

BRUSSELS PRINCIPLES AGAINST IMPUNITY AND FOR INTERNATIONAL JUSTICE  
adopted by the „Brussels Group for International Justice”, following on from the colloquium  
"THE FIGHT AGAINST IMPUNITY: STAKES AND PERSPECTIVES" (Brussels, March 11-  
13, 2002)

In numerous countries, the most serious crimes affecting the international community as a whole remain unpunished. The victims dare not speak out; the perpetrators are either not pursued or cannot be found; the authorities either lack the will or the means to ensure justice. Impunity holds disastrous consequences: it allows the perpetrators to think that they will not have to face the consequences of their actions, it ignores the distress of the victims and serves to perpetuate crime. Impunity also weakens state institutions, it denies human values and debases the whole of humanity.

Nonetheless, the international community has stepped up its efforts to fight against impunity. In 1993 and 1994, two ad hoc tribunals were set up to try the serious crimes committed in the former Yugoslavia and Rwanda; in 2002, the United Nations established the Special Tribunal for Sierra Leone; the Rome Statute of the International Criminal Court (ICC) came into force on July 1, 2002.

However, the jurisdiction of the ad hoc tribunals is limited in terms of time and geographic reach. As regards the ICC, it is only called on to try the tip of the iceberg of the serious crimes of international humanitarian law. Indeed, the Rome Statute of the International Criminal Court confines its jurisdiction to crimes committed since its entry into force, to cases referred to it by the UN Security Council, or to crimes either committed on the territory or by a national of the states that are a party to it or have recognized its jurisdiction. Furthermore, the latter provision is only valid in instances where the states competent to judge the crimes do not try the perpetrators themselves.

Thus, international justice is, henceforth, founded on the principles of complementarity and collaboration between international jurisdictions and national jurisdictions. Each one acts as a court of the international community when it tries serious crimes of international humanitarian law.

The globalization of criminal justice is not, however, limited to the establishment of new international institutions. It also manifests itself in certain spectacular applications of international law, particularly through the case law of the ad hoc international tribunals. In addition, an increasing number of trials, based on universal jurisdiction, are conducted in several states, mainly spurred by the victims and non-governmental organizations. Judges are becoming aware of the role they can and must play in the fight against impunity. Through the work of the International Law Commission, the International Law Association and other learned societies (see the Princeton Principles on Universal Jurisdiction), legal doctrine plays a part in the efforts aimed at codifying international criminal law as regards the repression of serious crimes of international humanitarian law.

Certain notorious cases have, however, undermined the implementation of these principles, be it with regard to the scope of the immunity from criminal jurisdiction of foreign government officials or the exercise of universal jurisdiction in absentia.

Under such circumstances, the international community, states and civil society are faced with the question of knowing whether they really want to fight impunity and how to do it effectively.

It was in this context and spirit that the colloquium entitled „The fight against impunity: stakes and perspectives” was held from March 11 to 13 2002, in Brussels, under the auspices of the Belgian Ministry of Foreign Affairs and the Coalition for the International Criminal Court. This colloquium resulted in the creation of the „Brussels Group for International Justice”, composed of the following individual members, Iruñe AGUIRREZABAL QUIJERA (in her personal capacity), Federico ANDREU, Montserrat CARRERAS, Carlos CASTRESANA FERNANDEZ, Eric DAVID, Claude DEBRULLE (in his personal capacity), Eric GILLET, Patricia JASPIS, Stephan PARMENTIER, Jan WOUTERS. The Group formulated a body of principles that were discussed during the course of the colloquium, without necessarily corresponding with the ensuing recommendations.

Considering that impunity and democracy are incompatible with one another, the Group expresses the wish that these principles may make a significant contribution towards the development of international justice and the fight against impunity.

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The Brussels Principles address themselves to the international community in all its constitutive parts: states, international organizations, civil society, NGOs. First and foremost, however, they address themselves to all professionals in the justice system: public prosecutors, judges, investigators, and lawyers.

The principles are divided in five sections:

1. Definitions and fundamental principles (principles 1 to 5)
2. Criminal prosecution and obstacles (principles 6 to 12).
3. Universal jurisdiction (principles 13 to 16).
4. International police and judicial co-operation (principles 17 to 22).
5. Non-judicial mechanisms (principles 23 and 24).

The Brussels Principles are based on international law. However, when in some cases they depart from it, they are formulated according to the optative or conditional mode. The Principles are interlinked in their interpretation and implementation, and each principle should be read taking into account the other principles. The principles have been translated into four languages: French, Flemish, Spanish and English.

## **I. Definitions and fundamental principles**

### *Principle 1 ^ Impunity and international justice*

1. „Impunity” is understood as failing to investigate, prosecute and try natural and legal persons guilty of serious violations of human rights and international humanitarian law. For the purpose of these Principles, „serious violations of human rights and international humanitarian law” mean in particular war crimes, crimes against humanity, genocide, torture, extrajudicial executions and forced disappearances (hereinafter „serious crimes”).

2. The scope of serious crimes extends beyond the limits of the territories where they are committed. They constitute a challenge for the public conscience and result in their authors being considered as enemies of humanity (*hostes humani generis*). Within this context, the fight against impunity forms part of the fight for international justice and constitutes a responsibility for the entire international community.

3. The obligation to repress serious crimes constitutes a peremptory norm (*jus cogens*) of international law.

### *Principle 2 ^ Victims, rights*

1. Fighting against impunity and for international justice implies the recourse to strategies associating the victims (direct and indirect), with a view to defending their rights. These rights include:

- (a) the right to know the truth about serious crimes;
- (b) the right to obtain justice, notably, the right
  - to obtain the prosecution and trial by a criminal jurisdiction of the presumed authors of the serious crimes;
  - to obtain adequate redress for the damages suffered;
  - to have access, if necessary, to administrative bodies.

2. These rights may never be compromised.

3. All final judgments must be executed.

### *Principle 3 - Jurisdictions concerned*

These Principles are applicable to all international or national jurisdictions of statute or common law.

### *Principle 4 ^ Co-operation and complementarity between jurisdictions*

1. The fight against impunity and the protection of the rights of the victims are dependent upon co-operation between, and inseparable and complementary action by:

- (a) the courts of the countries where the crimes were committed;

- (b) the courts of third states, including, if necessary, when they exercise universal jurisdiction;
- (c) the international courts.

2. The members of the international community must ensure, individually and collectively, and in conformity with international law, that the forum state executes the final judgments pronounced by its courts in relation to serious crimes.

3. Third states must take all the necessary steps to ensure that the awards of reparations in civil cases or the decisions regarding awards of reparations in criminal judgments relating to serious crimes pronounced in the forum state are recognized and executed in the said third states.

4. In the event that the author of a serious crime should find himself or herself on the territory of a state that fails to extradite him or her to the state where he or she has been sentenced for the crime in question, the state of the place where he or she finds himself or herself should grant itself jurisdiction to execute the criminal sanction, pronounced by virtue of a fair trial by the forum state and duly enforceable on the latter's territory.

#### *Principle 5 - Sources of rights and obligations of states*

1. The rules governing the incrimination and repression of serious crimes are set forth in a number of international treaties of a general nature as well as in the general customary international law ensuing from these treaties, from the acts of international organizations (UN, specialized institutions, regional organizations), from the practice of states, from international and national case law, as well as from the most highly qualified publicists (notably the works of the International Law Commission).

2. States should become parties to the treaties that sanction the observance of fundamental rights and freedoms and international humanitarian law, in particular the treaties that provide for the incrimination and repression of serious crimes.

3. States should not formulate reservations and, if necessary, should remove any existing reservations whenever these limit the scope of the treaties mentioned in the previous paragraph.

## **II. Criminal prosecution and obstacles**

#### *Principle 6 ^ Legality and non-retroactivity of the norms of criminal law*

1. The criminal nature of the facts in question should be appraised in relation to national or international law. It is therefore not contrary to the principles of legality and non-retroactivity of criminal laws to prosecute the authors of acts or omissions considered criminal under international law alone at the time when they were committed.

2. Without prejudice to the first paragraph of the present Principle, states should criminalize conduct amounting to serious crimes in their national laws.

### *Principle 7 ^ Imprescriptibility*

1. War crimes, crimes against humanity and genocide are imprescriptible.
2. Given the peremptory nature (jus cogens) of the prohibitions under international law, namely torture, extrajudicial executions and forced disappearances, they should be imprescriptible, even when they do not constitute the serious crimes mentioned in the first paragraph of this Principle.
3. As regards the serious crimes mentioned in the second paragraph of this Principle, prescription will, in any event, be suspended for:
  - (a) the periods during which the victims find themselves unable to exercise their rights;
  - (b) the periods during which the authorities, de jure or de facto, are unwilling or unable to conduct investigations and to bring the presumed authors of these serious crimes before the courts.
4. In cases where serious crimes constitute continuing violations, their possible prescription will take effect only once the said violations have ended. This applies, in particular, to cases of forced disappearances.

### *Principle 8 ^ Immunities*

1. Immunities or special procedural rules that can be attached to the official status of a person, by virtue of domestic or international law, cannot prevent international criminal jurisdictions from exercising their jurisdiction with regard to this person. In accordance with the peremptory nature (jus cogens) of the obligation to repress serious crimes (Principle 1, § 3), the same principle applies to the national courts of the state for which this person exercises official functions. It should also apply to the national courts of third states.
2. Should immunity nevertheless apply before the court of a third state, it only remains in effect during the exercise of the official function. Nevertheless, it does not affect the principle of universal jurisdiction (cf. Principle 14) in that it does not rule out the launching of legal proceedings in this state, without act of coercion.
3. Any state can request the state for which the presumed author of a serious crime exercises official functions either that it prosecute this person itself, or that it lift the immunity that prevents the courts of the prosecuting third state from exercising its jurisdiction. The rule is applicable irrespective of the duration of the functions exercised. This implies that the state for which these functions are exercised should accept, in the shortest possible time, either to prosecute itself the presumed author of the serious crimes, or to lift the immunity so that justice can be done.
4. Immunity only remains in force for the duration of the official functions of the author of a serious crime. Although the immunity remains in effect for acts that are official functions, once

the said functions have come to an end, serious crimes may, under no circumstances, be considered as acts that are official functions.

*Principle 9 ^ Order and responsibility of the superior*

1. In the case of serious crimes, the duty of obedience is not a ground for justification.
2. The hierarchical superior is responsible for the behaviour of his or her subordinates in all cases whereby he or she has had, or should have had knowledge of their acts, and for which he or she had the authority to prevent or to put an end to them.
3. The responsibility of the hierarchical superior does not preclude that of the subordinate.

*Principle 10 ^ Amnesties and pardon*

1. Measures of amnesty, pardon and other such measures may not undermine the obligations imposed on states by international law to investigate serious crimes, to bring the presumed authors to justice and to grant redress to the victims.
2. This principle applies even at the end of armed conflicts and in processes of reconciliation or transition towards democracy.
3. This principle does not preclude individual measures of pardon or a review of the sentence, provided these are properly motivated and take into account the gravity of the crimes committed.

*Principle 11 - Non bis in idem*

The principle of non bis in idem is applicable to any final and enforced judgment pronounced at the end of a trial that is fair both for the accused and for the victims.

*Principle 12 ^ Disciplinary sanctions*

In the case of serious crimes, a disciplinary action cannot replace legal action.

### **III. Universal jurisdiction**

*Principle 13 - Definition and legal basis of universal jurisdiction*

1. "Universal jurisdiction" is the right of a state to institute legal proceedings and to try the presumed author of an offence, irrespective of the place where the said offence has been committed, the nationality or the place of residence of its presumed author or of the victim.
2. This jurisdiction is exercisable, in accordance with the rules of fair trial, regardless of whether or not the presumed author is present on the territory of the forum state.

3. If the domestic law of the forum state does not explicitly provide for universal jurisdiction, the courts of this state may exercise it, insofar as international customary law forms a part of the domestic legal system of the state in question.

*Principle 14 ^ Scope of the obligations of states*

1. By virtue of international law, any state has the obligation to exercise universal jurisdiction in relation to the presumed author of a serious crime from the moment the said presumed author is present on the territory of that state.

2. International law does not require a state to exercise universal jurisdiction, should the presumed author of a serious crime not be present on its territory (jurisdiction in absentia). In the absence of jurisdiction of an international court, it would, however, be desirable that a state be able to exercise universal jurisdiction in absentia to make the fight against impunity more effective, even more so when the victims are present on the territory of the forum state. The exercise of such a jurisdiction should, however, not impede the exercise of the jurisdiction of the International Criminal Court.

3. A state is under no obligation to exercise universal jurisdiction if it extradites the presumed author to any other state that requests the extradition with a view to instituting legal proceedings in relation to a serious crime, or if it hands over this person to the International Criminal Court or to any other international jurisdiction.

4. If a demand for extradition is put forward concurrently by various states, the state to which the request is submitted shall rule in light of all the circumstances and, in particular, those laid down in Principle 15 §2.

*Principle 15 - Conflicts of jurisdiction*

1. Universal jurisdiction excludes negative conflicts of jurisdiction: a national court may decline its jurisdiction for serious crimes only if it is assumed by a court in another country or an international court.

2. Positive conflicts of jurisdiction that may ensue from the exercise of universal jurisdiction in the case of serious crimes should be settled through consultations or negotiations between the states concerned, and taking into account all relevant circumstances, in particular, the gravity of the crime, the place where it occurred, the date on which the proceedings were initiated, the place of residence of the victims, the nationality of the presumed author, or the observance of the rules governing the right to a fair trial.

*Principle 16 ^ Right of the victims to seek prosecution and to obtain redress*

1. States should provide for the possibility for the victims (direct and indirect), irrespective of their nationality, their origin or their place of residence, to seek prosecution through the filing of a complaint and to take part in the trials as parties, with a view to obtaining appropriate redress for the damages suffered.

2. In states where the criminal procedure allows for victims to seek prosecution and to take part in the trials, the law cannot limit these rights or subject them to conditions that would substantially reduce their scope.

3. Associations for the protection of human rights and fundamental freedom and associations of victims (direct and indirect) should be granted an appropriate right to initiate the prosecution through the filing of a complaint, as well as the possibility to obtain adequate redress for the damages suffered by their members collectively. These rights could only be subject to conditions that would allow the court to which the case was referred to verify that the plaintiff associations are truly independent, as well as to ascertain the democratic nature of their *modus operandi* and the transparency concerning their sources of funding.

#### **IV. International police and judicial co-operation**

##### *Principle 17 ^ Information and training*

In the international domain, even more so than at the national level, the fight against impunity and for international justice rests on two prerequisites:

1. Information should be disseminated regarding the instruments available in this respect: international treaties, domestic laws, implementation procedures, archives open to the public.
2. Training programmes should also be developed for the members of the judicial authorities and police forces who are likely to be involved in this fight.

##### *Principle 18 ^ Police and judicial co-operation*

1. States must provide to each other the greatest possible police and judicial co-operation in any criminal law proceeding relating to serious crimes.
2. The sovereignty, security, public order (*ordre public*) or other essential interests of the state the co-operation of which is requested should not impede the said co-operation, in light of the gravity of the crimes.
3. This co-operation may not undermine the rules of confidentiality which flow from the requirements of the fundamental rights and freedoms, as well as from international humanitarian law.

##### *Principle 19 ^ A criminal law policy with universal reach*

1. The fight against impunity and for international justice calls for the development of a criminal law policy with universal reach. This implies the need for collaboration between the bodies in charge of ensuring the observance of the law, both at national, regional and universal levels. Such collaboration rests, in particular, on police and judicial networks capable of identifying



the presumed authors of these crimes, of locating them, searching them and prosecuting them before the most appropriate jurisdictions.

2. One of the linchpins of this policy should consist in the protection of the witnesses and informants prior to, during and after the proceedings, judicial or otherwise. To this effect, intergovernmental agreements should be concluded that would ensure not only that the confidentiality of the persons involved is guaranteed, but also that the costs of moving them to a safe place and accommodating them are reimbursed.

3. To ensure that all the aforementioned measures are effective, both at national and international level, states must provide the necessary financial resources for police and judicial co-operation, as well as for the exercise of universal jurisdiction, in particular, when such funds are necessary to the proper administration of justice in the state in which the presumed author of the serious crime is prosecuted.

*Principle 20 ^ Universal treaty on extradition and judicial co-operation on criminal law*

1. Without prejudice to the other sources of international law, the conclusion of a treaty with universal reach in relation to extradition and judicial co-operation in criminal matters would facilitate the effective implementation of universal jurisdiction for the repression of serious crimes.

2. While respecting the international standards already applicable in respect of ordinary offences, this treaty should, at a minimum, provide for:

- (a) the observance of the principle «aut dedere aut judicare»;
- (b) the power to extradite nationals.

3. The treaty should likewise provide for:

a) the refusal to extradite a person to a state where he or she would run the risk of being sentenced to death; however, such an extradition could be authorized if sufficient guarantees are provided that the sentence in question will not be executed.

b) the refusal to extradite when there are serious grounds to believe that:

i. the person liable to be extradited will be subjected to torture or to sentences or treatments deemed inhuman or degrading;

ii. the extradition request was submitted with a view to prosecuting or punishing a person because of his or her race, religion, nationality or political views, or that the situation of the person in question is likely to be aggravated for one of these reasons.

iii. the person liable to be extradited has been the object or will be the object of a flagrant denial of justice.

4. In case of application of the «aut judicare» principle, the said treaty should provide for the transfer of the presumed authors before national jurisdictions that respect the principles of a fair trial.

*Principle 21 ^ Mutual monitoring and observance of the accepted law*

1. The United Nations and regional organizations with a democratic vocation should ensure that their members become party to the treaties that incorporate respect for fundamental rights and freedoms, as well as international humanitarian law, and, if necessary, ensure the effective incorporation of these conventions into domestic law.

2. The verification of the implementation of this accepted law should be ensured through the establishment of a mechanism for the mutual monitoring of the commitments made. The said monitoring should be carried out by independent experts appointed by the organization concerned.

3. Should the member states of the organizations mentioned in the first paragraph of this Principle fail to respect the rules in relation to the repression of serious crimes, the said failure should be reported and appropriately publicized. If this is the case, the organizations concerned should sanction the defaulting state, for instance, by depriving it of the rights and privileges deriving from its membership.

*Principle 22 ^ International Criminal Court*

1. All states should become Parties to the Rome Statute of the International Criminal Court, adopted on 17 July 1998.

2. Each state party to the Statute must incorporate in its domestic criminal law the crimes referred to in the Statute of the Court, the rules of jurisdiction allowing it to deal with such crimes, pursuant to the principle of complementarity, as well as the means to co-operate with the Court.

3. All Members of the United Nations should do likewise. This principle is based on the possibility for the Security Council to refer to the Prosecutor of the International Criminal Court a situation in which crimes stipulated in the Statute have been committed (Statute, Article 13(b)).

4. In light of the commitment of the United Nations to protect fundamental rights and freedoms and the duty of all states to co-operate to this effect by virtue of the Charter of the United Nations, and given also the "historical importance" attributed by the UN General Assembly to the adoption of the Rome Statute of the International Criminal Court and its wish to see "all states" become party thereto, it would clearly be contrary to international law that a state that is not party to the Statute should take any step or initiative whatsoever that may disrupt or prevent the functioning of the Court.

5. The necessary human and material resources should be provided to the International Criminal Court that will enable it to carry out its important mission effectively and fully independently, and thus to come up to the expectations of the international community.

## **V. Non-judicial mechanisms**

### *Principle 23 ^ Non-judicial commissions of inquiry*

1. Non-judicial commissions of inquiry (such as "truth and reconciliation" commissions) and judicial procedures, far from excluding each other, are mutually complementary in the fight against impunity and for international justice. The constitution and activity of these commissions cannot, however, replace judicial procedures.

2. Non-judicial commissions of enquiry can effectively contribute towards the fight against impunity and for international justice, provided they meet the following minimum conditions:

- (a) they must be preceded by a broad public debate;
- (b) they must rest on a proper legal basis that clearly establishes their mandate, their composition and their modus operandi;
- (c) they must reflect the composition of society;
- (d) they must be free from any political or government interference;
- (e) they must operate in accordance with the minimum standards of a fair trial and of protection of the victims, the offenders, the witnesses and all other persons concerned;
- (f) they must have the power to call witnesses;
- (g) they must have the power to make recommendations;
- (h) they must have the necessary resources at their disposal;
- (i) they must publish and widely disseminate a final report, at least, in the official languages of the country.

3. The recommendations of such commissions should be implemented and undergo regular evaluations, both by state bodies and by the international community.

### *Principle 24 ^ Policies of reparations*

1. In addition to judicial redress, policies of reparations devised by national governments and international organizations constitute a useful mechanism in the fight against impunity and for international justice. Such policies should seek to ensure the effectiveness of judicial redress and to promote adequate individual and collective redress, so as to prevent such serious crimes from recurring in future.

2. The policies should not be limited to financial compensations. They should also include, inter alia: the restitution to the victims of their belongings, the rehabilitation of the victims through the provision of appropriate medical, psychological and social assistance, the granting of satisfaction in the form of, for instance, apologies or requests for forgiveness, guarantees of non-repetition of serious crimes including, for example, educational measures and institutional reforms aimed at preventing serious crimes.

3. In addition to judicial measures and redress, these policies should also promote reconciliation.
4. Within the framework of transition to democracy, it may be necessary to proceed to institutional reforms in relation to the army, the justice system, the police, the education system and the means of communication.

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#### Presentation of the members of the Brussels Group for International Justice

The documents are published by the Brussels Group for International Justice who brought together the following people.

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