

THE ICJ AND FORCING STATES TO ABIDE BY THE IHL AND LEGALITY

محكمة العدل الدولية وإلزام الدول بالقانون الدولي الإنساني وبمبدأ الشرعية

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ABSTRACT

The International Court of Justice has made great efforts to protect international peace and security by issuing advisory opinions, as well as by formulating contemporary principles that are binding on states on The peaceful settlement of disputes. It has also established new legal principles to remove ambiguity from the provisions of international humanitarian law. Hence, I will highlight the new principles of the International Court of Justice and its efforts to resolve contemporary disputes.

Keywords: International Court of Justice; Conflicts; peace.

الملخص

لقد بذلت محكمة العدل الدولية جهودًا كبيرة لحماية السلم والأمن الدوليين من خلال إصدار الفتاوى، وكذلك من خلال صياغة المبادئ القانونية المعاصرة الملزمة للدول بشأن التسوية السلمية للنزاعات الدولية. كما أرسيت مبادئ قانونية جديدة لإزالة الغموض عن أحكام القانون الدولي الإنساني، ومن ثم فسوف أسعى لإلقاء الضوء على جهود محكمة العدل الدولية لإلزام الدول باحترام الشرعية الدولية.

الكلمات المفتاحية: محكمة العدل الدولية؛ النزاعات؛ السلام.

1- INTRODUCTION:

The importance of the research lies in shedding light on the efforts of the International Court of Justice in maintaining international peace and security, by highlighting the Court's role in settling disputes that arise between states, and issuing advisory opinions in legal cases, in addition to clarifying the Court's role in contributing to the application of international humanitarian law and the Human rights law , however, the problem lies in the fact that the statute of the International Court of Justice includes many obstacles, the most important of which is the recourse to the court. It is optional, and the Court faces many obstacles to oblige states to those jurisprudence and opinions, and one of the biggest problems is the difficulty of distinguishing between legal and political conflict.

As for the research method, I will follow the analytical method by showing the principles developed in the rulings of the International Court of Justice, and the extent of the Court's contribution to replacing war with peace, and how the International Court of Justice had a wonderful role in developing, interpreting and enriching the principles of International humanitarian law, and I will explain how the fatwa's issued by it contributed to removing confusion and ambiguity in many legal issues.

The International Court of Justice had an important role in confronting the arbitrariness of states in implementing the provisions of international humanitarian law by preventing the access of medicines and humanitarian aid to the countries subject to the embargo. so The Court issued numerous fatwa's that the embargo does not include the humanitarian aspect.

Therefore, the International Court of Justice has a major role in developing, interpreting and implementing the provisions of international humanitarian law with the aim to achieve international peace and security.

2- The ICJ jurisdiction:

2.1- Jurisdiction:

The Article 36 of ICC Statute stipulated that:

- 1- The jurisdiction of the Court comprises all cases in which the parties refer to it and all matters specially provided for in the Charter of the United Nations or treaties and conventions in force.
- 2- The states parties to the present Statute may at any time declare that they recognize as compulsory ipso facto and without special agreement, in relation concerning to any other state

accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning: the interpretation of a treaty; any question of international law; the existence of any fact which, if established, would constitute a breach of an international obligation; the nature or extent of the reparation to be made for the breach of an international obligation.

3-The declarations referred to above may be made unconditionally or on the condition of reciprocity on the part of several or certain states, or for a certain time.

So only States may be parties in cases before the Court". Looking back in time, the question of access of individuals to international justice,²¹ with procedural equality, already drew the attention of legal doctrine ever since the adoption of the PCIJ Statute in 1920, and has continued to do so, throughout more than nine decades. Individuals and groups of individuals began to have access to other international judicial instances, reserving the PCIJ, and later the ICJ, only for disputes between States. Yet, the dogmatic position is taken originally in 1920, on the occasion of the preparation and adoption of its Statute, did not hinder the PCIJ to occupy itself promptly of cases pertaining to the treatment of minorities and inhabitants of cities or territories with a juridical statute of their own.

2.2- Limiting the jurisdiction of the ICJ to States:

Article 34 of the Statute of the International Court of Justice has raised a problem related to the nature of the parties to the litigation. It stipulates that only states have the right to litigate before the International Court of Justice. Despite this article, individuals have resorted to litigation before other international courts of justice (ⁱ)

so, with the ICJ, to which no contentious case can be submitted unless both applicant and respondent are States. Private interests can only form the subject of proceedings before the Court if a State, try to explain diplomatic protection as a legal means of protecting the state its nationals , takes up the case of one of its nationals and invokes against another State the wrongs which its national claims to have suffered at the latter's hands ; the dispute thus then becomes one between States . Hardly a day passes without the Registry receiving applications from private individuals. However distressing the facts in such applications may be, the ICJ is unable to entertain them, and a standard reply is always sent : "Under Article 34 of the Statute, only States may be parties in cases before the Court (ⁱⁱ).

Although many international organizations have an independent legal personality, and practice their jurisdiction with complete independence from the state, the statute of the International

Court of Justice does not allow the representation of these organizations before the International Court of Justice (iii).

Hence, Article 34 of the Statute of the International Court of Justice contradicts the nature of the work of international organizations that have a legal personality equivalent to that of the state.

2.3-The possibility of international organizations and individuals resorting to the ICJ :

2.3.1-International organizations and recourse to the ICJ:

In practice, the ICJ did not abide by Article 34 , Although the International Court of Justice has committed itself since 1945 that the state condition must be met by the conflicting parties, it has abandoned this condition in many cases.

Article One Part One of the Agreement on Privileges and Immunities of the United Nations states that the organization has an international legal personality and also has the capacity to contract, acquire property and file legal cases.

According to the provisions and decisions of the International Court of Justice, the international organization has the right to a judicial claim because that organization has an international legal personality , The International Court of Justice pointed out that eligibility means the right to resort to the ordinary methods mentioned in international law, such as the request for negotiations, settlement, investigation, and request for arbitration. (iv) , The Court affirmed that the United Nations enjoys the legal personality and the capacity to act, and it will not be able to fulfill its tasks if it is deprived of this personality.

For example, the dispute between the World Health Organization and Egypt was presented to the International Court of Justice to interpret the agreement concluded between them in 1951, and indeed the International Court of Justice issued an interpretative ruling in the dispute, although the World Health Organization is not a state (v).

2.3.2- Individual and recourse to the ICJ:

Many jurisprudential opinions differed regarding the eligibility of individuals to resort to the International Court of Justice , I will summarize it below :

A) The first opinion: The individual does not recognize the international legal personality, because international law regulates the relationship between states, and internal law regulates the relationship between individuals , Also, the rules of international law stem from the will of states, not individuals (vi) , so the individual can not resort the ICJ

- B) The second one : The second opinion recognizes the individual with the international legal personality, because international legal principles derive their source from the will of individuals and not from the will of the state, And because international law addresses individuals with its provisions , the state also performs its tasks for the sake of the individual, so the individual has the international legal personality, and then he can resort to the International Court of Justice directly ^(vii)
- C) The last opinion: Individuals cannot resort directly to the International Court of Justice, but they can impose the mediation of their state, That is why the International Court of Justice refused to rule on the Anglo-Iranian oil case

2.3.3-Exceptions to Denying Individuals Recourse to the ICJ:

According to the Statute of the ICJ, individuals are deprived of recourse to it , However, there are other legal means that individuals use to claim their rights.

A) The direct claim before international courts :

The European Court of Human Rights has allowed an injured individual to bring legal action against the country that caused the harm , also The Court of Justice of Central American countries is also competent to consider disputes that arise between governments and individuals^(viii).

Recently, many investment agreements have appeared that include an exceptional clause that allows the individual to have recourse to international courts , Such as the agreements for settling investment disputes between states and nationals of other countries, which were concluded under the auspices of the International Bank for Reconstruction and Development on March 18, 1965, and the agreement stipulates that “the state may agree with the foreign investor to settle the dispute that arises between them through conciliation or arbitration” without relying on this investor on The diplomatic protection provided by his country to him, and this agreement was completed on October,1986 ^(ix)

B) The legal status of the courts that consider a dispute of one of its parties an individual:

I pointed out that some international courts allow individuals to resort to them to claim their rights, and , so a dispute arose over the legal nature of those courts.

The first opinion : According to this view, the international character is not excluded from these courts, although the international courts decide on a dispute that arises between states, but the individual derives his existence from the state of his nationality , In the sense that these courts have an international nature, and that the individual derives his existence from his state

The second one : According to this view, these courts have an international nature that derives from the ratification of the treaty. Although the treaty gave the individual the right to claim, his state remains obligated to implement any breach of the treaty provisions^(x)

2.4- The parties must agree to resort to court

According to the Article 36 of the ICJ statute , the state parties must agree to resort the ICJ, The court also applies the general and special agreements recognized between the parties, The parties to the conflict can choose the legal rules that govern the dispute or apply the rules of justice^(xi).

according to Article 36 of the Statute. Paragraph 1: “The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force.” The first possibility envisaged here is where the parties bilaterally agree to submit an already existing dispute to the ICJ and thus to recognize its jurisdiction for purposes of that particular case. Such an agreement conferring jurisdiction on the Court is known as a “special agreement” or “compromise”. Once such a special agreement has been lodged with the Court (whether by one party alone or jointly), the latter can entertain the case.^(xii)

Recourse to the International Court of Justice may be pursuant to an agreement between two states or multilateral treaty that includes the agreement of the parties on the provision of the jurisdiction of the International Court of Justice to resolve the dispute.

Examples of treaties or conventions conferring jurisdiction on the ICJ , Optional Protocol to the Vienna Convention on Diplomatic Relations, concerning the Compulsory Settlement of Disputes that that signed on 18, April 1961 in Vienna , and Convention on the Prevention and Punishment of the Crime of Genocide that signed in Paris , 9, December 1948

State can Declared accepting the compulsory jurisdiction of the Court, State can Declared accepting the compulsory jurisdiction of the Court, which, if established, would constitute a breach of an international obligation ; (d) the nature or extent of the reparation to be made for the breach of an international obligation. The declarations referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain States, or for a certain time.” ^(xiii)

2.5- Interpretation and Revision:

Interpretation and Revision the Court’s jurisdiction lies in the possibilities of reopening a case either for interpretation , or for revision. Interpretation and revision are provided in Articles 60 and 61 of the ICJ Statute. According to Article 60, in case of a disagreement as to the meaning and

scope of a judgment, the Parties may request the Court to construe it. The request for interpretation may be submitted either by application of one or more of the Parties or by a special agreement ^(xiv)

Another way whereby the Court may be seized of a reopened case is through a request for revision of a judgment, as provided in Article 61 of the Court's Statute. An application for revision of a judgment may be filed only when it is based on the discovery of a fact, taken as decisive, that, when the judgment was delivered, was unknown to the Court and also to the party claiming revision, and such lack of knowledge was not due to negligence. As distinct from requests for interpretation, there is a time-limit for filing the request, that is, the application for revision³⁶ must be made within six months of discovering the new fact ^(xv)

Article 34 of the Statute of the International Court of Justice has been criticized because treaties seek only to protect the rights of individuals ^(xvi)

2.6- The ICJ and the issuance of legal opinions:

According to Article 96 of the United Nations Charter, the General Assembly, as well as the Security Council, may request the International Court of Justice for an advisory opinion on legal issues.

Article 65 of the Statute of the International Court of Justice also obligates the ICJ to issue advisory opinions on legal issues referred to it by United Nations bodies, According to the foregoing, the United Nations organs have the right to resort directly to the International Court of Justice to request an advisory opinion on legal issues

For example, Israel built the apartheid wall equipped with electronic sensors on the Palestinian territories, so the General Assembly of the United Nations resorted on 10/12/2003 to request a legal advisory opinion from the International Court of Justice , The fatwa was issued as follows:

- 1- The separation wall violates international law.
- 2- Israel must stop construction work, remove what has been built, and repeal the regulations it issued.
- 3- All states are obligated not to recognize the wall and its consequences. ^(xvii)

Another example. On 16-10- 1975, the United Nations General Assembly requested an advisory opinion regarding Spain's occupation of Western Sahara on the pretext that Sahara is a territory without a master, Therefore, the International Court of Justice issued an advisory opinion that the disputed places, Wadi Dahab and Saguia El Hamra in Western Sahara, are not without a

master, but are linked to legal ties with the Kingdom of Morocco and some tribes living in Western Sahara (^{xviii}).

2.6.1- The power of the ICJ to accept or reject to issue the advisory opinion:

There are two different opinions about the eligibility of the International Court of Justice to accept or refuse to issue fatwa's referred to it by the United Nations bodies:

The first opinion: According to this view, the ICJ is not obligated to issue an advisory opinion and may reject it without entailing any violation of the provisions of Article 96 of the Charter of the United Nations or Article 65 of the ICJ statute.

The second one: Supporters of this view say that the Court is obligated to issue advisory opinions on all legal issues, and that the International Court of Justice does not have the discretion to refuse to issue an advisory opinion, Because the International Court of Justice is the only judicial organ of the United Nations and its function is to issue judgments and advisory opinions on legal issues (^{xix})

2.6.2- Who has the right to request a fatwa?

According to the text of Article 96 of the Charter of the United Nations, the International Court of Justice issues advisory opinions on legal issues referred to it by the Security Council or the General Assembly of the United Nations.

Some believe that other organs of the United Nations, as well as other international organizations, have the right to request an advisory opinion from the court (^{xx}).

Therefore, it is not for states, individuals or public bodies other than the organs of the United Nations to request an advisory opinion from the International Court of Justice (^{xxi}).

2.7- The jurisdiction of the ICJ depends on the nature of dispute:

2.7.1- The jurisdiction of the ICJ over legal, not political, disputes:

According to the Statute of the International Court of Justice, the Court is competent to adjudicate legal disputes, and does not have jurisdiction over cases of a political nature.

Perhaps the reason is due to the nature of the functions of the International Court of Justice and that it issues judgments and advisory opinions in accordance with international law, Specially since countries are used to settling political disputes by other means such as mediation, arbitration and conciliation.

Most of the jurisprudence emphasized this fact, and that it is difficult to resort to legal methods to settle political disputes, especially if the plaintiff bases his allegations on historical events that are difficult to put into a legal form. ^(xxii)

2.7.2- Distinguishing between legal and political conflict:

The distinction between legal and political conflict has sparked a great deal of controversy I will summarize it in the following:

The first opinion: He believes that the legal dispute is that which is subject to the International Court of Justice, while the political dispute is outside the jurisdiction of that court , Because Article 36 of the UN Charter provides for the jurisdiction of the International Court of Justice only in legal disputes.

Among those political differences is the former claim of the United States of America that it launched a ferocious war on brotherly Iraq under the pretext of disarming weapons of mass destruction.

The second opinion: distinguishes between right and interest, meaning that the legal dispute aims to claim a right, and that the political conflict aims to claim an interest.

I think that this opinion cannot be accepted, because jurisprudence often calls the right the term interest ^(xxiii).

2.8- The legal nature of the judgments of the ICJ

International legal jurisprudence differed regarding the legal nature of the rulings of the International Court of Justice:

The first opinion: According to this view, the ruling issued by the International Court of Justice is of the nature of an agreement, because this ruling is a declaration of the will of states and because the parties agreed to resort to the International Court of Justice.

Several criticisms were directed at this view, because the states parties agreed only to resort to the International Court of Justice to settle the dispute and delegated the court to take the decision, but the states did not agree on the ruling ^(xxiv).

The second one: Supporters of this view believe that the ruling issued by the International Court of Justice is a legal act that has legal effects, because this action is issued by the international judge specialized in settling the dispute in accordance with the rules of international law, and This ruling is completely independent of the will of the parties .

2.9– the relationship between ICJ statute and United Nation charter:

It seems that there is a close relationship between the Statute of the International Court of Justice and the Charter of the United Nations, and therefore the Statute of the International Court of Justice is an integral part of the Charter of the United Nations, in addition to the fact that the procedures for amending the Statute are the same and the number of members required for the issuance of the decision is the same, The difference is that states that are not members of the Statute of the International Court of Justice have the right to vote, unlike the UN Charter.

We can say that , The ICJ is being the judicial organ of the United Nations, it is by that Organization that the elections are conducted and Voting takes place both in the General Assembly and in the Security Council.

2.9.1- What distinguishes the ICJ from the organs of the United Nations?

- 1- International Court of Justice decisions do not require a majority of votes, while Security Council decisions are issued by seven votes, including the five major countries.
- 2- The organs of the United Nations are bound by the jurisdiction contained in the Charter and are not allowed to override it, unlike the International Court of Justice, which has the authority to issue advisory opinions on legal issues that fall within the jurisdiction of other bodies.
- 3- Members and non-members of the United Nations participate in the work of the International Court of Justice on an equal basis, but the work of the organs of the United Nations does not allow non-members to participate except in a narrow way.
- 4- There is a similarity between the General Assembly of the United Nations and the International Court of Justice in that both of them are not obligated to submit reports on their actions to another party.

The establishment of the International Court of Justice does not prevent states from establishing other judicial bodies in accordance with the text of Article 92 of the Charter of the United Nations, but this matter is excluded because the international community has not seen remarkable success except through the International Court of Justice (^{xxv}).

3- The ICJ and development of The IHL:

Contemporary international humanitarian law consists of a complex set of traditional and Customary rules and jus cogens that the case law of the International Court of Justice helps to clarify and its interpretation.

I would like to refer that International humanitarian law includes the Hague Law on the Prohibition of the Use of Certain Means of War, and the Geneva Law, which concerns the protection of victims of armed conflict and non-combatants who do not take part in hostilities ^(xxvi)

3.1- the ICJ and the customary nature of The IHL treaties:

In its rulings, the International Court of Justice emphasized the customary nature of treaties of international humanitarian law , In the judgment issued on 9/4/1949 in the Corfu Channel case, the Court referred to the customary nature of the treaties of international humanitarian law.

According to the 1907 Hague Convention, states parties are obliged to warn other states of the presence of mines, and although Albania is not a party to the agreement, the International Court of Justice stated that “the compulsory obligations of the Albanian authorities included warning, for the benefit of maritime transport in general, of the presence of a minefield in Albanian territorial waters, and the warning of British warships of imminent danger from the presence of the minefield. Such obligations are not based on the Hague Convention VIII of 1907, which applies in time of war, but on established general principles, namely, elementary considerations of humanity that are more appropriate for peace than proportionality of war, as well as the obligation of each state not to intentionally allow its territory to be used for acts that are inconsistent with the rights of other states^(xxvii)).

The International Court of Justice confirmed the customary nature of the rules of international humanitarian law in another case in its ruling issued in 1986 in the dispute relating to military and paramilitary activities in the region of Nicaragua, The ICJ indicated that if countries planted mines in any water and did not give any warning or notice, Ignoring the security of peaceful navigation, it is thus violating the principles of international humanitarian law which form the basis of certain provisions of the Eighth Hague Convention of 1907.” ^(xxviii)

From the foregoing, the International Court of Justice concluded that “the broad codification of humanitarian law and the extent to which the resulting treaties are accepted, as well as the lack of

The use of notice-related clauses that were in the legalization charters, has extended the community international set of contractual rules, the vast majority of which had become customary^(xxix) already and reflects universally recognized humanitarian principles.

3.2- How did the ICJ contribute to the development of IHL

According to Article 53 of the 1969 Vienna Convention, “a peremptory norm in international law in general is the norm accepted and recognized by the international community of states as a

whole, as a norm that can only be nullified or modified by another norm of general international law of the same character.^(xxx)

The International Court of Justice has dealt with jus cogens, which are closely related to international humanitarian law, such as basic human rights, the right of peoples to self-determination, and the prohibition of the use or threat of force ^(xxxix).

The International Court of Justice contributed to the development of international humanitarian law by defining the basic rules and principles that govern the conduct of hostilities in areas of armed conflict.

The International Court of Justice has established an important principle for the protection of human rights in areas of armed conflict, which is the obligation to distinguish between combatants and civilians.

The Court issued an advisory opinion in 1996 aimed at protecting the civilian population and civilian objects and establishing the distinction between combatants and non-combatants ^(xxxix)

The First Chamber of the former International Tribunal for Yugoslavia concluded that “the civilian population shall not be the object of attack during armed conflicts because this is a basic rule in accordance with international humanitarian law.” ^(xxxix)

The International Court of Justice appears to have been influenced by Protocol I of the 1977 Geneva Convention, which states in Article 48 that “Parties to the conflict must distinguish at all times between the civilian population and combatants and between civilian objects and military objectives. They then direct their operations against military objectives without others. In order to ensure Respect and protection of the civilian population and civilian objects

Hence, the International Court of Justice has played an effective role in enriching international humanitarian law with many fatwa’s that seek to protect the right to life and the protection of civilians.

The International Court of Justice formulated the principle of distinction between combatants and non-combatants, and established a general principle which is the prohibition of attacks on civilians and the prohibition of the use of indiscriminate weapons, and the Court said that the use of indiscriminate weapons in conflict areas is no different from their deliberate use ^(xxxix).

In continuation to the efforts of the International Court of Justice to develop international humanitarian law, it issued rulings and fatwa’s to protect the prisoners, the wounded and the sick.

In the event of an armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, Each party to the dispute is obligated to apply the following provisions as a minimum:

- (1) Persons not taking a direct part in hostilities, including members of forces armed men who have laid down their arms, and persons hors de combat by sickness or Injury, detention, or any other reason, they shall in all circumstances be treated humanely, without discrimination
- (2) The ICC prevented the following:
 - (a) Assault on life and physical integrity, in particular murder in all its forms, mutilation and treatment , cruel and torture;
 - (b) The taking of hostages;
 - (c) Outrages upon personal dignity, in particular humiliating and degrading treatment;
 - (D) The passing of judgments, the execution of sentences, and the holding of a previous trial before a properly constituted court legally, and guarantees all the necessary judicial guarantees in the eyes of civilized peoples. ^(xxxv)

The International Court of Justice has affirmed that the rules and principles it has established in its judgments constitute the minimum that states must follow. The Court has called this minimum humanitarian primary considerations , This is because these principles and rules are what civilized countries have settled on following.

The International Court of Justice not only developed international humanitarian law, but also contributed to its implementation.

The ruling of the International Court of Justice issued in 1986 regarding military and paramilitary activities in Nicaragua stated that the US government is obligated, according to Article 1 of the Geneva Convention, to respect international conventions, not only because it is a party to the Convention, but the obligation stems from international humanitarian law.

4- The ICJ and imposing a mandatory nature on the rules of IHL:

4.1- The reluctance of most states to abide by the rules of IHL:

I have noticed through research that the majority of the major countries do not adhere to the two Additional Protocols to the Geneva Convention of 1977, and that many countries do not adhere to the Convention on the Prohibition of the Use of Certain Weapons, and that many countries also

do not adhere to the Convention on the Prohibition of the Use of Certain Weapons, and although the international community is making great efforts in areas of The armed conflict to provide relief to the sick, wounded and civilians, through United Nations bodies, but these efforts face many difficulties due to the refusal of the parties to the conflict to allow the Red Cross and humanitarian relief to enter those areas.

I noticed that the daily violations of the human right to life in Syria, and the killing of women, children, the elderly, the sick and prisoners, are met with only words of condemnation and condemnation.

International humanitarian law not only prevented the use of weapons of mass destruction in Syria, and failed to protect civilians living under the line of fire, also failed to deliver humanitarian aid to the Syrian people.

On the other hand, Russia ignited a fierce war against the defenseless Ukrainian people, and this war began by bombing civilian neighborhoods, destroying homes, hospitals and universities, and demolishing places of worship for civilians. In addition, the Russian armed forces committed genocide crimes and ignored the rules of international humanitarian law.

Although the four Geneva Conventions of 1949 dealt with grave violations that constitute war crimes and included willful killing, torture, intentional harm to health, and forcing prisoners to work among combatants , And it dealt with depriving prisoners of fair trials

The primary objective of international humanitarian law is the protection of human beings in areas of armed conflict (^{xxxvi}).

There is no doubt that the conflicts that the world has known since the beginning of the nineties constitute a grave threat to international peace and security, and therefore it was necessary for the international community to focus on the third common article in the four Geneva Conventions of 1949 and their protocols. (^{xxxvii})

Hence, the rules of international humanitarian law, although they gave great attention to the protection of civilians and the protection of prisoners and war-wounded in areas of armed conflict, these rules do not enjoy universality and do not rise to the rank of sufficient binding on the part of states.

The bombing continues in the areas of armed conflict in Syria and Ukraine, and genocide crimes are still being committed against civilians in those areas,

And the armed forces still insist on preventing humanitarian aid from entering conflict areas, preventing the transfer of sick and wounded to treatment homes and preventing forced detention.

4.2- The ICJ and obligating states to the rules of IHL:

The International Court of Justice has issued many rulings that emphasize the obligatory and peremptory nature of the rules of international humanitarian law. These rulings also emphasized that the rules of human rights and fundamental freedoms cannot be violated by any state under the pretext of the victim's consent or self-defense, Therefore, nuclear weapons may not be used in contravention of these binding rules.

It seems that all countries of the world have an interest in developing and obligating the rules of international humanitarian law, because any violation of those rules will cause harm to all countries of the world without exception (^{xxxviii}).

The International Court of Justice has issued many rulings and fatwa's that have a binding force to states, and therefore the role of the Court is no longer limited to just expressing an opinion, but to obligate states to it.

For example, On December 8, 2004, the United Nations General Assembly requested the International Court of Justice to express its advisory opinion regarding the construction of the separation wall that is being carried out by Israel in the Palestinian territories. After voting on the extent of its competence to have jurisdiction, all fifteen court judges acknowledged jurisdiction, and then the court moved to discuss the issue of the fatwa to decide after that the illegality of the separation wall and the necessity of dismantling it and compensating the Palestinians affected by its construction as it constitutes a violation of the principles of international humanitarian law. The decision was supported by fourteen judges (^{xxxix}).

In 1996, the United Nations General Assembly requested the International Court of Justice to issue an advisory opinion also regarding the legality of the threat or use of nuclear weapons. This court held that the use or threat of use of nuclear weapons in principle violated the principles of international humanitarian law, but added that it did not know whether such actions would not be lawful on the assumption that they were based on self-defense and were necessary for the survival of the state (^{xl}).

On May 28, 1951, the International Court of Justice issued an advisory opinion at the request of the United Nations General Assembly regarding the eligibility of states to make reservations to the Convention on the Prohibition of Genocide (^{xli}).

In 1996, the United Nations General Assembly requested an advisory opinion from the International Court of Justice on the legality of the use or threat of nuclear weapons. The Court

responded to the advisory opinion that the use and threat of nuclear weapons are a violation of international humanitarian law (^{xlii}).

The International Court of Justice played an active role in protecting humanitarian aid in 2018 in the case brought by Iran against the United States of America, regarding the abolition of sanctions imposed on goods, because those sanctions constitute a violation of international law, and on October 3, 2018, the International Court of Justice issued a ruling lifting the sanctions imposed on medicines and goods. The same humanitarian objectives, and the content of the ruling was to oblige the United States of America to remove all obstacles imposed on the export of medicines, agricultural commodities and medical products to Iran. In its ruling, the court indicated that the penalties imposed on medicines and humanitarian needs cause serious harm to health and lives (^{xliii}).

However, international humanitarian law has obligated the international community organizations that specialize in providing humanitarian aid to adhere to the principle of neutrality. According to the principle of neutrality, victims of armed conflict must abide by the side of neutrality and not interfere in the conflict in one way or another. In order to preserve the immunity granted to them, which prevents any person from being endangered (^{xliv}).

Based on the foregoing, I say that: Every humanitarian body or organization working within the framework of Relief, protection or assistance to victims of armed conflict, to commit itself in its humanitarian work to preserving its independence, impartiality and impartiality in accordance with the principles for which it was established, as is the case for the International Committee of the Red Cross.

The Temple case is among the most important cases heard by the International Court of Justice, as it had a significant impact on the principles of International law, where the vihear Preah temple is located in an important area on the common border of Cambodia and Thailand, issued. The International Court of Justice issued a ruling in this case in 1962, in which it concluded that border maps have evidentiary value and applied this to the map in question contained in the appendix to Cambodia's memorandum before the Court, and the Court considered that Thailand's conduct amounted to an affidavit. By surrendering, the court concluded that the temple of the vihear Preah is located in the territory under the sovereignty of Cambodia. It also reached that Thailand is obligated to return to Cambodia any contents, statues, parts of memorials or sandstone models. Which the Thai authorities may have moved from the temple since the date of Thailand's occupation of the temple in 1954 (^{xlv}).

5- The role of ICJ in consolidating the principles of international law:

The International Court of Justice has succeeded in consolidating the principles of international law, and in establishing the principle of legality and the respect of states for the sovereignty of others.

On March 16, 2001, the International Court of Justice issued a ruling in the dispute between Qatar and Bahrain. This ruling included the consolidation of the principle of border stability. The court unanimously declared Qatar's sovereignty over Zubarah and the Jinan Islands, and the court declared Bahrain's sovereignty over the Hawar Islands.

Hence, the International Court of Justice established the principle of border stability and considered that the state's continued possession of the islands for a long period and the exercise of sovereignty over them is evidence of the validity and the legitimacy ^(xlvii).

With regard to the dispute arising between Libya and Malta regarding the boundary between them, although the International Court of Justice based the settlement of the dispute on Article 76 of the 1982 Convention on the Law of the Sea, and although this Article did not clarify the meaning of the continental shelf, it only stated that the minimum territory The state at sea is 200 miles and the maximum is 350 miles , Despite this, the International Court of Justice established an important principle, which is the application of the rules of justice. The Court considered that the coastal state has a continental shelf that includes the seabed and what is below it beyond the territorial sea. ^(xlviii)

In the conflict between Libya and Chad, related to Ouzo, ^(xlix) the International Court of Justice established another principle, which is the principle of the subsequent conduct of the two states, The International Court of Justice ruled in favor of Chad and considered that the Aouzou region is within the territory of Chad , The court confirmed that the dispute between the two countries is based on setting the correct path for the common border, not sovereignty ^(l).

Hence, the International Court of Justice established another principle, which is adherence to the terms of the treaty concluded between the two parties and neglecting the principle of sovereignty for the existence of an agreement.

6- Algeria has the right to apply to ICJ to sue France :

6.1-The crimes of the French occupation in Algeria :

France occupied Algeria in 1830, and although it pledged to respect the rights, religion and property of the Algerians, and signed an agreement to guarantee this, the French occupation committed the most heinous crimes against the great Algerian people.

Among the most serious crimes committed by the French occupation against the Algerian people is the crime of torturing citizens, breaking their will, and terrorizing women, the elderly and children , And the colonizer committed not only physical torture, but psychological torture, kidnapping and rape ⁽ⁱ⁾.

The French occupation committed dozens of massacres in order to end the uprisings, such as the Ain al-Turki uprising in 1901, the uprising of the residents of Ain Bassam in 1906, and the uprising of Beni Sakran and Camp in 1914 ⁽ⁱⁱ⁾.

Although France has ratified many international conventions of a humanitarian nature, it committed the most heinous crimes of torture against Algerian citizens to force them to reveal the secrets of the militants and their hiding places ⁽ⁱⁱⁱ⁾.

Among the crimes of the French occupation was the forced recruitment of Algerians and the use of civilians to dig trenches and use them as human shields during the First and Second World Wars.

The number of forcibly conscripted Algerians in the world war reached 17,000, and the number of wounded and dead reached 45,000 or more , Airplanes, tanks, and mass executions were used in this war ⁽ⁱⁱⁱⁱ⁾.

The French occupation enacted new real estate laws according to which it stripped Algerian citizens of their property, lands and homes, and the occupier vandalized entire villages with the aim of seizing them, and then distributed those lands and properties to European mercenaries coming from France, The French occupier did not respect the belief and religion of the Algerian people, as it demolished the places of worship ^(liv).

The colonizer was seeking to achieve a double goal, which is to change the demographic situation of Algeria on the one hand, and to gather the Europeans in places that would allow them to control the country on the other. ^(lv).

Emanuel Macron, the first French president born after the Algerian War (1954-1962), caused controversy during his election campaign when he declared in February 2017 that France's colonization of Algeria was a crime against humanity, true brutality and "part of the history that we must face by apologizing to those against whom we have committed such practices".

His statements were welcomed in Algeria, but they caused extensive debate in France, where Macron was criticized by the far-right Front National party competing with him in the presidential race. Soon after being elected, however, Macron announced a new position. "We admit but we do not apologize," he said about France's colonial history in Algeria, stressing that France should not be caught up in the past but rather must overcome it to move forward and establish French-Algerian relations based on common future interests. ^(lvi)

The French forces also conducted nuclear tests in the Algerian desert, which killed thousands of citizens, spread diseases and polluted the environment.

After World War II, the nuclear race between France, England and Germany began, and the French desire to conduct nuclear research and experiments outside its territories increased. ^(lvii)

several explosions were carried out from a high towers that were more polluting on the surface of the earth. These experiments were conducted in Hamoudia, 50 km southwest of Reggane. ^(lviii)

France began its program to test chemical weapons in the Algerian desert in 1935 in the Namous Valley, north of Bechar, and before that, and on December 4, 1852, France used chloroform against the residents of the city of Laghouat, which was inhabited by 4,000 people, killing 2,800 people. It should be noted that the discovered facts proved the first uses of the materials Chemical weapons as war weapons against civilians and safe cities for the purpose of occupation, whose arena was occupied by the invading French forces ^(lix)

6.2- The basis of France's international responsibility :

I think it is wrong to base France's responsibility for its crimes in Algeria on violating the provisions of the current international humanitarian law represented in the four Geneva Conventions , Because France will declare that it is not responsible for any crime committed before 1949 , Therefore, the legal basis for France's responsibility for the crimes of the occupation before or after 1949 is the violation of the provisions of customary international humanitarian law.

according to the Article No 144 of the IHL"States may not encourage violations of international humanitarian law by parties to an armed conflict. They must exert their influence, to the degree possible, to stop violations of international humanitarian law".

The article 142 stipulated that « States and parties to the conflict must provide instruction in international humanitarian law to their armed forces.»

So the obligation to respect humanitarian law creates responsibilities for the different national authorities. However, if they fail to meet these obligations, the possibility of judicial recourse is not automatic. In case of grave breaches of the international humanitarian law foresees penal sanctions based on the principle of universal jurisdiction and through the International Criminal Court.

Therefore, France's responsibility is based on the following:

- a) The occupying forces committed international crimes and violations of customary international humanitarian law, according to instructions from the state.
- b) France did not do its due diligence to prevent the commission of these crimes.
- c) France was aware of the commission of these international crimes and kept silent about them.
- d) Availability of harm complementary to international liability, such harm must violate a right or interest protected by international law, the harm may be material or moral, and it may affect an individual, organization or the state itself. ^(lx)

The basis of France's responsibility for its crimes in Algeria is based on one of the principles of international law, which states that any illegal act or violation of an obligation under international law leads to the obligation to provide compensation for damages as much as possible and to restore the situation to what it was previously.

These general principles apply to violations of international humanitarian law and were stipulated in the fourth Hague Convention in its third article, which arranged responsibility for any acts committed by members of the armed forces.

The same provision was stipulated in Article 142 of the customary international humanitarian law, which obligated each country to provide appropriate advice and advice to military commanders on the necessity of applying international humanitarian law.

6.3-France's commitment to compensate Algeria for material and human losses

As a result of the responsibility of the French occupation for violations of international law, France is obligated to repair various damages and losses, and compensation must include all damages, whether material or moral. The French state is responsible for compensating human and material losses. Add to that the backwardness that accompanied the occupation period, which made the occupied lands a mere colony, and its inhabitants mere slaves, as Article 91 of the First Protocol of 1977 annexed to the four Geneva Conventions of 1949 ensures that the parties to the conflict who violate the provisions of the Geneva Conventions or this protocol are obligated to pay

compensation, if the situation so requires, and they shall be responsible for all acts committed by persons forming part of his armed forces.^(lxi)

Therefore, Algeria's recourse to the International Court of Justice to obtain a legal opinion on France's responsibility for the crimes of the French occupation of Algeria will inevitably end with the issuance of a fatwa condemning France.

6.4- Practical obstacles that prevent Algeria from suing France :

Despite my deep belief that France is fully responsible for the crimes committed by the French occupation in Algeria, there are many obstacles that must be overcome namely:

A) There is no internal Algerian law that allows for the criminalization of colonialism, and therefore the Algerian Parliament must expedite the issuance of this legislation , Although this law was presented to the Algerian parliament many times, the last of which was in 2009, it is still under study.

It seems that the law to be promulgated is based on some internal laws and international agreements, including several articles of the Algerian Constitution, the International Criminal Court of Rome 1998, and the International Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity 1968, the Geneva Protocol for the Prohibition of Chemical Weapons 1925 and the Atlantic Charter on the Right to Peoples in Self-Determination 1941

This law was discussed again in 2019 after the Algerian popular protests against European interference in Algeria's affairs, after the European Parliament claimed that Algeria was violating rights and freedoms, But it is still under release

Therefore, the Algerian parliament must realize that this law is the only means of resorting to the International Court of Justice and prosecuting French colonialism

B) The second obstacle is that Algeria will not be able to resort to the International Criminal Court because the statute of that court does not allow the trial of accused persons for violations prior to the date of the establishment of the Court in 2002, Nevertheless, Algeria still has the right to resort to the International Court of Justice to sue the French occupation for the crimes it committed

C) The third obstacle: that the Evian cease-fire agreement concluded in 1962 between France and Algeria included some secret clauses that might represent a pressure card that would prevent Algeria from suing France.

7- RESULTS

1- The International Court of Justice has played a very important role in the development of the principles of international humanitarian law, it has introduced new principles to resolve disputes in contemporary cases.

2- The rulings of the International Court of Justice for Human Rights and the right to life have a priority, and established a new principle in the fatwa on the use of nuclear weapons, which is that the right to life and other basic rights take precedence over other rights, and the International Court of Justice has also warned against attacking civilians under the pretext of legitimate defense.

3- The rulings of the International Court of Justice played an active role in the development of international humanitarian law and made its rules obligatory for example When Israel built the separation wall, the International Court of Justice issued a decision nullifying this construction because it violates international law and impedes the movement of the Palestinian people, and emphasized the necessity of removing what was built with the rebuilding. The situation is as it was , No one expected such a decision, especially since Israel is backed by American support.

4- I recommend that Article 34 of the Statute of the International Court of Justice be amended to allow international groups and organizations other than the United Nations to have recourse to the International Court of Justice, History has proven that the International Court of Justice has made great achievements in resolving international disputes, and despite that, resort to it is still limited to states. I think that the state's demand is not compatible with goals that it seeks to achieve, it aim to protect international peace and security, and therefore international organizations and armed groups must be allowed to resort to it to settle the conflict peacefully as an alternative to war.

5- The distinction between legal disputes that fall within the jurisdiction of the International Court of Justice and political disputes have raised a wide controversy, According to the Statute of the International Court of Justice, the Court is competent to adjudicate legal disputes, and does not have jurisdiction over cases of a political nature, This led to the reluctance of the International Court of Justice to adjudicate in many cases due to the protest of the parties to the conflict of the political nature, and this is what Israel tried to do in Palestine.

6- The International Court of Justice has introduced a new principle similar to the principle of abuse of right in civil law, It obligated countries to observe the principle of humanitarian considerations and warn other countries of the presence of mines in their territory. for example In the Albania and Britain case, the International Court of Justice stated that “the mandatory obligations of the Albanian authorities include warning, in the interest of maritime transport in general, of the presence of a minefield in Albanian territorial waters, and to warn British warships

of the imminent danger of a mine field .These obligations are based not on the Eighth Hague Convention of 1907, which applies in time of war, but on well-established general principles, i.e., primary humanitarian considerations which are more favorable to peace than the proportionality of war, as well as obligations Each stipulates that its territory will not be allowed to be used for acts inconsistent with the rights of other states

7- The International Court of Justice formulated the principle of distinction between combatants and non-combatants, and established a general principle which is the prohibition of attacks on civilians and the prohibition of the use of indiscriminate weapons, and the Court said that the use of indiscriminate weapons in conflict areas is no different from their deliberate use.

8- There is still time for Algeria to resort to the International Court of Justice to sue France for the crimes and massacres committed by the occupation for the period from 1830 to 1962, and the responsibility includes what the French occupation committed against the Algerian people, including an attack on lives and money, a violation of rights and freedoms, and an environmental measure.

9- The legal basis for France's responsibility for the crimes of the French occupation in Algeria is based on the violation of the provisions of customary international humanitarian law, and the failure to exercise the care stipulated in Articles 140 to 144 thereof.

10- Since this issue is very important and the great Algerian people will reap its fruits politically and financially, all obstacles that hinder Algeria's recourse to the International Court of Justice must be overcome , So The Algerian parliament must pass legislation criminalizing the occupation, the media must highlight the crimes of the French occupation to gain international sympathy, and the prosecution must be by the Algerian government and not individuals and associations.

8- ANALYSIS OF RESULTS :

1- The International Court of Justice has affirmed that the rules and principles it has established in its judgments constitute the minimum that states must follow. The Court has called this minimum humanitarian primary considerations , This is because these principles and rules are what civilized countries have settled on following.

2- I have noticed through research that the majority of the major countries do not adhere to the two Additional Protocols to the Geneva Convention of 1977, and that many countries do not adhere to the Convention on the Prohibition of the Use of Certain Weapons, and that many countries also do not adhere to the Convention on the Prohibition of the Use of Certain Weapons, and although the international community is making great efforts in areas of The armed conflict to provide relief to the sick, wounded and civilians, through United Nations bodies, but these efforts face many difficulties due to the refusal of the parties to the conflict to allow the Red Cross and humanitarian relief to enter those areas.

3- Despite the tremendous efforts made by the international community, and despite the rulings and advisory opinions of the International Court of Justice, the suffering still persists. The bombing continues in the areas of armed conflict in Syria and Ukraine, and genocide crimes are still being committed against civilians in those areas, I think we have a lot to do.

9- CONCLUSION

1- From the above it can be noted that the International Court of Justice has made tremendous efforts to protect international peace and security, and its role was not limited to issuing fatwas and rulings, but the Court was able to formulate new general principles that are binding on states, such as the principle of the priority of protecting the right to life over other rights, and the principle that others must be warned against The presence of mines in territorial waters, and the principle of expanding the interpretation of bilateral treaties when demarcating the borders.

2- The court achieved remarkable success in overcoming the hegemony of the major countries and trying to influence their decisions, and the evidence for this is that the court issued a ruling in favor of Palestine in the case of building the wall, The ICJ affirmed that the construction of the wall violates international law and that it must be demolished.

3- Many countries are still reluctant to resort to the International Court of Justice, and they invent flimsy reasons to escape from the Court's decisions. For example, Israel always seeks to evade appearing before the International Court of Justice under the pretext that the Court is not competent and that Palestine is not a state in the concept of the Statute of the International Court of Justice. It also sometimes argues that the Israeli-Palestinian conflict is a conflict of a political nature and that the court does not have jurisdiction over it.

4- Despite the efforts made by the International Court of Justice to protect world peace, many disputes are still pending, and violations of international human rights law are still continuing, the entire Syrian people are under fire of indiscriminate bombardment day and night, and Ukrainian cities suffer from the fire of Russian forces and crimes of genocide.

5- The time has come to unify Arab efforts and establish the Arab Court of Justice to specialize in resolving disputes of an Arab nature, and for the Arab countries to seek a seat in the Security Council, like the major powers, by putting pressure on the international community and threatening to withdraw collectively.

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