

Shireen Abu Akleh's case, a matter of the International Criminal Court

On May 11, Shireen Abu Akleh a reporter from Al Jazeera news, was murdered by Israelis soldiers in the West Bank. Shot in the face, Shireen died in the middle of a Palestinian vicinity. There was no armed conflict nor armed Palestinians, and either way according to some witnesses, she was killed. This case is concerning, and in accord with the International Humanitarian Law, there were some violations who should be penalized. During this essay it is going to be presented why there was perpetration of war crimes according to the right of war as well as the main point of the essay, which is to explain why in agreement with the International Humanitarian Law, this case should be investigated and resolved by the International Criminal Court.

As Human Rights are alienable to us, they are conditioned to be respected as they should be safeguarded, but the truth is that even though there exist legal instruments ratified by States, today there are many violations committed and most of them do not have a proper resolution. Nowadays it seems the power of the States and their status in the international scenario are more important rather than the international jurisdiction, and Shireen's case was only one of many cases where Human Rights were violated. It is not the first time Israel silence Palestinian voices by intimidating their journalists and burying the truth. Abu Akleh's death was not an accident and justice is demanded.

When Abu Akleh was covering news of an Israeli military operation in the occupied territory of the West Bank, she was wearing a press vest and a helmet that made the distinction that she was a civilian. According to the International Humanitarian Law which is applied in cases of war, there are three principles. One of them is to make the distinction of civilians; all the persons who are not participating in the hostilities should be safeguarded. In agreement with the Article 4 of the IV Geneva's Convention of 1949: The Protection of Civilian Persons in Time of War; "Persons protected by the Convention are those who at a given moment and in any manner whatsoever, find themselves in a case of a conflict or occupation in the hands of a party to the conflict or Occupying Power of which they are not nationals", and as a matter of fact, journalists are civilians and a deliberate attack against them should be a violation to the International Humanitarian Law according to the Geneva's Convention.

As the war changes, the International instruments too, and in order to adapt to the new challenges, the Additional Protocols of the Geneva's Convention in 1977 were created to make more specifications about the protection of civilians in warfare, emphasizing concepts such as the "Indiscriminated Attacks". Stated by the Additional Protocol I, Article 51(4) "Indiscriminated attacks are prohibited" and by *indiscriminated* it refers to attacks that are objectively directed to civilian or civilian objects without distinction. Israel does not recognize the Additional Protocols of 1997

but it has ratified the four Geneva's conventions in 1951, which does not exempt it to adhere to the rules of International Law when in fact, it was responsible on many occasions from the compliance of several violations to the International Humanitarian Law.

Certainly there was a violation, however effortly, Israeli authorities are trying to distort the truth by claiming the perpetrators of the attack were Palestinians rather than accepting responsibility for the murder, nevertheless there is ample evidence to demand for a formal investigation of the case starting by declaring the initial probe which is that Shireen was killed about 300 feet from Israeli forces, but given the power and the influences of Israel, this investigation might not get the case resolved. In order to give a correctly process of resolution, Palestinian authorities demanded for International help to handle the case properly and adress it to an international body. In response of that, the Security Council of United Nations released a statement to request "an immediate, thorough, transparent, fair and impartial investigation into the murder".

This case should be a matter of the International Criminal Court given that it is the only International body who can try individuals charged with commision of war crimes, crimes against humanity and the crime of aggression. There is only one "limitation" in this case and it is the fact that Israel doesn't recognize the Rome Statute which gives the jurisdictional basis to the ICC, this means that by nature, the court cannot perform investigations in Israeli territory. Fortunately given that Shireen's case was committed in The West Bank (Palestinian territory taken by Israel) The International Criminal Court can interven to make a fully investigation, since in the year 2015 Palestina has ratified the Rome Statute and as a member, it has the right to demand for legal resolutions to the atrocities who are constantly committed in the territory by external forces.

In conclusion, Shireen's case has been a controversy the latest days and as established by the IV Geneva's Convention and the Additional Protocols, its murderer was a violation of Human Rights according to the International Humanitarian Law as well as a breach of customary law. Israelis forces should be responsible for the killing as it was not the first and probably nor the last one of a series of violations the State has committed since 1967 with the occupation of the Palestinian territory. The State as well as the perpetrators should be subjects of application of the International Law, and the only body who can apply a decisive judgment is the International Criminal Court given its nature conditioned by the Rome Statute, which is to apply the jurisdiction against the commision of war crimes and atrocities against humanity.

Shireen Abu Akleh was a recognized name across the Arab world who showed the struggle Palestians live with and the insight of the real story in an objective way. "She was the voice of truth and justice" and the Arab world is not going to forget her indiscriminated murdered, nevertheless forfeit the right to seek for justice.

References

Farooq, U. A. (2022, 12 mayo). *Shireen Abu Akleh killing: The legal mechanisms available for justice*. Middle East Eye. Recuperado 13 de mayo de 2022, de <https://www.middleeasteye.net/news/shireen-abu-akleh-legal-mechanisms-available-justice-and-accountability>

Tahhan, Z. A. (2022, 12 mayo). *Palestinians mourn journalist Shireen Abu Akleh, call for justice*. News | Al Jazeera. Recuperado 14 de mayo de 2022, de <https://www.aljazeera.com/news/2022/5/12/funeral-service-shireen-abu-akleh-set-start-ramallah>

Naciones Unidas. (2022, 14 mayo). *El Consejo de Seguridad pide investigar el asesinato de la periodista*. Noticias ONU. Recuperado 14 de mayo de 2022, de <https://news.un.org/es/story/2022/05/1508752#:~:text=Los%20miembros%20del%20Consejo%20de,11%20de%20mayo%20de%202022>.

Comite International Geneve. (2004, julio). *What is International Humanitarian Law?* (N.º 1). ADVISORY SERVICE ON INTERNATIONAL HUMANITARIAN LAW. https://www.icrc.org/en/doc/assets/files/other/what_is_ihl.pdf

Portilla Gómez, J. M. (s. f.). *El DERECHO INTERNACIONAL ANTE LA OCUPACIÓN DE LOS TERRITORIOS PALESTINOS Y EL MURO DE SEPARACIÓN*. Anuario Mexicano de Derecho Internacional. UNAM. Recuperado 17 de mayo de 2022, de <https://revistas.juridicas.unam.mx/index.php/derecho-internacional/article/view/156/249>

Comite International Geneve. (s. f.). *DIH consuetudinario - Practice Relating to Rule 11. Indiscriminate Attacks*. Recuperado 17 de mayo de 2022, de https://ihl-databases.icrc.org/customary-ihl/spa/docs/v2_rul_rule11

Gascón, E. G. (2022, 12 mayo). *Por qué la Corte Penal Internacional no condenará a Israel por crímenes de guerra*. Público. Recuperado 17 de mayo de 2022, de <https://www.publico.es/internacional/corte-penal-internacional-no-condenara-israel-crimes-guerra.html#:~:text=En%202015%20Palestina%20firm%C3%B3%20el,tribunal%20ha%20terminado%20por%20rechazar>.

GENEVA CONVENTION RELATIVE TO THE PROTECTION OF CIVILIAN PERSONS IN TIME OF WAR: Vol. IV. (1949). https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.33_GC-IV-EN.pdf

Estatuto de Roma de la Corte Penal Internacional: Vol. I. (1998). [https://www.un.org/spanish/law/icc/statute/spanish/rome_statute\(s\).pdf](https://www.un.org/spanish/law/icc/statute/spanish/rome_statute(s).pdf)