



**Arab American University-
Faculty of Graduate Studies**

**The Extent to which International Agreements
Relating to the Environment are Enforceable on the
Palestinian Territories and the Obstacles to their
Implementation**

By

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**This thesis was submitted in partial fulfillment of the
requirements for the Master's degree in International
Law and Diplomacy**

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By

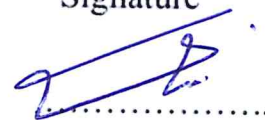
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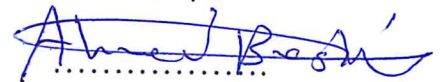
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Acknowledgement:

I, the author of thesis, certify that it was submitted to the Arab American University for a master's degree, and that it is the result of my own research except as indicated wherever it is received, and that this thesis or any part of it has not been submitted for any scientific degree or scientific research at any educational institution, university or institute.

Signature:

Qusay Jalal Abd Alatif Anzawi



Date: 26\9\2022

Dedication

To the one who honored me to carry his name, my dear father, may God protect
him...

To the one who helped me to reach a high degree...

To the light of my eyes, the light of my path and the joy of my life...

My mom, whose prayers has led to my success and excellence...

To My main pillar.... My brothers and sisters...

To the source of warmth, tenderness... my beloved grandmother

I give you the gift of love, elevation and dignity

To everyone who taught me a letter

To everyone who supported me even with a smile.

Appreciation

Praise be to Allah, the Lord of the worlds, who has blessed us with the light of knowledge, praise be to Allah first and foremost for His countless bounty and blessings. Praise be to Allah, who facilitated me to complete this thesis, and prayers and peace be upon our Lord Muhammad and upon his family and companions, and after:

After this work is nearing completion, I want to extend my sincere thanks and gratitude to Dr. Rezeq Samoudi, who supervised the thesis, for his continuous support, which had a great impact on the completion of this work. This thesis was the result of his blessed efforts, wise directives, continuous follow-up, and fruitful cooperation. His experience had a clear impact in enriching it. I give him all my thanks, appreciation and gratitude, and may God reward him all the best.

I also extend my sincere thanks and gratitude to the members of the discussion committee for kindly accepting the discussion of this thesis and enriching it from the flood of their extensive knowledge.

May God grant us all success

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Abstract

In recent years, interest in the environment has increased. Countries and specialists in environmental and health issues have begun to show increasing concern about the environmental changes caused directly and indirectly by human, which threatens the health of individuals and societies.

This increased interest prompted me to examine the extent to which the Palestinian areas under the Israeli occupation and its control are affected by environmental changes. Israeli policies and settlement activities constitute the greatest threat to the Palestinian land, air, water and natural resources. Also, the military activities of the Israeli occupation forces and the separation wall are considered challenges that have a special impact on the Palestinian environment.

Accordingly, I addressed Israel's responsibility to protect the Palestinian environment, by presenting a set of environmental agreements, international principles and customary rules for environmental protection. In addition, I discussed the rules and principles of international humanitarian law and international human rights related to environmental protection and public health as Palestine has been under a long-term occupation since 1967.

In the end, by addressing the various judicial, legal and political mechanisms available in international law, I presented a set of options that Palestine has in order to push Israel towards implementing environmental agreements and carrying out its duties under these agreements.

This research concludes that the Israeli measures represented in the confiscation and control of Palestinian lands for the purposes of building the apartheid wall and Israeli

settlements, are considered major causes of the deterioration and destruction of the Palestinian environment and constitute an obstacle to the environmental advancement in the Palestinian territories.

Furthermore, the options that Palestine has in order to push Israel towards implementing environmental agreements and carrying out its imposed duties seem few. They also have limited impact due to the specificity of the existing international system, and the obstacles that surround the work of the binding mechanisms provided by public international law.

Chapter One (Introduction)

1.1. General Introduction.

International law has witnessed a remarkable development in the second half of the twentieth century, both with regard to the persons addressed to it or the topics and areas it covers. It began to keep pace with organizing the new problems facing the contemporary international community and not be limited to addressing the traditional issues of that society such as sovereignty, diplomatic and consular relations, war and neutrality. Thus, it began to interact with the emerging problems that concern all members of the international community in various fields, so many branches of international law appeared concerned with regulating a specific situation, including international law for the environment.

There is no doubt that concerns about the negative impact of human activities on the environment and the growing and increasing complexity of environmental problems have led to an increase in the level of understanding of countries, international organizations and people of the risks facing the international environment. Thus, it has now become a subject of serious international concern. These concerns formed the starting point towards finding a common ground for cooperation among all parties concerned to reach a common legal framework capable of confronting and dealing with these problems.

Later, members of the international community realized that the problems facing the environment have an international dimension from two aspects. The first one is that pollution generated from a particular country may have an impact on other countries. For example, gases may be emitted through the air from a country to the territory of another

country. The second aspect is that countries have become more convinced that they cannot confront environmental problems alone.

As a result, concern for the environment is no longer limited to applied sciences within the framework of studies and research in that field, despite its importance in detecting pollution and its causes, in addition to its role in revealing the means and techniques for eliminating the causes of pollution. Rather, the international community today is more convinced that these new and dangerous environmental problems cannot be confronted individually, and that they must be dealt with within a legal framework that guarantees international cooperation between all representatives of the international community. So, we can reach an international environmental law within the framework of international law concerned with multiple environmental issues. It, in turn, aims primarily to protect the environment from the dangers and damages, or to reduce them.

After the increasing environmental threat facing humanity as a whole, members of the international community decided to hold international and regional conferences and seminars. They also decided to give awareness lectures on the importance of cooperation, coordination of efforts, participation in preparing plans, exchanging experiences and scientific knowledge. In addition, by joining many conventions, they called for working at an accelerated pace to ensure that these problems do not exacerbate. Furthermore, they cooperated with all relevant and specialized bodies, including the United Nations, to achieve real and tangible progress that ensures the survival of humanity in a clean and healthy environment. So, the UN's efforts have helped in the formulation of international guidelines and treaties on environmental issues.

It should be noted that most of the environmental problems facing the countries of the world today are represented in the illegal emission of materials or their discharge into the air, water or soil, the illegal shipment of waste, their illegal dumping or disposal, in addition to the excessive consumption and misuse of natural resources. There is a discrepancy in the ability to confront these problems between countries. Developed countries such as Western Europe and the United States of America, as the leading and most advanced countries in this field, continue to prepare studies and plans to meet these challenges, as they possess the technical and scientific expertise and the financial capabilities necessary for this. However, as for the developing countries, most of which are concentrated in South Asia and Africa, they are less able to face these problems due to poverty, underdevelopment and the absence of sufficient human and material resources.

As for Palestine, the role of the Israeli occupation in problems of the environmental situation shall be addressed. Palestine suffers from a lack of expertise, plans and material resources. Moreover, it has been under the control of the Israeli occupation for a long time, which follows policies that harm the Palestinian environment. So, the construction of Israeli settlements and the apartheid wall have a direct impact on the Palestinian environment and natural resources.

Commitment to environmental standards, the state's assumption of its responsibilities towards the environment at the present time, and the joint coordination between states regarding these issues is not a matter of choice, but rather a necessary issue, since the majority of the world's countries are well aware that solving these problems is through cooperation and coordination of joint efforts among them.

In order to achieve the objectives of this study and in an attempt to answer its questions, I have developed a plan, which I have divided as follows:

Chapter One: This chapter contains a general introduction to the topic that represents the general content of the study. This introduction includes a set of main ideas related to the topic of the study, in addition to presenting its main components and detailing its contents.

Chapter Two: This chapter highlights the emergence of international environmental law and its stages of development. It also clarifies Palestine's relationship with this law by showing the international agreements related to the environment to which Palestine has joined. In addition, it shows the Palestinian environment reality and the obstacles that hinder the application of environmental agreements on the Palestinian territories.

Chapter Three: This chapter deals with Israel's responsibility to protect and preserve the environment, where it first shows the historical context of the Israeli occupation of the Palestinian territories that were seized in 1967. Then it moves to discuss the Israel's responsibility to protect the environment in the Palestinian territories, both in terms of international environmental law, which contains many conventions and customary rules that regulate a variety of environmental issues, or in terms of human rights law that emphasizes the human right to live in a clean and safe environment. In addition, this chapter explains international humanitarian law, which includes many conventions and customary rules that stressed the need to protect the natural environment from the effects of hostilities during armed conflicts.

Chapter Four: This chapter demonstrates the Israeli practices and procedures that pollute the Palestinian environment and destroy its various elements. It also presents the

set of Israeli policies that contribute to the control and depletion of natural resources. In addition, it shows the extent to which these Israeli policies are compatible with the powers enjoyed by the occupying state in the occupied territories under international humanitarian law agreements.

Chapter Five: This chapter focuses on the various options through which Israel can be pushed towards commitment to and implementation of international legal rules relating to the environment. It also discusses international responsibility and its role in pushing countries towards implementing and complying with environmental agreements, in addition to a set of diplomatic and judicial options. Moreover, it addresses the mechanisms available within the United Nations and their importance in putting pressure on Israel to implement international environmental agreements.

Finally, a conclusion will be drawn up covering the general aspects of the study, in addition to presenting the results obtained with providing some recommendations.

1.1.1. Study Problem

The research problem represents by the loss of the ability to hold Israel accountable for its violations of the Palestinian environment and its natural elements in the occupied Palestinian territories since 1967, due to the weakness of enforcement and compulsion measures found in international environmental agreements. Also, Israel fails to respect its responsibilities to protect the environment under international humanitarian law conventions and its customary rules and international human rights law, as the Palestinian territories occupied since 1967 are under Israeli control.

1.1.2. Study Importance

The importance of this research comes in light of the growing interest in the environment at the level of countries and international governmental and non-governmental organizations. It should be noted that at a time when these entities are making intense efforts at the international level to protect the environment and its various elements from the multiple and widespread manifestations of pollution, the Israeli occupation authorities are working to destroy the elements of the natural environment in the occupied Palestinian territories based on systematic and studied plans. On the other hand, the mechanisms of implementation are among the motives and reasons that prompted us to discuss this issue, especially since these mechanisms are part of the executive function of public international law.

1.1.3. Study Objectives

This study aims to identify the violations committed by the Israeli occupation authorities against the elements of the Palestinian environment, as the Israeli measures affect it. Thus, negatively affects the Palestinian human rights who live in this environment. The study also aims mainly to know the rules of international law that dealt with the protection of the environment and its natural elements and the obligations of the occupying state towards these rules. On the other hand, it examines the means and tools available in international agreements in general and the environment in particular, through which it is possible to put Israel at the forefront of bearing its responsibilities as an occupying state in relation to the environmental violations that are being committed by Israel in the occupied Palestinian territories.

Through this research, I expect to be able to add a set of ideas about the possibility of implementing environmental agreements in the occupied territories, since many obstacles may prevent to implement them, as is the case in the occupied Palestinian territories under the full control of the Israeli occupation. Then, I will continue my research in an attempt to address this problem through the tools available in accordance with international law.

1.1.4. Study Questions

The desire to know the power and impact of the agreements and rules relating to the environment and found in various international law conventions in general, and international law for the environment in particular, prompted to ask the following question: How effective are these agreements and rules in protecting the environment in the occupied Palestinian territories?

Several sub-questions emerge from this question, which can be summarized as follows:

- 1- What are the most prominent international agreements that deal with the preservation of the environment and that can be applied in the occupied Palestinian territories?
- 2- What is the role of relevant international and regional organizations in monitoring the implementation of these conventions?
- 3- What are the obligations of Israel as an occupying power towards these agreements?

1.1.5. Study Hypotheses

This study assumes that applying international agreements relating to the preservation and protection of the environment in the occupied Palestinian territories is possible in light of the Israeli control over the Palestinian areas. However, the weaknesses that

permeate the implementation and compliance mechanisms found in these agreements, in addition to the lack of other implementation mechanisms in international law, make the application of environmental agreements difficult and tainted by many challenges.

1.1.6. Study Scope

The scope of the study in this research is limited to the West Bank region. So, it addresses the Israeli procedures and practices that threaten the Palestinian environment and contribute to its pollution and depletion of its natural resources in the West Bank. It also demonstrates environmental agreements that Israel violates its provisions and evades its application in the occupied West Bank regions, specifically in area C.

This study focuses on Israeli activities and practices in the areas of the West Bank, due to the extensive Israeli settlement in these areas. In addition, the vast majority of the apartheid wall, whose construction began in 2002, extends over the lands of the West Bank. Therefore, the study pays special attention to the impact of settlements and the apartheid wall on the environmental reality in the occupied Palestinian territories in the West Bank.

1.1.7. Study Methodology

In his study of this topic, I rely on a methodology that corresponds to the nature of the research and the issues it raises. Thus, I use the descriptive analytical approach by referring to the legal foundations on which various conventions and rules of international law relating to the protection of the environment are based. In addition to the legal basis on which the various implementation mechanisms found in international agreements are based.

1.2. Literature Review

1- Nasrallah Sana, 2010-2011, Legal Protection of the Environment from Pollution in the Light of International Humanitarian Law: This study dealt with the principles of international humanitarian law, including those related to protecting the environment from pollution in time of war, in addition to protecting the environment from pollution in international conventions.

2- Abdali Boubacar, 2017-2018, International Responsibility for Unlawful Acts in the Environmental Field: This study focused on civil liability as one of the tools of international law for environmental protection. It stressed that international responsibility is a civil liability based on compensation, not criminal punishment. However, we emphasized in this context that international responsibility is a responsibility with two branches, one of which is civil and the other criminal. We also discussed the importance of criminal responsibility as a tool to ensure compliance with environmental conventions. Moreover, we tried to highlight the role of the criminal court in protecting the environment.

3- Boutlja Hussain, 2017-2018, Mechanisms for Implementation of International Conventions for the Protection of the Environment: This study dealt with the presentation of a set of mechanisms available in public international law, including political and judicial means and others, through which environmental agreements related to the protection of the environment can be implemented. In this context, we were able to add in this study the supervision mechanism as one of the available mechanisms to ensure the implementation of environmental agreements.

4- United Nations Human Rights Council, Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, January 24, 2018: This report addressed the 16 framework principles developed by the Special Rapporteur at the time, Mr. John Knox. These principles emphasized that human is part of nature. The sixteen principles summarized the most important human rights obligations related to the environment. It also provided integrated and detailed guidance for the implementation of those obligations.

Chapter Two

The System of International Environmental Law and Palestine's

Relationship to it

International environmental law emerged like other different branches of international law. Then, it began to gradually expand and diversify with the beginnings of the rapid development of the industrial and technological revolution witnessed by the modern world. That period was characterized by high rates of pollution and damage to the elements of the natural environment compared to the previous periods, which were less severe in terms of pollution and depletion of the elements of nature.

These new indicators have contributed to the emergence of a modern international awareness that warns of the repercussions of that stage on the future of human life and the universe as a whole. Hence, countries, international and non-international organizations and people concerned with preserving and protecting the environment began to launch serious calls for cooperation in order to start deep and fruitful dialogues that would have a decisive role in creating a state of awareness and a sense of responsibility towards the environment. As a result of these calls, international conferences were held, during which environmental issues and problems were discussed and solutions were developed.

As part of its interest in environmental issues, the Palestinian National Authority submitted a request to join a set of international agreements that deal with the most important environmental problems of concern and cooperation at the regional and international levels.

However, Palestine faced many problems with regard to the implementation of the environmental agreements to which it acceded. The most prominent of these problems are the Israeli occupation's control of the Palestinian lands and the loss of any sovereignty by the Palestinian National Authority over them, especially in areas classified as "C", in addition to other problems related to Palestinian interior legislation.

This chapter will address three main topics:

The first topic: the emergence and development of international environmental law.

The second topic: Palestine and international environmental law.

The third topic: Obstacles to the application of international law for the environment on the Palestinian territories.

2.1. The Emergence and Development of International Environmental Law

The features of the emergence of international law for the environment began at the beginning of the nineties, when a group of environmental agreements appeared in that period that dealt with and regulate certain issues. After that, environmental agreements emerged within the framework of addressing a specific problem that appears in a certain period of time. For example, the first of these agreements was concerned with addressing environmental issues related to animals and plants in terms of protecting them and regulating their hunting and other matters. Then, with the expansion and multiplicity of environmental problems in the second half of the twentieth century, international environmental law has begun to address a new set of environmental challenges and

problems facing states, especially those related to water, air and soil pollution and the depletion of natural resources. This has contributed to the development of hundreds of treaties, whether international, regional or bilateral, in a range of different environmental fields like the marine environment, pollution of all kinds, protection of biodiversity, and regulation of hazardous materials and activities.¹

Then, states and other parties became aware of the need to cooperate in the framework of protecting the environment and addressing its emerging problems. So, calls were issued to hold international conferences to discuss environmental issues by the governments of countries and their peoples, international organizations and environmental advocates around the world. They have growing sense that the current and future quality of life is a responsibility of humanity, and that all parties are required to take a role, no matter how simple, in the field of environmental protection and care. Thus, forming a broad front at the global and regional levels that seeks to enhance interest in the environment and solve the challenges it faces. The United Nations has been able to play a leading role in the context of leading deep discussions on raising awareness of environmental issues and the need to pay attention to them and put an end to the problems they encounter.

As for the emergence of international customary rules on environmental protection, because of the novelty of this law, its customary rules are still in the early stages of development and formation, but they cannot be ignored in any case.²

¹ Abdel Karim, Jamal, (International protection of the environment through the development of the rules of international environmental law), *Journal of Rights and Human Sciences*, Algeria, Issue 2, 2021, p. 216-219.

² Bakai, Mohamed (International Law on the Environment and International Conflicts), *Maalem Journal for Legal and Political Studies*, Algeria, Issue 2, 2019, p. 184.

Accordingly, this topic will be divided into three sections. The first one deals with the protection of the International Convention on the Environment, while the second one examines the customary rules in the field of environmental protection. Finally, the last section deals with the non-binding law “soft law” and its role in the development of international environmental law.

2.1.1. International Agreements

The international agreements related to the environment cover different and multiple subjects. So, each subject addresses a specific environmental problem by establishing foundations and controls that determine the behavior of states and parties within the framework of their environmental practices related to this problem. Among these topics dealt with by international agreements on the environment:

First: Protect the Wild Environment and Nature

The first international and regional agreements related to the environment focused on the protection of animal and plant species and nature. The industrial revolution was in its infancy and did not have that strong impact on other environmental elements such as water, air and soil, which today are witnessing pollution in large and dangerous proportions. Thus, the legal regulation of environmental aspects paid more attention to issues related to animals and plants due to their importance at that time for countries and populations in the continuation and development of their lives.³

The London Convention, which was adopted on May 19, 1900, is the first convention aimed at controlling brutal killing and preserving various wild animals in Africa. It is

³ Charles Kiss, Alexandre, **La protection internationale de la vie sauvage**, *Annuaire français de droit international*, volume 26, 1980, p. 663.

applied by the signatory countries in their colonies in Africa: Britain, France, Germany, Portugal, Spain, Italy and the Congo. Then, the Paris Agreement was adopted on March 19, 1902, relating to the protection of birds useful for agriculture.⁴

And then, the London Convention adopted on November 8, 1933 regarding the conservation of animals and plants in African nature. This agreement entered into force on January 14, 1936. It included in its appendix a list of plant and animal species that must be protected. It also included the establishment of protected pens and the adoption of regulatory measures related to hunting.⁵

Then, followed by the Washington Agreement adopted on October 12, 1940 relating to the protection of the flora, fauna and scenic landscapes of the American countries. This agreement provided for the establishment of national parks and nature reserves. It also included measures to protect migratory birds and some endangered species. This agreement introduced, for the first time, new concepts regarding environmental protection, such as endangered species and natural reserves.⁶

Second: Protecting the Marine Environment from Pollution

In the fifties of the last century, the marine environment witnessed serious pollution. As a result, the 1954 London Convention was signed as the first multilateral instrument. Its primary objective is to protect the environment from pollution resulting from the discharge of harmful substances and oils into sea waters.⁷

⁴ Boubacar, Ben Fatima, (International Environmental Protection Law), Master's degree in Law, Moulay Taher Saida University/Faculty of Law and Political Science, Law System for Environmental Protection, Algeria, 2016-2017, p. 26-27.

⁵ Maurice, Kamto, **Les conventions régionales sur la conservation de la nature et des ressources naturelles en Afrique et leur mise en œuvre**, Revue Juridique de l'Environnement, issue 4, 1991, p. 418.

⁶ Charles Kiss, Alexandre, La protection internationale de la vie sauvage, Supra note No. 3, 418.

⁷ Boubacar, Ben Fatima, (International Environmental Protection Law), Supra note No. 4, p.27.

Then, the Brussels Agreement of 1969, which contained two agreements, was adopted. The first relating to intervention in the high seas in the event of oil pollution occurring or possible to occur. The second stipulated the damages caused by oil pollution. It emphasized the preservation of the high seas from accidents and the right of coastal states to intervene in the event of pollution. After that, the Convention for the Prevention of Pollution from Ships, held in London in 1973, which is considered one of the most important international agreements. It aimed at achieving a complete prevention of the causes of intentional pollution with oil and other harmful substances and reducing non-accidental dumping and spillage.⁸

With the increase in the phenomenon of pollution, the 1982 Law of the Sea Convention was drawn up. The agreement was devoted to the protection of the marine environment. It included 46 articles through which the method of combating marine pollution was regulated. So, commitments were placed indicating the duty of states to take measures that prevent pollution of the marine environment. In addition, countries have agreed to reduce pollution and control it jointly or individually if it occurs.⁹

Third: Protecting the Earth Environment and Natural Resources

Countries have realized the importance of preserving natural resources in order to achieve an ecological balance that ensures human survival within a safe and sound environmental environment. Accordingly, the first international agreement concerned with the preservation of the terrestrial environment and what contains natural resources was concluded in 1971, known as the Ramsar Convention on Wetlands. It aims to

⁸ Abu Sobeih, Batoul (International Protection of the Marine Environment from Oil Pollution), Master's degree in Public Law, Middle East University, Jordan, 2021, p. 23.

⁹ *ibid*, p.25.

preserve the submerged lands, whether permanently or temporarily, such as swamps, in addition to protecting the water birds that take shelter in the areas where these lands are located, through the establishment of nature reserves on wetlands.¹⁰

Subsequently, the Convention on Biological Diversity was signed in 1992 with the aim of preserving biological diversity and ensuring the sustainable use of its components and the fair and equitable sharing of benefits arising from the use of genetic resources in it. The agreement mainly aims to preserve ecosystems, species and genetic resources in different environments.

For the purposes of protecting and preserving soils, the United Nations Convention to Combat Desertification was adopted in 1994 and entered into force in 1996. This agreement is considered one of the most important international agreements aimed at protecting land in countries suffering from severe drought or desertification, by taking effective measures on all levels, and in cooperation with all stakeholders.¹¹

Fourth: Protect the Air Environment

The technological development and the accompanying rise in air pollution rates prompted countries to conclude international agreements regulating the negative practices of countries that result in serious air pollution. These agreements aimed primarily at reducing air pollution levels and controlling these rates by following a set of preventive measures.

The 1985 Vienna Convention and the 1987 Montreal Protocol are the first agreements aimed at reducing emissions that are likely to have negative effects on the ozone layer.

¹⁰ Ramsar Wetlands Convention 1972, Article 4.

¹¹ United Nations Convention against Desertification 1994, Article 2.

They stressed that countries must take more national, regional and international measures to prevent serious damage to the ozone layer. It, then, established the United Nations Framework Convention on Climate Change to limit dangerous human interference with the climate system by stabilizing concentrations of greenhouse gases in the atmosphere.¹²

After that, countries resorted to addressing serious environmental problems of common concern through the conclusion of international agreements. These agreements lay the foundations and controls that govern the behavior of countries within the framework of their environmental practices. Thus began the formation of international environmental agreements, which are the main source of international environmental law.

2.1.2. Customary Rules

In the Environmental Protection Law, Customary rules are ‘‘the set of legal rules that arose in the field of combating and preserving the environment, and which were customarily followed in a regular and continuous manner, so that they were believed to be binding and respected’’.¹³

It can be said that, due to the recent interest in environmental problems, the role of customary rules is still insignificant in the field of environmental protection, compared to its role in other branches of law. In spite of this, there is talk about a set of customary rules that contribute directly to the protection of the environment.¹⁴

¹² United Nations Framework Convention on Climate Change 1992, Article 2.

¹³ Salama, Ahmed, **Environmental Protection Act (Pollution Control - Natural Resource Development)**, Cairo, Arab Renaissance House, 2002-2003, p. 50.

¹⁴ Ibid, p. 50.

First: Customary Rules for Environmental Protection Within the Framework of International Environmental Law

Principle 21 of the Stockholm Declaration is considered one of the most important environmental principles that reflect international custom.¹⁵ Many believe that this principle represents the cornerstone of international environmental law. This principle states that “In accordance with the Charter of the United Nations and principles of international law, states have the sovereign right to exploit their resources in accordance with their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause harm to the environment of other states or areas outside the borders of national jurisdiction”.¹⁶

Emphasizing the importance of this principle, it was reiterated in Principle 2 of the Rio Declaration of 1992. Since these principles were originally included in non-binding declarations, it is difficult to determine the time when these principles moved from being mere ordinary principles that were stipulated in the Declaration or a non-binding instrument, to consider them as binding customary rules and independent of this instrument but formally stipulated in it.¹⁷

Before proceeding to discuss whether Principle 21 is a customary rule or not, It is necessary to look at the elements that must be available for a rule to be considered an international custom. Custom consists of two elements, the first element is general practice, and the second element is based on the necessity that this practice be accepted

¹⁵ Zainol, Muhammed, (State’s Responsibility Over Its Neighbouring States’ Environment: A Customary International Law?), *The Journal of the Malaysian Bar*, 2004, p. 94.

¹⁶ United Nations Conference on the Human Environment (Stockholm Declaration of 1972), principle 21.

¹⁷ Dupuy and others, *Customary International Law and the Environment*, Cambridge Center for Environmental, Energy and Natural Resources Management, December 2018, P 7.

as a law by states. So, the practice of states is considered crucial in respect of a rule's acquisition of the status of custom, as well as a host of other factors from which we may discern general practice with respect to that rule, such as statements made by government spokesmen, correspondence with other states, and judgments of international and national courts which are considered to be sub-sources of international law according to Article 38 of the Statute of the International Court of Justice.¹⁸

There is no doubt today that Principle 21 has already developed from being just an ordinary principle within a non-binding international instrument into a customary norm binding on states. This can be inferred from the broad acceptance that this principle enjoys by members of the international community. So, there is a conviction among states that this practice is required as a matter of law. Thus, in its advisory opinion on the legality of the threat of the use of nuclear weapons, the International Court of Justice decided that states have a duty to abide by Principle 21, affirming that there is a general obligation for states to ensure that activities within their jurisdiction and control respect the environment of other states, or areas outside of national control.¹⁹

Second: Environmental Protection in the Context of Customary Principles of International Humanitarian Law

In addition to the provisions of international humanitarian law, which provide for the protection of the environment directly or indirectly, international humanitarian law also includes a set of customary principles through which it is possible to provide protection for the environment during armed conflicts. Among these principles:

¹⁸ Zainol, Muhammed, (State's Responsibility Over Its Neighbouring States' Environment: A Customary International Law?), *Supra* note No. 15, p. 92.

¹⁹ *Ibid*, P. 94-98.

1- The Principle of Distinction

This principle is considered one of the most important customary rules in international humanitarian law. It places the duty of states to distinguish between civilian and military objectives at all times. Article 52 of Additional Protocol One clarifies the nature of this principle. It affirms that civilian objects may not be the object of attack or for deterrence attacks. So, these attacks should be limited to military targets only. In cases of doubt whether an object usually dedicated to civilian purposes such as a mosque, school or home, is used for military purposes, it is assumed that it is not used for military.

In the context of environmental protection, this principle concludes with the prohibition of directing military operations against civilian objects or the civilian population that may cause widespread and long-term damage to the natural environment.²⁰

2- The Principle of Proportionality

This principle, within the framework of international humanitarian law, means taking into account the proportionality between the damage that may be caused to the opponent and the military advantages that can be achieved from the military operation. This principle seeks to establish a balance between two opposing interests, namely: humanitarian necessity and military necessity.²¹

This principle was referred to in Paragraph 5/b of Article 51 of Additional Protocol I. It confirmed that it is considered among indiscriminate attacks that attack that could be

²⁰ Al-Taneji, Ali (Role of the Principles of International Humanitarian Law in Environmental Protection), Journal of the Faculty of Politics and Economics, Egypt, Issue 9, 2021, p. 16.

²¹ Ibid, P. 14

expected to cause loss of civilian life or injury to civilians or damage to civilian objects, or a mixture of these losses and damages, the excessiveness of which is evident in comparison with the overall tangible and direct expected military gains.

As for Article 8 of the Statute of the International Criminal Court, it was clarified in Paragraph B/4 that it is considered among the grave violations of the laws and customs applicable in international armed conflicts, to deliberately launch an attack with the knowledge that such attack will result in consequential loss of life or injury to civilians or inflicting civil damage or causing widespread, long-term and severe damage to the natural environment, the excessiveness of which is evident in comparison with the overall tangible and direct expected military gains.

3- The Principle of Unnecessary Suffering

The first appearance of this rule was in the Saint Petersburg Declaration of 1868 regarding the prohibition of the use of certain projectiles in time of war. This declaration affirmed that the right of the parties to use military means is not an unrestricted right, but that states must take into consideration that the only legitimate purpose that states target during war is to weaken the enemy's military forces. Therefore, this purpose shall not be exceeded by the use of weapons which may unduly aggravate the suffering of persons separated from combat.²²

This customary rule contributes to providing effective protection of the environment in the event of armed conflicts, as the parties to the conflict have the obligation to achieve

²² St. Petersburg Declaration of 1868 in order to ban the use of certain missiles in wartime, University of Minnesota-Library of Human Rights.

the military objective within the framework of the use of proportionate weapons, without having the right to use other weapons that may harm the environment.²³

4- The Principle of Precaution

Article 57 of Additional Protocol One mentioned this principle, as the first paragraph of the same article referred to the duty of states to take continuous care in the conduct of military operations. The second paragraph emphasized that states must take a set of necessary precautions during an attack, such as ensure that the targets that will be attacked do not contain civilians or civilian objects, and refrain from taking any decision that may cause damage or accidental loss of civilian life or civilian objects.²⁴

Although the issue of environmental protection is not directly raised within this customary rule, the protection of the environment as a civilian object requires states to take the necessary measures and precautions when they may be exposed to damage during a military attack.²⁵

2.1.3. Soft Law

In addition to binding international treaties, there is another category called “soft law” non-binding law. This category is considered one of the main tools that directly contributed to the development of international environmental law. These instruments are in the form of declarations or conferences that result in a set of guidelines or

²³ Melzer, Nils, *International Humanitarian Law "A Comprehensive Introduction"*, International Committee of the Red Cross, 2016, p. 107-108.

²⁴ 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, Article 57.

²⁵ Melzer, Nils, *International Humanitarian Law "A Comprehensive Introduction"*, supra note No. 23, p. 100.

recommendations. The Stockholm Declaration of 1972 and the Rio Declaration of 1992 are among the most important tools of flexible environmental law.

First: The United Nations Declaration on the Human Environment “Stockholm” 1972

Countries and parties concerned with environmental issues responded to the invitation made by the United Nations General Assembly regarding the holding of the International Conference on the Human Environment “Stockholm Conference”. It constituted the first step that helped in building and developing aspects of this law. The Swedish capital, Stockholm, took the initiative to host this conference in the extended period from June 5 to 16, 1972, with the participation of 113 countries and 400 non-governmental organizations.²⁶ This conference contributed to a qualitative leap in the development of international environmental law. At the end of this conference the first international document was issued for the principles of relations between countries in the matter of the environment, how to deal with it, and responsibility for the damage it sustains.²⁷

The declaration consists of a preamble and 26 principles. In addition, the meeting countries have reached a plan of action that includes 109 recommendations, through which governments, specialized agencies of the United Nations and international organizations were invited to cooperate and take special measures in order to protect life and control pollution problems.

²⁶ Boubacar, Ben Fatima, *supra* note No. 1, p. 30.

²⁷ Alsayed, Rashad (Environmental Protection in Armed Environmental Conflicts), *Journal of Law and Economics - Cairo University, Egypt*, Issue 62, 1992, p. 8.

The term sustainability also appeared for the first time in the framework of international environmental law. The Stockholm Conference stressed the importance of linking the concept of environment and development. It also emphasis on the benefit of developing countries with special advantages and the indirect responsibility of developed countries. It is important to know that this term added a new social value worthy of respect by members of the international community. Thus, the real bet between countries has become based on the importance of the link between the environment and development. So, progress remains conditional on the need to preserve the global environment.²⁸

The most important characteristic of the Stockholm Conference is the orientation of the participating parties towards issuing a recommendation for the necessity of establishing a central administration entrusted with responsibility for environmental affairs, which is what the United Nations Environment Program called "UNEP".²⁹ The establishment of this program has constituted a new turning point in terms of facing emerging environmental challenges. It aims primarily at the governance of global environmental affairs, through the coordination, assessment and management of global environmental issues under the United Nations and in cooperation with national environmental organizations and movements.

UNEP has led to reaching multiple environmental agreements, including the International Convention on Trade in Endangered Species in 1973, the Basel Convention on Transboundary Wastes in 1989 and its amendments, and the United Nations

²⁸ Al-Hussein, Shukrani (From Stockholm Conference 1972 to Rio+20 2021: Introduction to Global Environmental Policy Assessment), Arab Economic Research by the Center for Arab Unity Studies, Issues 63 and 64, 2013, p. 150.

²⁹ Saadani and Rahmani (UN role in the development of international environmental law), Al Quds Open University Journal of Research and Studies, Issue 42, 2017, p. 298.

Convention to Combat Desertification in 1996. It has also contributed to ambitious programs within the framework of its environmental objectives, including: Adoption of a plan of action for the Mediterranean in 1975, the establishment of the World Commission on Environment and Development on the basis of a resolution issued by UNEP in 1983, the World Meteorological Organization and the Declaration of the Century of 2000, and the program to combat deforestation, forest degradation and climate change.³⁰

Second: The Earth Summit "Rio Conference" 1992.

The United Nations headed for the convening of the International Earth Summit (Rio) Conference on Environment and Development from June 3 to 14, 1992 in the Brazilian city of Rio de Janeiro. The main objective of this conference was to achieve sustainable development goals and environmental cooperation to ensure the preservation of the cleanliness of the planet, the non-pollution of the environment and the depletion of natural resources.

The parties gathered at the Rio Earth Summit issued 27 principles aimed mainly at creating new levels of cooperation in the scientific, technological and technical fields between countries, international organizations and peoples to ensure the protection of the global ecosystem and support the pillars of development. During this conference, a non-binding and voluntary action plan to be implemented by the United Nations in relation to sustainable development was announced, called Agenda 21. It is a global program that contains a set of measures and instructions issued by the Earth Summit to implement what is stated in the Rio Agreement. The program addressed the importance of preserving and

³⁰ Al-Hussein, Shukrani, Supra note No. 10, p. 150.

managing resources for development, through the preservation of biological diversity, the proper management of natural resources, and the protection of various water sources.³¹

The conference also resulted in the adoption of the Convention on Biological Diversity, which was opened for signature on June 5, 1992, in response to the call launched by the United Nations Environment Program in 1988, in which it called for the formation of a specialized group of experts to discuss the conclusion of an international convention on biological diversity. This agreement resulted in three main principles: the conservation of biological diversity, the sustainable use of nature, and the fair and equitable sharing of benefits. In addition, the United Nations Framework Convention on Climate Change was adopted, which was also opened for signature during the 1992 Rio Conference.³²

After that, meetings and conferences followed, and many other summits were held. They aimed at developing new visions and goals regarding environmental assessment and sustainable development efforts, and intensifying cooperation between national governments, international and regional institutions and individuals to live on a clean and healthy planet, taking into account the achievement of equity and justice between everybody.

³¹ Report of the United Nations Conference on Environment and Development, Rio de Janeiro, June 3-14, 1992, United Nations-New York, 1993.

³² Official United Nations page, International Biodiversity Day, 22 May.

2.2. Palestine and International Environmental Law

Since its establishment, the Palestinian National Authority has shown an interest in environmental issues related to the protection and preservation of the environment. The first official body in Palestine regarding the environment was established in 1996 under the name (the Palestinian Environmental Authority). In 1998 the (Ministry of Environmental Affairs) was established and the Palestinian Environmental Authority was merged with it. Its official name in 2002 became (Environmental Quality Authority).³³

In 1999, it issued Law No. 7 as the first Palestinian law regulating environmental affairs in Palestine. This law set the general framework governing the environmental situation in Palestine. This law contained many regulations, rules, and instructions to be followed regarding the environment in the Palestinian territories. It included many topics that cover aspects of environmental issues in Palestine, including the topic of environmental protection, which concerned itself with the environment of all kinds, whether it was a marine, aquatic, air, or terrestrial environment or the protection of nature. On the other hand, it dealt with the issue of environmental impact assessment in terms of licensing and inspection. It also put penalties for violating the provisions and texts contained therein.³⁴

I would start with the Basic Law. It affirmed the right to a clean, healthy and sound environment. Article 33 of it states that “a balanced and clean environment is a human

³³ The official website of the Environmental Quality Authority, a brief history of the authority.

³⁴ The official website of the Environmental Quality Authority, the topics contained in environment law No. 7 of 1999 on the environment and the set of regulations and instructions.

right, and preserving and protecting the Palestinian environment for the sake of present and future generations is a national responsibility.”³⁵

The Basic Law also referred in the second paragraph of Article 10 to the need for the Palestinian National Authority to work without delay to join regional and international declarations and covenants that protect human rights.³⁶ In this regard, and in the context of Palestine’s efforts to accede to the international conventions and treaties concerned with the environment, the Palestinian Environmental Law, in Article 77, deals with regulating the status of international conventions concerned with the environment on the Palestinian territories. It stipulates that “the international environmental conventions to which Palestine is a party is an integral part of national legislation”.³⁷ In addition, the environmental Law has addressed the necessity of enacting legislation and laws on the following environmental issues, which constitute the core of international environmental agreements: "land use, solid waste, hazardous materials and waste, pesticides and fertilizers, rock and sand extraction, desertification and soil erosion, aerobic environment, environmental disturbance, aquatic environment, marine environment, reserves, natural areas and archaeological and cultural areas".³⁸

Among the international agreements related to the protection and preservation of the environment, to which Palestine has acceded are:³⁹

³⁵ The Amended Palestinian Basic Law of 2003, Article 33.

³⁶ The Amended Palestinian Basic Law of 2003, Article 10.

³⁷ Law No. 7 of 1999 on the environment in Palestine, Article 77.

³⁸ Official website of the Environmental Quality Authority, International Environmental Conventions.

³⁹ The website of the Palestinian Ministry of Foreign Affairs, the international agreements to which the State of Palestine has joined.

- 1- The Paris Agreement on Climate Change, to which Palestine acceded on April 22, 2016, and entered into force on February 4, 2016.
- 2- The United Nations Framework Convention on Climate Change, and Palestine acceded to this agreement on April 22, 2015, and it entered into force on February 4, 2016.
- 3- On January 2, 2015, Palestine submitted a request to join two international agreements on the environment (the Convention on Biological Diversity and its Biosafety Protocol, and the Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and Their Disposal), and these agreements entered into force on April 2, 2015.
- 4- On December 29, 2017, Palestine submitted a request to join three agreements relating to the environment, namely (the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in World Trade, the Stockholm Convention on Persistent Organic Pollutants, and the United Nations Convention to Combat Desertification). All of these agreements entered into force on March 29, 2018.
- 5- Barcelona Convention on the Reduction of Pollution in the Mediterranean Sea.
- 6- Vienna Convention for the Protection of the Ozone Layer.

2.3. Obstacles to the Application of International Law for the Environment on The Palestinian Territories.

Although Palestine has joined many international environmental agreements, there are two types of challenges that stand in the way of the implementation of these agreements on the Palestinian territories. The first challenge lies in full and direct Israeli control over Palestinian lands, especially in Area C. As for the second challenge, it is represented in the existence of a legislative defect, due to the lack of clarification of the status of international agreements in internal law. As a result, a decision was issued by the Supreme Constitutional Court in Palestine stipulating that international agreements to which Palestine is acceded must pass the stage of ordinary law in order to become effective in the Palestinian territories. This topic will discuss these challenges, each separately, in two subjects.

2.3.1. Israeli control of the Palestinian territories occupied in 1967

About 20 years after the signing of the Oslo Agreement between Israel and the Palestine Liberation Organization, Israel has not relinquished its control over the West Bank. Accordingly, it has managed to control large areas of Palestinian land, especially in areas classified as "C", which constitutes a proportion of 61% of the total area of the West Bank. Israel controls all aspects of life, including service sectors such as education and health, in addition to controlling natural resources, natural reserves, water, electricity, construction and development, and large numbers of Palestinian citizens live in these areas, in addition to the Israelis who live inside the settlements established by the Israeli occupation on these lands. As a result of the existing Israeli occupation, these lands are

under the direct and complete control of the occupation authorities, while Palestine lacks any aspect of sovereignty over them, due to Israel's restriction of all activities of the Palestinian National Authority in the region.⁴⁰

It should be noted that the Palestinian National Authority does not have any authority to work in these areas without coordination with the Israeli occupation authorities. Israel works to provide the needs of the settlements and their residents with all they need in terms of water, road networks, electricity and other basic things that the Palestinian citizen lacks. This indicates the discrimination practiced by Israel against the original owners of the land. Thus, Israel deals with these areas according to its needs with regard to the security of its settlements, and when it comes to the Palestinian people, it does not bear any responsibility and does not make any effort to do so.

Reports have confirmed that, over the years, Israel has not allocated funds to improve facilities or build an infrastructure to transport and treat sewage water, or to build additional treatment facilities in the West Bank to accommodate the population increase. In addition, when it comes to building a Palestinian facility in the West Bank. In the West Bank, the matter becomes more complicated and cumbersome, as the establishment of any sewage-related projects in the West Bank requires approval by the joint water committee between the Israelis and the Palestinians, and in many cases this approval may take many years to be approved.⁴¹

Consequently, the neglect of wastewater treatment in the West Bank has a negative and direct impact on Palestinian communities. For example, the sewage that flows from

⁴⁰ Aggurin and Saada (Protection in the Occupied Palestinian Territories), Local Global Protection, 2014, p. 54.

⁴¹ Btselem, Foul Play Neglect of Wastewater Treatment in the West Bank, June 2009, p. 20.

the Beitar Illit settlement contributes to polluting groundwater sources and springs in Wadi Fukin area. This village contains nine natural springs that used to irrigate crops and to drink, but the settlement's delivery facility cannot treat the amount of wastewater it receives as a result of the great pressure on it, which leads to the flooding of this wastewater on the agricultural fields in the village, and parts of it leak into the groundwater and springs. As for the residents of the settlements, they depend on the water supply system in Israel, and therefore the neglect of sewage treatment in the area does not affect them almost as much as it does for the Palestinians.⁴²

The complete control of the Israeli occupation over the areas classified as "C" makes it difficult to enforce the agreements relating to the environment, to which Palestine has acceded, on these areas due to the fact that they are not under Palestinian control. This makes these areas free from any monitoring, inspection or assessment of the environmental conditions in them from the Palestinian side. As for the Israeli side, the occupation authorities do not give any consideration to environmental issues as long as they are far away and do not affect the settlements inhabited by Israelis, but rather work in a systematic and planned manner to pollute Palestinian lands or communities far from the settlements by throwing waste and hazardous waste and discharging sewage into them.⁴³

In this regard, the Palestinian Environmental Quality Authority stated that one of the most important problems and challenges facing the Dead Sea is the complete Israeli control over it. Thus, the Palestinian unable to access it to conduct any study, analysis or evaluation of the impact of Israeli measures on the ecosystem in this areas. Israeli

⁴² Ibid, p. 27-28.

⁴³ Environmental Quality Authority, Environment Sectoral Strategy 2021-2023, p. 107.

activities contribute to the decrease in the water level of the Dead Sea, which poses a threat to its existence and the ecological environment surrounding it. Israel also controls the tributaries of the Jordan River, which leads to a reduction in the quantities of water that reach the Dead Sea.⁴⁴

The Israeli occupation government not only refused to withdraw from the rest of the West Bank lands, but also continued to confiscate and control Palestinian lands on a large scale. So, these lands became non-contiguous and disconnected enclaves. In short, it can be said that the entire West Bank is still under Israeli occupation and control.⁴⁵

2.3.2 The Decision of the Supreme Constitutional Court in Palestine Regarding the Status of International Agreements in Palestinian Domestic Law

In this regard, it should be noted that states usually adopt two basic systems for the domiciliation of international law: the dual system or "double legalists", and the unilateral system "the unity of legalists". Under the bilateral system, the state constitution does not grant a special status to treaties or to the rights and obligations established by those treaties. Accordingly, these treaties and the principles and rules contained therein remain without any influence in international law unless they are approved in accordance with the rules of the legislative process in the state party. As for the unilateral system, the treaty becomes, without the need for an internal legislative process, part of the internal

⁴⁴ Ibid, p. 44-45.

⁴⁵ Aggurin and Saada (Protection in the Occupied Palestinian Territories), Supra note No. 41, p. 54.

law, as soon as it is concluded and enters into force for that state, in the event of its conclusion and approval in accordance with what is specified by the state's constitution.⁴⁶

As for the position of the Palestinian internal system on the relationship of international law with internal law, the Palestinian Basic Law amended in 2003 did not specify the mechanisms for the domiciliation of international law and its relationship to internal law. It also did not specify the authority competent to conclude international treaties or the mechanism for its enforcement in the internal system or its legal value.⁴⁷

Thus, it appears that there is a legal and legislative gap in Palestinian law with regard to the enforcement of the international agreements that are joined. However, the Palestinian Constitutional Court intervened in this matter in order to clarify the status of international agreements in relation to internal Palestinian legislation. So, it issued a decision in 2017 stipulating the supremacy of international agreements over legislation in line with the national, religious and cultural identity of the Palestinian people.⁴⁸ However, in its decision, the court added the word "ordinary" after the phrase "internal legislation", which confirms that the court intended to say that international conventions are superior to ordinary domestic legislation only, and are inferior to the Basic Law.

In 2018, the Palestinian Constitutional Court issued an explanation regarding the request submitted to it about the statement of respect for human rights and the basis for their commitment to them at the national level, and to clarify the mechanisms for

⁴⁶ Palestinian Center for the Independence of Law and The Judiciary (Equality), booklet entitled *International Treaties and National Law: A Comparative Study of the Relationship between International Treaties, National Law and Settlement Mechanisms*, 2014, p. 36-37.

⁴⁷ Toam and Khalil, *Enforcement of International Conventions in Palestine: Legal Problems and Constitutional Solutions*, Birzeit University - Constitutional Law Unit, 2019, p. 5.

⁴⁸ See Interpretation 4/2017 of the Palestinian Supreme Constitutional Court of November 29, 2017, *Palestinian Facts*, Issue 138, available at: [4-2017_Constitutional Challenge.pdf](#).

integrating the agreements that Palestine is committed to and activating them in the internal system. The court decided by a majority that “the Declaration of Independence is an integral part of the constitutional system in Palestine, and indeed the most supreme of it, after which comes the Palestinian Basic Law, and since the Supreme Constitutional Court in Palestine has declared the transcendence of international treaties and agreements over ordinary national legislation (laws and decisions by laws) , the international treaties and agreements come in a lower rank than the Basic Law, followed by the various legislations in force in Palestine”. The Court added that “the treaty or agreement is not in itself a law to be applied in Palestine, but rather it must gain strength through passing through the formal stages that must be available to issue a specific internal law to enforce it”.⁴⁹

At the conclusion of this chapter, it can be concluded that Palestine has made great efforts in the context of supporting international efforts aimed at enhancing the protection and preservation of the environment. On the internal level, it has enacted legislation that guarantees the protection of the environment. In addition, it issued a special law regulating the environmental conditions in the Palestinian territories in line with the international trends of countries, international organizations and other parties, which calls for addressing environmental problems through cooperation and participation in developing solutions and exchanging experiences and material, technical and scientific capabilities. On the external level, it hastened to join the international environmental agreements that address the serious environmental problems that threaten the planet.

⁴⁹ See Interpretation 5/2017 of the Palestinian Supreme Constitutional Court dated March 25, 2018, Palestinian Facts, Issue 141, find it at 5-2017_Constitutional Interpretation.pdf.

Hence, it confirmed that it will be part of the common global understandings on the advancement of the global environmental reality.

Despite this, Palestine, like the rest of the world, has faced many challenges and difficulties in fulfilling its obligations to provide protection for the environment from the damage it may be exposed to. However, the Israeli occupation and the control it imposes on the Palestinian territories is the most prominent challenge facing Palestine in this regard.

Chapter Three

Israel's Responsibility to Protect the Environment in Palestine

The responsibility for protecting the environment in the territory of the state is one of the duties of the state itself. In the Palestinian case, the Environmental Quality Authority is supposed to be responsible for everything related to protecting the environment from pollution through the enactment of laws, legislation, control, inspection and other means. However, the Palestinian territories, as was discussed earlier, is under the Israeli occupation. This control stands in the face of every Palestinian movement in the context of addressing and taking care of environmental issues. On the other hand, Israel refrains from assuming its environmental responsibilities as an occupying power that controls the land by force, which contributes to exacerbating the catastrophic environmental conditions in the Palestinian territories.

Before talking about Israel's responsibility to protect the environment in Palestine under bilateral and international agreements, the historical background of the Israeli occupation of the West Bank in 1967 and its control over it will be addressed in the first topic. Then, Israel's responsibility to protect the environment under the temporary Palestinian-Israeli agreement Concerning the West Bank and Gaza Strip in 1995 will be demonstrated in the second topic. The third topic focuses on Israel's responsibility to protect the environment under international environmental law. Finally, the fourth topic deals with Israel's responsibility to protect the environment based on the applicability of the conventions and rules of international humanitarian law and international human rights law to the Palestinian territories.

3.1. The Historical Background of the Israeli Occupation and Control of the Palestinian Lands in the West Bank

The Israeli forces occupied the remaining parts of the historical lands of Palestine in the West Bank, Gaza and Jerusalem regions, following the 1967 war, known as the "Six-Day War". As a result, the Israeli occupation forces took control of the West Bank, including Al-Quds Al-Sharif (5878 km²) in 1967, after the withdrawal of the Jordanian forces and their return to the east of the Jordan River. So, Israeli borders with Jordan were reduced from 650 km to 480 km (83.5 km of which is the length of the Dead Sea). Then, Israel began to Judaize Jerusalem in a planned and systematic manner. By seizing vast areas of West Bank land, Israel was able to improve its strategic, security and military situation. It was also able to remove any military danger that could threaten it, or any organized and armed Arab army in the West Bank, which is the geographical heart of historic Palestine. Consequently, Israel was able to subjugate about 2.5 million Palestinians are under its control.⁵⁰

After Israel extended its effective control by military force over the occupied Palestinian lands, it began building Israeli settlements. In addition, it constricted huge concrete wall aimed at fragmenting and eroding the unity of the Palestinian lands and preventing their direct contact. Israel has followed various mechanisms to control the Palestinian lands. It has followed a complex bureaucratic judicial mechanism, through which Israel has seized about 50% of the area of the West Bank in order to build settlements and ensure their expansion in the future. These confiscated lands were declared as lands belonging to the State of Israel and registered on this basis. Israel has

⁵⁰ Palestinian National Information Center -Wafa, June 1967 War.

followed this procedure since 1979 and it was based on the application of the Ottoman Land Law of 1858, which was in effect during the occupation period. Israel has continued to rely on the judicial bases issued by its own courts to impose its control over more Palestinian lands. So, it has seized large areas of land by declaring it closed military areas, or by declaring it as “abandoned property” and then confiscating it for public needs.⁵¹

Thus, the Israeli authorities were able to seize thousands of dunams of Palestinian lands in the West Bank and Jerusalem. There are vast areas that have been transformed into a security belt area for the separation wall and other areas on which civilian settlements have been built for the settlement of Jews immigrant. In addition, the areas adjacent to the settlements have been controlled by Israel under the pretext of security needs to protect the settlers and ensure their freedom of movement. Consequently, Israel was able to create a new geographical division in the occupied territories aimed at isolating Palestinian cities and villages from each other by constructing bypass roads, erecting gates and military checkpoints.⁵²

The measures taken by the Israeli occupation authorities were not limited to controlling Palestinian lands only, but since their military occupation of the West Bank in 1967, they have issued a set of military orders that affect the environment and natural resources. In 1969, Military Order No. 363 was issued, which authorizes the Israeli Civil Administration to declare any area in the occupied West Bank as a “nature reserve” or

⁵¹ Israeli Information Center for Human Rights in the Occupied Territories - B'Tselem, Land Looting: Israeli Settlement Policy in the West Bank, Report issued in May 2002.

⁵² Ibid.

“natural areas” under orders it issues, so that strict restrictions on construction and land use are imposed on these areas to demand environmental protection.⁵³

The Wadi Qana Nature Reserve in Salfit Governorate is considered the best example of what is happening in the nature reserves in the occupied land as a result of Israeli practices and procedures. The Israeli authorities took control of all the mountainous heights surrounding the valley from all directions, for the purpose of building settlements.

The Israeli occupation authorities prohibit the Palestinians from carrying out any activities that would benefit from the water sources flowing in the valley through the establishment of natural pools to store water, or the establishment of natural dams that block the flowing water along the valley on the pretext that it changes the features of the land. In addition, the valley is located on one of the richest areas of the West Bank with groundwater, due to its location in the western water basin of the West Bank, as there are approximately 11 water springs under Israeli control in the Wadi Qana region.⁵⁴

On the other hand, the Israeli authorities' exploitation and control of the Wadi Qana area under the pretext that the targeted lands are nature reserves, is one of the main reasons that contribute to the destruction of the Palestinian environment, given that the area of the valley is fertile agricultural and water sources are available. In addition, it has biodiversity of plants, wild animals and birds. The mountains surrounding the valley are covered with dense forests of oak, syris and Palestinian sweden, and hundreds of types of wild animals

⁵³ monitoring israel colonizing activities (POICA), Israeli military orders in the service of Israeli interests, july 2020.

⁵⁴ Ahmed, Aisha, The Independent Commission for Human Rights, (Environmental pollution caused by industrial zones and Israeli waste dumps in the Occupied Palestinian Territory - Salfit area as a model), Ramallah, 2018, p. 51-53.

live in it, such as the Palestinian mountain deer, porcupine, wild rabbit, collared pigeon and other species.⁵⁵

3.2. Israel's Responsibility to Protect the Environment Under the 1995 Palestinian-Israeli Interim Agreement on the West Bank and Gaza Strip

Within the framework of the negotiations that took place between them at various stages, the Palestinian and Israeli have agreed to cooperate in natural and human environmental issues. Environment is one of the most prominent concerns that countries aspire to preserve and protect as the international community members aim to protect ecosystems. Bilateral negotiations between the Palestinian and Israeli were not isolated from these efforts made on a global scale. The interim agreement between them in Washington included understandings related to protecting the environment and addressing its local and international problems. It also clarified the rights and duties of each party in this regard.

Indeed, Article 12 deals with all measures and procedures related to environmental issues. The second paragraph of this Article stated that the Israeli side will transfer to the Palestinian side the authorities and responsibilities related to the following environmental aspects: sewage, solid waste, pest control, water, noise control, public health, air pollution, quarrying, landscape preservation and other prerogatives. It also emphasized the gradual transfer of these powers and responsibilities to the Palestinian jurisdiction in Area "C", with the exception of issues that will be negotiated in the final status

⁵⁵ Ibid, p. 54.

negotiations, and that this will be during the other phases of redeployment, which will be completed within 18 months from the date of the inauguration of the Council.⁵⁶

The understandings between the two parties clarified the duty of each party to address common local environmental issues such as sewage disposal, dumping of waste, control of the transport of pesticides and chemicals, the use and exploitation of natural resources in accordance with development policies and standards, combating desertification and others. It also stressed the commitments of the two parties to environmental issues that are a source of global concern, such as applying and ensuring compliance with internationally recognized standards with regard to levels of pollutants discharged through emissions and liquid waste, and globally agreed methods and means for waste disposal and storage of hazardous materials. In addition, asked for adopting principles and standards that comply with internationally accepted standards regarding the protection of endangered species, wild animals and plants, and the preservation of existing forests and natural reserves.

However, the environmental reality that we are living in since the signing of the Oslo Treaty, testifies that the environmental situation in the Palestinian territories is getting worse. The situation in the Palestinian environment today has reached catastrophic results due to the Israeli practices established by the Oslo Treaty. Since the signing of this Treaty, the Israeli occupation government has been able to consolidate its control over the occupied Palestinian land in 1967 through the construction of the apartheid wall and the Israeli settlements. Thus, the construction of the wall contributed to the confiscation of a

⁵⁶ Interim Palestinian-Israeli Convention on the West Bank and Gaza Strip of 1995, Article 12, paragraph a/2.

total of 45% of the area of the West Bank, in addition to the thousands of dums that were confiscated for the establishment of Israeli settlements.⁵⁷

In addition to its hegemony over the Palestinian lands, through building Israeli settlements, Israel managed to control the Palestinian water resources, as evidenced by the provisions of the Oslo Accords, which estimated that the amount of groundwater in the West Bank and Gaza Strip amounts to 734 million cubic meters, of which the Palestinians 'share was 235 million cubic meters only , while Israel takes the remaining amount. On the other hand, the construction of the apartheid wall enabled Israel to control the water centers in the West Bank, where the wall isolates many Palestinian water wells and natural springs.⁵⁸

Although the Palestinian Authority maintains a degree of autonomy within Areas "A" and "B" according to the Oslo Accords, the approval of any infrastructure projects, including water and sewage pipelines, requires Israeli permits, or approval in Area "C" controlled by Israel.⁵⁹

The issue of water and depriving the Palestinians of its sources is one of the most prominent obstacles established by the Oslo Accords. Despite Israel's recognition of the rights of the Palestinians to water, which came in one of the provisions of the agreement, "Israel recognizes the water rights of the Palestinians in the West Bank, and those rights

⁵⁷ Massad, Dana, (The Palestinian Environment in the Occupied Territories in 1967 Twenty Years after the Oslo Agreement - Part Three - Natural Balance of the Environment), Afaq Environmental Magazine, Ramallah, December 2013, No. 60.

⁵⁸ Saleh, Maher, (The Relationship of Agricultural Development with Free Political Will - Palestine as a Model), Thesis for Master's degree in An-Najah National University, Nablus, 2012, pp. 116-118.

⁵⁹ Human Rights Council, The allocation of water resources in the Occupied Palestinian Territory, including East Jerusalem, Report of the United Nations High Commissioner for Human Rights, 13 September–1 October 2021, p. 7.

will be negotiated within the permanent status negotiations”.⁶⁰ control of the water resources remained in the hands of the Israeli authorities. Thus, the Palestinian side depended on obtaining Israeli approvals with regard to water issues, either by the Joint Water Committee or by the Civil Administration. Therefore, the joint committee obstructed the Palestinian water projects and delayed the implementation of most of them, or did not grant approvals for projects submitted to it years ago.⁶¹

Wastewater is also considered among the other challenges imposed by this treaty, as the establishment of facilities to treat wastewater resulting from Palestinian communities is also subject to the approval of the Israeli side according to the agreement under which the Palestinian-Israeli Joint Water Committee operates. Thus, is required to obtain an Israeli approval of the location and proposed method of wastewater treatment and other matters.⁶²

Despite the recognition of the Palestinian and Israeli side of the need to protect the environment and exploit natural resources on a sustainable basis, the Israeli activities and practices related to the construction of the apartheid wall and the construction of settlements, and the accompanying negative effects on the Palestinian environment and its natural resources, indicate that Israel has not adhered to the signed agreement with the Palestinian side. So, this holds Israel responsible based on the legal rule that “*pacta sunt servanda*”, as this rule is considered a basic principle in civil law and international law. Therefore, the binding force of the contract prevents one of the parties to the contract

⁶⁰ The Palestinian-Israeli Interim Agreement on the West Bank and the Gaza Strip of 1995, Article 40, Clause 1.

⁶¹ Al-Atili, Shaddad, (Palestinian Water Rights - Water Reality, Rights and Negotiations), Palestinian Center for Policy Research and Strategic Studies (Masarat), October 2021, pp. 52-54.

⁶² Btselem, Foul Play Neglect of Wastewater Treatment in the West Bank, *Supra* note No. 41, p. 21-22.

from unilaterally modifying its content.⁶³ Consequently, Israel's breach of its obligations entails its responsibility towards the Palestinian side.

3.3. Israel's Responsibility to Protect the Environment in Accordance with International Environmental Agreements

The concept of environment is approached by some people from a narrow perspective, while it approached from an extended one by others. The broad definition of it leads to the fact that the environment "is the sum of natural, biological, social, cultural and economic factors that go beyond equilibrium and affect humans and other organisms directly or indirectly".⁶⁴

According to this definition, there is the existing natural environment created by God, such as mountains, forests, rivers, air and water, and there is the urban or social environment, which is man-made, and includes all the facilities he built in the natural environment, such as buildings, factories, gardens, dams, etc.⁶⁵

Those with a narrow perspective see a separation between environment and the natural, given that the idea of naturalism adds new aspects to the environment, especially urban facilities. So, the concept of environment in the strict sense does not necessarily include some important matters related to nature, such as preserving some species and races.⁶⁶

⁶³ Abdelkader, Sadiq (binding force of the contract within the scope of civil liability), *Journal of Law and Local Development*, Algeria, Issue 1, 2019, p. 33.

⁶⁴ Salama, Ahmed, **Environmental Protection Act (Pollution Control - Natural Resource Development)**, *Supra* note No. 21, p. 68-69.

⁶⁵ Abdelaziz, Zeraq (UN's role in protecting the environment from pollution), letter for master's degree in law, University of brothers Mentori Constantine, *International Relations and International Organizations Act*, Algeria, 2012-2013, p. 12.

⁶⁶ Bashir and Abedi (International Protection of the Environment within the Framework of Human Rights with reference to some legal developments), *Journal of Political and Legal Science*, Algeria, Issue 10, 2015, p. 137.

It was necessary to clarify the concept of the environment before dealing with the legal framework that governs it and regulates its aspects, which is called international law for the environment. It is defined as “a branch of public international law that includes a set of legal rules (convention and custom) that regulate and control the behavior of the people of the international community with the aim of protecting the human environment, including water, air and soil, and the animals, fish, birds and minerals that are contained in it, from risks arising from scientific, industrial and technological progress”.⁶⁷

International environmental law has contributed to addressing environmental issues through its multi-subject agreements. They aim to protect and control environmental practices by clarifying the obligations of the international community members and placing restrictions on their environmental behavior. The United Nations also had an advanced role in protecting the environment. So, the environmental conferences it organized contributed to creating new principles in the field of environmental preservation.

3.3.1. Protecting the Environment Under Environmental Agreements

The emerging and serious environmental problems prompted states and international organizations to conclude international agreements that regulate aspects of these problems and the actions of states. Environmental agreements dealt with specific issues related to the environment. They were not comprehensive or set a general framework for the protection of the environment, but were limited to addressing a specific issue of the environment. These agreements are considered the main source of international law for

⁶⁷ Bakai, Mohamed (International Law on the Environment and International Conflicts), Supra note No. 2, p. 183.

the environment, as this law is considered a branch of public international law, for which Article 38 of the Statute of the International Court of Justice identified its own sources, and international conventions were the first of these sources.

Israel is a contracting party to the most important international conventions related to the environment, including:

First: Conventions Related to Biodiversity

Ramsar Convention 1971

This convention aims to protect and preserve wetlands as a habitat for waterfowl. Wetlands had ecological functions in controlling aquatic systems, and provides life for distinct groups of plants and animals, especially waterfowl. Wetlands constitute a resource of great importance on the economic, cultural and scientific levels. Moreover, the waterfowl that use these lands as a place to live transcend the borders of countries during their seasonal migration. Therefore, they should be considered an international resource.⁶⁸

The term “wetlands” means “the areas of marsh and peatlands that are flooded with water, whether naturally or artificially, permanent or temporary, and whether these waters are stagnant or running, fresh, green or salty, including areas of marine waters whose depth does not exceed six meters islands”.⁶⁹ The term waterfowl means “birds that depend ecologically on wetlands”.⁷⁰

⁶⁸ Ramsar Convention on Wetlands of International Importance, particularly as waterbird silos, Ramsar February 2, 1971 and amended by protocol on December 3, 1982 and amendments of May 28, 1987, p. 3.

⁶⁹ Ramsar Convention on Internationally Important Wetlands 1971, Article 1.

⁷⁰ Ramsar Convention on Internationally Important Wetlands 1971, Article 2

Israel signed this agreement in 1993 and adopted it in 1997,⁷¹ but it violates its provisions and main objectives through its practices and procedures. Israel controls most of the areas of strategic importance in the West Bank, and these areas have wet lands such as the Jordan River, the Dead Sea, and the springs scattered in the West Bank. Withdrawals and the extraction of large quantities of water for the purposes of meeting the needs of domestic and agricultural settlements have contributed to the drying up of some of these springs and valleys, which are a major source of groundwater, and thus the loss of species of animals and plants to their main habitat. For example, the western side of the Dead Sea region contains springs called al-Fashkha, these springs are considered a shelter for many migratory birds and many types of plants grow in them, such as reeds. However, Israel took control of the place where these springs are located and exploited them to obtain agricultural products and foodstuffs.⁷²

Second: Agreements on the Disposal of Waste and Hazardous Materials

1- Basel Convention of 1992

This agreement aims to protect human health and the environment, by stricting the adverse effects that may result from the generation and management of hazardous materials and waste. It stressed the need for countries to commit themselves to taking measures for the proper exchange of information regarding the movement of hazardous

⁷¹ Al-Wazara Environmental Protection - The Site of the Israeli Ministry of Foreign Affairs, Nature and Biodiversity in the International Arena, entered on April 18, 2022.

⁷² Institute of Applied Research -Arij, World Wet Zone Day "Wetlands for Our Future: Sustainable Lifestyles,"February 2016.

wastes and other wastes across borders and to control this transfer from countries to another.⁷³

Israel signed this agreement in 1992 and adopted it in December 1994, and it became effective on its lands in 1995.⁷⁴ Israeli factories established in areas surrounding Tel Aviv disposed of their chemical residues, detergents, agricultural pesticides, leather, batteries and plastics, by transferring them to the areas of Deir Sharaf and Qusin, Nablus District in 2002.⁷⁵ This obligation also extends to prohibit all persons under its national jurisdiction from transporting or disposing of hazardous wastes or other wastes.⁷⁶ Since residents of settlements built on the occupied Palestinian lands are subject to Israeli law, Israel must prevent them from disposing of and dumping their hazardous waste in the Palestinian areas. Unfortunately, the Palestinian lands are considered an incubator for the hazardous waste left by Israeli settlements.

2- Rotterdam Convention of 1998

This agreement aims to protect humans and the environment from potential harm resulting from trafficking in certain hazardous chemicals and pesticides and to ensure that they are disposed of in an environmentally sound manner. So, countries shall take into account, inter alia, the voluntary standards stipulated in the International Code of Conduct

⁷³ Basel Convention on control of the cross-border transport and disposal of hazardous wastes of 1992, p. 6.8.

⁷⁴ Ministry for Environmental Protection - The site of the Israeli Ministry of Foreign Affairs, hazardous materials in the international arena, entered on April 18, 2022.

⁷⁵ Massad, Dana (Israel is a member of the largest international conventions for environmental protection, but ! trampled by all of them), Development and Environment Horizons Magazine, Ramallah, Issue 63, April 2014.

⁷⁶ Basel Convention on control of the cross-border transport and disposal of hazardous wastes of 1992, Article 4, paragraph 7a.

and the Code of Ethics issued by the United Nations Environment Program on international trade in chemical resources.⁷⁷

This agreement worked to establish a list of the most dangerous chemicals that countries should ban from dealing with in the framework of trade exchange. Article 11 emphasized the obligations of countries with regard to exports of chemicals included in the lists prepared by the agreement. So, paragraph 1/b of the same article indicated the obligation of each party to take appropriate legislative or administrative measures to ensure compliance of exporters operating within its jurisdiction with regard to preventing them from circulating prohibited substances under the lists contained in the agreement.⁷⁸ Israel signed this agreement in 1999 and re-ratified it in 2011, and it has been in effect since 2012.⁷⁹

It is worth noting that Israel smuggled large quantities of toxic pesticides, whether to the Palestinian territories or to other areas. In 2013, large quantities of carcinogenic pesticides made in Israel were seized.⁸⁰ Moreover, the published reports in this context confirm that Israeli companies are using agricultural lands in Palestine as a field for experiments, as they initially import their agricultural pesticides inside the Palestinian territories and then decide to sell them on the Israeli market or not. The average amount of chemical pesticides used per acre in Israel is about 3.5 kg per year, which makes it the most used member of the Organization for Economic Cooperation and Development with

⁷⁷ Rotterdam Convention on the application of pic procedures to certain dangerous chemicals and pesticides in circulation in international trade in 1998, p. 5.6.

⁷⁸ Rotterdam Convention on the application of pic procedures to certain dangerous chemicals and pesticides in international trade in 1998, Article 11, paragraph 1/b.

⁷⁹ Ministry for Environmental Protection - The site of the Israeli Ministry of Foreign Affairs, hazardous materials in the international arena, entered on April 18, 2022.

⁸⁰ Massad, Dana (Israel is a member of the largest international conventions for environmental protection, but ! trampled by all of them), Supra note No. 75.

these toxic substances compared to other countries. Israel ranks second in terms of the amount of active toxic substance per capita. This amount is 1 kg per person. This makes us seriously need to examine the toxic substances remaining on agricultural products imported from Israel to the Palestinian territories. These agricultural products that are failed in Israeli laboratory tests are exported and marketed in the Palestinian market.⁸¹

Third: Air Pollution Protection Agreements

1- Vienna Convention 1985 and Montreal Protocol of 1987

They aim to reduce the use of chemicals and reduce emissions that lead to the erosion of the ozone layer and air pollution, by limiting the production of these materials and placing controls on their import and export. In this regard, it must be pointed out that the harmful gases and fumes that rise from Israeli factories operating in Israeli settlements or those that operate inside Israel are close to the borders and thus export their smoke to the Palestinian territories. In addition, the Israeli quarries and stone crushers operate in the West Bank, and constitutes a source of air pollution and erosion of the ozone layer.⁸²

Although the Montreal Protocol prohibited the use of "methyl bromide" gas in its charter signed in 1995, and returned again in 2005 to confirm its absolute ban, Israel has used it in the production of its chemical pesticides in Ramat Hoviv factories. It should be noted that, the use of pesticides containing this gas is prohibited in the European Union and North America, due to the diseases it causes to the nervous system. It is also considered one of the most harmful substances that cause the depletion and erosion of the

⁸¹ Karzam, George , (Palestinian agricultural chemical reality is no less bad than the Israeli and Palestinian testing field for Israeli chemical companies), Development and Environment Horizons Magazine, Ramallah, Issue 50, 2012-2013.

⁸² Massad, Dana, Israel is a member of the largest international conventions for the protection of the environment, but! You trample it all, Supra note No. 75.

ozone layer, which leads to a reduction in its thickness, and thus an increase in the amount of harmful external radiation, especially ultraviolet rays. It is worth mentioning here that the toxic tear gas used by the Israeli occupation forces in the occupied territories against the Palestinian people often contains methyl bromide.⁸³

3.3.2. The Protection of the Environment Within the Framework of the United Nations.

The United Nations carries out its duties within the framework of achieving living on a clean and healthy planet and within an environment free of pollution. Since it felt that there is a need to stand seriously in the face of negative phenomena that harm the environment, it called on countries and governmental organizations to organize international conferences to participate in leading discussions that develop solutions to the escalating environmental crises. The beginning was, as we previously explained, in 1972, when the Stockholm Conference on the Preservation of the Human Environment was held. Two decades later, the Rio Conference or the "Earth Summit" was held to complete the efforts made to protect the environment and address its evolving problems.

Although conferences and meetings concerned with the environment have not stopped since that time, and environmental problems are still increasing more dangerously, these two declarations are seen as the starting point for the development of binding international environmental rules and principles, as they define what has become known today as "the modern era" of international environmental law.⁸⁴

⁸³ Karzam, George, (the Palestinian agricultural chemical reality is no less bad than the Israeli and Palestinian testing field for Israeli chemical companies), *Supra* note No. 81.

⁸⁴ Handl, Günther, (declaration of the united nations conference on the human environment "Stockholm declaration", 1972 and "the RIO declaration" on environment and development), 1992, United Nations Audiovisual Library of International Law, 2013, p. 1.

Of course, the Stockholm and Rio Declarations are non-binding international instruments. However, both declarations contain provisions that at the time of their adoption were understood to either already reflect customary international law or are expected to constitute future normative expectations for the protection and preservation of the environment.⁸⁵

Both Declarations focused mainly on the human element, as the first common Article emphasized that the human being is the main pillar that must be protected and a healthy environment for him must be provided. So, while the Rio Declaration places people at the center of concerns related to sustainable development, the Stockholm Declaration takes a pragmatic approach to the protection and preservation of the environment for the benefit of all mankind.⁸⁶

While the responsibility of the state for its environmental activities is considered the most prominent common principle in the two declarations, and in identical language, the second part, whether of principle 21 of the Stockholm Declaration or principle 2 of the Rio Declaration, recognizes the responsibility of the state to ensure that activities within the scope of its work or control do not cause damage to the environment in other states or in areas beyond their national jurisdiction or control. Moreover, in the first part, both instruments affirm the sovereign right of the state to “exploit its natural resources in accordance with its environmental policies” (Stockholm) and the environment and development policies (Rio).⁸⁷

⁸⁵ Orellana, Marcos, (Typology of instruments of public environmental international law, ECLAC - Environment and Development Series No. 158, 2013, p. 21.

⁸⁶ Handl, Günther, (declaration of the united nations conference on the human environment "Stockholm declaration", 1972 and "the RIO declaration" on environment and development), 1992, Supra note No.81, p. 4-5.

⁸⁷ Ibid, p. 6.

The advanced sense of the need to protect the environment prompted the conferees at the Rio Conference to adopt new directions regarding environmental protection that were not previously included in the Stockholm Declaration. In this context, it was agreed that the formulations of the precautionary principle should be included in the principles emanating from the conference, which was referred to in principle 15, that stipulates “states shall, on a large scale, adopt the preventive approach according to their capabilities, and in the event of the emergence of a risk of serious harm, the lack of full scientific certainty does not serve as a reason to postpone cost-effective measures to prevent environmental degradation.”⁸⁸

In recent decades, the United Nations Environment Program has not ceased its work in the continuous development of environmental law at the national and international levels. It has also promoted the effective implementation of environmental law in particular, including by providing capacities to promote compliance with and enforcement of multilateral environmental agreements.⁸⁹

⁸⁸ Ibid, p. 7.

⁸⁹ Report of the UNEP Governing Council on Justice, Governance and Law for Environmental Sustainability, Nairobi, 28 November 2012.

3.4. Israel's Responsibility to Protect the Palestinian Environment According to the Rules of International Humanitarian Law and International Human Rights Law

International law defines the normative framework that Israel must adhere to in its practices inside the occupied territories. This framework includes international humanitarian law and international human rights law. The application of international humanitarian law extends during occupation and armed conflicts, while international human rights law applies in times of peace and war. However, the limited and narrow protection provided by international humanitarian law to war victims and civilians makes international human rights law applicable alongside international humanitarian law in times of armed conflict.⁹⁰

3.4.1. International Humanitarian Law

International humanitarian law aims to protect civilians and civilian objects who are not directly related to military operations from the tragedies of armed conflicts.⁹¹ It also aims to protect people who have become unable to fight, including members of the armed forces who laid down their arms, medical teams, relief workers and humanitarian associations. Geneva Convention deals with this aspect of international humanitarian law. In addition, it seeks to reduce the scourge of wars and their destructive effects by organizing and codifying rules and behaviors that show what is permitted and what is prohibited for the parties to the conflict during the course of military operations, an aspect

⁹⁰ The Israeli Information Center for Human Rights in the Occupied Territories - B'Tselem, occupied territories and international law, report issued in November 2017.

⁹¹ Melzer, Nils, **International Humanitarian Law "A Comprehensive Introduction"**, Supra note No. 23, p. 78.

that the Hague Law dealt with. Moreover, international humanitarian law does not only include what has been treated and regulated by the Hague and Geneva law only, but also includes all other international convention and customary rules stemming from the principles of humanity and public conscience.⁹²

The effects of violent armed conflicts and the development of deadly and destructive means of warfare have called on states and international governmental and non-governmental organizations to draw attention to the urgent need to protect the environment and neutralize its natural elements from the damage caused by war. The environment is the space in which human lives. So, if it is safe, humanity is also safe, and if it is damaged, humanity will be harmed. Since international humanitarian law is the legal framework that governs international and non-international armed conflicts, its conventions contain many texts and provisions that concern the environment and its protection during the outbreak of war. It also includes customary rules related to the protection of the environment during armed conflicts.

First: International Humanitarian Law Agreements

International humanitarian law agreements, either directly or indirectly, deal with the issue of the environment. They emphasized the duties of states and parties regarding its protection and neutralization from the effects of armed conflicts and wars. Therefore, in this part, the materials provided by these agreements to protect the environment will be examined.

⁹² Sina, Nasrallah (Legal Protection of the Environment from Pollution in light of International Humanitarian Law), Thesis for master's degree in international humanitarian law, Bagi Mukhtar-Annaba University/Faculty of Law, Algeria, 2010-2011, p. 65.

1-The Fourth Geneva Convention of 1949 Related to the Protection of Civilian Persons in Time of War, Dated on August 12, 1949.

This agreement did not explicitly refer to environmental issues, nor did it include an explicit text stipulating the duties of the occupying power towards providing protection for the environment and avoiding damage to it. Still, we can highlight this duty under Article 53. It emphasized the prohibition that the occupying power must observe with regard to the destruction of any immovable or movable property related to individuals or groups, the state, public authorities, social or cooperative organizations, unless the war operations require this destruction.⁹³

The text of the article is explicitly clear with regard to the prohibition of the destruction of property of any kind, regardless of its owners, but it did not mention the protection of the environment explicitly.⁹⁴ Therefore, the protection of the environment in this context can be highlighted when it comes to the destruction of any property whose destruction could cause harm to the environment. For example, the bulldozing of the lands of the Palestinian population by the Israeli occupation authorities is considered a destruction of it. So, the soil's loss of its physical and chemical properties, which affects its production capabilities.⁹⁵ Soil constitutes the upper layer of the earth's crust, and therefore damage to its compounds makes it unsuitable for the growth of plants and trees. In addition, the razing of forests, nature reserves and forests in the Palestinian areas in

⁹³ The Fourth Geneva Convention of 1949 related to the Protection of Civilian Persons in Time of War, dated on August 12, 1949, Article 53.

⁹⁴ Mary Henkerts and Beck, **Customary International Humanitarian Law**, 2 volumes, ICRC, 1996, p. 128.

⁹⁵ Ahmed, Aisha, The Independent Commission for Human Rights, (Environmental pollution caused by industrial zones and Israeli waste dumps in the Occupied Palestinian Territory - Salfit area as a model), Supra note No. 54, p. 51.

order to build Israeli settlements, contributes to the destruction of those areas and lands. Thus, the cutting down of trees and the loss of many types of wild plants and animals that live in those areas contribute to the ecological imbalance of those areas.⁹⁶

Therefore, the prohibition imposed by this article on the destruction of property, extends indirectly to include the duty to protect the environment placed on the shoulders of the occupying state. Since Israel controls the lands and destroys them according to its occupational procedures, this prohibition must be binding on it with respect to the explicit text that came by the article and in relation to its duty to protect the environment.

However, Israel may take advantage of the exception that came in this article regarding the necessities imposed by military operations in the context of its destruction of Palestinian lands. The response to this pretext is by proving that the lands that Israel destroyed in order to build settlements and the apartheid wall did not come in the context of its military operations, i.e., as part of a military operation. Instead, they were destroyed within the framework of the measures taken by Israel in order to control it, which contradicts an international customary rule that prohibits the destruction of any part of the natural environment except in cases necessitated by imperative military necessity.

As Israel is a contracting party and a signatory to the Fourth Geneva Convention, this convention is considered binding on it and it must respect the rules and provisions it contains. The first common article of the four Geneva Conventions of 1949, stipulates that the High Contracting Parties undertake to respect this convention and ensure its respect in all cases.⁹⁷ In addition, the International Committee of the Red Cross, in its commentary on this article, stated that the duty to ensure respect is not limited to the

⁹⁶ Ibid, p. 54-55.

⁹⁷ The Four Geneva Conventions of 1949, Common Article I.

behavior of the parties to the conflict, but also includes the need for states to do everything in their power to ensure respect for international humanitarian law without exception. Furthermore, the Security Council supported the commission's interpretation through its resolution in 1990, in which it called on the parties to the Fourth Geneva Convention to ensure that Israel respects its obligations.⁹⁸

2- The Hague Convention of 1907 Respecting the Laws and Customs of War on Land

The Hague Convention included provisions that, in essence, express its main framework. Aspects of its work can be limited to two things. The first is related to controlling the conduct of hostilities, while the second matter is to restrict the freedom of the parties within the framework of choosing offensive means and methods.⁹⁹ The text of Article 22 affirmed that the belligerents do not have an absolute right to choose the means to harm the enemy. In addition, Paragraph "e" of Article 23 stipulates the prohibition of the use of weapons, projectiles and resources that may cause unnecessary injury and pain.¹⁰⁰

Although this agreement did not explicitly refer to the duties of the opposite parties in relation to the protection of the environment, it did, by virtue of the importance of its provisions and the commitment of states to them, contribute to the development of customary rules that directly contribute to the protection of the environment. So, the practice of these behaviors by states and their observance in the management of their

⁹⁸ Mary Henkerts and Beck, **Customary International Humanitarian Law**, Supra note No. 94, p. 445-446.

⁹⁹ The Hague Convention on Respect for the Laws and Norms of Land War 1907, Article 22.

¹⁰⁰ The Hague Convention on Respect for the Laws and Norms of Land War 1907, Article 23.

military operations represents an acceptance by them of their importance and the need to comply with them.¹⁰¹

Restricting the right of the parties to use weapons and prohibiting the use of certain types of weapons in the context of military operations contributes to avoiding endangering the environment and natural resources, which may be affected by hostilities between the warring parties.

3- 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

This protocol has clearly and explicitly dealt with the issue of environmental protection during armed conflicts. Thus, it fills the gaps in the four Geneva and Hague conventions regarding the explicit provision of environmental protection. Article 55 of this protocol directly bore the title of protecting the natural environment. Its first item stipulated that the warring parties take into account the protection of the natural environment from widespread and long-term damage.¹⁰² This protection includes prohibiting the means and methods that are intended or expected to cause such damage to the natural environment and thus harm the health or survival of the population. Also, its second item emphasized the prohibition of deterrent attacks against the natural environment.

¹⁰¹ Sina, Nasrallah (Legal Protection of the Environment from Pollution in light of International Humanitarian Law), *Supra* note No. 92, p. 82.

¹⁰² 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, Article 55.

However, since then a notable practice has arisen that this prohibition has become customary. The United States stated in 1991 in its response to the memorandum of the International Committee of the Red Cross on the applicability of international human law in the Gulf region, that its practices do not include methods of warfare that may cause widespread and long-term extreme damage to the environment.¹⁰³

Despite the importance of this Article in providing protection for the environment during armed conflicts, the prohibition it imposes on states towards the natural environment is limited by the fulfillment of three conditions that are difficult to prove. Many states have confirmed that these conditions represent a very high limit, and that the three cumulative conditions in addition to the term long-standing has been understood to mean long decades. However, the recent report of the United Nations Environment Program indicated that an important reference point should be the definition of the terms contained in the 1976 Convention for the Prohibition of the use of Environmental Change Technologies. So, this agreement defines widespread as “covering an area estimated at hundreds of square kilometres”, long-term as “extending for several months or approximately one season,” and extreme as “causing significant or noticeable disruption or harm to human life and natural and economic resources.”¹⁰⁴

4- Convention on the Prohibition of the Use of Environmental Change Techniques for Military Purposes 1976

This agreement came in light of the countries' realization that scientific and technical progress in the field of modern weapons and the use of these weapons on the battlefield

¹⁰³ Mary Henkerts and Beck, *Customary International Humanitarian Law*, Supra note No. 94, p. 146.

¹⁰⁴ Pontin and others, *Environmental Injustice in the Occupied Palestinian Territories - Issues and Prospects*, Al-Haq Foundation, Palestine, 2015, p. 38.

allows for changes in the surrounding environment. Therefore, it is necessary to put an end and impose an effective ban on the use of technologies that contribute to changing the environment for military purposes or for any other hostile purposes.¹⁰⁵

The text of Article 1 of the Convention on the Prohibition of Environmental Change Techniques recalls what is stipulated in Article 55 of Additional Protocol I. It reconfirms the parties' pledge not to use environmental change techniques with widespread, long-lasting or severe effects for military purposes as a means to cause destruction, loss or damage to any other state party. It also referred to the three thresholds included in Article 55 of Additional Protocol I.

The difference between the text of this article and the text of Article 55 contained in Protocol I, is that the latter referred mainly to the effects resulting from the attack, i.e., the intended or expected result on the environment. However, what was stated in the text of Article 1 of the Convention on the Prohibition of Environmental Amendment refers to manipulation or intentional damage to techniques for modifying the environment.¹⁰⁶

Second: The Customary Rules of international Humanitarian Law

The practice of fixed states within the framework of avoiding damage to the environment and its natural elements, contributed to the consolidation of many legal texts related to the protection of the environment. They were contained in international humanitarian law agreements as customary rules binding on states, as a result of their

¹⁰⁵ Preamble to the 1976 Convention prohibiting the use of changes in the environment for military or other hostile purposes.

¹⁰⁶ Mary Henkerts and Beck, **Customary International Humanitarian Law**, Supra note No. 94, p. 127.

acceptance as a general practice among states. Among these customary rules stipulated in international humanitarian law agreements:

Rule One: When Conducting Hostilities on the Natural Environment, States Must Observe the Following Principles: ¹⁰⁷

A- It is Not Permissible to Attack Any Part of Nature Unless it is a Military Objective.

B - It is Prohibited to Attack a Military Objective That May be Expected to Cause Accidental Damage to the Environment and Which Would be Excessive in Going Beyond the Concrete and Direct Military Advantage Expected to Result From it.

Rule A, which prohibits states from attacking any part of the natural environment, is based on the principle of distinction. It is a fundamental principle of international humanitarian law. ¹⁰⁸ Under this principle, the parties to the conflict must distinguish at all times between civilian objects and military objectives, and those military attacks shall be directed only at military objectives. It may not be directed at civilian objects. ¹⁰⁹

Consequently, the restrictions imposed by this principle on states extend to the protection of the natural environment unless it is a legitimate military target. Thus, states must not limit the use of the principle of distinction between civilian objects and military

¹⁰⁷ *ibid*, p.127

¹⁰⁸ Melzer, Nils, *International Humanitarian Law "A Comprehensive Introduction"*, *Supra* note No. 23, p. 18.

¹⁰⁹ Al-Taniji, Ali, (The Role of International Humanitarian Law Principles in Environmental Protection), *Journal of the College of Politics and Economics*, Egypt, No. 9, January 2021, p. 16.

objectives, but rather they must include everything related to environmental issues within the concept of distinction known to them during their military strikes.¹¹⁰

The application of the distinction principle to the natural environment was mentioned in the guidelines issued by the General Assembly regarding the protection of the environment in times of armed conflict. The United Nations General Assembly called on all countries to distinguish these guidelines widely and to seriously consider the possibility of incorporating them in their military manuals, and in the instructions directed to its armed forces. The International Committee of the Red Cross submitted a statement of principles regarding the protection of the environment in times of armed conflict to the United Nations General Assembly in 1993. No one opposed this approach, which explains the application of the principle of distinction to the environment.¹¹¹

As for Rule B, which prohibits an attack on a military objective that is expected to cause excessive damage to the environment, such that its damage exceeds the military gains that can be achieved. This rule is based on the principle of proportionality. It aims to reduce the losses or sufferings resulting from military operations, whether for people or things.¹¹²

In view of the goal that this principle seeks to achieve, the environment must also be among the considerations that countries must balance with their military objectives. So,

¹¹⁰ Mary Henkerts and Beck, **Customary International Humanitarian Law**, Supra note No. 94, p. 128.

¹¹¹ *ibid*, p. 129

¹¹² Sina, Nasrallah, legal protection of the environment from pollution in the light of international humanitarian law, supra note No. 92, p. 76.

targets that cause excessive damage to the environment are avoided compared to the modest military targets that can be gained as a result of this attack.¹¹³

Several official statements have supported the applicability of the principle of proportionality to accidental damage to the environment. During the bombing campaign against Yugoslavia, NATO confirmed that it took into account all the accidental damage resulting from the bombing process, whether it was environmental, human or civilian infrastructure. The International Court of Justice, in its 1996 advisory opinion in the Nuclear Weapons case, stated that "states must take into account environmental considerations when assessing what is proportionate and necessary in the pursuit of their legitimate military objectives."¹¹⁴

Rule Two: Paying Full Attention When Countries Use Methods and Means of Warfare to Protect and Preserve the Natural Environment.

This rule refers to the duty of the warring parties to take the necessary precautions during military operations to avoid accidental damage to the environment. So, the lack of scientific knowledge does not excuse the effects resulting from certain military operations on the environment of any of the parties to the conflict.¹¹⁵

This rule constitutes a reflection of a major principle of international humanitarian law, which is the principle of prohibiting the use of methods of combat that cause unrestrained casualties and damage. The prohibition contained in this article confirms

¹¹³ The advisory opinion of the International Court of Justice on the Legality of the Use or Threat of Nuclear Weapons 1996, published on the official website of the United Nations, document symbol a/51/218, p. 20.

¹¹⁴ Mary Henkerts and Beck, *Customary International Humanitarian Law*, supra note No. 94, p. 129.

¹¹⁵ *ibid*, p.130

that states do not have absolute freedom to use certain types of weapons, especially those that cause disproportionate damage compared to the military advantage expected to be achieved from them.¹¹⁶ For example, if one of the parties to the conflict can achieve a military objective with a simple conventional weapon, it is prohibited under this article to use a chemical weapon or any other weapon of excessive harm to achieve the same objective.

In this context, the practice of states has proven that the duty to protect the environment during armed conflicts does not result from the application of rules that protect civilian objects only, but states must provide this protection to the environment. The Security Council took into account the approach based on the protection of the natural environment for this character in its resolution issued in 1991, regarding Iraq's responsibility for environmental damage and the depletion of natural resources caused by the Iraqi invasion of Kuwait.¹¹⁷

It can be concluded from this rule and from the international practice confirmed by the Security Council regarding the protection of the environment due to its character and not its protection within the framework of the protection provided by agreements to civilian objects, that the modern international trend is trying to devote the duty to protect the environment as a duty separate from the protection of civilian objects. So, the protection of the environment becomes a basic title that binds states, in addition to their other duties imposed on them by international humanitarian law.

¹¹⁶ Sina, Nasrallah, legal protection of the environment from pollution in the light of international humanitarian law, *Supra* note No. 92, p. 72.

¹¹⁷ Mary Henkerts and Beck, **Customary International Humanitarian Law**, Former Reference No. 94, p. 131-132.

Based on the foregoing, it can be said that all legal texts and provisions contained in international humanitarian law agreements, in addition to its binding customary rules related to the protection and preservation of the environment, are the legal basis that Israel must take into account in all matters relating to its military activities in the occupied Palestinian territories. Accordingly, Israel bears responsibility for any violation of these provisions and customary rules.

The state is considered responsible for violations of international humanitarian law attributed to it, including those violations committed by its armed forces, by persons, entities delegated to it by a degree of governmental authority, or by persons or groups operating under its supervision or control. Thus, Israel will be responsible for all violations of international humanitarian law if it has effective control over the military or paramilitary operations in the context of which the violations occurred.¹¹⁸

3.4.2. International Human Rights Law

In addition to its commitment to international humanitarian law, Israel is also obligated to comply with the provisions of international human rights law in all its actions and practices within the occupied Palestinian territories. The 1948 Universal Declaration of Human Rights affirmed that all human beings are equal in rights and dignity without distinction as to race, color, language or religion. However, Israel claims that the provisions of international human rights law are not binding on it in its practices in the Occupied Palestinian Territories, as they do not officially fall within its sovereignty area.¹¹⁹

¹¹⁸ Ibid, p. 463-466.

¹¹⁹ B'Tselem, the occupied territories and international law, Supra note No. 90.

Several decisions issued by the Office of the High Commissioner for Human Rights and the International Court of Justice have affirmed the rejection of the Israeli claim regarding its lack of responsibility to observe the provisions of international human rights law. In this context, the Human Rights Council, in its resolution S-21/1, affirmed the applicability of international humanitarian law and international human rights law to the occupied Palestinian territories. It also referred to Israel's obligations in this regard, in addition to its responsibility for human rights violations committed there.¹²⁰ On March 23, 2021, the Human Rights Council adopted a resolution in which it indicated that all international covenants and instruments related to human rights shall be applied in the occupied Palestinian territory, including East Jerusalem. It also stressed Israel's duty to implement and respect these human rights.¹²¹

In its advisory opinion issued in 2004 on Israel's construction of the apartheid wall, the International Court of Justice referred to Israel's obligations in the context of its human rights practices. The Court affirmed that the Palestinian territories occupied by Israel have, for more than 27 years, been subject to Israel's territorial jurisdiction as the force occupying list. When Israel exercises the powers available to it on this basis, it is bound by the provisions of the International Covenant on Economic, Social and Cultural Rights. Moreover, it is obligated not to place any obstacles in the way of exercising these

¹²⁰ Resolution of the Human Rights Council S-21/1 of July 23, 2014 on ensuring respect for international law in the Occupied Palestinian Territory, including East Jerusalem.

¹²¹ Human Rights Council Resolution 46/3 of March 23, 2021, entitled The State of Human Rights in the Occupied Palestinian Territories, including East Jerusalem, and the commitment to ensure accountability and justice.

rights in the areas in which jurisdiction has been transferred to the Palestinian authorities.¹²²

The Convention on the Rights of the Child of 20 November 1989, contains Article 2, which states that “states parties shall respect and guarantee the rights set forth in the Convention to every child subject to their jurisdiction”. Therefore, this agreement applies to the occupied Palestinian territories.¹²³

International human rights law is considered the framework that protects all human rights, whether economic, social, political and other rights. International charters, declarations and conventions on human rights ensured the protection of all these rights. As for those rights related to the environment, their importance was not emphasized until the beginning of the seventies, following the Stockholm Conference. Countries and international organizations concerned with the environment began to regulate the aspects, contents and persons of this right, and to emphasize the responsibility of everyone with regard to protecting the environment. This part will examine the obligations that international human rights law imposes on states to protect the environment, in accordance with its various conventions and its principles in this regard.

First: Protecting the Environment in Accordance with Human Rights Agreements Related to the Environment.

The most important international conventions and declarations related to human rights did not clearly and explicitly refer to the human right to live in a clean, healthy and sound

¹²² The advisory opinion of the International Court of Justice on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories 2004, published on the official website of the United Nations, document symbol A/ES-10/273, p.55.

¹²³ Ibid, p. 55.

environment. Neither the Universal Declaration of Human Rights issued in 1948 nor the two international covenants adopted in 1966 included any text aimed at protecting the environment and the human right to live within a safe environment. Rather, it was content with stipulating his right to life. The reason why these declarations and international instruments did not address this right was due to the timing of its announcement. At the time when it was concluded, the environment and its natural elements were not exposed to serious pollution as is the case after its formulation. Therefore, human life was not threatened in a very large way compared to the existential threat to which human is exposed today due to climatic changes, aggravating environmental pollution and depletion of natural resources.¹²⁴

The respect of states for the human right to life today requires them not to consider it only within the framework of the penal code, according to which every person who attacks human life is punished. But it must be looked at from another aspect related to the environment, in terms of providing environmental conditions that ensure the continuation of life on earth without pollution. Therefore, states' respect for this right must be taken into account that life evolves and is renewed. From this point of view, states must control technological and industrial development processes, in addition to their balanced and optimal exploitation of natural resources in accordance with respect for this right.¹²⁵ Thus, they will reduce the percentage of pollution and save basic resources for human survival.

¹²⁴ United Nations General Assembly- Human Rights Council, Report of the Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, Mr. John H. Knox, 22/43, December 24, 2012, p. 4.

¹²⁵ Economic and Social Council, Report of the Committee on Economic, Social and Cultural Rights, Twenty-Second Session April 25-12 May 2000, General Comment No. 14 The right to the highest attainable standard of health (Article 12).

In this regard, it can be noted that all the Israeli measures, including land levelling, air pollution, dumping of waste, control and depletion of water resources, and other measures caused by the separation wall and the construction of Israeli settlements, are inconsistent with Israel's obligations and responsibilities to respect and preserve the life of the Palestinian human being guaranteed under international conventions and declarations on human rights.

Second: Protecting the Environment in Accordance with the Framework Principles on Human Rights and the Environment.

The Human Rights Council established the mandate of the independent expert on human rights and the environment in 2012. Mr. John Knox was appointed as the first rapporteur on human rights obligations related to the enjoyment of a safe, clean, healthy and sustainable environment. In his 2018 report on human rights obligations relating to the environment, Knox emphasized that these framework principles do not create new obligations, but rather reflect the application of existing human rights obligations in the context of the environment. On the other hand, he pointed out that the development of human rights standards related to the environment did not depend on direct texts that were contained in international instruments that refer directly to this right. So, this right was not adopted in human rights conventions and charters that apply globally. Still, there is a single regional agreement that explicitly addresses this right, which is the African Charter on Human Rights. Therefore, international bodies, regional courts and special rapporteurs have worked to apply human rights law to environmental issues by "greening" existing human rights, including the right to life and health. Thus, the affirmation of the human right to live in a safe, healthy and clean environment did not come out of nowhere. Rather,

it came from the recognition of human rights bodies that enjoying a healthy and clean environment is a right complementary to other human rights such as the right to water, food, housing and others.¹²⁶

The sixteen framework principles on human rights and the environment summaries the most important obligations of states towards human rights related to the enjoyment of a safe, healthy and clean environment. Israel's responsibility for its violations of Palestinian human rights related to the environment can be driven. From these principles:

1- The First Framework Principle: States Should Ensure a Safe, Healthy, Clean and Sustainable Environment in Order to Respect, Protect and Fulfill Human Rights.¹²⁷

The responsibility of states under human rights conventions imposes on them two obligations. The first is to make every possible effort for the full and complete realization of human rights. The second obligation lies in providing protection for these rights from violations and illegal practices. For example, the right to movement is considered a well-established right under many human rights charters and declarations. Therefore, states are obligated to harness all the means and tools they possess to enable the individual to enjoy this right according to their first obligation. They also have the duty to provide protection for the individual's exercise of this right from any abuse or persecution as part of this practice, in accordance with its second obligation.¹²⁸

¹²⁶ UN General Assembly - Human Rights Council, Report of the Special Rapporteur on Human Rights and the Environment 59/37, January 24, 2018.

¹²⁷ The first framework principle in the Special Rapporteur's report on human rights obligations for a safe, healthy, clean and sustainable environment 24 January 2018.

¹²⁸ UN General Assembly - Human Rights Council, Report of the Special Rapporteur on Human Rights and the Environment, Supra note No. 126, p. 9.

Similar to the responsibility of the state regarding movement, it can be said that Israel is obligated to activate the means of monitoring, inspection and control of environmental practices in its settlements in order to ensure that the Palestinian citizens enjoys their right to live in a healthy, clean and sound environment. It is also required to provide protection for the environment in the Palestinian areas from any action or activity that may contribute to its pollution or damage. Since environmental pollutants do not have limits, they are also required to monitor their environmental behavior within their borders in order to protect the Palestinian environment.

The evidence that we see today indicates that Israel is evading its obligations under international human rights law with regard to Palestinian human rights related to the environment. It has worked and is still working to destroy the environment in the Palestinian areas through its negative practices. In August of 2012 The Israeli authorities bulldozed agricultural lands and demolished a well to irrigate crops in the town of Al-Khader, south of Bethlehem. The bulldozing operation covered an area of 5 dunms in the Al-Absiya area, adjacent to the settlement of (Al-Ayazar). Furthermore, the occupation authorities and the so-called Nature Protection Guard in the Civil Administration issued a number of orders obligating farmers to uproot olive trees from their lands in the town of Derastia and the Al-Muqasim area near the Ain Al-Bassa spring in Qana Valley.¹²⁹

There is no doubt that these Israeli practices contribute to influencing the work of other Palestinian human rights, such as the right to life, the right to enjoy the highest levels of psychological and mental health, and the right to food and water. So, basic human rights

¹²⁹ Environmental Quality Authority, report on Israeli violations of the Palestinian environment for the year 2012.

and environmental protection are interlinked, and any disruption to the ecological balance threatens the stability of the individual's life and lifestyle in an appropriate manner.

2 - The Third Framework Principle: States Should Prohibit Discrimination and Ensure Effective Equal Protection Against Discrimination in the Context of the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment.¹³⁰

This principle confirms that discrimination in rights related to a healthy and clean environment is prohibited for states. Therefore, it is their responsibility to ensure that individuals obtain equal rights in the environment without discrimination between them. It was stated in the explanation of this principle that discrimination may be direct or indirect:¹³¹

A- Direct Discrimination: This Type of Discrimination Occurs When Some People Receive Less Favorable Treatment Than Others in Similar Circumstances in Relation to a Prohibited Act, or by Granting Facilities to One Party and Denying Them to Another Party in the Same Circumstances.

Israel practices discrimination with regard to the issues of quarries established in the West Bank. The occupation imposes normal control over the work of the quarries owned by Israeli companies regarding the quantities of rocks they extract or the pollution

¹³⁰ The third framework principle contained in the Special Rapporteur's report on the issue of human rights obligations related to a safe, healthy, clean and sustainable environment 24 January 2018.

¹³¹ UN General Assembly - Human Rights Council, Report of the Special Rapporteur on Human Rights and the Environment, Supra note No. 126, p. 10.

resulting from their work. In contrast, it imposes strict control when the owner of these quarries is Palestinian, whether in terms of rock extraction or the pollution resulting from them. The same applies when it comes to settlements inhabited by Jews, as the environmental restrictions imposed on them in the occupied territories are considered light restrictions, compared to the severe restrictions imposed on the residents of the Palestinian areas adjacent to those settlements.

In the Beit Fajjar area, for example, there are many quarries that are located on lands owned by the Palestinians, but these quarries are often raided, their equipment confiscated, and heavy fines are imposed on their owners. The justification given by Israel for the harm caused to the quarries is its presence, contrary to orders and procedures dictated by Israel, on land classified as Area “C”, and therefore subject to the Israeli Civil Administration planning system, which has the power to grant, renew and cancel licenses to operate quarries. While Israel refuses to grant new licenses to Palestinian quarries in Beit Fajjar, or to renew old ones, which were granted to a number of quarries in the 1990s, Israel continues to renew work licenses for 11 Israeli-owned quarries in the West Bank, which were established in the mid-seventies of the century on lands currently classified as Area “C”.¹³²

B - Indirect Discrimination: This Type of Discrimination Occurs When a Certain Group is Allowed to Carry Out Certain Actions, While Another Group is Prevented from Doing the Same Actions.

¹³² The Israeli Information Center for Human Rights in the Occupied Territories - B'Tselem, Report on Planning Policy in the West Bank, April 21, 2016.

The random landfills set up by settlers in the lands of the Palestinian population are a witness to this type of discrimination. At a time when Israel allows the settlement residents to dump their waste in the occupied Palestinian territories without any supervision, it prevents the Palestinian residents from establishing legal and licensed dumps on the pretext of the possibility of polluting the surrounding environment for settlements.¹³³

Also, access to water resources in the West Bank falls within the framework of this type of discrimination. Israel allows water companies operating in settlements to have unlimited access to groundwater, extract it, and dig wells with great depths to feed the settlers with water. In contrast, it does not allow the Palestinians to access groundwater freely. Palestinians are also prevented from digging wells that exceed a certain depth to prevent them from getting more water.

3 - The Fourteenth Framework Principle: States Should Take Additional Measures to Protect the Rights of Those Most Vulnerable to Environmental Damage or Those Who are Particularly Vulnerable to it, Taking Into Account Their Needs and Risks.¹³⁴

In the explanation of the rapporteur on the environment and human rights on this principle, it was stated that ethnic and racial groups may often be among these vulnerable groups as a result of their lack of power. So, the areas of this ethnic and racial group

¹³³ The Israeli Information Center for Human Rights - B'Tselem, report entitled Israel Exploits Palestinian Lands to Process Israeli Waste, December 2017.

¹³⁴ The 14th Framework Principle in the Special Rapporteur's report on human rights obligations for a safe, healthy, clean and sustainable environment 24 January 2018.

become sites of negative environmental practices such as waste water treatment plants and power plants that cause environmental pollution.

In this regard, it should be noted that Israel operates a facility for treating the waste produced within its borders, but a large part of this facility is located outside the sovereign borders of the state of Israel: in the territories of the West Bank. By exploiting its status as an occupying power, the Israel has instituted less stringent environmental protection regulations in industrial areas located within settlements in the occupied territories, and in those areas has offered economic incentives - such as tax concessions and government subsidies. Because of this policy, it has become more advantageous to set up waste treatment plants in the occupied territories than in Israel.¹³⁵

All the practices and procedures carried out by the Israeli occupation authorities in the Palestinian territories stem primarily from Israel's attempt to control and dominate the Jewish race over the Arab Palestinian race. Its action is subject to selective criteria on the basis of race, as a result of the *fait accompli* that Israel imposes by force on the Palestinians in the occupied territories and their lack of authority over them.

Thus, this principle imposes on Israel as the occupying power to take into account the needs of other ethnic groups present in the occupied Palestinian territories. It also obliges it to take additional measures to ensure the protection of the environment and prevent its pollution in the Palestinian areas, due to Israel's control over the course of life in those areas and the lack of Palestinian sovereignty over them.

¹³⁵ The Israeli Information Center for Human Rights - B'Tselem, a report entitled *Israel Exploits Palestinian Lands to Process Israeli Waste*, *Supra* note No. 133.

The Human Rights Council affirmed at its forty-sixth session, through what was stated in the third item on the agenda regarding the promotion and protection of all human rights, civil, political, economic, social and cultural, including the right to development, that states are obligated to respect and promote human rights. They are also obligated to take all measures to address environmental challenges, and take measures to ensure respect for the rights of all, as stipulated in various international instruments and framework principles on human rights and the environment.¹³⁶

From the foregoing, it can be said that all environmental agreements, customary rules and legal texts contained in this chapter are the legally binding basis for Israel in the framework of its responsibility for its environmental activities. Under the international environmental law treaties, Israel is responsible for its environmental behaviour in relation to the issues protected by these conventions. Also, under the conventions and rules of international humanitarian law and international human rights law that apply to the occupied Palestinian territories, Israel is obligated to protect and preserve the environment as part of the responsibilities of the occupying power. Despite that, Israel continues to deny these agreements and refuse to comply with its responsibilities imposed on it by these agreements and international customary rules. On the other hand, it refuses to abide by its environmental responsibilities stipulated in the bilateral agreements signed with the Palestinian side.

¹³⁶ Resolution 46/7 of the UN Human Rights Council on 23 March 2021 on human rights and the environment.

Chapter Four

Israeli Practices Regarding the Palestinian Environment

The Israeli authorities carry out a set of activities and measures that affect all aspects of human and natural life. The Israeli occupation measures change the environmental reality in the occupied Palestinian territories, causing damage to its environmental components and natural resources and posing a real threat to the lives of the Palestinian population.

At a time when international and regional efforts led by states, international organizations and those concerned with environmental affairs are intensifying about preserving the environment from pollution and working to limit or reduce the percentage of pollution that affects the environment and its natural elements, Israel is working to intensify its activities that directly affect the Palestinian environment. Israeli practices that cause damage, sooner or later, to the Palestinian environment vary. It continues to build Israeli settlements, which are considered the biggest threats to the Palestinian environment. Settlement means confiscating the land and natural resources that belong to the Palestinians. In addition, it builds bypass roads and establishing military sites that need more confiscated lands. The construction of the separation wall had no less impact on the Palestinian environment than the construction of settlements. So, the construction of this wall contributed to the confiscation of a large number of lands and the levelling of others, and of course all this contributes to the erosion of vegetation cover and soil pollution, in addition to the loss of biodiversity.

Before going into the explanation and review of the Israeli practices that threaten the Palestinian ecosystem, it shall be noted that the environmental problems to which they

are exposed are limited to two aspects. The first aspect is the pollution to which different environments are exposed, such as the physical environment (air - water - land) and the biological environment (plants - animals - humans). As for the second aspect, it is represented in the depletion of natural environmental resources such as water, minerals, rocks and others, which contradicts the goals and sustainable development plans issued by the United Nations and the international community with regard to ensuring the right of future generations to enjoy natural resources and wealth. It should also be noted that international law and domestic law mainly aim to protect the environment and preserve it from pollution and depletion, as the essence of international agreements related to the environment deal with the treatment of these two serious problems in many provisions and texts.

The Israeli practices, which will be discussed later in this chapter, will clarify how the Israeli measures affect the aspects that contain the environmental problems. They can be summarized, as we mentioned previously, through pollution and the depletion of natural resources. Therefore, this chapter discusses in the first topic the Israeli measures that threaten the Palestinian environment and contribute to its pollution, and the second topic presents Israel's policy in the depletion of natural resources.

4.1. Israeli Measures That threaten the Palestinian Environment and Contribute to its Pollution

There is no doubt that the Palestinian-Israeli conflict casts a shadow over the Palestinian environment. The complete Israeli control over the land and the loss of any Palestinian sovereignty over it has serious repercussions on the reality of the Palestinian ecosystem, which suffers as a result of Israeli practices that threaten all aspects of natural and human environmental life. As a result, the Palestinian environment witnessed a dangerous Israeli escalation that directly contributed to the deterioration of the environmental situation in the occupied Palestinian territories. Successive Israeli governments continue to expand and increase the pace of building settlements in the Palestinian territories for the benefit of Jewish settlers, and impose more restrictions on the movement of the Palestinians by constructing a huge wall. The resulting and accompanying measures to build settlements and the apartheid wall have contributed to creating catastrophic environmental conditions for people and land in Palestine. The Israeli authorities deliberately ignore the response to health and environmental needs necessary for the population of the occupied area over the years of its occupation. In return, it provides all these needs to the Israeli settler coming from abroad.

It is worth noting that these practices have exacerbated the suffering of the Palestinian people, through illegal Israeli policies that are based on the confiscation of agricultural lands that constitute a source of livelihood for many citizens, the construction of bypass roads, the construction of roadblocks and army training camps, in addition to the pollution of water and land due to waste resulting from settlement activities.

In what follows, we will address these Israeli practices and measures that threaten and pollute the Palestinian environment. In this context, we will address the effects of the apartheid wall and Israeli settlements on the Palestinian environment in two subjects.

4.1.1. the Apartheid Wall

More than 18 years after the issuance of the advisory opinion of the International Court of Justice on July 9, 2004, which demanded that Israel stop work on the wall, remove what was built from it and compensate Palestinians for the damages they sustained, the wall is still standing on the occupied Palestinian lands.¹³⁷ Also, its damages are still worsening and affecting all aspects of life. Among these damages are those affecting the natural, social and urban elements of the occupied Palestinian territory. Of course, the wall affects many other aspects of life for the Palestinian people, but we are about to talk about its effects on the natural environment in Palestine. Thus, our discussion will be limited to this research category, which is basically the subject of our direct study.

1- The Impact of the Apartheid Wall on the Degradation of Palestinian Lands

The separation wall erecting was accompanied by the confiscation and destruction of vast areas of Palestinian land. Israeli authorities confiscated hundreds of thousands of dunums of cultivated and fertile Palestinian lands, which were swept and looted. It also destroyed the green cover, and the uprooted hundreds of thousands of carobs, olive, almond, palm and other plants. In addition, it stole the fertile topsoil. The security

¹³⁷ Khodrij, Zahra, (The Apartheid Wall Destroys the Environment and Wildlife - Qalqilya as a sample), Afaq Environment and Development magazine, Ramallah, Issue 139, October 2019.

restrictions imposed on the areas and lands adjacent to the wall contributed to making it semi-arid and suffering from a lack of interest due to the inability of farmers to reach it.¹³⁸

The city of Qalqilya is among the most affected Palestinian cities by the construction of the wall. The apartheid wall cuts a path of about 56 km in length on the city's lands, isolating 35,000 dunms of fertile agricultural land behind it, and 12 artesian wells located on the western aquifer. It also contributed to razing an area of 3,700 dunms of land in Qalqilya governorate, and uprooted 20,000 olive trees, and 180,000 other fruitful and fores trees.¹³⁹

Hardly any report, even if its small size, is without reference to the bulldozing actions carried out by the Israeli occupation authorities after their control over a wide range of Palestinian lands in favor of building the apartheid wall. The damages resulting from the bulldozing work extend over many years and cannot be restored back to its previous condition. The, surface layer of land that is being bulldozed in order to build the wall, was formed over hundreds of years, and therefore it cannot be returned to its normal condition it was before that.¹⁴⁰

These works contribute to an increase in the number of Palestinian lands that may be exposed to desertification and drought. Indicators of desertification in Palestine show that more than 50% of the lands need great effort to rehabilitate these degraded natural resources, and approximately 15% of them are in a state of severe deterioration. In addition, a report issued by the General Administration of Forests, Range and Wildlife at

¹³⁸ Karzam, George (How to Contribute to Reducing Land Degradation), Environmental and Development Prospects Magazine, Palestine, Issue 140, 2021.

¹³⁹ Khodraj, Zahra, (The Apartheid Wall Destroys the Environment and Wildlife - Qalqilya as a sample), Supra note No. 137.

¹⁴⁰ Ibrahim, Mohammed (Separation Wall and the Future of the Arab-Israeli Conflict), L.I.M. in Political Science, Middle East University, Jordan, 2009, p. 77.

the Ministry of Agriculture stated that the most important cause of land degradation in Palestine is the Israeli occupation, which bulldozes lands and systematically cuts trees. So, the number of trees uprooted trees by the Israeli settlers or by the occupation forces in the Palestinian territories since the year 2000 is estimated to be more than one million trees.¹⁴¹ Tens of thousands of these trees were uprooted due to the construction of the separation wall, and there are more than 700 thousand fruitful trees will be separated to the west of the wall.¹⁴²

Land levelling works carried out by Israel in the occupied Palestinian territories lead to soil erosion, which contributes to the erosion of the upper surface layer of the soil, and its transfer from one place to another due to winds and torrents. Also, the uprooting of trees facilitates the process of soil erosion, as trees and plants help increase soil cohesion and prevent its collapse, due to its absorption of heavy rain water and reducing its waste.

The impact of the wall extended to include large areas of agricultural land that it nibbled on. The area of isolated and besieged lands between the wall and the Green Line amounted to about 680 square kilometers in 2012, of which about 454 square kilometers are agricultural lands, pastures and open areas, 117 square kilometers are used as colonies and military bases, and 89 square kilometers are forests, in addition to 20 square kilometers are Palestinian lands on which buildings are erected.¹⁴³

¹⁴¹ Tawil, Firas, (Desertification extends in the West Bank, Gaza Strip and land reclamation is the solution), Environment and Development Horizons Magazine, Ramallah, Issue 116, 2019.

¹⁴² Ibid.

¹⁴³ Melhem, Ahmed, apartheid wall destroys the environment and threatens species of animals with extinction, Al-Monitor website, September 23, 2015.

2- The Impact of the Separation Wall on Biodiversity in Palestine

Biodiversity refers to all forms of life on the globe, including plants, animals, fungi and other microorganisms. It also refers to the groups that make up them and the habitats in which they live. It is known that the greater the biodiversity in the ecosystem, the more this leads to the success of the system, its stability, and its performance of its functions well. The Charter on Biological Diversity defines it as “the variability of organic organisms from all sources, including, among other things, terrestrial and marine ecosystems, aquatic organisms and the ecological complexes of which they are part, and this includes diversity within species and between species and ecosystems.”¹⁴⁴

According to figures issued by the Palestinian Central Statistics Authority, the number of live plant and animal species that live in historic Palestine is about 51,000, and they constitute approximately 3% of the global biodiversity.¹⁴⁵ The number of plants that grow in Palestine is about 2,959 species, where the number of endemic species in Palestine is about 261 species, including 12 rare species and 543 species threatened with extinction, such as the lily and iris family. Palestine is also characterized by the diversity and multiplicity of animals, with an estimated number of animal species living in it about 30,850 species, including 30,000 species of invertebrates, 116 species of mammals, 578 species of birds, 97 species of reptiles, 9 species of amphibians, 1700 species of marine fish and 30 species of freshwater fish.¹⁴⁶

¹⁴⁴ Convention on biological diversity. Rio de Janeiro, 5 June 1992, Article 2.

¹⁴⁵ Environmental Quality Authority, environment sectoral strategy 2021-2023, p. 24.

¹⁴⁶ Palestine Institute for Bio-Education and Sustainability, all the figures in the statistics are for geographical historical Palestine, but for the West Bank and Gaza Strip, the number of plants and animals living in them is as follows: plants (2076), mammals (98), birds (373), reptiles (81), amphibians (9), marine fish (297), freshwater fish (15).

Despite this huge biodiversity of the Palestinian environment, Palestine faces many threats in this direction. They are represented in the wrong local policies such as overgrazing, urbanization, lack of planning and scarcity of resources and capabilities. Still, the main threat to the Palestinian environment is the Israeli occupation that follows different forms and methods to control the Palestinian lands. Israel has managed to control 10% of the West Bank's lands with an area of 160-180 thousand dunums as a result of building the apartheid wall. It isolates area of 733 square kilometers of these lands, which badly affects the biodiversity in Palestine.

The wall also has negative effects on the wildlife in Palestine. Its construction contributed to the fragmentation of the lands from each other. As a result, the movement of animals became very restricted and difficult. On the other hand, these animals lost their own shelter as a result of the bulldozing that led to the demolition of their homes. It also created a state of environmental fragmentation between the West Bank and the 48 lands, which negatively affected the lives of these animals. In addition, it narrowed the area of land in which animals live, which raised their hunting rates. So, many species of them are now threatened with extinction. According to the statistics of the Wildlife Society in Palestine specialized in this regard, the number of striped hyenas in Palestine ranges between 300 and 500 hyenas throughout the West Bank, while the number of wild deer does not exceed 2,000. Thus, the Palestinian mountain deer has become extinct due to Israel's construction of its separation wall.¹⁴⁷

The disintegration and loss of habitats are other challenges to the preservation of biodiversity. They affect the region in general, as habitat loss refers to the disappearance

¹⁴⁷ Ibid.

of natural environments that are the main habitat for certain plants and animals. A wide range of negative activities contribute to the loss and disappearance of habitats, such as unplanned urban expansion, drought and desertification, over-exploitation of natural resources and other factors.¹⁴⁸

In Palestine, the Israeli occupation is considered the main cause of the loss of habitats for animals and plants in the occupied territories. Israeli measures accompanying to build the wall contributed to restricting the biodiversity in Palestine, as the soil is razed and wild plants, medicinal herbs and flowers are destroyed. The wall constitutes an environment expelling everything concerning livestock, wild and plant. In this regard, the Fifth National Biodiversity Report indicated that the fragmentation and disintegration of habitats as a result of the construction of the apartheid wall is a physical barrier that prevents many mammals from accessing food and mating sources. In Bethlehem, for example, about 31 mammal species lived, but due to the rapid changes in the region and the impact of the construction of the wall, 13 species were not recorded during the last five years, and 4 species became rare during the period between 2008-2013.¹⁴⁹

In addition to the wall's contribution to disrupting the life cycle of some wild animals and birds that are interconnected with some types of other plants, there are some birds, such as the Palestinian mountain partridge and desert curlew, that nest directly on the ground. Therefore, the destruction of the plant environment affects the integration that these animals need to survive.¹⁵⁰

¹⁴⁸ Al-Saleh and Al-Razzouk, **Natural Resources Management**, Al-Baath University - College of Agriculture, 2018, p. 180.

¹⁴⁹ Palestinian Central Office of Statistics, Fifth National Report on Biodiversity 2015, p. 37-39.

¹⁵⁰ Karaja, Nael, separation wall and Israeli settlements deprive farmers of harvesting their land and threaten environmental and animal wealth, Palestinian News and Information Agency-WAFA, 2016.

Thus, it can be said that the construction of the apartheid wall is one of the main threats to the loss of biodiversity in Palestine, as its construction contributed in a huge way to the fragmentation and dismantling of the habitats of living creatures, which led to the decrease or extinction of some wild animal and plant species.

Recently published reports dealing with Palestinian environmental affairs have shown that the degree of threat posed by the wall to biodiversity in Palestine is very high, and that its negative effects will be severe and destructive on the Palestinian ecosystem.¹⁵¹

4.1.2. The Israeli Settlements

After Israel forcibly established its control over the occupied Palestinian lands in 1967, it began to adopt policies that express its ambitions to control the rest of the lands of historical Palestine. So, it adopted the policy of confiscating lands under various pretexts to build settlements and bring settlers to live in them. Through these arguments it was able to control vast areas of Palestinian land in favor of establishing Jewish settlements. Year after year, it increased the pace of confiscation and land seizure, and at the same time intensified its settlement activities and expanded it.

From 1967 until the end of 2020, the number of Israeli settlements reached about 150 spread over all areas of the West Bank, and the number of settlers living in these settlements reached 712,815, knowing that these numbers were much less than they are now, and are increasing every year.¹⁵²

¹⁵¹ Palestinian Central Bureau of Statistics, 5th National Biodiversity Report 2015, Supra note No. 149, p. 51.

¹⁵² 2020 Annual Statistical Report of the Palestinian Central Bureau of Statistics on Israeli colonies in the West Bank, 2021, p. 21.

The Israeli settlements have left severe traces that can harm various elements of the Palestinian environment.

1- Water and Soil Pollution

The activities resulting from the settlements are the main cause that contributes to the pollution of groundwater in Palestine. These settlements drain the wastewater resulting from the settlers' uses to the Palestinian agricultural lands and valleys. The amount of wastewater pumped by the Israeli settlements towards the Palestinian lands is estimated at about 40 million cubic meters annually, while the amount of wastewater produced by Palestinian citizens in the West Bank amounted to about 34 million cubic meters.¹⁵³

This wastewater leads to contamination of surface water by mixing with it. It also penetrates into the depths of the earth and pollute the groundwater, which makes this water unfit for human consumption and increase the proportion of salts and nitrates in it. On the other hand, it makes water unsuitable for agricultural use, as wastewater pollutes the lands and crops, as the concentration of sodium salts in the soil clogs its pores. Thus, lands become unsuitable for agriculture, which leads to the desertification of the Palestinian lands, in addition to spreading unpleasant odors, the proliferation of harmful insects, and the spread of epidemics.¹⁵⁴

An example of wastewater contamination of groundwater and agricultural lands in Palestine is that the sewage of Shaarei Tikva settlement flows to Beit Amin in Qalqilya, causing damage to agricultural lands, in addition to the leakage of sewage through the

¹⁵³ Zeadah and Sheap (Environmental Pollution by Hazardous Waste from Industrial Settlements and Israeli Landfills in the Occupied Palestinian Territories), Vision Center for Political Development, 2020, p. 23.

¹⁵⁴ *ibid*, p.126

pores into the underground tank. The wastewater flowing from Adam settlement, located east of Al-Nabi Ya'qub neighborhood in Jerusalem, led to the poisoning of livestock in Wadi Al-Qilt, because of the dangerous pollution that affected the waters of the valley due to the sewage coming from the settlement. It also became clear that the sewage water had leaked hundreds of meters underground and traveled a distance of three kilometers, and became flowing with the water of Ain Al-Fouar in Wadi Al-Qilt, which led to this poisoning.¹⁵⁵

The Israeli authorities bear direct responsibility for the pollution of water and soil in Palestine. The settlements were built with the help of successive Israeli governments. These governments provided all means of support for settlements establishment, and worked to provide for their needs and the various and increasing needs of their population due to the doubling of the number of settlers. In contrast, Israel proceeded to ignore the needs of the Palestinians and their basic requirements. So, Israel has an indirect role in polluting Palestinian water with wastewater through its neglect of wastewater management and treatment throughout the years of its occupation of the Palestinian territories, as it did not work to extend new sewage networks to meet the growing population. Thus, more than 54% of Palestinian families are not connected to the sewage networks healthy.¹⁵⁶

Note that the 1995 Palestinian-Israeli Interim Agreement dealt with the issue of wastewater alongside water issues. Paragraph 12/g of Article 40 addressed the importance of cooperation between the two parties in the field of sanitation. The agreement indicated

¹⁵⁵ The Palestinian News and Information Agency -Wafa, the impact of the Israeli colonies on the Palestinian environment.

¹⁵⁶ Ibid.

that the two parties, upon signing the agreement, shall establish a permanent Joint Water Committee (JWC) for the transitional period, and the function of this committee shall be to deal with all issues related to water and sanitation.¹⁵⁷

However, since 1996, when the Palestinian Water Authority was established and the Joint Water Committee was formed, only one wastewater treatment plant has been built. It was built in 1998 with funding from the German Development Bank, in one of the “B” areas of the city of Al-Bireh. Israel was interested in building the facility with the aim of forcing the Al-Bireh municipality to connect the sewage flowing from the nearby Psagot settlement. Obtaining approval to build a wastewater treatment facility is a complex and lengthy process, and the process is even more complicated and cumbersome when it comes to a Palestinian facility in the West Bank, where Israeli approval is required.¹⁵⁸

In addition to waste water, the solid waste that is exported from Israeli settlements as a result of domestic uses or industrial waste, constitutes another source of threat to the Palestinian environment. These wastes, on the one hand, cause untold damage to human health, and on the other hand, pollute water and soil in the Palestinian territories.

The Israeli authorities have used the Palestinian lands throughout the years of their occupation as a place to dispose of their hazardous waste, such as industrial waste that contains toxic chemicals, medical waste, whether liquid or contaminated, and radioactive waste. Many sites in the Palestinian territories are used to dump or bury these wastes, which causes the pollution of vast areas of agricultural land and soil, as a result of the decomposition of these wastes, including the toxic compounds they contain, in the

¹⁵⁷ Interim Palestinian-Israeli Agreement on the West Bank and Gaza Strip of 1995, Article 40.

¹⁵⁸ Btselem, Foul Play Neglect of Wastewater Treatment in the West Bank, *Supra* note No. 41, p. 21-22.

Palestinian soil.¹⁵⁹ It also pollutes groundwater as a result of the process of filtering liquids resulting from these wastes into the aquifer.¹⁶⁰

2- Air Pollution

Air pollution constitutes one of the major environmental risks to human health. In general, air pollution occurs due to industrial, agricultural and other activities carried out by humans. Because of the enormous industrial development, air pollution rates have become much more dangerous than they were in the past. There is no doubt that all countries of the world are facing this dangerous phenomenon today, and Palestine being part of this world is facing this problem. So, like other countries of the world, Palestine suffers from a lot of negative habits that expose the air to pollution, such as indiscriminate burning of waste, excessive use of pesticides, and factories smoke and other sources of pollution.

As for the special challenges facing Palestine, represented by the Israeli occupation and its negative measures against the Palestinian environment, they represent an additional burden and an obstacle to providing the lowest levels of healthy living. The Israeli occupation's control over most of the Palestinian lands prevents the establishment of central health dumps, leading to establishing random and unorganized dumps in Palestinian gathering areas, which has negative effects on the life of the Palestinian citizen.¹⁶¹

¹⁵⁹ Ahmed, Aisha (Environmental pollution by Israeli industrial zones and landfills in the Occupied Palestinian Territory- Salfit area as a model), *Supra* note No. 54, p. 35.

¹⁶⁰ Research Center - PLO, *Impact of Israeli colonies on the Palestinian environment*, p. 5.

¹⁶¹ *ibid*, p.132

In terms of air pollution, the Israeli settlements and the activities resulting from them are considered the most important sources of air pollution in Palestine. The settlements often dispose of their hazardous waste by burning it, which leads to air pollution in the occupied Palestinian territories, in addition to the exposure of the occupied Palestinian territories to toxic gases emitted from Israeli factories close to the borders, or those located in Israeli settlements established on the occupied lands.¹⁶²

The Gashouri factories operating in the Nitzan Shalom settlement are the biggest evidence of the environmental discrimination that the West Bank is subjected to in the context of the air pollution caused by the settlements. It works in the field of manufacturing fertilizers, pesticides and agricultural products. The factory was located in Kfar Saba area within the Israeli regions. But, it was closed in 1982, when the residents of that area, in cooperation with the Ministry of Environment, filed a lawsuit against the factory on the basis of its harmful effects on the environment, agriculture and public health. Then, in 1987, the factory reopened its doors in the city of Tulkarm after the Israeli occupation confiscated Palestinian lands to build a settlement on it. The smoke rising from the factory inside the Palestinian territories is one of the living examples of air pollution in Palestine due to the Israeli factories spread in the settlements. Thus, the air pollution rate in the area surrounding the Gashouri factory is very high. The teachers working in the nearby schools confirmed that students do not leave their classrooms during breaks due to pollution and unpleasant odors. In addition, the statistics indicate

¹⁶² Environmental Quality Authority, Environment Sectoral Strategy 2021-2023, Supra note No. 145, p. 41-42.

that the rates of cancer, asthma and eye diseases in the area of this factory are among the highest in the West Bank due to the proximity to the work of the industrial settlement.¹⁶³

4.2. The Impact of the Occupation on the Natural Resources of the Palestinian Territory

The natural resources that were created by the God are among the basic pillars upon which man relies to continue his life. Water, air and land, including the minerals, rocks, fuel and oils form the basis on which civilizations are built and developed. These resources fulfill the basic needs of human beings, and constitute a source of income for some countries where large quantities of these resources are available. Although the occupied Palestinian territories are rich in natural resources such as water and rocks, the Israeli control over these lands prevents Palestinians from using and managing them. Israel follows systematic policies in the context of controlling these resources, in order to exploit them for its benefit and to serve the settlements it is building. If water is the basis of existence for all living things, then rocks are used as basic materials for construction, and therefore they are essential resources for the continuation and development of life.

There is no doubt that the exploitation of natural resources is a pure right of the countries on whose lands these resources are located, and other countries cannot deprive them of this right. Even in the event of the state being under occupation, international law regulates the limits and powers within which the occupying state can use these resources.

¹⁶³ Hellerin, Velda (Environmental Racism in the West Bank: Slow Violence by Israeli Colonies), An-Najah National University, p. 37.

Accordingly, this topic will be divided into two subjects. The first one deals with the powers of the occupying state within the occupied territory, while the second one focuses on the Israeli policies towards the natural resources in the occupied Palestinian territories

4.2.1. The Limits of the Powers of the Occupying State in the Occupied Territories

In this regard, this subject will discuss on the powers of Israel as the occupying state with regard to the property and natural resources located in the occupied Palestinian territories under the rules set forth in international humanitarian law, and relevant Security Council and General Assembly resolutions.

The rules of international humanitarian law dealt with the issue of the powers of the occupying power in the occupied territory within its various treaties. The Hague Regulations on Respecting the Laws and Customs of War on Land of 1907, in Article “55” thereof, affirmed that “The occupying country is seen only as an administrator and usufructuary of public buildings, real estate, forests and agricultural properties belonging to the hostile state and located in the occupied country. It must protect the capital of these properties and manage them in accordance with the rules of usufruct.”¹⁶⁴

The Israeli Supreme Court confirmed what was stated in this article in the context of its response to the petition submitted by a cooperative society following the freeze by the planning authorities of the Israeli military government on permits to build housing units for Palestinians in one of the occupied Palestinian territories. The court’s response stated, “It is not permissible for a military commander to balance the economic and social

¹⁶⁴ The Hague Convention on Respect for the Laws and Norms of Land War 1907, Article 55.

interests of his country, as long as it does not affect his security interests in the region and the interests of the local population. Therefore, lands under military occupation are not considered an open field for economic or other forms of exploitation.”¹⁶⁵

In its ruling, the court noted that the powers of the military commander must be consistent with the rules of international law relating to military occupation and the principles of Israeli administrative law. Also, it noted that the central aspects around which the Hague Regulations revolve is to ensure the legitimate security interests of the occupying power in the territory under military occupation and protect the needs of the civilian population residing in that occupied territory. Thus, the military commander is required to strike a delicate balance between security necessity and civilian necessity.¹⁶⁶

The right to permanent sovereignty over natural resources is among the rights affirmed by international human rights instruments. The International Covenant on Civil and Political Rights and the International Covenant on Social, Economic and Cultural Rights, in the second paragraph of Article 1, of each, affirmed that “it is the right of all peoples, in pursuit of its own objectives, to freely dispose of its wealth and natural resources without prejudice to any obligations arising from international economic cooperation based on the principle of mutual benefit and international law. In no case may a people be deprived of its own means of subsistence.”¹⁶⁷

¹⁶⁵ HCJ 393\82 Jam'iat Iskan Al-Ma'almoun Al-Tha'auniya Al-Mahduda Al-Mauliya, Cooperative Association Legally registered at the Judea and Samaria Area Headquarters v. Commander of IDF Forces in Judea and Samaria and Supreme Planning Committee in the Judea and Samaria Area, 25 July 1982, 28 December 1983.

¹⁶⁶ Ibid.

¹⁶⁷ Sovereignty over natural resources in the Palestinian territories, posted on the Website of the Palestinian National Information Centre-Wafa, is available at: https://info.wafa.ps/ar_page.aspx?id=01e4C6a7837685955a01e4C6.

Emphasizing that the Palestinian people enjoy their right to exploit their natural resources, the United Nations General Assembly issued two resolutions in this regard. The first one is resolution No. 144/38, which stipulated the rights of the Palestinian people to permanent sovereignty and full control over their natural resources. It also affirmed that all measures taken by Israel to exploit human and natural resources, and other economic activities in the Occupied Palestinian Territories are illegal, and Israel must immediately cease such measures. In addition, It affirmed the right of the Palestinian people to recover and compensate in full for the depletion, exploitation, loss and damage of their natural and human resources and other economic activities.¹⁶⁸

The second one is resolution No. 65/179, which stipulates the permanent sovereignty of the Palestinian people in the occupied Palestinian territories over their natural resources, in accordance with the principle of permanent sovereignty of peoples under foreign occupation over their natural resources. It is guided by the principles of the Charter of the United Nations that affirm the inadmissibility of acquiring land by force, with reference to relevant Security Council resolutions, including Resolution 242 of November 22, 1967. In addition, this resolution reaffirmed the applicability of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of August 12, 1949, to the Occupied Palestinian Territory, including East Jerusalem.¹⁶⁹ It also affirmed that the Palestinian territories occupied in 1967 are under the Israeli occupation, which bears the responsibility to implement the rules of customary

¹⁶⁸ General Assembly Resolution 144\38 regarding permanent sovereignty over national resources in the Palestinian and other occupied Arab territories, issued on 19 December, 1983.

¹⁶⁹ General Assembly Resolution 179/65 on the permanent sovereignty of the Palestinian people in the occupied Palestinian territory, including East Jerusalem, over their natural resources, issued on 22 March 2011.

international law, and the conventions relating to the state of belligerent occupation with regard to its practices in the occupied territory.

Based on these resolutions and what has been established by international custom, international law and international resolutions, including General Assembly Resolution 144/38 and Resolution 242, which affirms the inadmissibility of seizing land by force, the right of the Palestinian people to demand recovery and compensation for damage to their natural resources is a right of the state and a right for individuals as well, and no one can give it up.

In addition, Article 3 of the Hague Regulations of 1907 allows Palestine to claim restitution and compensation for all damages caused by Israel to its natural resources. This article confirmed that the warring party who violates the provisions contained in the regulations shall be obligated to compensate if necessary, and shall be responsible for all acts committed by persons belonging to its armed forces.¹⁷⁰

It is necessary to pay attention to an important issue in the context of Israel's expansion of its powers in the occupied Palestinian territories, which is the allegations that Israel may make in the context of discussions that the Hague Regulations are enacted to address the short-term military occupation. Therefore, its powers in this case are restricted according to what was stated in Article 43 of the Hague Regulations of 1907, which requires the occupying power to maintain public order and the laws in force in the occupied territory and not to make fundamental changes therein, except in cases of extreme necessity.¹⁷¹ As for the prolonged military occupation, it may impose on it the

¹⁷⁰ The Hague Convention of 1907 on respect for the laws and norms of land warfare, Article 3.

¹⁷¹ The Hague Convention of 1907 on respect for the laws and norms of land warfare, Article 43.

expansion of some procedures and powers as a result of the development of economic and social conditions.¹⁷² Thus, ensuring development and growth within the framework of a long-term military government requires making investments in infrastructure, which can be refuted by reminding that it must in all cases take into account the prohibition affirmed by the Israeli High Court of Justice in its decision issued in the context of responding to the petition submitted by the cooperative organization against the Planning Committee, as mentioned earlier, in which it affirmed that it is not permissible to make the occupied areas a field for economic exploitation, but their properties and natural resources must be managed according to the rules of usufruct.¹⁷³

This is in addition to its conflict with Article 55 of the aforementioned 1907 Hague Convention. Also, its procedures contradict the global trends that were enshrined in the early emergence of international environmental law through the Stockholm Conference and the Rio Conference and the declarations and charters issued by the United Nations that followed these conferences, regarding urging States to sustainably use their natural resources in accordance with the concept of sustainable development, which guarantees current generations progress and growth, but without causing harm or prejudice to the interests and rights of future generations.

¹⁷² HCJ 393\82 Jam'iat Iscan Al-Ma'almoun Al-Tha'auniya Al-Mahduda Al-Mauliya, *Supra* note No 165, p. 10-14.

¹⁷³ *Ibid*, p. 4.

4.2.2. Israeli Policies Towards Natural Materials in the Occupied

Palestinian Territories.

Israel carries out many practices that would exploit the natural resources in the Palestinian areas. It pursues systematic policies in order to control and exploit these resources for its benefit, the most important of which are water and rocks.

First: Water and its Various Sources

The 1967 war was not aimed at subjecting the rest of the Palestinian lands to Israeli control only. It had other goals and ambitions behind it related to controlling the wealth and resources in the Arab regions, foremost of which is water. Israel took advantage of this war to expand its control over the water resources in the region, and was able to control the headwaters of the Jordan River. Hence, it now controls half of the area of the Yarmouk River, and seized the West Bank of the Jordan River, which is of strategic importance to it.¹⁷⁴

Since 1967, the water resources in the occupied Palestinian territories have been under full and direct Israeli control. In the midst of the ongoing military operations in the West Bank, a series of military orders were issued, according to which all powers regarding water in the West Bank and Gaza Strip were transferred to the Israeli military ruler. Then, another series of military orders in this regard were issued, including:¹⁷⁵

1- Order No. (92) issued on 15/8/1967, which provided for granting the full authority to control all matters related to water to the officer appointed by the Israeli courts.

¹⁷⁴ Jarbawi and Abdul Hadi (Water of the State of Palestine: From Expropriation to Recovery), *Journal of Palestinian Studies*, Issue 4, 1990, p. 9.

¹⁷⁵ Jabbara, Tayseer (Palestinian control of water in Palestine), report by the PLO Research Center.

2- Order No. (158), which stipulates the absolute prohibition of establishing any new water construction without a license, and the appointed military officer may refuse any permit without giving reasons.

3- Order No. (291) issued in 1967, which states that all water sources in the Palestinian territories have become the property of the Israeli state in accordance with the Israeli decision of 1959.

In order to complete its control over the water resources in Palestine, the occupation authority in 1982, by virtue of a military order, transferred the technical supervision of all artesian wells that are used for domestic and industrial purposes, to the Israeli National "Mekorot" company, which gave it the ability to control the quantities of water pumped to these wells.¹⁷⁶

A decade later, Israel and the Palestinian Liberation Organization signed the Oslo Accords in Washington in 1993. In this agreement, water issues were addressed. Article 7 of it stipulated that the Palestinian Council would, upon its inauguration, establish a water authority and management. In addition, Article 11 of it stipulated the establishment of a Palestinian economic committee to cooperate in order to develop the programs specified in the protocols contained in the "Declaration of Principles" agreement, such as Annex No. 3, which confirms in clause No. 1 of the agreement on cooperation in the field of water and its development by experts from both sides.¹⁷⁷

Then, the Cairo Agreement "Gaza and Jericho Agreement" signed in 1994. In Article 2-b of it there are some points related to water. For example, this Article includes, in

¹⁷⁶ Jarbawi and Abdul Hadi, *Supra* note No. 142, p. 11-12.

¹⁷⁷ Palestinian News and Information Agency -WAFI, water in the final negotiations.

clause “A”, the obligation of the Palestinian Authority to establish and manage water and sanitation networks and resources in a manner that prevents damages from occurring regarding water resources. However, clause “B” confirms that Mekorot company is exempted from being subject to clause “A”. So, it continues to operate and manage the existing water networks that supply water to settlements and military sites. In addition, clause “C” stresses that pumping operations of water resources in settlements and military sites will remain according to the current quantities of drinking water and irrigation water, and the Palestinian Authority should avoid negatively affecting these quantities.¹⁷⁸

Thus, under this agreement, Israel was able to continue to control the water resources and ensure their continued flow towards the Israeli settlements. It granted the Palestinians under the first paragraph the work to establish and manage water networks and resources. However, in the two paragraphs that followed this paragraph, it reiterated that their right to access water sources is not absolute, by preventing the Water Authority from managing and operating water systems located in Israeli settlements, military areas, or those managed by Mekorot Company.

In 1995, according to the Palestinian-Israeli Interim Agreement on the West Bank and Gaza Strip signed in Washington, the issue of water was again addressed and its importance was emphasized in the context of the existing understandings. So, everything related to Israeli and Palestinian obligations towards water resources and ways of cooperation between them in this regard were detailed. Article 40 of this agreement provides for an explanation and clarification of the responsibilities and duties of the two parties regarding the water situation in the occupied Palestinian territories. According to

¹⁷⁸ Ibid.

the first clause of this Article, Israel recognized the water rights of the Palestinians in the West Bank. In the second part of the same clause, reference was made to the water resources remaining within the settlement of the permanent status negotiations between the two parties.¹⁷⁹

As for the sixth paragraph, Palestinian and Israeli parties agreed on the future water needs of the Palestinians in the West Bank. These needs range between 70-80 million cubic meters per year. Israel has not fulfilled and implemented these agreements, as the B'Tselem human rights center report on the water situation in the Jordan Valley indicated that the amount of water produced by the Palestinians in 2008 amounted to 30.7 million cubic meters. This percentage before the signing of the interim agreement was 54 million cubic meters, of which 24 million from wells and 30 million from springs.¹⁸⁰ These figures show Israel's lack of response to the increasing Palestinian needs for water due to the increase in the population. Of course, the water crisis and water insecurity in the West Bank confirm that Israel follows the same policies with regard to the rest of the occupied territories.

Based on this article, paragraph 11 recommended the formation of a permanent joint water committee between the Palestinians and the Israelis. The responsibilities of this committee include approving new water and sanitation projects throughout the West Bank. The Committee is composed of an equal number on each side, and all decisions

¹⁷⁹ Interim Palestinian-Israeli Agreement on the West Bank and Gaza Strip, signed in Washington on September 28, 1995, Article 40, Paragraph 1

¹⁸⁰ Israeli Information Center for Human Rights in The Local Territories - B'Tselem, report entitled (Expropriation and Exploitation/Israel's Policy in the Jordan Valley- North of the Dead Sea), May 2011, p. 32.

relating to the work of the Committee are reached by consensus, including the agenda, procedures and other matters.¹⁸¹

In the past, Israel controlled the water resources in the West Bank according to the decisions issued by the military ruler. However, after the signing of the interim agreement in Washington and the understandings between the parties regarding water resources, Israel has adhered to the pretext of transferring water issue to final status issues, in addition to other issues related to Jerusalem, borders, refugees and settlements.

It should be noted that clause V of the Oslo Accord (Declaration of Principles on Palestinian Self-Government Arrangements) of 1993 stipulates in paragraph "A" that the five-year transitional period begins upon withdrawal from the Gaza Strip and the Jericho Area. It also states that permanent status negotiations between Israel and representatives of the Palestinian people in accordance with paragraph "B" shall begin as soon as possible, not later than the beginning of the third year of the transitional period.¹⁸²

Commenting on what is stated in this item, it can be said that final status issues, including water, were supposed to be agreed upon after the Israeli withdrawal from the Gaza Strip and the Jericho area no later than the beginning of the third year, which is 1996, as the Gaza-Jericho agreement was signed in 1994. Accordingly, the Israeli withdrawal from the aforementioned areas was initiated. Still, it did not completely happen as a result of the Israeli procrastination and the lack of seriousness of the Israeli governments in reaching a comprehensive and just solution to the Palestinian issue.

¹⁸¹ Interim Palestinian-Israeli Agreement on the West Bank and Gaza Strip of 1995, Paragraph 11 Article 40.

¹⁸² Palestinian News and Information Agency -Wafa, Oslo Agreement (Declaration of Principles - On Palestinian Self-Government Arrangements) September 13, 1993.

Water sources in Palestine vary between surface and groundwater, spring water, rain and other sources. However, groundwater is the main source of water in Palestine. Despite these multiple sources, Israel controls approximately 86% of all water sources shared between the Palestinian and Israeli parties. It also imposes its military rule and decisions on 14% of the percentage of water allocated to Palestinians.¹⁸³

1. Surface Water

The Jordan River is the only and permanent source of surface water in the West Bank. This river forms the eastern border of the West Bank with Jordan, and its waters are shared by five riparian countries: Palestine, Syria, Lebanon, Jordan, and Israel, which exploit most of it. It should be noted that the Palestinians' legal share of the river water according to Johnson's plan is about 257 million cubic meters per year. Still, the Palestinians have not been able to obtain this amount due to Israeli control based on military force over the river water since the occupation of the West Bank in 1967.¹⁸⁴

2. Groundwater

The presence of groundwater is concentrated in three main basins in the West Bank: the Eastern Basin, the Western Basin, and the Northeast Basin, with an annual renewable storage capacity of about 675-794 million cubic meters.¹⁸⁵

Groundwater sources are also under Israeli control. The Israeli national water company Mekourt excavates this water, while Palestinians cannot do so without obtaining the

¹⁸³ Palestinian Center for Policy Research and Strategic Studies - Pathways, Policy Analysis Paper entitled (Towards Effective Policies to Ensure The Restoration of Water Rights and Water Justice within the Palestinian Territories), November 2016, p. 3.

¹⁸⁴ The official website of the Palestinian Water Authority.

¹⁸⁵ Ibid.

necessary licenses, which they rarely granted. The excavations of this company are active in the Jordan Valley, especially in the eastern part, which is very rich in mountainous groundwater. In 2008, Mekourt company conducted 42 excavations, of which 28 were carried out in the Jordan Valley. It pumped 32 million cubic meters, or 69% of the water pumped by the company in the West Bank. The company operates independently in the Jordan Valley, separate from the national system in which communities in Israel and other settlements in the West Bank are supplied with water.¹⁸⁶

Several studies indicate that Israel exploits the vast amount of groundwater in the West Bank, without taking into account the rules and considerations of safe pumping. The amount of annual recharge of its aquifer water does not exceed 678 million cubic meters, while the annual quantities exploited exceed 700 million cubic meters. Palestinian consumption of the total groundwater in Palestine amounted to 678 million cubic meters, about 118 million cubic meters per year, which is equivalent to about 17.4 of the production capacity of aquifers. While Israeli water consumption amounted to 438 million cubic meters per year, equivalent to about 71% of the production capacity of aquifers in the West Bank.¹⁸⁷

3- Well Water

Israel has a special policy in dealing with well water in the Palestinian areas. It drilled more than 20 wells with a depth of 300-600 meters in 1980, while Palestinians were prevented from digging wells until after the referring to the Israeli military ruler. Israel

¹⁸⁶ Report by B'Tselem(Expropriation and Exploitation/Israel's Policy in the Jordan Valley- North of the Dead Sea), Supra note No. 148, p. 31.

¹⁸⁷ Salameh, Yasser (Israeli water policy and its impact in the West Bank/Study in Geopolitics), master's degree in geopolitics, An-Najah National University, Nablus, 2008, p. 59-60.

did not stop there, but tightened its procedures regarding water issues in order to control it. So, it issued decisions canceling the previous water licenses.¹⁸⁸

As a result of these wells, Israel has been able to loot about 40 million cubic meters of water to account for Israeli settlements, which has negatively affected the pumping capacity of artesian wells owned by Palestinians. Of course, the intensive pumping of deep wells dug by Israel led to the complete or partial drying of Palestinian wells, especially in the Jordan Valley. Of the 774 dug in the West Bank before the occupation, only 338 usable wells left. In the framework of controlling the use of water extracted from agricultural wells in the occupied areas, Israel then began installing meters on well pumps, in order to monitor the quantities consumed and to ensure that they do not exceed the permissible limit it determines.¹⁸⁹

With regard to the distribution of water from its various sources, Israeli settlements, which have an estimated population of 750,000 settlers, receive 70 million cubic meters per year. This amount is more than half of the amount obtained by Palestinians in the West Bank. As for household consumption, the consumption of the Israeli per capita amounts to about 300 liters per day, compared to 80 liters obtained by the Palestinian individual. Also, more than 600 liters obtained by the settler, knowing that many rural communities in Palestine do not exceed 20 liters of water per capita per day.¹⁹⁰

¹⁸⁸ Jabbara, Tayseer (Palestinian control of water in Palestine), report by the PLO Research Center.

¹⁸⁹ Jabbara, Tayseer, Israeli control of water in Palestine, *Supra* note No. 143.

¹⁹⁰ Tamimi, Abdel Rahman (proposed policies to enhance Palestinian water security), Palestinian Center for Policy Research and Strategy Study -Pathways, October 2021, p. 14.

Second: Quarrying

Natural stone is one of the most important natural resources in Palestine. These stones are used in the construction of buildings and facilities. There is no doubt that this natural resource is considered one of the economic pillars on which the Palestinian population depends, as the stone and marble industry contributes to the Palestinian national economy. It contributes more than 30% of the volume of national income from Palestinian industries. Quarries, crushers and saws together contribute 5.5% of industrial establishments and include about 8% of their employees, and constitute 12.6% of the existing industrial production.¹⁹¹

This sector, like other sectors in Palestine, faces many Israeli obstacles as a result of the prevailing political and security conditions in the Palestinian areas. Israel tightens its procedures and decisions against the work and development of this sector, which incurs Palestinian traders a lot of material losses. While the occupation grants the necessary permits and facilitates the required conditions for Israeli companies working in this field, crushers and quarries belonging to Palestinians face difficulty obtaining these licenses issued by the Israeli occupation authorities.

It is no secret to anyone Israeli ambitions to control more land and areas belonging to Palestinians in the West Bank. The figures for the number of settlers that Israel brings to stay in the occupied territories are increasing year after year. Of course, this increase needs to build more houses and settlement units to accommodate Jews coming from abroad. Therefore, the need for stones increases as their numbers double. So, stones and gravel are basic raw materials for the construction of settlement housing.

¹⁹¹ Palestinian Stone and Marble Center, Polytechnique University of Palestine.

At the beginning of this Israeli trend aimed at ensuring the provision of stones and gravel for the construction of Israeli settlements, the Civil Administration announced the establishment of six quarries in the West Bank. Then, gradually increased this number. Israel followed an unrestricted policy within the framework of operating quarries, where it was decided to build quarries by the Civil Administration without the need for tenders, and without paying attention to the negative effects that will be reflected on the Palestinian environment and its natural resources. The stones and gravel extracted by these quarries are used to meet the requirements of settlement construction. Thus, it contributed to meeting 80% of Israeli needs in the field of construction. Moreover, Israel confiscated large areas of Palestinian land to establish and facilitate the work of Israeli quarries. For example, it confiscated land in Wadi al-Tin in the city of Tulkarm in order to establish quarries.¹⁹²

One of the biggest examples of Israeli exploitation of stones in the West Bank is the settlement of "Beit Hagai". It was established in 1983 on the lands south of Hebron near Dhaheri. A huge quarry was built in this settlement and is considered the third largest quarry in Israel and the largest in the West Bank. This factory produces about 3 million tons of stones and gravel annually, which represents a quarter of the total GDP from the quarries of Israel and the West Bank. According to information issued by the Civil Administration, the production of the quarry constitutes 74% of the GDP in Israel and the Palestinian territories, and this constitutes 20-30% of Israel's consumption of stones and gravel. In addition, the revenues of the quarry constitute about 80% of the settlement's revenues.

¹⁹² Palestinian News and Information Agency -Wafa, Israel plunders and destroys natural resources: quarries as a model.

It should be noted that Israel grants this quarry the necessary facilities to continue working, and in return, the quarries owned by Palestinians are subject to strict conditions and large financial fines and the confiscation of tools and mechanisms that operate the quarry, in addition to the denial of obtaining licenses. There are more than 30 quarries in the Khelet Hajjah area is still waiting to obtain approvals issued by the occupation authorities because it is located in Area “C”.¹⁹³ Explosives also constitute another obstacle for the Palestinians to extract stones and gravel, as the Israeli control over this method prevents its use by the quarries run by the Palestinians, knowing that the Israeli occupation banned this method when the Intifada began in 2000.¹⁹⁴

According to data issued by Yesh Din, in 2008, 12 million tons of gravel were extracted in Area “C” of the West Bank by both Israeli and Palestinian quarries. After 7 years this figure increased by 40%, and in 2015 the amount extracted reached 17 million tons of gravel per year. More than 20% of the general consumption of stones and pebbles comes from the annual production of crushers operating in the West Bank. The annual production value of crushers operating in the West Bank is about \$160 million, with Israel operating 64% of these crushers in Area “C”, and 36% managed by Palestinians in Areas “A”, “B” and “C”.¹⁹⁵

In 2009, the Israeli human rights organization Yesh Din filed an objection before the Israeli Supreme Court as the High Court of Justice against the commander of the IDF, the head of the Civil Administration, and ten Israeli companies operating in the West Bank, claiming that the quarrying and extraction operations by Israeli companies in the West

¹⁹³ Ibid.

¹⁹⁴ Occupation crushers plunder Palestinian natural resources, New Life, Al-Bireh, November 26, 2017.

¹⁹⁵ Ibid.

Bank constitutes an illegal depletion of natural resources in the occupied area by the occupying power. The organisation demanded the court to order the commander of the Israeli army and the Civil Administration to stop the quarrying and extraction operations, and not to issue new permits in this regard.¹⁹⁶

Yesh Din presented a number of legal arguments about Article 55, and confirmed that it had adopted the principle of continuity and that it allowed the continuation of operating quarries prior to the existence of the occupation, not new ones, especially those that produce outputs for the benefit of the occupation force. The organization also argued that extracting materials from quarries was taking most of the products and not only the core of natural resources. In addition, these operations are not in the interest or benefit of the local population of the occupied land, which contradicts Article 43 of the Hague Convention, which restricts the activities of the occupying power to ensuring and guaranteeing security and public order, with respect to the laws in force, except in cases of extreme necessity.¹⁹⁷

As a result, the Israeli Supreme Court issued a decision, which Yesh Din described as an unprecedented decision in interpreting the law of occupation, as the court invoked the law of occupation and long-term occupation to justify Israeli practices and activities in the West Bank.

The judicial system of the Occupying Power participates in the legalization of exploitation and looting operations managed by Israel. In December 2011, the Israeli Supreme Court approved the mining and quarrying operations carried out by Israeli

¹⁹⁶ Pacheco, Allegra, (Israeli Supreme Court Case on Quarry Licensing in the West Bank), Institute of Law - Birzeit University, 2019, p. 2.

¹⁹⁷ Ibid, p. 2-4.

companies in the occupied territories. This ratification is tantamount to approving the economic exploitation approach taken by the occupying state against the natural resources owned by the Palestinian people.¹⁹⁸

After reviewing previous Israeli policies and practices, it is clear to us that Israel is continuing to plunder and deplete Palestinian natural resources, which makes them illegal and contrary to the powers and responsibilities entrusted to the occupying power towards the natural resources in the occupied territories in accordance with the Hague Regulations.

These practices are primarily aimed at preventing the achievement of sustainable development in the Palestinian territories, through the policy of land confiscation and measures that contribute to depriving the Palestinian people of the enjoyment of the natural resources they possess. In return, it grants itself and the settlers of the colonies the right to exploit the natural resources in the occupied territories without imposing controls or the minimum means of control and inspection. Thus, this leads to excessive consumption of these resources and their gradual depletion, which affects the well-being of citizens residing in the occupied Palestinian territories and deprives them of their basic rights, in addition to depriving future generations of their right to enjoy this wealth.

¹⁹⁸ An Updated List of Israeli Quarries in the West Bank, October 2014, A report published on the Who Profits Research Center's official website, available at: <https://www.whoprofits.org/updates/an-updated-list-of-israeli-quarries-in-the-west-bank/>.

Chapter Five

The Different Options Through Which Israel Can be Pushed For the Implementation of International Agreements Related to the Environment

Most international conventions related to the environment mentioned certain mechanisms that can be resorted to by the parties in the event of a dispute between them over the application or interpretation of the treaty. These mechanisms provided for in environmental agreements are divided into diplomatic and judicial means. There are also other mechanisms that are not provided for in these conventions, such as international responsibility. It can be resorted to as one of the tools provided by international law to ensure the application of international conventions. However, in other cases, states can search for mechanisms different from this one, especially when they are more effective in relation to the subject matter of the conflict.

Accordingly, this chapter will discuss the means and options that Palestine can resort to in order to ensure Israel's compliance with environmental agreements and their application. Therefore, these options will be divided into three topics. The first topic deals with international responsibility as a legal basis to ensure the application of environmental agreements. The second topic will address the means provided by environmental conventions to consider the issue of application and interpretation, while the third topic focuses on the tools available within the UN body.

5.1. International Responsibility as a Legal Basis for Ensuring the Implementation of Environmental Agreements

This topic will clarify the concept of environmental protection responsibility based on international responsibility in terms of its persons and types; then it will show the basis on which to claim this responsibility.

Some view international responsibility from a traditional perspective. Accordingly, it is defined as "the legal system under which the state that committed an illegal act is obligated to compensate the state affected by the act".¹⁹⁹ This trend places responsibility on the state. Thus, the state does not raise responsibility except for its own interest. If damage resulting from the illegal act affects the state itself or one of its citizens, the international claim raises only by the affected state towards the state from which the illegal act was issued. However, the modern perspective distinguishes between international civil responsibility and international criminal responsibility.²⁰⁰

Since international responsibility, whether criminal or civil, can be raised in multiple topics, and since this study concerns about the environment, it will proceed directly to demonstrate the international criminal and civil responsibility of the state for environmental damage resulting from its negative practices.

¹⁹⁹ Sarhan, Abdel Aziz, **Public International Law**, Dar Al-Nahda Al-Arabiya, Cairo, 1991, p. 130.

²⁰⁰ Mubarak, Alwani (International Responsibility for Environmental Protection - Comparative Study), Ph.D. in Law, Mohamed Kheder-Biskra University, International Relations Law, Algeria, 2016-2017, p. 40-42.

5.1.1. International Criminal Liability for Environmental Damage

Talking about criminal responsibility certainly leads to talk about environmental crime. The establishment of criminal responsibility is based mainly on the commission of one of the crimes of concern to the international community. Article 5 of the Rome Statute establishing the International Criminal Court specified that its jurisdiction is limited to the most serious crimes of concern to the entire international community. Therefore, it considers crimes against humanity, genocide, war crimes, and the crime of aggression.

In this regard, environmental crime is considered that negative or positive behavior committed intentionally or unintentionally by a natural or moral person who harms the environment or one of its elements, such as throwing waste and remnants of factory waste, whether in the air, land or sea. In terms of the legal nature of this crime, it can be a simple crime and sometimes it is a repeated crime if the violates are committed more than once, and may also represent a temporary or continuous crime.”²⁰¹

Based on this definition, we will address the following two sections:

Section One : Persons of Criminal Responsibility

The previous definition indicates that this criminal responsibility may arise due to a natural or legal person (the State). This matter is considered controversial among jurists. Some point out that this responsibility arises only against persons under the internal legal system of states. Therefore, the assumption by the state of this responsibility is not possible within the framework of international law. The proponent of this hypothesis proceed from the point of view that this responsibility has a nature of repairing damage

²⁰¹ Ibrahim and Abdelhak (Environmental Protection under International Criminal Law), Journal of Ijtihad for Legal and Economic Studies, Algeria, Issue 2, 2020, p. 380.

and not satisfaction. Thus, the right of the affected states is determined by demanding repair of the damage, and providing future guarantees, and this responsibility cannot take a penal nature against the defendant state.²⁰²

Other views have pointed to the possibility of international criminal responsibility against the state. The state may commit an act that constitutes an international crime against the environment, such as deliberately carrying out activities that would pollute the environment or threaten its balance through the destruction of its ecosystems or the use of prohibited weapons that result in damage to the aerodynamic, water and other environment. This opens the door to international criminal responsibility against the state itself as a legal person. Therefore, penalties and sanctions, such as a fine, that correspond to the nature of the parties to the claim of responsibility, can be imposed. For example, the compensation that Kuwait obtained from Iraq as a result of the environmental damage it has suffered, is the best evidence of the possibility of the state assuming its international criminal responsibility as a result of its actions harmful to the environment.²⁰³

Despite what we pointed out in the previous case and the possibility of holding the state responsible for environmental damage in this capacity, it must be noted that the emergence of Iraq's criminal responsibility as a result of the environmental damage caused to Kuwait was carried out within the framework of a resolution issued by the Security Council and not by a decision of the International Criminal Court. Kuwait received compensation through the United Nations Compensation Commission of the Security Council, which was established in 1991. Therefore, the establishment of the

²⁰² Youssef, Muallem, (International Responsibility Without Harm - State of Environmental Damage), Ph.D. in Public Law, University of Mentori-Constantine, Specialization of International Law, Algeria, p. 269.

²⁰³ Ibid, p. 270.

criminal responsibility of the State for environmental damage is within the scope of the various mechanisms of international law, while this responsibility cannot be established within the framework of the International Criminal Court, before which only natural persons comply.

Accordingly, the emergence of this responsibility against Israel because of its destructive practices in the Palestinian environment is difficult with regard to the Palestinian situation. It requires Palestinians to go to the Security Council and obtain a resolution in this regard to activate the work of the Compensation Committee. Still, this is a scenario that faces many difficulties in the possibility of veto by the USA.

With regard to the activation of international criminal responsibility towards Israeli individuals is possible, Article 25 of the Rome Statute establishing the International Criminal Court confirmed in the first paragraph that the jurisdiction of the Court rests with natural persons.²⁰⁴ In addition, the second paragraph confirmed that a person who commits a crime within the jurisdiction of the Court is responsible for it individually and is subject to punishment in accordance with its domestic law. The ICC has the power to hear environmental crimes as war crimes and crimes against humanity. So, with regard to war crimes, Article 8 in paragraph 2 of item 2 “BI” indicates that an attack resulting in civil damage or causing widespread, long-term and severe damage to the natural environment and whose excessiveness is evident in relation to the totality of concrete and desired military consequences is considered war crimes which the Court is competent to consider.²⁰⁵

²⁰⁴ Rome Statute of the International Criminal Court, adopted in Rome on 17 July 1998, Article 25.

²⁰⁵ Rome Statute of the International Criminal Court, adopted in Rome on 17 July 1998, Article 8.

As for crimes against humanity, Article 7 in paragraph 2 “B” stipulates that genocide includes the deliberate imposition of living conditions, including denial of access to food and medicine, with the intention of destroying part of the population. As well as, item “E” affirms that torture means intentionally inflicting severe pain or suffering, whether physically or mentally, to a person who is under the supervision or control of the accused. Here, the negative environmental measures and practices carried out by Israel in the occupied Palestinian territories that cause serious diseases and death to the Palestinian population can be seen as a crime against humanity. So, Israel imposes difficult living conditions, deliberately inflicts pain and severe suffering to Palestinians under its control.

This situation has changed today as the International Criminal Court decided in September 2016 to extend its jurisdiction to crimes that constitute the destruction of the environment. It announced that it will begin classifying crimes that lead to environmental destruction, land misuse, and illegal expropriation of landownership as crimes against humanity. Hence, this resolution will include crimes leading to the destruction of the environment among the crimes against humanity contained in Article 7 of the Rome Statute.²⁰⁶

Section Two: Conditions for Establishing International Criminal Responsibility

It is not sufficient for the establishment of international criminal responsibility to provide the material act of the crime. Rather, the awareness and will must be available on the part of the offender. “Awareness” means that the offender distinguishes between what

²⁰⁶ Kazem, Khalid (Criminal Court's role in combating environmental crime), Journal of the Faculty of Basic Education for Educational and Human Sciences, Baghdad, Issue 42, 2019, p. 1011.

is legitimate and what is illegal, and “will” means the freedom to choose between taking an action or not. Thus, they are only available in the natural person. The crime in domestic law can be committed intentionally or unintentionally. Still, in the international field it is always intentional, which was demonstrated by the judicial procedures in the Nuremberg and Tokyo tribunals with regard to the trial of the second world war criminals, where there is no text on the non-intentional crime.²⁰⁷

It should be noted that the forms of environmental crime are not limited to pollution incidents only. Protection of the environment in the true sense today also includes the protection of all its natural elements and components in a way that ensures that their balance is not disturbed. Taking into account the environmental violations to which the Palestinian environment is exposed by Israeli practices, it can be found that these practices are not limited to pollution of water, air and soil, but also to the loss of biodiversity, which affects the diversity of living organisms from animals and plants that may extinct in the future. Israeli practices also affect the diversity of the ecological habitats in which these organisms live, which leads to imbalance in the ecosystems in the Palestinian areas, which is a real and serious threat to the environment.

In fact, the challenges facing the emergence of state responsibility for environmental damage may also appear in the emergence of individual responsibility. For example, if a state claims that an activity carried out by another state harms and pollutes its environment, it may face challenges related to identifying the pollution agent and accounting for damage to the environment.²⁰⁸

²⁰⁷ Nasser, wqass (Foundation for Individual Criminal Responsibility from the International Criminal Law Developer), *Journal of Law and Humanities*, Algeria, Issue 4, 2016, p. 246.

²⁰⁸ Abdel-Al, Sami, *Environment in the Perspective of International Criminal Law*, Faculty of Law-Tanta University, p. 25-26.

These difficulties facing the realization of the international criminal responsibility of a state or an individual for environmental damages prompt us to look into other type of international responsibility, which is civil liability. It may seem a more effective option with better results in this context.

5.1.2. Civil International Liability for Environmental Damage.

Civil international responsibility means "the legal system which seeks to compensate one or more persons of international law for damage suffered as a result of the activity of one or more persons of international law".²⁰⁹ This definition indicates that international responsibility may result from wrongful acts committed by a person of international law. It may also result from acts that are legitimate and internationally applicable to the state, such as the state carrying out a certain activity permitted under international law, but causing harm to another state.²¹⁰

This responsibility is complicated by the availability of three elements. The first element is the error resulting from the breach of a legal duty. It achieved by refraining from work that should have been done or doing work that should not be done. The second element is damage, i.e., prejudice to a legitimate interest or right. Finally, the last element is the causal relationship produced by the proof that the harm is the result of error.²¹¹

Accordingly, the next part will be divided into three sections, the first section deals with the traditional bases on which international responsibility is based. The second

²⁰⁹ Dakkak, Muhammad, **The Condition of Interest in the Liability Claim for Violating International Legitimacy**, Dar Aljamaa for Printing and Publishing, Beirut, 1982, p. 11.

²¹⁰ Mubarak, Alwani (International Responsibility for Environmental Protection - Comparative Study), Supra note No. 200, p. 42

²¹¹ Shabana, Mohammed (International Responsibility for Environmental Damage), Ph.D. research in general international law, Zagazig University, Faculty of Law, Egypt, 2018, p. 8.

section will examine the wrongful act as a basis for international civil responsibility, while the third one deals with the establishment of such responsibility under harmful consequences for acts not prohibited by international law.

Section One: Traditional Foundations

International jurisprudence differed in determining the basis of international responsibility. Many theories dealt with this responsibility from different aspects, the most important of which we will rely on as a basis for liability for environmental damage:

1. Error Theory

This theory is created by the Dutch jurist Grossius. He thinks that the state is responsible for the actions of its nationals. If it an error or negligence attributed to the state, then its responsibility arises. Thus, the state is considered an accomplice in the cause of the damage because of its negligence in taking the necessary measures to prevent error by its nationals. The jurist Vattel also contributed to the spread of this theory when he asserted that responsibility as defined by medieval Europe was a collective responsibility based on the supposed solidarity among all the constituent members of the group whose members had the harmful act.²¹²

The roots of this theory go back to a long history. It was based on the basis that the governor bears responsibility for the error made by his employees working under his command as well as his citizens. This responsibility is related to the fact that the error

²¹² Mubarak, Alwani (International Responsibility for Environmental Protection - Comparative Study), Supra note No. 200, p. 46.

results from not preventing some actions by the governor who was silent and accepted errors and did not punish the perpetrator.²¹³

Today, this theory has spread widely in domestic and international laws. It has become the basis for claiming compensation as a result of making a mistake. We find that there are those who rely on this theory for medical and health errors or engineering and architectural ones. Hence, many countries can rely on it as a basis for liability for environmental damages and demanding appropriate and fair compensation for these damages.

2- Risk Theory (Objective Liability)

This theory came to fill the gaps created by the error theory, and as a result of its failure to keep pace with progress in the scientific and technological field. The error theory is not suitable for treating all damages. Sometimes there is difficulty in proving the person who caused the damage, and therefore the injured person may not obtain compensation. Hence, international jurisprudence is directed to the need to find a new theory that is commensurate with the damages resulting from acts prohibited by international law. Such a theory guarantees the expansion of the scope of international responsibility in order to achieve a main goal of ensuring that the affected people obtain the necessary compensation as quickly as possible.²¹⁴

²¹³ Boubacar, Abdali (International Responsibility for Illegal Acts in the Environmental Field), Thesis for master's degree in law, Dr. Taher Moulay Saida University, Specialization of International Law and International Relations, Algeria, 2017-2018, p. 33.

²¹⁴ Yusuf, Mualem, (International Liability Without Harm - State of Environmental Damage), Supra note No. 202, p. 23-24.

If the legal basis for liability for acts prohibited by international law is the error and the wrongful act, then the harm alone is sufficient to establish the responsibility towards the state that practices the activity or the act that is not internationally prohibited under the new theory, provided that the causal relationship exists between the damage and the direct legal person of the legitimate act.²¹⁵

Section Two: Wrongful Act as a Basis for International Civil Responsibility

The illegal act is one of the modern international trends on the basis of which international responsibility is established. The report of the International Law Commission for the year 2001, in the first chapter of it, clarified everything related to the illegal act, as follows:

First: Definition: Article 1 of the 2001 International Law Commission's report defines it as "every internationally wrongful act committed by a state that entails its international responsibility."²¹⁶

The jurist Ajo defined it as: the behavior attributed to the state, which is the contradiction between the behavior of a state in a specific field and the behavior that it should have taken under international law.²¹⁷

Second: Conditions: Article Two of the commission's report stipulated the elements that must be present in the act of states in order for it to be considered internationally illegal.

²¹⁵ *ibid*, p.26.

²¹⁶ Article 1 of the Commission's 2001 report on state responsibility for unlawful acts.

²¹⁷ Boubacar, Abdali (International Responsibility for Illegal Acts in the Environmental Field), *Supra* note No. 213, p. 49.

It was stated that the state commits an internationally illegal act if the act represented by an action or omission that:²¹⁸

- 1- Attributed to the state in accordance with international law.
- 2- Constitutes a breach of an international obligation on the state.

Articles 4 to 11 clarify the behaviors that are attributed to the state, and the cases in which the state is responsible or not responsible for such behavior.

Articles 12 to 14 have also explained what is meant by a breach of the international obligation. The breach by a state of its international obligation results in the event that its act does not conform to what this obligation requires, regardless of the origin or nature of the obligation (Article 12). However, an act of a state is not considered to be breaching of an international obligation unless this obligation is incumbent upon the state at the time of that act (Article 13). Finally, Article 14 deals with the time extension of the breach of the international obligation.

In interpreting the conditions of the wrongful act, it can be said that two elements must be present:²¹⁹

- 1- The first: a personal element, which is the presence of positive or negative behavior, i.e., doing an action or refraining from an action.

It means attributing the illegal international act to a state in its capacity as a person of international law, so that the positive or negative behavior is attributed to it.

²¹⁸ Article II of the Commission's 2001 report on state responsibility for illegal acts.

²¹⁹ Boubacar, Abdali (International Responsibility for Illegal Acts in the Environmental Field), *Supra* note No. 213, p. 51-52.

2- The second: an objective or material element, which is that the action or omission is in violation of an international obligation on the shoulders of the state.

It means that the behavior of the state or the international organization was carried out in contravention of a certain international obligation. Therefore, the violation of the rules of international law is the basic condition for the establishment of international responsibility for the wrongful act.

An example of the internationally illegal Israeli actions that cause the destruction and pollution of the Palestinian environment is its exploitation of the natural resources in Palestine. Israel loots and drains these resources directly by its authorities or indirectly by turning a blind eye to the acts of exploitation carried out by its settlers in the West Bank. So, this constitutes a clear violation of its international commitment with regard to the right of Palestinians to permanent sovereignty over natural resources. This right is inalienable to all states without exception and all states shall respect it under international resolutions and conventions.

Section Three: International Responsibility for Adverse Consequences Not Prohibited by International Law.

In many cases, the responsibility of the state arises under actions that are not prohibited by international law. Countries have the right to exploit their natural resources in accordance with their own development policies. This right has been stipulated under the two international covenants and under Principle 21 of the Stockholm Declaration and Principle 2 of the Rio Declaration. Still, International instruments and covenants stipulated that this exploitation and utilization shall take place within the limits that do not harm the environment of another country.

Despite the importance of these principles within the framework of the protection of the common environment between states, this responsibility can also be invoked in accordance with well-established principles within the framework of international law in the context of relations between states. Among these principles:

1- The Principle of Non-abuse of the Right

This principle extends its roots to a very ancient history. Roman and ancient French law knew it, and Islamic Sharia knew it six centuries before its appearance in Western jurisprudence. Article 38 of the statute of the International Court of Justice recognized the general principles of law as a source of international law. Thus, there no doubt that this principle is among these principles, given the importance it enjoys in the relations between states.²²⁰

This principle considers that the use of the right must remain in the context of the framework specified for it and its basic content, so that its use does not deviate in any way from the content that it seeks to achieve. If the state has the right to exploit its resources for the purposes of progress and development, the other state has the right not to be affected by the action of others. Therefore, countries must strike a delicate balance between achieving their goals and not harming others. In the event of conflict between the right to development and progress and the right of states not to be harmed, we shall recall the Islamic rule "preventing mischiefs is better than bringing benefits", which is a necessary principle in the context of environmental protection.²²¹

²²⁰ *ibid*, p.37

²²¹ Youssef, Mualem, (International Liability Without Harm - State of Environmental Damage), *Supra* note No. 202, p. 72.

We can infer the importance of this principle from the many judicial applications that emphasized the establishment of international responsibility under this principle. For example, the International Court of Justice stipulated in its judgment on the issue of free zones in Supreme Savoy in 1936 on this principle, saying: In some circumstances the state - from a technical point of view within the limits of the law - bears international responsibility if it abuses its rights.” The Court affirmed the same principle in the Norwegian fisheries case between Britain and Norway and the Corfu Strait case in 1949.²²²

2- The Principle of Good Neighborliness

This principle means “states taking into account, when exercising their jurisdiction over their territories, the need not to cause harm to neighboring regions.” This principle implies the availability of two principles.²²³

A- The state’s obligation to refrain from doing any action on its territory that would cause harm to the territories of neighboring countries.

B - The state must take all necessary precautions on its territory to prevent anyone who is under its control from carrying out activities that harm the territory of neighboring countries.

Dr. Salah El-Din Amer confirmed that this principle found a driving force for it through its stipulation in the Charter of the United Nations of 1945. Its preamble included the necessity of determination to take ourselves to tolerance and live together in peace

²²² *ibid*, p.76-77

²²³ *ibid*, p. 82-83

and good neighborliness, which made good neighborliness with full legal value. It also removed any suspicion of its power as a principle of contemporary international law.²²⁴

Among the most important judicial applications of the principle of good neighborliness is the case of Lake Lanno between France and Spain, regarding the use of the lake's water in the production of electric power. Spain claimed that this pollutes the waters of the Carol River, which flows into its territory, where there was no treaty between the two countries regulating the exploitation of the lake waters. So, the ruling expressed that, "Although France has the right to use the water sources of this lake located in its territory in the production of electric power, it should observe the principle of good faith in a manner that achieves the interests of neighboring countries."²²⁵

The Israeli factories whose smoke polluted with harmful gases penetrates into the Palestinian areas is direct evidence of Israel's responsibility for actions not prohibited by international law. It also shows Israel's violation of the basic principles that states shall respect within the framework of their actions and relations with other states.

Criminal responsibility is an available international legal means through which states can be pushed to ensure the implementation of international conventions and their commitment to them. At the level of international criminal responsibility, Palestine possesses new power cards to deter Israel from environmental crimes. Thus, the inclusion of environmental crimes among the crimes considered by the Court in the framework of crimes against humanity, constitutes an important victory for the environment. Still, Israel itself is not tried before this court, but rather its members. Its destructive practices for the

²²⁴ Samia, Siddiqui (Civil Liability for Environmental Damage in International Law), Arab Democratic Center, 2016.

²²⁵ Yusuf, Mualem, (International Liability Without Harm - State of Environmental Damage), Supra note No. 202, p. 86.

Palestinian environment indicate that it comes in a systematic and planned context by its highest leadership levels. So, such disastrous practices do not come by ordinary people, which makes its senior leaders vulnerable to compliance before the International Criminal Court, and this, of course, constitutes a tool of pressure on it.

As for international civil liability, the issue of compensation that may be imposed on it as a result of its illegal actions, in addition to its actions that are not prohibited by international law but cause environmental damage in the Palestinian territories, may be an effective tool to ensure its compliance and implementation of the obligations imposed on it under international environmental agreements.

5.2. The Means Provided by Environmental Agreements to Consider the Issues of Implementation and Interpretation

The environmental agreements stipulate in their various articles the means for settling disputes that may arise between the parties about their application and interpretation. The Basel Convention on the Control of Transport of Hazardous Substances and the Rotterdam Convention on the Prior Informed Consent Procedures for Chemical Substances contain an express provision, in Article 20 of them, on these means. It is also stipulated in Article 11 of the Vienna Convention for the Protection of the Ozone Layer. As for the Convention on Biological Diversity, it mentioned various articles on the means that the parties can resort to in order to resolve their disputes. In addition, these agreements indicated the possibility of developing other tools through which the extent of the application of states' provisions could be examined.

Accordingly, this topic is divided into three subjects. The first one deals with the peaceful means contained in the environmental agreements regarding interpretation and application. The second subject considers judicial means.

5.2.1. Diplomatic Means

These environmental agreements mentioned a set of diplomatic means to resolve disputes arising between the parties. Negotiation was one of the means agreed upon by all agreements, in addition to their right to choose any other peaceful means of choice. Some of these conventions mentioned another means such as good offices, mediation, reconciliation and investigation. Although these means are not mentioned in the Basel and Rotterdam Convention, their mention of the term “any other peaceful means” makes these means legal. It is stated in Chapter VI of the Charter of the United Nations, which bears the title Peaceful Settlement of disputes in accordance with the means mentioned in Article 33 of the Charter, that good offices, mediation, reconciliation and investigation are among the peaceful means of resolving international disputes, in addition to arbitration and judicial means.²²⁶

First: Negotiation

Negotiation is one of the most important and sound means through which countries seek to solve their problems, disputes and outstanding issues between them. This method has been used by many countries to solve problems in various fields, whether economic, commercial, political or other. Palestine was among the countries that have had

²²⁶ Charter of the United Nations 1945, Article 33.

negotiating experiences throughout their conflict with Israel, such as the negotiations that took place in Madrid in 1991 and the Oslo negotiations in 1993.

Negotiations have been defined as “an overlapping process between two or more parties with the aim of reaching common ground on an issue or issues that include common interests, or differences. Through it the parties seek to reach an acceptable agreement respected by all negotiating parties.”²²⁷

The initiation of this method for settling disputes regarding the application and interpretation of international agreements is considered to be superior to other means of settling disputes. So, it is not possible to resort to the judiciary or arbitration except after exhausting the options provided by this means. In its ruling in the “Mavromatis” case in 1924, the International Court of Justice confirmed that, “before filing dispute with the court, it is important that its subject matter has been accurately determined through diplomatic consultations.”²²⁸

Bilateral negotiations took place between the Palestinians and the Israelis to reach a political settlement. It ended with the signing of the Oslo Agreement in 1993. Of course, these negotiations discussed environmental issues. So, they were organized in the detailed annexes to the Oslo Agreement. Also, Article 40 of the 1995 Palestinian-Israeli Interim Agreement dealt with these issues. It discussed environmental issues that specifically concern the two parties and their duties towards them. In addition, it mentioned issues of

²²⁷ Erekat, Saeb, (**Life Negotiations**), An-Najah National University, Department of Political Science, Nablus, 2008, p. 21.

²²⁸ Hussein, Bou Tlja, (Mechanisms for the Implementation of International Conventions for environmental protection), Ph.D. in Public Law, University of Algeria, Faculty of Law, Algeria, 2017-2018, p. 87-88.

common global concern, such as the disposal of hazardous waste, the protection of the ozone layer, the conservation of biodiversity, and others.

As for the negotiations that take place on the interpretation and application of international environmental agreements, it is worth noting that these negotiations may result in an understanding between the parties on the application of the agreement on a specific basis. This application does not take into account the basic provisions of the agreement and the interests of the other states parties. So, international agreement negotiations must be under the knowledge and care of the authority authorized by the agreement to ensure its implementation and interpretation. The parties must inform this authorized authority of the results of the negotiations to enable it to ensure that the agreement has been interpreted in an acceptable manner.²²⁹ Usually, the conference of the parties or the General Secretariat are the bodies that are authorized to play this role. Article 17 of the Rotterdam Convention stipulates that the Conference of the Parties shall develop and adopt procedures to identify cases of non-compliance with the Convention in order to treat the parties whose non-compliance is proven.²³⁰ Also, Article 19 of the Basel Convention affirms the right of any party to inform the General Secretariat if it has reason to believe that another party is acting, or may act, in a manner that constitutes a violation of its obligations under this Convention.²³¹

²²⁹ *ibid*, p.88

²³⁰ Rotterdam Convention on the application of pic procedures to certain dangerous chemicals and pesticides in circulation in international trade in 1998, Article 17.

²³¹ Basel Convention on control of the cross-border transport and disposal of hazardous wastes of 1992, Article 19.

Second: Good Offices and Mediation.

Article 2 of the Hague Convention of 1899 for the pacific settlement of international disputes talks about good offices and mediation and its role in resolving disputes. This article confirmed that in the event of a serious dispute, the signatory states agree to resort to good offices or mediation by one or more friendly countries.²³²

1- Good Offices: This term is used to refer to a procedure whereby a third party or a state, either on its own initiative or upon a request through diplomatic means, seeks to bring the parties to the conflict to the table of a conference to resume direct negotiations or agree on a method of peaceful settlement with the aim of ending the existing conflict.²³³

This model of peaceful solutions has been used by many countries and international organizations in order to resolve disputes of all kinds, such as border disputes between countries, and economic and political disputes. Within the framework of the Palestinian issue, these parties have provided their good offices to reach a peaceful and just solution to the conflict with Israel, including the United Nations, the United States, Russia and European countries, which usually send their envoys to the region to play various roles to achieve peace in the world.

However, to this day, these efforts have not succeeded in achieving any real breakthrough in order to reach radical solutions to the Palestinian-Israeli conflict. In many cases these efforts have stopped at the point of providing recommendations to resolve some outstanding issues between the two parties in the short term.

²³² The Hague Convention on the Peaceful Settlement of International Disputes of 1899, Article 2.

²³³ Sucharitku, I Sompong, (Good Offices as a Peaceful Means of Settling Regional Differences), Golden Gate University School of Law, 1968, p. 339.

2- Mediation: It is an attempt to resolve conflicts, through the intervention of a third party to help the negotiation parties to find a solution. The consent of the parties participating in the negotiations is an essential necessity for it. The success of mediation depends on the acceptance and readiness of the parties to the negotiations, and on the skills of mediators.²³⁴

The role of the mediator is to reconcile the conflicting claims and to appease the resentments which may have arisen among the disparate nations. His functions are terminated when one of the parties to the dispute the mediator himself express that the means of conciliation he has proposed inadmissible.²³⁵

Usually, good offices and mediation are confused. Still, the dividing line between them is that good offices involve more discreet procedures, and are limited to the initiation of direct negotiations between the parties without active participation, while the mediator generally takes a more active role in the discussion, and is often expected to suggest some solutions to the problem.²³⁶

It should be noted that the good offices and mediation depend on the approval of the negotiating parties or the conflict parties. So, they do not have an obligatory force against the parties, and all they have is the status of advice exclusively. Thus, the parties to the conflict are free to take on or reject proposals issued by the mediator or those acting as good offices.²³⁷

²³⁴ Erekat, Saeb, (**Life Negotiations**), Supra note No. 227, p. 47.

²³⁵ The Hague Convention on the Peaceful Settlement of International Disputes of 1899, Resources 4 and 5.

²³⁶ Sucharitku,l Sompong,(Good Offices as a Peaceful Means of Settling Regional Differences), Supra note No. 233 ,p. 339.

²³⁷ The Hague Convention on the Peaceful Settlement of International Disputes of 1899, Article 6.

Third: Reconciliation

Reconciliation is a relatively recent procedure for settling international disputes by peaceful means. It was introduced after the First World War. It is done through the work of reconciliation committees. These committees are not limited to investigating legal issues, but rather seek to raise all issues that would reach to a peaceful settlement of the existing conflict. In addition, these committees are usually formed from some personalities or countries that have the confidence of the conflicting parties.

There are two forms of reconciliation. So, there is voluntary reconciliation. The parties to the dispute resort to this form of reconciliation to find a settlement that ends the dispute between them. In addition, there is obligatory one. It is an agreement concluded before the dispute between the parties to the dispute requires resorting to reconciliation to settle the differences and problems that may arise between them.²³⁸

Many international agreements relating to the environment have mentioned this method as a peaceful means of settling disputes, such as the United Nations Convention on Climate Change, which stipulated it in Article 14, paragraph 3, and the Convention on Biological Diversity in Article 27 thereof. In the same context, the Permanent Court of Arbitration in the Hague worked on preparing optional rules for reconciliation in disputes related to natural or environmental resources in 2002. The Permanent Court of Arbitration promotes these optional rules in the context of its participation in the negotiations of the parties to multilateral agreements, in order to raise awareness among states of the feasibility of using these rules in settling environmental disputes in multilateral

²³⁸ Tori, Yakhlof (Peaceful Settlement of International Disputes), *Ijtihad Journal of Legal and Economic Studies*, Algeria, Issue 2, 2018, p. 295-296.

agreements. It can also be used to settle disputes that may arise between two or more states that are parties to an international agreement regulating access to natural materials and related to the interpretation and application of this agreement.²³⁹

Fourth: The Investigation

Article 9 of the 1899 Hague Convention on the Peaceful Settlement of International Disputes states that resorting to this method is done in the event of disputes arising from a difference of opinion on points of facts. It recommends the states parties to the conflict, who were unable to reach an agreement through diplomacy, to establish an international commission of inquiry, as far as circumstances permit. This committee aims to reach a settlement of the differences between parties by clarifying the facts through an impartial and transparent investigation.²⁴⁰ Article 10 of this Convention stipulates on how to form investigation committees. So, that the conflicting parties form an investigation committee according to a special agreement between them, and this agreement determines the facts to be examined and the validity of the delegates.²⁴¹

With regard to the nature of the decisions issued by these committees, Article 14 confirmed that the report of the investigation committee is limited to a statement of facts. Also, it does not, in any case, have the nature of the arbitration. Thus, it leaves the disputing countries with complete freedom with regard to the effect that should be given to this decision. Hence, the decisions issued by the investigation committees do not have

²³⁹ Hussein, Bou Tija, (Mechanisms for the Implementation of International Conventions for the Protection of the Environment), Supra note No. 228, p. 91-92.

²⁴⁰The Hague Convention on the Peaceful Settlement of International Disputes of 1899, Article 9.

²⁴¹ Hague Convention for the Peaceful Settlement of International Disputes of 1899, Article 10.

a binding status unless the conflicting parties decide to give these decisions this status and effect.

The foregoing means are considered one of the most important means recognised by countries for resolving disputes by peaceful means. The matter of choosing one of them is left to the parties to the conflict, so that the parties consider the means that are appropriate or commensurate with the type and nature of the existing conflict. It has traditionally been for states to resort to these means because of their flexibility. So, countries use their strengths points to trade each other in order to obtain greater gains for each party. In any case, the failure of states to reach an agreement to submit the dispute to a judicial authority does not exempt them from continuing to seek to settle it by peaceful means that suit them.²⁴²

5.2.2. The Judicial Means

Judicial means are among the means stipulated in international environmental agreements for settling disputes arising from the application and interpretation of the agreement. Arbitration and the judiciary are among the most important of these means. Most of the environmental agreements, such as the Basel and Rotterdam Conventions, in addition to the Vienna Conventions, have confirmed them.

Arbitration and the judiciary are of great importance in terms of resolving disputes. They are distinguished from other peaceful means that they are of an obligatory nature. Thus, the procedures they require during the course of the case as well as the rulings issued by them are mandatory for the parties to the dispute. They have a high degree of

²⁴² Basel Convention on Control and Cross-Border Disposal of Hazardous Wastes 1992, Article 20, paragraph 2.

sufficient experience to decide in various cases, as judges or arbitrators who work in these means are of high scientific expertise and competencies. So, they are considered an impartial, credible and transparent bodies by the parties to the conflict. Hence, we will discuss arbitration in the first part, and then we will discuss the judiciary represented by the Supreme Court of Justice in the second part of this requirement.

First: Arbitration

Arbitration is one of the most important means in matters of a legal nature, especially in the interpretation or application of international conventions. States recognize this method as one of the most effective, and equitable means of settling disputes that diplomacy has failed to settle.²⁴³

It should be noted that the arbitration resorted to by states is divided into two options. The first one is international arbitration, and the second is arbitration related to international environmental agreements. Therefore, we will deal with international arbitration at the beginning and then address arbitration contained in international environmental agreements as mechanisms to ensure compliance.

1-International Arbitration

Arbitration is one of the old judicial means that countries have resorted to in order to resolve their various disputes. The arbitration witnessed the presentation of the first case related to the environment in the early twentieth century, known as the "Trail Smelter" case between the United States of America and Canada. At first, this case was referred to the International Court of Justice pursuant to Article V of the bilateral treaty between the

²⁴³ The Hague Convention on the Peaceful Settlement of International Disputes of 1899, Article 16.

United States and Canada. It states that “disputes along the common frontier... shall be referred from time to time to the Joint International Commission.” The purpose of this agreement was to prevent border disputes between the two countries, especially with regard to water. In 1935 the International Court of Justice held a session in which it issued a report and a recommendation on the conflict between the United States and Canada. After reviewing the case, the court decided that Canada would pay 350,000 US dollars in compensation for damages. The United States of America rejected this ruling, which prompted the International Court of Justice to establish an arbitration court consisting of three members, one of them is Canadian, the other is American, and the last is Belgian, including two scientists, to make decisions on the main issues of the case.

— Finally, the Arbitral Tribunal handed down its judgment in 1941, declaring that “No State shall have the right to use its territory or permit its use in a manner that results in damage caused by fumes in the territory of another person or the property or persons located therein, when the case has serious consequences.” The court eventually ordered to compensate those American farmers directly, and to change the way operations conducted at the smelter to reduce the amount of harmful chemicals released during processing. This system was very expensive for the smelter, costing about \$20 million. The court's decision addressed this issue by striking a delicate balancing act whose aim was not to prevent pollution definitively, but rather to reduce the damage caused by pollution through regulatory actions.²⁴⁴

There is no doubt that this issue is one of the most important environmental issues that have established the principle of polluter pays. At the same time, it stressed that

²⁴⁴ Prunella, Catherine, (AN INTERNATIONAL ENVIRONMENTAL LAW CASE STUDY: THE TRAIL SMELTER ARBITRATION), International Pollution Issues- electronic research journal, 2014.

countries should not use activities within their territories that would harm the environment of other countries.

2- Arbitration of International Environmental Agreements

The majority of international environmental agreements included a special text urging members to arbitrate in the event of the exhaustion of diplomatic means. It is worth noting that some of these agreements organized cases related to arbitration in their annexes, as did the Basel Convention on the Control of the Transport of Hazardous Waste. So, Annex VI of this agreement has 10 articles regarding the procedures that the parties must follow in case they decide to resort to arbitration, in addition to the nature of the work of the arbitral tribunal and its terms of reference.

As for the Rotterdam Convention, it confirmed in Article 20 of it that arbitration will take place in accordance with the procedures adopted by the Conference of the Parties as soon as possible. Annex VI of this Agreement dealt with a set of articles related to its arbitration rules. Article 11 of the Vienna Convention went to the same orientation regarding conducting arbitration in accordance with the procedures adopted by the Conference of the Parties at its first ordinary meeting. Also, the first Conference of the Parties, held in Helsinki between April 26-28, 1989, decided the arbitration procedures for this Agreement in accordance with Annex II thereof. The same applies to the 1992 Convention on Biological Diversity, as rules for arbitration are detailed in Annex II of it. These rules are organized into 13 articles.

Another set of environmental agreements adopted the optional rules for arbitration of the Permanent Court of Arbitration for Natural Resources and/or the Environment of 2001, as is the case for the Convention on International Trade in Endangered Species of

Wild Fauna and Flora of 1973. Article 18, paragraph 2, of it states: “the parties may, by mutual agreement, submit the dispute to arbitration, in particular the Permanent Court of Arbitration in The Hague, and the parties that raised the dispute shall be bound by the arbitration decision.” In addition, Article 13, paragraph 2, of the Bonn Convention for the Conservation of Migratory Species of Wild Animals of 1979 confirmed the referral to the arbitration rules of the Permanent Court of Arbitration.²⁴⁵

Second: International Judiciary

The International Court of Justice is the most important tool of international justice in the present era. It is the main judicial body of the United Nations. Its mission, in accordance with international law, is to settle international disputes, and to issue advisory opinions on legal issues submitted to it by states parties and specialized United Nations agencies. In the context of environmental issues, the relevant international conventions indicated that the International Court of Justice is the judicial body to which the parties can submit a claim regarding disputes arising from the application and interpretation of these conventions.

The beginning of the nineties witnessed the presentation of one of the most important environmental cases to the International Court of Justice. The case known as the “Gapsikovo-Nagymaros” project between Hungary and Slovakia. The events of this case are summed up in the fact that the Ambassador of the Republic of Hungary filed a request on October 23, 1992 with the Registry of the International Court of Justice, in which he filed a case against the Czechoslovak Federal Republic in a dispute related to a project to

²⁴⁵ Hussein, Bou Tlja, (Mechanisms for the Implementation of International Conventions for the Protection of the Environment), Supra note No. 228, p. 95.

divert the course of the Danube River. Before the court proceeded with the proceedings, the Czechoslovak government had accepted the court's jurisdiction.

Following the negotiations led by the European Communities between Hungary and the Czechoslovak Republic, which dissolved and later became two independent states on January 1, 1993, the governments of Hungary and Slovakia signed an agreement concluded in Brussels on April 7, 1993. It provided for presenting some issues arising from the disputes that existed between the Republic of Hungary and the Czechoslovak Republic on the implementation and termination of the Budapest Treaty of 1977 Concerning the Establishment and Operation of the Gapsikovo-Nagymaros Dam Network, and the Establishment and Operation of the Temporary Solution.

In 1997, the Court issued its ruling on the subject of the dispute. It confirmed that Hungary was not entitled to suspend and abandon the works related to the Nagymaros project and part of the Gapsikovo project, to which the Budapest Treaty of 1977 and related instruments had assigned their responsibility. In addition, it stressed that the parties must negotiate in good faith in light of the prevailing situation based on the agreement signed between them. Also, both must take all necessary measures to achieve the objectives of this agreement. In the end, the court declared that Hungary should compensate Slovakia for the damage incurred as a result of Hungary suspending the works for which it was responsible and which it later abandoned.²⁴⁶

The environmental aspects of this case emerged through the parties' raising arguments related to the scientific and ecological effects of the project. These arguments were the

²⁴⁶ Report of the International Court of Justice August 1, 2001-July 31, 2001, General Assembly/56th Session, p. 38.

core of the work of the Court, which went to the place to examine these allegations and discuss them closely.²⁴⁷

5.3. Mechanisms Available Within the United Nations

It should be noted that the United Nations mechanisms that we will discuss fall within the framework of the so-called supervision mechanisms. These mechanisms are based on the procedures for reporting on the implementation of the instrument, following various mechanisms such as periodic reports, inspection or monitoring procedures, periodic evaluation or periodic review, visits or inquiries. They aim to gain access to some information. Thus, these mechanisms are among the means by which it is possible to monitor the state's compliance with its obligations under international agreements.²⁴⁸

Accordingly, this topic, in its first subject, examines the role of the General Assembly in improving Israel's compliance with environmental agreements through periodic monitoring reports issued by the committee established by it "Committee on the Exercise of the Inalienable Rights of the Palestinian People". Then, the second subject deals with the periodic evaluation or periodic review carried out by the Human Rights Council as another tool to ensure Israel's compliance with the application of environmental conventions.

²⁴⁷ Hussein, Bou Tlja, (Mechanisms for the Implementation of International Conventions for the Protection of the Environment), *Supra* note No. 228, p. 97.

²⁴⁸ Orellana, Marcos, *Typology of instruments of public environmental international law*, ECLAC - Environment and Development Series No. 158, 2013, *Supra* note No. 85, p. 17.

5.3.1. Reports of the Committee on the Exercise of the Inalienable Rights of the Palestinian People

In 1975, the General Assembly proclaimed the establishment of the United Nations Committee on the Exercise of the Inalienable Rights of the Palestinian People, pursuant to its resolution 3376, and requested it to recommend a program of implementation to enable the Palestinian people to exercise their inalienable rights of self-determination without external interference. The General Assembly then established the Division for Palestinian Rights to serve as the secretariat of the Committee, and gradually expanded the mandate of the Committee over time.

The importance of this committee for Palestine stems from the fact that its program of work is based on holding international meetings and conferences. It conducts meetings with civil society in all regions of the world, with the participation of political figures, representatives of governments, intergovernmental organizations, United Nations officials, parliamentarians, academics and representatives of the media. In addition, it files periodic reports to the General Assembly on the general situation in the Palestinian territories.²⁴⁹

In its reports to the United Nations, the Committee documents various Israeli violations in the occupied territories. So, it monitors everything related to settlement issues in terms of the increasing construction of settlement units and the confiscation of more Palestinian land. Also, it addresses the separation wall and the issues of apartheid discrimination. Furthermore, the committee monitors all violations by Israel of

²⁴⁹ United Nations Page, Issue of Palestine, United Nations Committee on the Exercise of The Palestinian People's Inalienable Rights.

Palestinian human rights, represented in the demolition of houses, restriction of freedom of movement, displacement and deportation of residents from their lands and settler violence, in addition to the practices faced by Palestinians in Area C.

It should be noted that environmental issues are among the matters monitored by this committee. For example, the committee's report issued in 2010 in the framework of the review of the situation in the Palestinian territories documented Israeli violations affecting the Palestinian environment. It stated that these lands are subjected to dredging and destruction of agricultural property and crops, in addition to restrictions on water sources in the West Bank, which led to a severe shortage of water quantities. Thus, Israel adopts discriminatory policy in the distribution of water quantities, so that its settlements get much more water than Palestinian. In its subsequent reports, the Committee has repeated all Israeli practices on Palestinian land, agriculture, crops and water, as well as Israeli violations impeding economic and social development.²⁵⁰

This committee consists of a group of member states. It also includes another group of countries that are represented as observers. This capacity is carried by the African Union, the League of Arab States and the Organization of Islamic Cooperation, which are organizations that also have a group of members represented by them.

The Committee has established a specialized division to carry out monitoring, research and publications activities on the Palestinian issue. It prepares and publishes the publications through the Internet in the form of weekly and monthly bulletins and reports reviewing the chronology of events in the occupied Palestinian territories. In addition, it provides the necessary briefings on the Palestinian issue. The Committee then ultimately

²⁵⁰ Report of the Committee on the Exercise of the Palestinian People's Inalienable Rights, issued by the General Assembly in 2010.

presents these reports to the General Assembly and the Security Council, which, in turn, issue a set of recommendations on the situation in the Palestinian territories.

There is no doubt that the work of the committee is carried out according to an expanded and accurate system and mechanism through which Palestine and its various issues gain great momentum. The committee aims primarily to enable the Palestinian people to exercise their rights. So, it documents Israeli violations and actions contrary to public international law and its various branches. Therefore, the Committee's briefing of the various environmental violations carried out by Israel in the Palestinian territories, through its monitoring operations, constitutes a new pressure factor that can push Israel to control its environmental behavior in line with modern international trends.

5.3.2. Human Rights Council

The Human Rights Council is the highest level of the United Nations mechanisms that concerned with the protection of human rights. This Council consists of 47 countries mainly concerned with the promotion and protection of all human rights around the world. The General Assembly established this Council on March 15, 2006 by its resolution 251/60. A year later, the Council adopted its institution-building package to guide its work and establish its procedures and mechanisms, including the universal periodic review mechanism, which is used to assess the human rights situation in all United Nations Member States.²⁵¹

This mechanism is among other mechanisms that Palestine can use within the framework of Israel's obligation to implement environmental agreements. It can be said that this mechanism is of particular importance than the rest ones. Despite the importance

²⁵¹ The official page of the Un Human Rights Council, background information on the Council.

of the mechanisms, we mentioned earlier, some of them face difficulties in application, and others need Israeli approval such as the agreement to go to arbitration and litigation. Thus, this mechanism is characterized by being designed to improve the human rights situation in all countries and address human rights violations wherever they occur. It is worth mentioning that this Council seeks to protect and promote human rights contained in international conventions and instruments such as the Universal Declaration of Human Rights 1948 and the 1966 International Covenants. The rights contained in these instruments are binding on application to all countries.

Palestine is of great importance within this Council, as item 7, entitled "Situation of human rights in Palestine and the other occupied Arab territories", is an important element on the Council's agenda. In addition, the Council appoints the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, whose task is to assess the situation. The Council also considers the situation of human rights in Palestine in the context of the universal periodic review.

The idea of a periodic review is based on the fact that states, every four and a half years, can review the human rights record for their counterparts, during a session of the Intergovernmental Working Group of the Human Rights Council in Geneva. All States without exception participate actively in the review of the human rights record of their counterparts and in the development of recommendations for them. United Nations bands and individual United Nations entities can also submit, on a voluntary basis, midterm reports or annual updates to record progress in the implementation of recommendations.²⁵²

²⁵² The United Nations- the Human Rights Council, make the most of the UPR at the country level - practical guidance.

The work of the Council with regard to the promotion and protection of human rights related to the environment has evolved; as the first Special Rapporteur on human rights and the environment was appointed in 2012. So, the periodic review carried out by the Council includes environmental issues. Since Israel is obliged to respect and apply human rights in the occupied territories, Palestine can review Israel's human rights record with regard to its violations of all Palestinian human rights in the Palestinian territories, including those related to the environment. Thus, the right of Palestinians to live in a healthy, safe, clean and sustainable environment comes through Israel's commitment to protect the Palestinian environment and stop its negative measures against it. In addition, achieving sustainability comes only through the Palestinian people's enjoyment of their right to manage and use their natural resources away from Israeli exploitation and looting of these resources.

The Council then holds interactive discussions and dialogues with the participation of all Member States on the human rights record of the state under consideration. After that, all other states make recommendations on all human rights, including environmental issues. Such recommendations are measures in which states urge the state under review to improve compliance with international human rights conventions. Eventually, the Human Rights Council adopts its final report.

Accordingly, we come to the conclusion that despite the abundance of various mechanisms for implementing the environmental agreements that we discussed in this chapter, the reality and effectiveness of these mechanisms in practice are surrounded by many difficulties and obstacles, which prevents us to push Israel to implement these agreements. However, it appears that the Human Rights Council may be the most

effective of these mechanisms due to the unique procedures it takes to ensure respect and implementation of human rights, including environmental rights.

Conclusion

The environment in various countries of the world is exposed to many problems due to the economic, environmental and political changes that the contemporary world is witnessing. However, the Palestinian environment is exposed to special challenges due to the Israeli occupation and the control it imposes on the occupied Palestinian territories. It continues to attack the Palestinian land and environment and works to pollute and destroy it through its occupation measures and security arguments related to the construction of the apartheid wall and, which constitutes an obstacle to the preservation of environmental systems and natural monuments in Palestine. In addition, Israel exploits Palestinian natural resources to meet its needs and the needs of the residents of the settlements established on the occupied Palestinian territories, which contributes to aggravating the environmental conditions and depleting the natural resources in the Palestinian territories.

There is no doubt that Israel has obligations related to the protection and preservation of the environment, whether under the signed environmental agreements, or based on its existing obligations under international humanitarian law and international human rights law, due to the overlap of environmental damage with basic human rights.

By violating its obligations to protect the environment under international environmental conventions, and completely ignoring its duties as an occupying power towards the residents of the occupied territory with regard to preserving the environment, and based on the Israeli violations of the Palestinian environment that have been discussed in this study, it is evident the occupying power is fully responsible for violation of conventions and rules of international law related to the protection of the environment.

However, putting an end to these environmental violations can be achieved by making more international efforts aimed at developing new mechanisms with regard to the implementation of states' obligations contained in international agreements, especially those mechanisms that exist in environmental agreements, given the importance of preserving the environment in the continuation of human life and various living organisms.

There is no doubt that the real obstacle that stands in the way of not making tangible progress in order to push Israel to implement and adhere to environmental agreements in the Palestinian territories is due to the weakness of the enforcement means provided by environmental agreements in particular, and international law in general. So, the element of obligation is still unclear. It is one of the most complex issues of international law, as its mechanisms surround many obstacles and practical difficulties, due to the specificity of the existing international system, which shows less interest in this aspect, while it pays wide attention with regard to other political issues and considerations.

Results

- 1- Israeli control over the occupied Palestinian territories, especially areas classified as "C", is the main reason that contributes to the pollution of the Palestinian environment. The alleged Israeli security measures contribute to the destruction of the Palestinian environment and the depletion of its natural elements.
2. The development of international environmental law legislation has witnessed significant progress over the past 50 years. Still, the development of such legislation is just as important as the need to develop strict and effective enforcement and compliance measures.
3. The systematic Israeli destruction of the Palestinian environment and the overexploitation of its natural resources contribute to hindering Palestine's achievement of the Sustainable Development Goals in line with the sustainable development plans that the United Nations called to be achieved for 2030.
4. Israeli settlements and the apartheid wall constitute the main obstacle facing Palestine and its people in the occupied areas. Thus, the measures accompanying the construction of the wall and settlements are considered the real threat to the Palestinian environment, knowing that international law and international resolutions confirm that they are illegal.
5. The Israeli discrimination with regard to environmental issues and needs between settlers and Palestinians on the basis of race is a torpedo to all efforts and international human rights charters that call for respect for all human beings without discrimination.
6. Israel's dispossession with the Palestinian National Authority of all its powers related to environmental aspects in accordance with the Oslo Accords in Area "C" further

deteriorates the environmental conditions of the Palestinian population residing in those areas. Thus, Israel prevents the Palestinian Authority from operating in those areas, and at the same time refrains as an occupying power from carrying out its duties and implementing its obligations in it.

Recommendations

First: at the national level

1. The Constitutional Court shall reconsider its decision calling for international conventions to be considered lower than the Constitution. This decision disrupts the entry into force of environmental agreements in the Palestinian.
2. It is necessary to spread awareness and knowledge of the importance of the environment within Palestinian society. Raising awareness of the Palestinian people of their environmental rights guaranteed under international resolutions and conventions is an important basis for knowing the extent of the negative Israeli violations against the Palestinian environment, and thus participating at all levels in exposing and disseminating these violations.

Second: at the international and regional level

1. The Palestinian National Authority, through the Environmental Quality Authority and other relevant bodies, shall continue to work with all international and regional parties from other countries, organizations and partners in order to highlight the environmental reality witnessed by Palestine as a result of Israeli violations. Working with the United Nations and its specialized agencies is useful in this regard, especially the Human Rights Council.
2. Extensive participation in all international environmental work and conferences, to emphasize the commitment of Palestine in enhancing cooperation on common global issues, and exploiting it to raise everything related to the challenges imposed by Israel on the Palestinian environmental sector. Thus, Israel appears as a state that is not committed

to its duties and the basis of cooperation and partnership imposed by environmental necessities in the twenty-first century.

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ملخص

تهدف هذه الدراسة الى الفاء الضوء على التدهور والتدمير الذي تشهده البيئة والموارد الطبيعية في الأراضي الفلسطينية المحتلة، جراء الممارسات والاجراءات الإسرائيلية في المناطق الفلسطينية، كما تسلط الضوء على مجموعة الاتفاقيات الدولية والقواعد والعرفية والمبادئ القانونية المتعلقة بالحفاظ على البيئة وحمايتها من التلوث، وذلك من خلال الإجابة على تساؤلات الدراسة التي ركزت على معرفة مدى تأثير وفاعلية الاتفاقيات والنصوص القانونية المتعلقة بحماية البيئة الموجودة في مختلف اتفاقيات القانون الدولي بشكل عام، والقانون الدولي للبيئة بشكل خاص، في توفير الحماية للبيئة الفلسطينية، وقد تم اختيار عنوان الدراسة للبحث في الطرق والتدابير التي من شأنها تطبيق الاتفاقيات البيئية في فلسطين.

وتوصلت الدراسة الى مجموعة من النتائج، أهمها:

أولاً: أن استمرار سيطرة إسرائيل على الارض الفلسطينية يساهم في زيادة تفاقم الأوضاع البيئية وتدهورها، خاصة أن الأنشطة الإسرائيلية المتعلقة بالتوسع الاستيطاني وإقامة الجدار الفاصل تطل البيئة والانسان الفلسطيني بشكل مباشر.

ثانياً: أن ضعف آليات الامتثال الموجودة في الاتفاقيات البيئية، بالإضافة الى التعقيدات التي تحيط بعمل آليات التنفيذ المتاحة في القانون الدولي، تساهم في استمرار الانتهاكات الإسرائيلية بحق البيئة الفلسطينية، وتحول دون القدرة على إلزام إسرائيل باحترام وتنفيذ الالتزامات الملقاة على عاتقها بموجب الاتفاقيات البيئية من جهة، وبموجب الالتزامات التي تفرضها اتفاقيات وقواعد القانون الدولي الإنساني بشأن حماية البيئة من التلوث من جهة أخرى.

وفي النهاية تم تقديم مجموعة من التوصيات وكان من أبرزها:

أولاً: على الصعيد المحلي، يجب ان يتم إعادة النظر في قرار المحكمة الدستورية الفلسطينية العليا المتعلق بمرتبة الاتفاقيات الدولية في القانون الفلسطيني الداخلي.

ثانياً: على الصعيد الدولي، لا بد من تكثيف الجهود الفلسطينية الرسمية بشأن ابراز الواقع البيئي في فلسطين امام الأطراف والجهات الدولية والإقليمية، والعمل على نشر الانتهاكات والممارسات الإسرائيلية بحق البيئة الفلسطينية، امام الرأي العام الدولي، لكي تظهر اسرائيل بصورة الطرف الخارج عن الاجماع الدولي الداعي الى ضبط الدول لممارساتها وانشطتها البيئية، والتعاون على جميع المستويات في سبيل تحقيق ذلك.

