



## **Non-Derogable Obligations of France to Take Actions in Response to Ongoing *Jus Cogens* Crimes Committed by the Responsible State: A Situation Requiring a Referral of Burma to the ICC**

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### **FRANCE’S LEGAL OBLIGATIONS UNDER INTERNATIONAL HUMANITARIAN AND HUMAN RIGHTS LAW**

<b>MULTILATERAL TREATY/CONVENTION</b>	<b>FRENCH RATIFICATION</b>
❖ Convention on the Prevention and Punishment of the Crime of Genocide (9 December 1948)	Signed 11 December 1948 Ratified 14 October 1950
❖ Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War (12 August 1949)	Signed 8 December 1949 Ratified 28 June 1951
❖ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) (8 June 1977)	Ratified with Reservation / Declaration 11 April 2001
❖ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) (8 June 1977)	Ratified 24 February 1984
International Covenant on Civil and Political Rights (16 December 1966)	Ratified 04 November 1980
Optional Protocol to the ICCPR (16 December 1966)	Ratified 17 February 1984 Entered 17 May 1984
Second Optional Protocol to the ICCPR on the death penalty (15 December 1989)	Ratified 02 October 2007 Entered 02 January 2008
Convention on the Elimination of All Forms	Signed 17 July 1980

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- ❖ In the absence of state accountability, criminal violations by a state that amount to *jus cogens* crimes trigger nonderogable obligations of third party states to take measures including collective action at the Security Council level.

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of Discrimination against Women CEDAW (18 December 1979)	Ratified 14 December 1983 Entered 13 January 1984
Optional Protocol to CEDAW (06 October 1999)	Signed 10 December 1999 Ratified 9 June 2000
International Convention on the Elimination of All Forms of Racial Discrimination (CERD) (07 March 1966)	Ratified 28 July 1971 Entered 27 August 1971
International Covenant on Economic, Social and Cultural Rights (16 December 1966)	Ratified 04 November 1980 Entered 04 February 1981
❖ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (10 December 1984)	Signed 04 February 1985 Ratified 18 February 1986 Entered 26 June 1987
❖ Optional Protocol to CAT (18 December 2002)	Signed 16 September 2005 Ratified 11 November 2008
Convention on the Rights of the Child (20 November 1989)	Ratified 26 January 1990
❖ Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (25 May 2000)	Signed 06 September 2000 Ratified 05 February 2003 Entered 05 March 2003  <b>Declaration:</b> France hereby declares that it recruits only volunteers aged at least 17 who have been informed of the rights and duties involved in military service and that the enlistment of recruits under the age of 18 is valid only with the consent of their legal representatives.
International Convention for the Protection of All Persons from Enforced Disappearance (20 December 2006)	Signed 06 February 2007 Ratified 23 September 2008
❖ Rome Statute of the International Criminal Court (ICC)	<b>Rome Statute</b> Signed 18 July 1998 Ratified 9 June 2000 (becoming the 12th State Party.) <b>Agreement on Privileges and Immunities</b> Signed 10 September 2002 Ratified 17 February 2004. <b>Bilateral Immunity Agreement</b> France has not signed a BIA.

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<b>SECURITY COUNCIL RESOLUTIONS MANDATING CRIMINAL ACCOUNTABILITY FOR IHL CRIMES IN CONFLICT</b>	<b>DATE OF ADOPTION</b>
S.C. Res. 1674, 5430th Sess., S/RES/1674 (Security Council Resolution 1674 on the <b>Protection of Civilians in Armed Conflict</b> )	28 April 2006
S.C. Res. 1325, 4213th Sess., S/RES/1325 (Security Council Resolution 1325 on <b>Women, Peace and Security</b> )	31 October 2000
S.C. Res. 1612, 5235th Sess., S/RES/1612 (Security Council Resolution 1612 on <b>Children and Armed Conflict</b> )	26 July 2005
S.C. Res 1820, 5916th Sess., S/RES/1820 (Security Council Resolution 1820 on <b>Women, Peace and Security</b> )	19 June 2008
S.C.Res. 1882, 6176th Sess., S/RES/1882 (Security Council Resolution 1882 on <b>Children and Armed Conflict</b> )	4 August 2009
S.C. Res. 1888, 6195th Sess., S/RES/1888 (Security Council Resolution 1888 on <b>Women, Peace and Security</b> )	30 September 2009
S.C. Res. 1889, 6196th Sess., S/RES/ 1889 (Security Council Resolution 1888 on <b>Women, Peace and Security</b> )	5 October 2009

### FRANCE'S REGIONAL LEGAL OBLIGATIONS

<b>TREATY/CONVENTION</b>	<b>FRENCH RATIFICATION DATE</b>
❖ European Convention for the Protection of Human Rights and Fundamental Freedoms	Signed 04 November 1950 Ratified 03 May 1974 Entered 03 May 1974
Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty (04 November 1950)  Adopted by the Council of Europe in 1982, provides for the abolition of the death penalty in peacetime; states parties may retain the death penalty for crimes "in time of war or of imminent threat of war". Any state party to the European Convention on Human Rights can become a party to the Protocol.	Signed and ratified

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<p>Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances. (03 May 2002)</p> <p>Adopted by the Council of Europe in 2002, provides for the abolition of the death penalty in all circumstances, including time of war or of imminent threat of war. Any state party to the European Convention on Human Rights can become a party to the Protocol.</p>	2002
<p>Abolished the death penalty for all crimes. Date of last execution</p>	1981 1977
<p>European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (26 November 1987)</p>	Signed 26 November 1987 Ratified 9 January 1989
<p>Council of Europe Convention on Action against Trafficking in Human Beings (16 May 2005)</p>	Signed 22 May 2006 Ratified 9 January 2008 Entered into Force 1 May 2008
<p>UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementary to the United Nations Convention against Transnational Organized Crime (Palermo Protocol) GA Res. 55/25 (8 January 2001)</p>	Ratified 12 December 2000
<p>❖ The Stockholm Declaration on Genocide Prevention</p>	28 January 2004 Government Representative present: Minister of Justice Dominique Perben
<p>The North Atlantic Treaty (4 April 1949)</p>	4 April 1949
<p><b>EU COUNCIL DECISIONS &amp; DECLARATIONS</b></p>	<b>DATE ADOPTED</b>
<p>❖ Council Decision 2003/335/JHA on the investigation and prosecution of genocide, crimes against humanity and war crimes (Judicial cooperation in criminal matters)</p> <p>“[G]enocide, crimes against humanity and war</p>	8 May 2003

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crimes must not go unpunished and [...] their effective prosecution must be ensured by taking measures at national level and by enhancing international cooperation.”	
Council Decision 2002/494/JHA setting up a European network of contact points in respect of persons responsible for genocide, crimes against humanity and war crimes	13 June 2002
❖ Council Common Position 2001/443/CFSP on the International Criminal Court (declaring that the crimes within the jurisdiction of the International Criminal Court are of concern for all Member States)	11 June 2001
❖ Council Common Position 2003/444/CFSP on the International Criminal Court (updating Council Common Position 2001/443/CFSP)	16 June 2003

### SELECTED NATIONAL LEGAL OBLIGATIONS OF FRANCE FOR CERTAIN *JUS COGENS* CRIMES, INCLUDING PROVISIONS FOR UNIVERSAL JURISDICTION

ACT OF PARLIAMENT	PURPOSE/RELEVANCE
Preamble of the French Constitution, adopted 4 October 1958	The Preamble recalls the 1789 Declaration of the Rights of Man and Citizen, which recognizes the importance of universal individual and collective rights.  “French governments, since 1789, have repeatedly invoked human rights principles in the elaboration of their foreign policy.” -Shiva Eftekhari <i>Human Rights Quarterly</i> 23 (2001) 1032–1061
Universal Declaration of Human Rights	It expresses the rights to which all mankind are entitled. It was ratified by the UN General Assembly on 10 December 1948
Article 11 of the 1789 Declaration of the Rights of Man and of the Citizen	The article inspired the Universal Declaration of Human Rights adopted by the United Nations on 10 December 1948 (Art. 19); and the European Convention on Human Rights adopted on 4 November 1950 (Art. 10)

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Article 689 of the French Code of Criminal Procedure (CCP)	The article provide that “Perpetrators of or accomplices to offences committed outside the territory of the Republic may be prosecuted and tried by French courts either when French law is applicable under the provisions of Book 1 of the Criminal Code or any other statute, or when an international Convention gives jurisdiction to French courts to deal with the offense.” Additionally, it provides that “a person guilty of committing [torture as defined in article 1 of the Convention against Torture] outside the territory of the Republic and who happens to be in France may be prosecuted and tried by French courts.”
Act 90-615 (13 July 1990), also known as the “Gayssot Act”	The law punishes: <ul style="list-style-type: none"><li>● Incitement to commit crimes or offences</li><li>● Efforts to justify war crimes and crimes against humanity—penalty of a 5-year prison sentence &amp; €45,000 fine</li><li>● Incitement to discrimination, hatred and violence.</li><li>● The "Gayssot Act" amends the law on the Freedom of the Press of 1881 by adding an article 24 [making] it an offence to contest the existence of the category of crimes against humanity as defined in the London Charter of 8 August 1945, on the basis of which Nazi leaders were tried and convicted by the International Military Tribunal at Nuremberg in 1945-1946. In essence, the "Gayssot Act" promotes the Nuremberg trial and judgment to the status of dogma, by imposing criminal sanctions on those who dare to challenge its findings and premises.</li></ul>

### **French Membership of international groups/organizations:**

EU, UN (Permanent Member of the UN Security Council), Council of Europe, NATO, G8, EBRD, FAO, IMO, OECD, OSCE, WEU, WHO, Francophonie and many other smaller international groups.