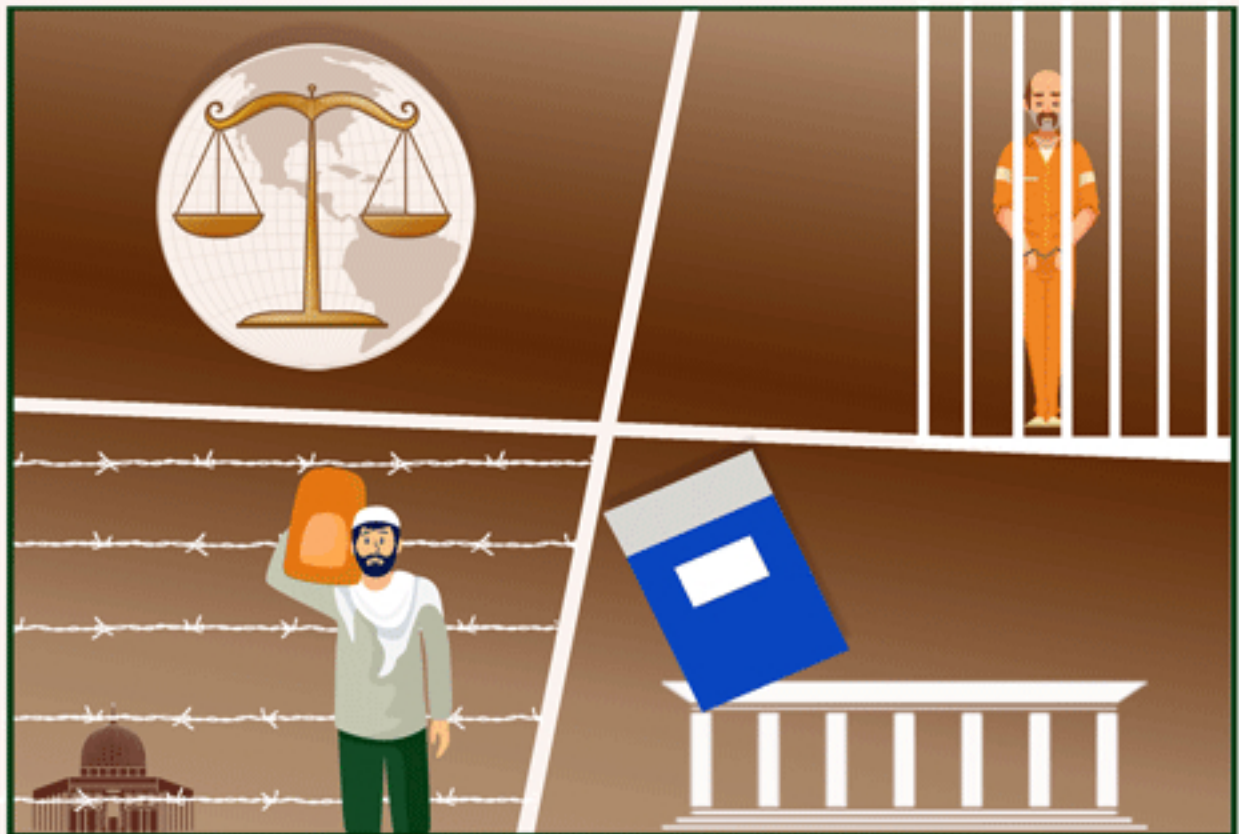




Advisory Opinion

The Rights of Prisoners and Civilians Under Occupation in International Law and the Israeli Bill Legalizing the Execution of Palestinian Prisoners and the Deportation of Palestinians



Prof. Dr. Ahmad Mubarak al-Khalidi

March 2023



Al-Zaytouna Centre for Studies & Consultations

The opinions expressed in all the publications and studies are those of the authors and do not necessarily reflect the views of al-Zaytouna Centre

Table of Contents

First: The Rights of Prisoners and Civilians Under Occupation, the Responsibility of the Occupying Power, and the Inability to Disavow This Responsibility in the Geneva Conventions.....6

- 1. Applicability of the provisions of the conventions to prisoners resisting the occupation.....6
- 2. Applicability of the Geneva Conventions to civilians in occupied territories.....9
- 3. The responsibility of the captive state in international law.....10

Second: Protection for Prisoners and Civilians Under Occupation in International Criminal Law..... 13

- 1. The crime of genocide..... 14
- 2. Crimes against humanity.....15
- 3. War crimes.....15
- 4. The crime of aggression.....16

The Rights of Prisoners and Civilians Under Occupation in International Law and the Israeli Bill Legalizing the Execution of Palestinian Prisoners and the Deportation of Palestinians

Prof. Dr. Ahmad Mubarak al-Khalidi¹

Benjamin Netanyahu, who formed the most extremist government in the history of the Israel since 1948, has approved the initiative of two extremist ministers, Itamar Ben-Gvir and Bezalel Smotrich, who hold the two most dangerous ministries in his government. These two have promoted a bill that allows the Israeli



army, police and settlers to commit war crimes, crimes against humanity, genocide, crimes of aggression and the deportation of Palestinians who resist the occupation of their homeland. The move disregards the provisions of international law, as it permits the killing of Palestinian prisoners, and permits crimes against civilians whom the occupation assumes will pose a threat in the future. The Israeli bill would give legitimacy to crimes committed by the occupation against the Palestinians. It allows the Israelis to commit the crime of summary execution of Palestinian resistance fighters fighting the occupation using legitimate means of resistance in international law, without fair trial or due process; deport the Palestinians from their original homeland; and demolish the homes in which the resistance fighters and their families live, even if this leads to the killing of civilians. The best evidence of the occupation committing such crimes can be established through the following:

- ✓ 1. The UN Special Coordinator for the Middle East Peace Process, Tor Wennesland, has condemned the execution of the youth ‘Ammar Mufleh by an occupation soldier in Hawara, south of Nablus, on 3/12/2022, and said, “Such incidents must be fully and promptly investigated, and those responsible held accountable.”
- ✓ 2. Another piece of evidence establishing Israel’s violation of international law is its failure to seriously prosecute the perpetrators of homicides against Palestinians in their cities inside Israel. According to *Haaretz*, in 2022, about 111 Arabs were killed in the 1948 occupied territories. The Israeli courts investigated only 5 such homicides.

¹ Constitutional Law professor, former dean of the Faculty of Law at An-Najah University, head of drafting committee of the Palestinian Constitution, and the Minister of Justice during the tenth Palestinian Authority government.



- ✓ 3. The occupying power captures Palestinians and keep them in administrative detention under military orders, renewed at the whim of the occupation army. To date, 365 prisoners have been held in Israeli prisons for more than 20 years. Nearly one thousand administrative prisoners are detained, as a large number of them kept in cells without a fair trial and medical care, with many of them dying as a result. These actions violate international law and international resolutions issued on their basis, and are considered serious crimes that threaten international peace and security. We cite, for example, UN General Assembly Resolution No. 40/25 of 1985, which affirmed the right of the Palestinian people to self-determination and independence, and demanded Israel to immediately and unconditionally release all persons arrested or imprisoned as a result of their struggle for self-determination and independence.
- ✓ 4. The occupation forces, in many other repeated cases, attack cities, villages and refugee camps inhabited by unarmed civilians, using drones and lethal explosive weapons, and kill those who oppose their incursions into civilian areas, even before they actually resist the Israeli occupiers, on the grounds that they intend to resist the occupier. This happened in the raid on the Jenin refugee camp in January 2023, where the occupation killed nine people and wounded many civilians, including an elderly woman and a teacher. This again happened in Aqabat Jaber refugee camp in Jericho on 4/2/2023, and Nablus on 22/2/2023. In the period 1/1/2023–23/2/2023 alone, 65 Palestinians were summarily executed by the occupation!
- ✓ 5. The occupation violated the sanctity of those who were summarily executed, even after they no longer posed any threat after their death. It held their bodies in unmarked numbered graves and morgues. To date, the occupation is holding more than 370 corpses in violation of international law and the Geneva Conventions of 1949. Occupation leaders are defying international law and the relevant provisions of the Geneva Conventions. On 23/2/2023, the Israeli Channel 12 admitted that Israeli Defense Minister Benny Gantz, decided not to hand over the body of the prisoner, Nasser Abu Hamid, to his family.



These are examples of the crimes committed by the occupation authorities against the Palestinians, and they want to legitimize them through the bill submitted to the Knesset. But what is the position of international law vis-à-vis these crimes that would be permitted by this bill, which legitimizes the execution of Palestinian prisoners, their deportation from their original homeland, or their denial of the right to reside there, and protects the occupying state and its senior officials, soldiers, and settlers who kill or order the killing



of Palestinians? Such a step is aimed at overthrowing the peremptory rules of international law that are binding on all countries, and that are established in the Geneva Conventions and in the established international norms, to which the all countries are bound. These laws cannot be abolished by the unilateral will of any country, as they are rules for which humanity has paid the price with the lives of millions of its children over the years, until they agreed to them for the benefit of all mankind. They are guaranteed by international agreements, among which we mention:

- ▶ • The Petersburg Declaration of 1868 banning the use of certain munitions.
- ▶ • The Hague Convention of 1899 banning “the use of bullets which expand or flatten easily in the human body.”
- ▶ • The Geneva Convention of 1925 prohibiting “the use in war of asphyxiating, poisonous or other gases and of bacteriological methods of warfare.”
- ▶ • The Convention on Respecting the Laws and Customs of War on Land, known as the Hague Convention of 1907.
- ▶ • The four Geneva Conventions of 1949 and their additional protocols.
- ▶ • The Rome Statute of the International Criminal Court (ICC) of 1998, which included the provisions of international criminal law approved by the participating states parties. Many states have signed up to the Convention.

The Rome Statute of the ICC, elaborated in detail the serious crimes punishable by international law. We will refer to the rules of international criminal law stipulated in the Rome Statute and related to the protection of human rights under occupation, including the prisoners, the wounded and the sick, after referring to the human rights of prisoners, the sick and the wounded among them and the non-sick and wounded in general international law.



It is important to define the international legal frameworks that identify the sources of the rules of international law, which include the most important provisions of international law that protect human rights and protected persons, namely civilians under occupation, wounded and sick prisoners, and prisoners who are not sick or not wounded.

Article 38 of the Statute of the International Court of Justice (ICJ) lists the sources of international law for the ICJ to follow when adjudicating international disputes. The



Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

- ▶ • international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
- ▶ • international custom, as evidence of a general practice accepted as law;
- ▶ • the general principles of law recognized by civilized nations;
- ▶ • judicial decisions and the teachings of the most highly qualified publicists of the various nations.

This means that no country has the right to unilaterally repeal, amend or alter the provisions of international law that have been approved by world countries—since the establishment of the international system, especially in the aftermath of the first and second world wars in the twentieth century, and endorsed in general or special international agreements. These agreements are considered binding on all countries that accepted the Covenant of the League of Nations and then the Charter of the United Nations.

In this paper, we will focus on reviewing the most important provisions of international law derived from international conventions, and elaborating the protection of general human rights including those of prisoners, the wounded, and sick, and protected civilians in occupied territories. We will rely mainly on the four international Geneva Conventions of 1949 and their appendices in particular, and then refer to the international criminal protection decided by the Rome Convention that established the statute of the ICC of 1998.



First: The Rights of Prisoners and Civilians Under Occupation, the Responsibility of the Occupying Power, and the Inability to Disavow This Responsibility in the Geneva Conventions:

1. Applicability of the provisions of the conventions to prisoners resisting the occupation:

In terms of the scope of application of the provisions of those conventions in peace and war, Article 2 of all the four Geneva Conventions stipulates that “in addition to the provisions which shall be implemented in peacetime, the present Convention shall apply to all cases of declared war or of any other armed conflict.”

This was stated in the first paragraph of Article 2 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Geneva Convention). The same provision was repeated in the third paragraph of Article 2 of the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Geneva Convention), the Geneva Convention relative to the Treatment of Prisoners of War (the Third Geneva Convention), and the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention). This all confirms that if one of the conflicting states is not a party to these conventions, but other conflicting states are parties to them, then the conventions remain binding on these states. Even for a country that is not a party to the Convention or has not acceded to it, the Rome Convention establishing the Statute of the ICC has supplemented the provisions stipulating that the ICC may consider holding a state accountable for its violation of the provisions of international agreements that are the basis of international law, if the Prosecutor of the ICC refers to it a request to look into crimes that occurred during a specific conflict, as we will explain later.

The rights of prisoners, the wounded, and the sick who are under the control of the enemy are stipulated in the four Geneva Conventions; Article 3 in Paragraph D of all the four agreements stipulates: The state under whose control prisoners, sick or wounded fall, is obligated to refrain from “the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted



court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.”

Article 4 of the Third Geneva Convention on the Treatment of Prisoners of War defines prisoners of war as:

1. Members of the armed forces of a Party to the conflict as well as members of militias or volunteer corps forming part of such armed forces.
2. Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfil the following conditions:
 - a. that of being commanded by a person responsible for his subordinates;
 - b. that of having a fixed distinctive sign recognizable at a distance;
 - c. that of carrying arms openly;
 - d. that of conducting their operations in accordance with the laws and customs of war.
3. Members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power.
4. Persons who accompany the armed forces without actually being members thereof,, provided that they have received authorization from the armed forces which they accompany, ...
5. Members of crews.... of the Parties to the conflict, who do not benefit by more favourable treatment under any other provisions of international law.
6. Inhabitants of a non-occupied territory, who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war.

These conditions are satisfied by Palestinians in the occupied territories, including civilians and those who resist the occupation. Their right to resist occupation by all means to achieve liberation and self-determination is recognized by the rules of international law and international resolutions issued in accordance with them by the United Nations, which includes all countries. We mention, for example, United Nations General Assembly Resolution No. 2787 of 1971, that stated:



“Solemnly reaffirming that the subjection of peoples to alien subjugation, domination and colonial exploitation is a violation of the principle of self-determination as well as a denial of basic human rights and is contrary to the Charter of the United Nations,.....

Confirming that colonialism in all its forms and manifestations, including the methods of neo-colonialism, constitutes a gross encroachment on the rights of peoples and on the basic human rights and freedoms,.....

Reaffirming the inalienable rights of all peoples, and in particular those of Zimbabwe, Namibia, Angola, Mozambique and Guinea (Bissau) and the Palestinian people, to freedom, equality and self-determination, and the legitimacy of their struggles to restore those rights,.....

1. Confirms the legality of the peoples' struggle for self-determination and liberation from colonial and foreign domination and alien subjugation, as well as of the Palestinian people, by all available means consistent with the Charter of the United Nations;

2. Affirms man's basic human right to fight for the self-determination of his people under colonial and foreign domination;

3. Calls upon all States dedicated to the ideals of freedom and peace to give all their political, moral and material assistance to peoples struggling for liberation i self-determination and independence against colonial and alien domination,”

The United Nations General Assembly affirmed the rights of the Palestinian people in many resolutions. Among them is the General Assembly Resolution No. 46/82 of 1991, which condemned Israel's policies in the occupied Palestinian territories, and demanded that it withdraw completely and recognize the right of the Palestinian people to self-determination and the establishment of their independent sovereign state.

In addition, the Security Council, in Resolution No. 252 of 1968 and Resolution No. 267 of 1969, called on Israel to rescind all measures to annex Jerusalem and other Palestinian lands after its aggression in 1967, which resulted in its occupation of all the lands of the historic State of Palestine as it stood during the British mandate over the State of Palestine. These lands and borders were organized by the provisions of the 1922 Constitution, drawn up by the King of Britain and proclaimed by the British Mandate authorities over Palestine at the time.



With regard to those who resist the occupation and to whom the Geneva Conventions apply, the text has been reaffirmed to recognize the same designations of those covered by the international Geneva Conventions with protection under the provisions of Article 13, paragraph 6, of the First and Second Geneva Conventions. Article 4 added persons who were affiliated with the armed forces of the occupied country, if the occupying power decided to arrest them because of this affiliation.

2. Applicability of the Geneva Conventions to civilians in occupied territories:

Article 5 of the First Geneva Convention established that the Convention applies to “protected persons who have fallen into the hands of the enemy, the present Convention shall apply until their final repatriation.” Article 5 of the Third Geneva Convention on the Treatment of Prisoners of War stipulates that this agreement shall apply to the categories of persons referred to in Article 4 of the Third Geneva Convention on Prisoners of War, starting from “the time they fall into the power of the enemy and until their final release and repatriation.”

With regard to the civilian persons protected under the Convention, Article 4 of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War defines protected persons as “Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals”.

Article 47 of the Fourth Geneva Convention states:

“Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory.”



3. The responsibility of the captive state in international law:

✓ a. Protecting the rights of prisoners in international law:

With regard to the protection of the rights of the wounded, sick and shipwrecked, Article 12 of the First Geneva Convention related to the amelioration of the condition of the wounded and sick in armed forces in the field stipulated the same content of the rights recognized by Article 12 of the Second Geneva Convention relating to the amelioration of the condition of the wounded, sick and shipwrecked members of armed forces at sea. The two articles stipulate that the wounded and sick members of the armed forces and other persons referred to in Article 4 of the Third Geneva Convention must be respected and protected in all circumstances, and they are the same categories mentioned in Article 13 of the First Geneva Convention and Article 13 of the Second Geneva Convention.



Article 12 of the First and Second Geneva Conventions and Article 13 of the Third Geneva Convention state that a Party to the conflict which has wounded, sick or prisoners in its power shall treat them humanely and care for them without any adverse distinction founded on sex, race, nationality, religion, political opinions, or any other similar criteria. The articles state, “Any attempts upon their lives, or violence to their persons, shall be strictly prohibited; in particular, they shall not be murdered or exterminated, subjected to torture or to biological experiments; they shall not wilfully be left without medical assistance and care, nor shall conditions exposing them to contagion or infection be created.”

Article 12 of the First Geneva Convention and Article 14 of the Third Geneva Convention relating to prisoners of war also require that women prisoners “be treated with all consideration due to their sex.”

In accordance with the provision of Article 14 of the First Geneva Convention and Article 16 of the Second Geneva Convention, the wounded and sick are among the categories specified by Article 13 of both the First and Second Geneva Conventions, and they are the same categories mentioned in Article 4 of the Third Geneva Convention, that those who fall into enemy hands shall be prisoners of war, whether the sick, the wounded, or non-sick and wounded. “The provisions of international law concerning prisoners of war shall apply to them.”



✓ **b. Responsibility of the captive state and its obligations to care for prisoners:**

Article 12 of the Third Geneva Convention states, “Prisoners of war are in the hands of the enemy Power, but not of the individuals or military units who have captured them. Irrespective of the individual responsibilities that may exist, the Detaining Power is responsible for the treatment given them.”

Likewise, according to Article 15 of the Third Geneva Convention, “The Power detaining prisoners of war shall be bound to provide free of charge for their maintenance and for the medical attention required by their state of health.” The responsibility of the State under whose power prisoners of war are in accordance with Articles 25, 26, 27, and 29 of the Third Convention, and Article 55 of the Fourth Geneva Convention includes its obligation to provide medical care, adequate shelter, and food; ensure that basic daily food rations are sufficient, in quantity, quality and variety; to ensure the maintenance of prisoners of war's health in good condition; to ensure that prisoners of war are provided with sufficient clothing, underwear and footwear suitable for the climate of the region where the prisoners are detained, and that care should be taken to replace and repair these items regularly.



Article 35 of the First Geneva Convention on the protection of wounded and sick prisoners stipulates, “Transports of wounded and sick or of medical equipment shall be respected and protected in the same way as mobile medical units. Should such transports or vehicles fall into the hands of the adverse Party, they shall be subject to the laws of war, on condition that the Party to the conflict who captures them shall in all cases ensure the care of the wounded and sick they contain.”

In the event of the death of any wounded or sick person held by a party to the conflict, Article 17 of the First Geneva Convention stipulates that the parties to the conflict must verify that the deceased has been buried respectfully and according to the rites of their religion, and that their graves are respected, and that they are marked in a way that can be identified for transfer to the country of origin of the deceased as soon as possible as circumstances allow, and at latest at the end of hostilities, when the administrations of the parties to the conflict reach an agreement. Articles 120 and 121 of the Third Geneva Convention have detailed the obligations of the State in whose custody prisoners of war die, adding, “If the enquiry indicates the guilt of one or more persons, the Detaining Power shall take all measures for the prosecution of the person or persons responsible.” All of these provisions are routinely violated by the Israeli occupation authorities with regard to those they kill in their raids on Palestinian cities, villages and towns, and bury



them in cemeteries with only numbers, without providing any information with their names and places of burial, and in many cases, they keep the bodies in morgue freezers and do not hand them over to their families. Rather, Israel detains these bodies to complete the judiciary prison sentence decided by its military authorities.

✓ c. **Inadmissibility of renouncing inalienable rights under the Geneva Conventions:**

The rights of civilians under occupation in general, and of prisoners, wounded and sick among them are inalienable rights. They may not be renounced in part or in entirety, as stipulated in Article 7 of the First Geneva Conventions for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, and the Second Geneva Convention Concerning the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, the Third Geneva Convention relative to the Treatment of Prisoners of War, and Article 8 of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War.

The provisions of these conventions are binding under international law in accordance with Article 51 of the First Geneva Convention, Article 52 of the Second Geneva Convention, Article 131 of the Third Geneva Convention, and Article 148 of the Fourth Geneva Convention. Indeed, according to those articles, “No High Contracting Party shall be allowed to absolve itself or any other High Contracting Party of any liability incurred by itself or by another High Contracting Party in respect of breaches referred to” in the Geneva Conventions.



Furthermore, Article 49 of the First Geneva Convention, Article 50 of the Second Geneva Convention, Article 129 of the Third Geneva Convention, and Article 146 of the Fourth Geneva Convention all state, “The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches” of these agreements.

Articles 50 of the First Geneva Convention, Article 51 of the Second Geneva Convention, Article 130 of the Third Geneva Convention, and Article 147 of the Fourth Geneva Convention elaborate on grave breaches committed against persons or property protected by these Conventions, which include one of the following acts:



- ▶ • Wilful killing.
- ▶ • Torture or inhuman treatment, including biological experiments.
- ▶ • Wilfully causing great suffering.
- ▶ • Serious injury to body or health.
- ▶ • Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

Second: Protection for Prisoners and Civilians Under Occupation in International Criminal Law:

There are crimes prohibited and cautioned against by the provisions of international law and international humanitarian law, which are against prisoners, the wounded, the sick, or civilians who fall under the control of the occupation, identified as what the Fourth Geneva Convention calls protected persons. These crimes are detailed in the Geneva Conventions and their appendices, then confirmed in the Rome Convention establishing the Statute of the International Criminal Court. They are considered serious crimes that threaten peace, security, and well-being in the world. The signatories to the international conventions agreed that these crimes cannot go unpunished in international law. This was stated explicitly in the preamble to the Statute of the International Criminal Court:



“The state parties to this statute, conscious that all peoples are united by common bonds, their cultures pieced together in a shared heritage, and concerned that this delicate mosaic may be shattered at any time, mindful that during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity...affirming that the most serious crimes of concern to the international community as a whole must not go unpunished...determined to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes...[and] determined to these ends and for the sake of present and future generations, [have decided] to establish an independent permanent International Criminal Court in relationship with the United Nations system, with jurisdiction over the most serious crimes of concern to the international community as a whole,... [and] resolved to guarantee lasting respect for and the enforcement of international justice”.



Therefore, the Rome Statute of the International Criminal Court stipulated in its first article that an international criminal court shall be established. “It shall be a permanent institution and shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern.” According to Article 4 of the Statute of the Court, “the Court shall have international legal personality. It shall also have such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes,” and it “may exercise its functions and powers, as provided in this Statute, on the territory of any State Party and, by special agreement, on the territory of any other State. According to Article 12 of the Statute of the Court, a State which is not a Party to this Statute can accept the exercise of jurisdiction by the Court with respect to a crime occurring within its territory by declaration lodged with the Registrar.

Article 5 of the Rome Statute of the International Criminal Court clarified that the jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:

1. The crime of genocide:

Article 6 of the Rome Statute of the International Criminal Court defines genocide as any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: Killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; forcibly transferring children of the group to another group.

Among the most prominent examples of the crime of genocide committed by the Israeli occupation authorities are: The siege imposed on all Palestinians; the tightened land, air and sea blockade on more than two million residents of the Gaza Strip; the attacks launched by the Israeli occupation army on Palestinian cities, villages and refugee camps, which result in the killing or wounding of dozens of civilians: an example of this is the massacre committed by the occupation forces in Nablus on 22/2/2023, in which more than ten people were killed, a toll that may increase, as the number of injured was 102, including those seriously injured. All of them are protected civilians according to the Geneva Conventions establishing the provisions of international law in this regard.



2. Crimes against humanity:

Article 7 of the Rome Statute of the International Criminal Court stated that any of the following acts is considered a crime against humanity: Murder; extermination; enslavement; deportation or forcible transfer of population; imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; torture; persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, or other grounds that are universally recognized as impermissible under international law; and the crime of apartheid.

All these types of crimes against humanity were committed and are still being committed by the Israeli occupation authorities against the Palestinian people. The long-term occupation is enslavement, and the persecution of worshipers, preventing them from reaching places of worship in Jerusalem, beating and arresting them just for reaching *al-Aqsa* Mosque, burning mosques and the homes of civilians and their residents inside them, and the chants of death to Arabs by the settlers, while they are armed and working under the protection and cooperation of army soldiers, and the policies of the occupation of apartheid and the apartheid wall are all material evidence of this. Also, among the examples of racial discrimination and demolition crimes, even against Palestinians, who remained in their original homeland and did not leave it in 1948, is what the occupation authorities did on 13/2/2023 by demolishing the homes of four Arab families in the city of Acre, inhabited by more than twenty people, built since more than 70 years ago, under the pretext that it was built without a license.



3. War crimes:

Article 8 of the Rome Statute of the International Criminal Court defines war crime as grave breaches of any of the provisions of the Geneva Conventions dated 12/8/1949, or any act against persons or property protected by the relevant provisions of the Geneva Convention, such as wilful killing, torture or inhuman treatment, extensive destruction and appropriation of property, wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial, unlawful deportation or confinement, or other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, as well as intentionally directing attacks against the civilian population not taking part in hostilities, killing or wounding a combatant who has voluntarily surrendered, or intentionally using starvation of civilians including wilfully impeding relief supplies as provided for in the Geneva Conventions.



Also, the transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory.

Among the grave violations of the provisions of the Geneva Conventions committed by the Israeli occupation authorities is the draft bill approved in its first reading by the Israeli Knesset on 23/2/2023, depriving Palestinian prisoners of receiving medical treatment.



Among the grave crimes committed by the occupation authorities are the demolition of hundreds of Palestinian homes. For example, in Jerusalem alone, since the beginning of 2023, more than 85 demolitions have been carried out.

A statement by UN experts deployed by the Human Rights Council also confirmed the increasing pace of appropriation of Palestinian homes in the West Bank, including Jerusalem.

Israel's Channel 7 announced on 14/2/2023 that the occupation authorities approved the construction of 7,032 settlement units in the "illegal" West Bank outposts out of 9,409 planned units. All of this confirms the major crimes committed by the occupation authorities, outlawed in the provisions of international criminal law in the Rome Statute of the International Criminal Court.

It is worth noting that Article 49 of the Fourth Geneva Convention of 12/8/1949 codified the binding legal rule established in international law and international norms, which stipulates that individual or mass forcible transfers, as well as deportations of protected persons from occupied territory are prohibited, regardless of their motive. The Article also states that the Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies, which was considered by the provisions of the Rome Statute of the International Criminal Court as a grave breach of the Geneva Conventions, and constitutes a war crime punishable by international criminal law agreed upon by the forces of the international community, represented by the signatory states to the Statute, to which many countries of the world have signed up.

4. The crime of aggression:

The preamble to the Charter of the United Nations, under which the United Nations was established, states that the framers of the Charter aim for its signatories to respect the obligations arising from treaties and other sources of international law. Article 1 of the Charter states that the purposes of the United Nations include taking "effective collective



measures for the suppression of acts of aggression” and ensure “respect for the principle of equal rights and self-determination of peoples.” Paragraph 4 of Article 2 of the Charter states that “all members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state.” Numerous Security Council and General Assembly resolutions have affirmed the illegality of seizing the land of others by force of aggression.

Among the ongoing crimes of aggression against the Palestinian people committed by the Israeli occupation is its gradual measures to seize all of the Palestinian West Bank by occupation and force, and annexing it to the territories Israel seized in 1948. Its current annexation measures were revealed by Israeli press reports, regarding the gradual de-facto annexation of the West Bank by the Israeli occupation by force. The reports said that the Israeli occupation government decided to transfer the powers of the civil administration (COGAT) that the occupation imposed by military orders, to the extremist right-wing terrorist minister Smotrich.



The Rome Statute of the International Criminal Court has established the jurisdiction of the Court to prosecute crimes of aggression. Indeed, according to Article 5, paragraph 2 of the Statute of the International Criminal Court, the court exercises jurisdiction over the crime of aggression when a ruling in this regard is adopted in accordance with Articles 121 and 122, and that this ruling with regard to the crime of aggression must be consistent with the relevant provisions of the Charter of the United Nations.

According to Article 13 of the Statute of the Court, the court may exercise its jurisdiction with regard to those crimes of “genocide, crimes against humanity, war crimes and crime of aggression,” referred to in Article 5 in accordance with the provisions of this Statute if:

- a. A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by a State Party in accordance with article 14;
- b. A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council.
- c. The Prosecutor has initiated an investigation in respect of such a crime in accordance with Article 15.



Or if a State which is not a Party to this Statute may, by declaration lodged with the Registrar, accept the exercise of jurisdiction by the Court with respect to the crime(s) that occurred in its territory according to Article 12.

In all cases, the Prosecutor of the International Criminal Court may, on his or her own initiative, initiate an investigation with regard to one of the crimes stipulated in the jurisdiction of the International Criminal Court in accordance with the provisions of Article 13, Paragraph C, and Article 15 of the Statute of the International Criminal Court.

Based on Article 15 of the Statute of the Court, in addition to the possibility of submitting requests to the Criminal Court by the States parties to the Rome Statute, and states in whose territory the criminal behavior occurred, individuals and groups, such as human rights groups, may send to the Prosecutor of the International Criminal Court information about the commission of one of those crimes, and the Prosecutor shall analyze the seriousness of those reports of the commission of one or more of these crimes, and may seek additional information from states or from United Nations agencies or Intergovernmental or non-governmental organizations or other reliable sources.

Thus, the Palestinian people have the legal right for their authority to ask the court to consider crimes committed by the occupying authorities or for individuals or civil society organizations to submit documented information about crimes committed by the occupying authorities to the Prosecutor of the International Criminal Court, who has the authority to open an investigation. If the Prosecutor verifies its seriousness, he or she has the power to refer it to the International Criminal Court for consideration and adjudication and the conviction of the perpetrator.

