamali and Madiha Masoud). Dar Al-Ilm for Millions, 1st edition.
7. Al-Aini, T.Y., Al-Hassanawy, A.J. (2009). The International Criminal Court: A Legal Study in Determining its Nature, Legal Basis, Formations, and Membership Rules, with Identifying the Guarantees of the Accused. Dar Al-Yazouri Scientific Publishing and Distribution, Jordan, p. 53.
8. International Committee of the Red Cross. (2005). Rule 157 of Customary International Humanitarian Law.
9. Hassan, M.S. (2024). The Effectiveness of the Principle of Universal Jurisdiction. Journal of Legal and Social Sciences, ZianeAchour University, Djelfa, vol. 9, issue 1.
10. International Committee of the Red Cross. (01/01/2004). International Humanitarian Law: Answers to Your Questions. Available at: <https://www.icrc.org> [Last seen: 8.05.2024].
11. Maki, O. (13/11/2022). Elements of the International Crime: An Applied Study on the UAE Law of International Crimes, International Committee of the Red Cross. Available at: <https://www.icrc.org/ar/publication/> [Last seen: 6.11.2024].
12. UN General Assembly Resolution A/65/181 of 29 July 2010.

Web Resources:

1. Euro-Mediterranean Observatory for Human Rights. Available at: <https://euromedmonitor.org/ar/gaza> [Last seen: 3.07.2024].
2. TRT Arabic channel. The Palestinian issue... a Tale of Steadfastness and the Pursuit of Rights. Available at: <https://www.trtarabi.com/explainers>.
3. Al Jazeera. (26.12.2023). French Researcher: War crimes in Gaza... Is it genocide? Available at: <https://www.aljazeera.net> [Last seen: 9.03.2024].
4. UN Human Rights Office of the High Commissioner. (22.12.2023). Israel Working to Expel Civilian Population of Gaza, UN Expert Warns. Available at: <https://www.ohchr.org> [Last seen: 9.03.2024].
5. UN High Commissioner for Human Rights, press release. (15.09.2009). The report of the United Nations Fact-Finding Mission on the Conflict in Gaza. Available at: <https://www.ohchr.org/ar/press-releases> [Last seen: 26.05.2024].
6. Anadolu Agency. (07.12.2023). The United Nations Voted on 5 Resolutions in Favor of Palestine, the Palestinian Ministry of Foreign Affairs and Expatriates called for "Urgent action at this time to impose a cease-fire on the Israeli aggression and a cessation of hostilities", Turkey. Available at: <https://www.aa.com.tr/ar/> [Last seen: 12.03.2024].
7. Al Jazeera. (29.03.2024). After the Security Council resolution.. Will the Pressure Succeed in Stopping the Israeli Aggression on Gaza? Available at: <https://www.aljazeera.net> [Last seen: 25.05.2024].
8. Al-Masry Al-Youm channel. (27.03.2024). Israel Disregards the Security Council Resolution and Continues its Operations in Gaza (details). Available at: <https://www.almasryalyoum.com> [Last seen: 25.05.2024].
9. Al Jazeera Net. (26.05.2024). The War on Gaza live.. Massacre in Rafah as the Occupation Targets Tents Near an UNRWA Facility. Available at: <https://www.aljazeera.net> [Last seen: 26.05.2024].
10. Al-Masry channel. (26.05.2024). New massacre.. The Occupation Bombs the Tents of the Displaced in Rafah. Available at: <https://www.masrawy.com> [Last seen: 26.05.2024].
11. UN Human Rights Office. (31.01.2024). Experts from the United Nations: The International Court of Justice

- Ruling Instills Hope in Protecting Gaza Civilians Suffering from Dire Humanitarian Conditions. Available at: <https://www.ohchr.org> [Last seen: 22.03.2024].
12. RT Arabic Channel. (21.05.2024). What Does the International Criminal Court Issuing Arrest Warrants Against Netanyahu and Gallant Mean? Available at: <https://arabic.rt.com/world/> [Last seen: 24.05.2024].
 13. International Committee of the Red Cross. (13.10.2024). The Scope of the Principle of Universal Jurisdiction and its Application. Available at: <https://www.icrc.org> [Last seen: 24.05.2024].
 14. Al Jazeera. (17.06.2001). Survivors of Sabra and Shatila sue Sharon in Brussels. Available at: <https://www.aljazeera.net/news/> [Last seen: 25.05.2024].
 15. Al-Quds Al-Arabi newspaper. (31.01.2009). The Decision of the Spanish Judge Against an Israeli Minister and Six Military Leaders on Charges of War Crimes Causes Uproar in Tel Aviv. Available at: <https://www.alquds.co.uk> [Last seen: 25.05.2024].
 16. Al Jazeera. (14.12.2009). A British Court Order for the Arrest of Livni. Available at: <https://www.aljazeera.net> [Last seen: 25.05.2024].
 17. International Committee of the Red Cross. (13.11.1024). The Scope and Application of the Principle of Universal Jurisdiction. Available at: <https://www.icrc.org> [Last seen: 14.11.2024].
 18. Le Temps journal. (20.05.2001). The Story Next to Ariel Sharon in Belgium. Available at: <https://www.letemps.ch/monde/sabra-chatila-plainte-contre-ariel-sharon-embarrasse-belgique> [Last seen: 9.11.2024].
 19. Al-Quds Al-Arabi newspaper. (31.06.2009). Spanish Judge's Ruling Against Israeli Minister and Six Military Leaders on Charges of War Crimes Stirs Tel Aviv. Available at: <https://www.alquds.co.uk> [Last seen: 9.11.2024].
 20. Al Jazeera. (24.12.2009). British Court Order to Arrest Livni. Available at: <https://www.aljazeera.net> [Last seen: 10.11.2024].
 21. The Influence of the Nuremberg Trial on International Criminal Law. Available at: <https://www.roberth-jackson.org/speech-and-writing/the-influence-of-the-nuremberg-trial-on-international-criminal-law/> [Last seen: 12.03.2024].