

**Arab American University**  
**Faculty of Graduate Studies**  
**Department of Legal Sciences**



**Master Program in International Law and Diplomacy**

**The Israeli Occupation Withholding of the Palestinian  
Martyrs' Corpses: Assessment from International Law  
Perspectives**

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**This Thesis was Submitted in Partial Fulfillment of the  
Requirements for the Master Degree in International Law  
and Diplomacy**

**Palestine, October/2024**

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## **Thesis Approval**




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## **Declaration**

I declare that, except where explicit reference is made to the contribution of others, this thesis is substantially my work and has not been submitted for any other degree at the Arab American University or any other institution.

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## **Dedication**

I dedicated this thesis to the victimized Palestinian people, to the souls of the Palestinian and Arab martyrs and their families, the prisoners, and detainees, and to all whom the Israeli colonial occupation has infected.

I am deeply grateful to my dear parents, Mohammed Ali and Rabia Khalil, for their unwavering support and encouragement.

This thesis is also dedicated to my beloved husband, Rami Abu Aisha, who has supported and understood me throughout my endeavors. His partnership, dedication, and love have been my anchor.

To my cherished daughters, Talia, Leen, and Nadine Abu Aisha: the reason for my being reaffirming them is that nothing is impossible, no reason to be afraid to pursue your dreams and aspirations. I would like to thank you all for your patience and understanding as I pursued and completed this degree.

Student: Hind “Mhammed Ali” Ahmad Khalil

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# **The Israeli Occupation Withholding of the Palestinian Martyrs' Corpses: Assessment from International Law Perspectives**

**By: Hind “Mhammed Ali” Ahmad Khalil**

**Supervision Committee:**

**Dr. Rizq Samoudi**

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## **Abstract**

This thesis examines the Israeli practice of withholding the corpses of Palestinian martyrs, identifying it as a significant violation of international legal standards and a form of collective punishment expressly forbidden under International Law. Through a comprehensive legal analysis, the thesis evaluates Israel's policy regarding the retention of Palestinian corpses and its alignment with international legal obligations while exploring the broader humanitarian and political ramifications of such actions. Key legal principles examined include the prohibition of cruel, inhuman, and degrading treatment, the dignity rights of the deceased and their families, and obligations for the proper treatment, identification, and repatriation of human remains. Utilizing a qualitative legal methodology encompassing doctrinal analysis, case law, international treaties, and testimonies, it also assesses Israel's actions as an occupying power within applicable legal frameworks.

The findings reveal that the practice of withholding Palestinian corpses constitutes a severe breach of international law, introducing the concept of "Arbitrary Withholding"—a novel legal term paralleling "Arbitrary Detention." This scientific work also identifies violations of international criminal law, such as enforced disappearance, and unauthorized post-mortem practices such as organ trafficking and organ theft.

In response to these identified violations, the thesis proposes a range of legal and policy recommendations aimed at activating international accountability mechanisms, including potential proceedings before the International Criminal Court (ICC) and United Nations human rights bodies. It advocates for diplomatic and legal initiatives to enhance adherence to existing legal norms and calls for the formal recognition of "Arbitrary Withholding" in international legal discourse. Moreover, it emphasizes the need for legal remedies and reparative measures for bereaved families, encompassing psychological support, improved documentation, and access to judicial recourse.

**Keywords:** Palestinian martyrs' corpses, Israeli authorities, International Law, Arbitrary withholding, Legal accountability.

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## List of Definitions of Abbreviations

Abbreviations	Title
API	Additional Protocol I
APII	Additional Protocol II
ECHR	European Convention on Human Rights
GCI	First Geneva Convention
GCII	Second Geneva Convention
GCIII	Third Geneva Convention
GCIV	Fourth Geneva Convention
ICESCR	International Covenant on Economic, Social, and Cultural Rights
IL	International Law
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Tribunal for the Former Yugoslavia
IHL	International Humanitarian law, also known as the law of armed conflict.
CIHL	Customary International Humanitarian Law
OPT	Occupied Palestinian Territory

# **Chapter One: General Framework and Introductions**

## **1.1 General Introduction**

The inherent dignity of all human beings should be honoured without exception, regardless of their gender, race, ethnicity, religion, nationality, political beliefs, or any other defining characteristic. Regrettably, throughout history, societies have been plagued by inhumane and degrading treatment. This mistreatment often extends to the handling of deceased individuals, with instances of mutilation and a lack of proper burial or cremation following religious customs and the fundamental principle of respect. The belief that the deceased and their remains should be treated with respect and dignity is widely held and deeply ingrained in various societal, religious, and cultural practices. Legal safeguards regarding the handling of martyrs' corpses have been established for a long time in International Humanitarian Law (IHL), International Criminal Law (ICL), Human Rights Law (IHRL), and domestic legislation. The handling of deceased corpses is a matter of concern in international criminal law, which prohibits the desecration of bodies. Violating the dignity of the deceased is now being acknowledged as a criminal act, reflecting an assault on personal integrity. These protections include the obligation to locate missing persons and also extend to ensuring the proper burial of the deceased. However, the implementation of these regulations poses challenges, and there is a lack of criminalization for certain actions against the Palestinian martyrs' corpses, such as hindering identification, neglecting bodies on the battlefield, withholding corpses, and unauthorized exhumation. Furthermore, Political or legal action is not doing enough to address the growing number of discriminatory laws and practices against the corpses of Palestinian martyrs. This necessitates looking for stronger instruments and strategies to apply pressure on their side. In this context, this thesis explores the practices of Israeli authorities regarding Palestinian martyrs' corpses and evaluates these practices against international standards. The thesis is structured into five chapters, each addressing critical aspects of this issue:

The First chapter is the general framework and introductions, which outline the objective of the thesis, the research hypothesis, and the research problem. It also defines the scope and limitations of the thesis, describes the methodology employed, reviews

the relevant literature, and establishes the theoretical framework guiding the research, accordingly, the researcher has put forth a hypothesis. This hypothesis introduces a new term in IHL: "Arbitrary Withhold." This term refers to the unlawful retention of corpses of civilians, prisoners of war, or military personnel, where the responsible party refuses to release the bodies to the proper authorities or families. Often occurring in armed conflicts, this practice carries significant legal, ethical, and emotional consequences. The term "Arbitrary Withhold" is intended to parallel the established concept of "Arbitrary Detention" in International Law (IL), which pertains to the unlawful detention of living individuals. This concept will be elaborated upon in the Theoretical Framework section of the thesis. This Thesis, "Arbitrary Withhold" specifically addresses the unlawful retention of Palestinian martyrs' corpses by Israeli authorities, encompassing civilians, prisoners of war, and military personnel. The researcher proposes that this term will enhance understanding of the plight of these martyrs and contribute to the broader discussion on this matter.

The second chapter delves into the international legal standards and norms concerning the treatment of deceased individuals during times of war and conflict. Additionally, It covers various aspects of IL, including IHL, IHRL, and ICL, highlighting the legal obligations related to the handling of deceased bodies. Moreover, Chapter Three traces the origins of the Palestinian-Israeli conflict and analyzes it through the framework of IL. It explores significant resolutions and legal instruments that have played a pivotal role in shaping and influencing the dynamics of the conflict.

The fourth chapter offers a detailed examination of Israeli practices concerning the retention of Palestinian deceased individuals' bodies. It begins with a comprehensive historical overview, presenting significant historical events and recent developments in this area. Subsequently, the chapter delves into an analysis of the specific Israeli laws and policies governing the management of these bodies, including the use of "cemeteries of numbers" for storage and specialized refrigeration units for preservation. Moreover, the chapter investigates serious issues such as unauthorized organ harvesting and experimental procedures performed on the bodies, shedding light on instances of mistreatment. To provide deeper insights, testimonies and interviews are included.

Additionally, the chapter addresses the issue of enforced disappearance and its impact on the treatment of the deceased, as well as the ethical and emotional implications of these practices. The final section focuses on the efforts of Palestinian human rights organizations working to repatriate the withheld bodies. It evaluates the advocacy and legal challenges encountered by these organizations in their pursuit of justice and accountability. By highlighting these ongoing struggles, the chapter underscores broader human rights concerns and the inherent complexities in seeking redress.

Chapter Five provides an in-depth legal analysis of Israel's practices concerning the withholding of Palestinian martyrs' corpses, framed within the context of IL. This chapter begins by examining the principles of IHL, which governs the treatment of deceased individuals during armed conflicts. It evaluates how Israel's practices align with or contravene IHL provisions related to the respectful handling of remains, the obligation to ensure proper burial and the prohibition against the desecration of corpses. Following this, the chapter explores the relevant aspects of IHRL, focusing on the protections afforded to individuals even after death. It scrutinizes how the withholding of corpses might infringe upon the rights to dignity and family life as enshrined in human rights treaties and conventions. The analysis then extends to ICL, particularly addressing potential violations that could be classified as war crimes or crimes against humanity. This section assesses whether the practices involving Palestinian martyrs' corpses could constitute such grave offences under ICL and the implications for accountability and justice. By integrating these legal frameworks, Chapter Five aims to provide a comprehensive perspective on the legality of Israeli policies and practices concerning Palestinian martyrs' corpses. It critically analyzes how these practices are interpreted and challenged within IL, offering insights into the legal remedies and avenues for redress available under IHL, IHRL, and ICL.

The final section synthesizes the findings of the preceding chapters and presents the overall conclusions drawn from the thesis. It consolidates the insights gained from the historical, legal, and practical analyses of the Israeli practices concerning the withholding of Palestinian martyrs' corpses. This chapter will highlight the key legal and humanitarian issues identified throughout the research, summarizing the impact of

these practices on affected individuals and communities. Following the conclusions, the chapter offers recommendations aimed at addressing the identified problems. These recommendations are intended to provide actionable solutions and strategies for improving the treatment of Palestinian martyrs' corpses and ensuring adherence to international legal standards. They encompass proposals for legal reforms, enhanced enforcement mechanisms, and avenues for increased advocacy and support from international bodies. By concluding with these recommendations, the chapter aims to contribute to the ongoing discourse on IHRL and IHL, advocating for effective measures to uphold justice and accountability in the context of the Palestinian-Israeli conflict.

## **1.2 Thesis Objectives**

Since the Israeli Occupation has persisted in withholding 520 Palestinian martyrs' corpses<sup>1</sup> including those of women and children while keeping some of them in refrigerators and placing others in military "cemeteries of numbers. Israel uses this policy as a tool of control to collectively punish the Palestinians and as a systematic colonial practice that seeks to impose its sovereignty over both the body and the land. The primary objective of this thesis is to critically analyze and address the Israeli practice of withholding Palestinian martyrs' corpses, focusing on its legal, political, and humanitarian implications. To achieve this, the thesis is structured around several key objectives.

### **1.2.1 Detailed Examination of Legal Violations**

The first objective is to conduct a comprehensive review of how Israel's practice of withholding Palestinian martyrs' corpses contravenes international law (IL). This includes analyzing International Humanitarian Law (IHL), International Human Rights Law (IHRL), and International Criminal Law (ICL). The thesis will scrutinize the legal frameworks that are designed to protect the rights of deceased individuals and assess how Israel's actions constitute breaches of these norms.

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(n.d.). الحملة الوطنية لاسترداد جثامين الشهداء المحتجزة والكشف عن مصير المفقودين<sup>1</sup>  
Www.makaberalarqam.ps. <https://www.makaberalarqam.ps/ar>

### **1.2.2 Assessment of Political and Colonial Dimensions**

Another key objective is to explore the political and colonial aspects of Israeli policy. This involves understanding how the practice serves as a tool for collective punishment and a mechanism of control over Palestinian bodies and land. The thesis will investigate how these practices reflect broader colonial strategies and their impact on the Palestinian populace, highlighting how this policy functions as part of a broader agenda.

### **1.2.3 Humanitarian Impact Analysis**

The thesis also aims to evaluate the humanitarian consequences of withholding the corpses. This includes assessing the emotional trauma experienced by families, the disruption of traditional and cultural burial practices, and the overall impact on communal solidarity and grief processes. Understanding these humanitarian impacts is crucial for grasping the full extent of the suffering caused by this practice.

### **1.2.4 Development of Legal and Diplomatic Strategies**

A significant objective is to propose a comprehensive strategy for initiating an effective investigation into the practice of withholding Palestinian martyrs' corpses. This will involve exploring various legal and diplomatic avenues, including the role of international bodies such as the United Nations and the UN Working Group on Arbitrary Detention. The goal is to develop a systematic approach to address this issue and ensure Palestinian voices are heard and their rights upheld.

### **1.2.5 Proposal for Legal Framework Enhancement**

The thesis will introduce and advocate for the "Arbitrary Withholding" concept within international legal discourse. This concept parallels the existing term "Arbitrary Detention" used for living individuals. By integrating this concept into official mandates and legal frameworks, the thesis seeks to address the practice of withholding corpses more effectively and garner international attention and action.

### **1.2.6 Advancement of Justice and Accountability**

Another objective is to contribute to the broader efforts for justice for the Palestinian people. This includes ensuring that international legal frameworks evolve to address the issue of withheld corpses and reinforcing mechanisms for holding perpetrators accountable for violations of international law. The thesis aims to support the pursuit of justice and the enforcement of human rights.

### **1.2.7 Engagement with Stakeholders**

Finally, the thesis emphasizes the importance of coordinating with relevant stakeholders, including Palestinian human rights organizations, international legal bodies, and diplomatic entities. By advocating for collaborative efforts, the thesis seeks to leverage available resources and support the development of actionable legal and diplomatic strategies to address the issue of withheld corpses.

## **1.3 Thesis Importance**

This thesis undertakes a comprehensive examination of Israeli policies regarding the retention of Palestinian martyrs' bodies, situated within the prism of international law (IL). The central objective is to scrutinize these practices, evaluate related hypotheses, and determine potential infringements of international legal norms, while simultaneously considering their broader legal and humanitarian ramifications. The significance of this study is underscored by its effort to fill a notable void in the current academic discourse by methodically exploring Israeli actions pertaining to the withholding of Palestinian corpses and their alignment with international law.

The research enhances the understanding of the legal aspects involved, providing an in-depth analysis beneficial to scholars and practitioners in international humanitarian law (IHL), international human rights law (IHRL), and international criminal law (ICL). Through this investigation, the thesis seeks to shed light on the legal and ethical infractions linked to these practices, thereby enriching the academic dialogue surrounding state accountability in occupied territories.

On a larger scale, the implications of this study extend to influence local and global policy debates. Locally, the findings may bolster human rights advocacy efforts, equipping Palestinian legal entities and organizations to pursue justice and accountability more effectively. By elucidating the repercussions of Israeli policies, the research could reinforce calls for reform and foster enhanced engagement with IHL and IHRL on a national front. Internationally, this research aspires to contribute to the broader discourse regarding human rights infringements, potentially catalyzing legal and diplomatic initiatives. The thesis aims to proffer policy recommendations that can inform international legal frameworks, shape the evolution of accountability mechanisms, and cultivate increased global collaboration in addressing such violations.

In sum, the ultimate aim of this thesis is to promote a deeper understanding and enforcement of international law, establishing a solid theoretical and practical foundation to tackle violations associated with the retention of corpses in conflict zones. This endeavor seeks to ensure heightened protection for the deceased and deliver justice for the grieving families impacted by these policies.

#### **1.4 Thesis Hypothesis and Problem**

This thesis investigates a pressing concern within the realm of international humanitarian law and human rights—the Israeli practice of withholding Palestinian martyrs' bodies. The retention of these bodies by Israeli authorities, often without proper identification, burial, or transparency, engenders significant uncertainty regarding their fate. This ongoing practice carries serious humanitarian implications, particularly relating to the dignity of the deceased and the emotional distress inflicted on their families. It compels a critical evaluation of whether such withholding constitutes a violation of international legal norms, notably International Humanitarian Law (IHL) and International Human Rights Law (IHRL), which protect the rights and dignity of both the deceased individuals and their families.

The main focus of this research is the apparent breach of these normative frameworks and the corresponding absence of accountability for Israeli authorities regarding their actions. This issue not only impacts the families deprived of the

opportunity to mourn and conduct proper burial rites for their loved ones but also raises broader concerns about the enforcement and adherence to international law within occupied territories. This thesis aims to ascertain whether this practice contravenes established international protocols and explores potential avenues for holding responsible parties accountable through mechanisms such as the United Nations and the International Criminal Court (ICC).

In tackling this complex issue, the research introduces the concept of "Arbitrary Withholding," a legal term proposed to characterize the unlawful retention of the deceased's bodies, irrespective of their status—be it civilian, prisoner of war, or military personnel. This term seeks to address a gap in the legal discourse surrounding the treatment of the deceased in situations of occupation, advocating for a more defined legal framework.

To investigate these concerns, the research will address several key questions:

1. What is the international legal stance regarding the Israeli practice of withholding Palestinian martyrs' bodies, including those of war prisoners, military personnel, and civilians?
2. How does international law view the alleged theft of organs from the withheld bodies of martyrs?
3. What measures can be implemented locally and internationally to retrieve the withheld martyrs' remains?
4. Is there a mechanism to hold perpetrators accountable under the international criminal justice system for their actions in this regard?
5. How can the concept of "Arbitrary Withholding" be effectively applied to the issue of Palestinian martyrs' bodies?

Through these inquiries, this thesis endeavors to deliver a thorough analysis encompassing both the legal and humanitarian dimensions of the issue, thereby enhancing understanding of the assumed violations at play and proposing potential pathways for accountability and remedial action.

## **1.5 Thesis Limitations**

This study investigates the violations of international law (IL) and human rights standards by Israeli occupation authorities regarding the treatment of Palestinian martyrs' corpses within Palestinian territories. The research specifically focuses on the period from 1964 to the present, as 1964 marks the documented beginning of Israel's practice of withholding the bodies of Palestinian martyrs. This timeline will be thoroughly examined and analyzed in the thesis. The scope of the study is confined to assessing the conformity of these practices with international legal and ethical standards, as well as exploring their impact on Palestinian individuals and communities.

## **1.6 Thesis Methodology**

In this thesis, the researcher employed a qualitative analytical approach to examine the legal aspects of the Israeli practice of withholding Palestinian martyrs' corpses in occupied Palestinian territories. The methodology primarily involves a descriptive-analytical and legal analysis of international law, specifically focusing on International Humanitarian Law (IHL), International Human Rights Law (IHRL), and International Criminal Law (ICL). This approach was chosen for its adaptability and thoroughness in exploring the issue's complexities.

The thesis utilizes both primary and secondary sources. Primary resources include international law conventions and treaties, such as those pertaining to IHL, IHRL, and ICL, which are essential for understanding the legal framework surrounding the withholding of corpses. Secondary resources consist of scholarly books, academic journals, and relevant case studies that provide additional context and support for the analysis. Furthermore, the study incorporates qualitative data obtained through interviews with individuals directly related to the research topic, including witnesses and experts. This method allows for a comprehensive examination of the subject matter, providing insights into the real-world implications and experiences related to the issue. Current statistical data relevant to the thesis is also included to support the analysis and provide a detailed understanding of the ongoing situation.

## 1.7 Literature Review

In the comprehensive review of this thesis, several key documents have been identified that provide significant context and insights into the subject matter. One particularly noteworthy source is (Gloria Gaggioli's "International Humanitarian Law: The Legal Framework for Humanitarian Forensic Action" (2018) <sup>1</sup>. Gaggioli offers an in-depth exploration of the legal principles of International Humanitarian Law (IHL), particularly concerning treating deceased individuals during armed conflicts. She emphasizes the rights of families and the dignity owed to the deceased, outlining the essential obligations of belligerent parties, including (1) the recovery of deceased persons, (2) the dignified treatment of their remains, and (3) the facilitation of bodies' returns to their families. These obligations are intrinsically linked to IHL's overarching aim to humanize the conduct of warfare. While Gaggioli's work is invaluable in providing theoretical insights into IHL and its application in forensic contexts, it primarily addresses general obligations and normative standards without delving into specific violation cases. Conversely, this thesis seeks to apply these foundational principles to a pressing issue: the systematic withholding of Palestinian martyrs' corpses by Israeli authorities. This ongoing practice, which dates back to 1964, involves the retention of remains under various conditions, including refrigerated storage or interment in military "cemeteries of numbers." By analyzing these actions in light of IHL, the thesis comprehensively examines the political, humanitarian, and legal dimensions unique to the Israeli-Palestinian conflict.

Moreover, this thesis introduces the term "Arbitrary Withholding" as a novel legal concept aimed at addressing the issue of withheld corpses. It also proposes practical legal and diplomatic interventions to bridge the gap between the theoretical framework and its enforcement in specific contexts. In summary, while Gaggioli's work provides essential theoretical foundations for understanding IHL and forensic action,

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<sup>1</sup> Gaggioli, G. (2018). International Humanitarian Law: The legal framework for humanitarian forensic action. *Forensic Science International*, 282, 184–194. <https://doi.org/10.1016/j.forsciint.2017.10.035>

this thesis advances the discourse by applying these principles to concrete violations and by offering actionable solutions to enhance the legal framework for accountability.

Another source is (Ooms, D. *Withholding the Dead on Necro power, Contentious Politics, and Contested Martyrdom in the Mobilization of Palestinians against the Israeli Occupation.* (n.d.)<sup>1</sup> Ooms, D. investigates the implications of Israel's practice of withholding Palestinian corpses, a phenomenon referred to as "necro power." This practice is strategically employed to inhibit the conversion of funerals into political protests by retaining the bodies of martyrs. Ooms analyzes how this act disrupts both the structural and cultural dimensions of Palestinian contentious politics, thereby undermining the commemorative and discursive processes inherent in acts of remembrance. The absence of the body, Ooms argues, transforms the mourning process into a politically charged event, creating a space of contested meanings. Although she critiques this practice as a continuation of injustice, she also recognizes its dual role in fostering mobilization, with "necroviolence" emerging as a compelling emblem of oppression that motivates collective action and strengthens solidarity among Palestinians. Additionally, Ooms challenges existing social movement theories for neglecting the significance of martyrs in mobilization, urging a reevaluation of theoretical frameworks that encompass posthumous agency and power dynamics.

In contrast, this thesis explores the legal dimensions of the withholding of corpses, identifying it as a violation of essential international legal instruments such as International Humanitarian Law (IHL), International Human Rights Law (IHRL), and International Criminal Law (ICL). This research introduces the term "Arbitrary Withholding," paralleling the established concept of "Arbitrary Detention," which Ooms does not address. Employing a descriptive-analytical methodology, this thesis utilizes primary and secondary sources, including international legal conventions, case law, statistical information, and interviews with key stakeholders. This thorough analysis advocates for the formulation of strategic legal and diplomatic frameworks aimed at

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<sup>1</sup> Ooms, D. (n.d.). *Withholding the Dead On Necropower, Contentious Politics and Contested Martyrdom in the Mobilisation of Palestinians against the Israeli Occupation.* <https://studenttheses.uu.nl/bitstream/handle/20.500.12932/37605/Thesis%20Dian%20Ooms%205609496%20FINAL.pdf?sequence=1>

securing justice and accountability. While Ooms focuses on the socio-political impacts of corpse withholding this thesis situates the practice within the broader context of systematic colonial practices, adding another analytical dimension that is not fully explored in Ooms's work.

The examination of the Israeli practice of withholding Palestinian martyrs' corpses, as outlined in (Daher-Nashif's, *The Colonial Management of Death: To Be or Not to Be Dead in Palestine*, 2020)<sup>1</sup> presents a critical perspective on the societal and colonial implications of such actions. Daher-Nashif's work highlights the profound emotional toll on Palestinian families who endure the preservation and freezing of their deceased loved ones, utilizing a qualitative exploratory design grounded in theory to fill a significant gap in the scholarly literature regarding death and mourning within a colonial framework.

This thesis seeks to expand upon Daher-Nashif's findings by incorporating a broader legal analysis. It situates corpse withholding within the context of International Humanitarian Law (IHL), International Human Rights Law (IHRL), and International Criminal Law (ICL)—areas that Daher-Nashif does not engage with in depth. The study further introduces the notion of "Arbitrary Withholding," which frames the ethical dimensions of this practice, thereby enriching the discourse surrounding the legal implications.

While Daher-Nashif's focus remains primarily on the qualitative aspects of personal and societal impacts, this thesis aims to provide a dual approach by integrating both qualitative and quantitative data. This includes a thorough examination of international legal conventions alongside statistical analysis. In doing so, the thesis not only critiques the colonial dimensions of corpse withholding but also seeks to propose actionable legal recommendations to address this issue within an international law framework. By merging legal theory with empirical evidence, the analysis aspires to

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<sup>1</sup> Daher-Nashif, S. (2020). Colonial management of death: To be or not to be dead in Palestine. *Current Sociology*, 69(7), 945–962. <https://doi.org/10.1177/0011392120948923>

contribute to a more nuanced understanding of the confluence between law and the human experience of mourning under colonial conditions.

## 1.8 Theoretical Framework

The thesis presented introduces the concept of "Arbitrary Withholding" to articulate the wrongful retention of corpses, particularly concerning Palestinian martyrs, within the framework of the Israeli-Palestinian conflict. This term aims to fill a notable gap in both legal and academic discussions by underscoring the unique nature of the wrongful withholding of remains as a distinct violation of human rights. It sets apart this act from "arbitrary detention", which addresses situations involving depriving living individuals of liberty.

The term "corpse" carries different definitions in English and law dictionaries. According to the English dictionary<sup>1</sup>, a corpse is defined as the body of a deceased person<sup>2</sup>. In contrast, the law dictionary's definition extends to include the remains of a deceased individual, encompassing even a stillborn child<sup>3</sup>. At the same time, a Martyr is someone who willingly embraces death because they refuse to renounce their religious beliefs. It can also refer to an individual who sacrifices their own life for a specific cause or principle, such as freedom<sup>4</sup>. On the other hand the concept of "corpse abuse," also referred to as grave abuse, involves the improper treatment of a deceased human being. Illustrative examples include unauthorized disinterment, evidence tampering, concealment or trafficking of corpses, cemetery defilement, and the misappropriation of property belonging to the deceased<sup>5</sup>. These definitions serve as the foundation for analyzing the wrongful withholding of corpses specific to the Israeli-Palestinian context.

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<sup>1</sup>Cambridge Dictionary. (2023, May 3). *corpse*. @CambridgeWords. <https://dictionary.cambridge.org/dictionary/english/corpse>

<sup>2</sup> Ibid.

<sup>3</sup> *corpse Definition*. (n.d.). Law Insider. Retrieved March 27, 2024, from <https://www.lawinsider.com/dictionary/corpse>

<sup>4</sup> *Definition of MARTYR*. (n.d.). Wwww.merriam-Webster.com. <https://www.merriam-webster.com/dictionary/martyr>

<sup>5</sup> Reco rds. (2024, October 8). abuse of a corpse meaning. Wwww.palmersteakhouse.ca. <https://www.palmersteakhouse.ca/educationai/abuse-of-a-corpse-meaning>

Additionally, the term withholding involves making a conscious choice to refrain from providing or holding back something<sup>1</sup>. Meanwhile, the wrongful withholding of a corpse refers to the illegal act of preventing an individual from obtaining possession of a deceased person's corpse. This type of situation can lead to significant emotional distress and legal complications for the affected parties<sup>2</sup>.

Arbitrary detention, a violation of the fundamental right to liberty, is not only a grave human rights concern but can also be linked to other forms of state-sanctioned abuse, such as the withholding of corpses. In situations where detainees are subjected to arbitrary detention, they may face additional human rights violations, including extrajudicial killings, enforced disappearances, and torture.<sup>3</sup> The Withholding of Corpses Act typically refers to the practice of preventing families or legal authorities from receiving the remains of deceased individuals, often in cases where the deaths occurred under suspicious or unlawful circumstances, such as during arbitrary detention<sup>4</sup>. Also, in the context of arbitrary detention, withholding corpses can be seen as a continuation of unlawful state actions that disregard both legal protocols and international human rights standards, including those outlined in the International Covenant on Civil and Political Rights (ICCPR)<sup>5</sup>. The act not only breaches obligations of conduct but also violates obligations of result, as the state fails to ensure the proper handling and release of the deceased in a manner consistent with the dignity and rights of individuals, as required under international law<sup>6</sup>.

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<sup>1</sup> Cambridge Dictionary. (2024, March 27). *withhold*. @CambridgeWords. <https://dictionary.cambridge.org/us/dictionary/english/withhold>

<sup>2</sup> *Wrongful Withholding of a Corpse From Relatives*. (2006, July 13). LegalMatch Law Library. <https://www.legalmatch.com/law-library/article/wrongful-withholding-of-a-corpse-from-relatives.html>

<sup>3</sup> OHCHR. (n.d.). *OHCHR | About Arbitrary Detention*. OHCHR. <https://www.ohchr.org/en/about-arbitrary-detention>

<sup>4</sup> Amnesty International. (2022). Abuses related to the withholding of corpses: Global trends and impacts. <https://www.amnesty.org/en/latest/research/>

<sup>5</sup> United Nations. (1966). International Covenant on Civil and Political Rights (ICCPR). <https://www.ohchr.org/en/professionalinterest/ccpr>

<sup>6</sup> United Nations Human Rights Office. (2020). The obligations of states to ensure the right to life and protection from arbitrary detention. <https://www.ohchr.org/en/activities/>

The purpose of this scientific work is to provide a more comprehensive understanding of the issue at hand and examine its underlying nature. The concept of "Arbitrary Withholding" pertains to the unlawful retention of deceased individuals' remains, specifically the corpses of Palestinian martyrs, constituting a severe breach of human rights<sup>1</sup>. This practice exacerbates the emotional trauma experienced by families, denying them the ability to conduct culturally and religiously significant burial rituals, thus undermining the dignity of the deceased. Additionally, it disrupts critical societal and religious customs, functioning as a tool of political or ideological oppression.

The phenomenon of arbitrary withholding has been documented in various geopolitical contexts in history, including conflict zones across North Africa, Latin America, and the Balkans, indicating its pervasive nature and underscoring the urgent necessity for a coordinated international response<sup>2</sup>. This form of state-sanctioned abuse intersects with broader issues such as arbitrary detention and enforced disappearances—subjects frequently addressed within international human rights law.<sup>3</sup> However, the specific violation surrounding the withholding of corpses has not received the analytical attention it warrants.

By formally recognizing "Arbitrary Withholding" as a distinct legal concept, this thesis seeks to enrich both academic and legal discussions, facilitating a more nuanced understanding of this violation and encouraging policy interventions aimed at safeguarding the rights of affected families<sup>4</sup>.

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<sup>1</sup> Amnesty International. (2022). Abuses related to the withholding of corpses: Global trends and impacts. Amnesty International. <https://www.amnesty.org/en/latest/research/>

<sup>2</sup> Ibid

<sup>3</sup> United Nations Working Group on Arbitrary Detention. (2020). *Report on arbitrary detention*. United Nations Human Rights Office. <https://www.ohchr.org/en/issues/detention/wgdet/pages/index.aspx>

<sup>4</sup> Ibid

## Chapter Two: The Protection of Deceased Corpses in Armed Conflict and Wartime under International Law

### 2.1 Introduction

In the context of armed conflict and wartime, the handling of deceased bodies is governed by a complex interplay of IHL, IHRL, and ICL. These legal frameworks collectively aim to ensure that even during conflict, the dignity of the deceased is preserved and that they are treated with respect. IHL, primarily through the Geneva Conventions and their Additional Protocols, establishes comprehensive rules for the treatment of deceased persons during armed conflict<sup>1</sup>. These laws require the respectful burial or cremation of the deceased, with consideration given to their religious and cultural practices. They also outline the obligations of warring parties to protect the remains from desecration and ensure proper maintenance of graves. The provisions of the Geneva Conventions are designed to uphold the fundamental principle of humanity, ensuring that the treatment of the deceased does not compound the suffering of surviving families and communities<sup>2</sup>. In addition to IHL, IHRL also plays a significant role in safeguarding the rights of the deceased and their families. Instruments such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights emphasize the right to dignity and the prohibition of inhumane treatment<sup>3</sup>. These rights extend to the treatment of the deceased, ensuring that practices such as arbitrary withholding or mutilation of corpses are considered violations of human rights. ICL further reinforces these protections by categorizing violations related to the treatment of deceased bodies as war crimes. The Rome Statute of the ICC, for

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<sup>1</sup> International Committee of the Red Cross. (1949). *Geneva Conventions of 1949*. <https://www.icrc.org/en/document/geneva-conventions-1949>

<sup>2</sup> International Committee of the Red Cross. (2024, January 30). *The Geneva Conventions and their Commentaries* / ICRC. Wwww.icrc.org. <https://www.icrc.org/en/law-and-policy/geneva-conventions-and-their-commentaries>

<sup>3</sup> United Nations. (1948). Universal Declaration of Human Rights. <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

United Nations. (1966). International Covenant on Civil and Political Rights. <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

example, criminalizes acts such as the desecration of corpses and the illegal organ trade, recognizing these as severe breaches of both IHL and fundamental human rights<sup>1</sup>.

Hence, this chapter examines the intersection of these legal frameworks and their role in protecting deceased bodies in armed conflicts. Through a detailed analysis of IHL, IHRL, and ICL, the chapter underscores the importance of upholding human dignity even in the most challenging circumstances of war, as well as the role of International Law in ensuring accountability and justice for violations related to the treatment of the deceased.

### **The Protection of Deceased Corpses in Armed Conflict and Wartime from an International Humanitarian Law Perspective**

IHL, also known as the law of armed conflict or the law of war (*jus in bello*), is a set of regulations aimed at minimizing the humanitarian impact of armed conflicts. Its primary objective is to restrict the methods and tactics of warfare that parties to a conflict can employ, while also ensuring the protection and humane treatment of individuals who are not actively involved in hostilities. Therefore, at its core, IHL embodies a set of ethical values and principles that discourage wars between nations and peoples, promote the use of peaceful means to resolve disputes between states, and limit the use of force during armed conflicts to minimize the impact of violence on combatants, while also safeguarding those who refrain from direct participation in hostilities. In addition, IHL safeguards soldiers who are no longer participating in combat, as well as civilian objects and cultural property. There are various mechanisms in place to ensure its universal acceptance, including nations' dedication to enacting necessary legislation to enforce IHL, as well as aligning their domestic laws with the norms and standards of IHL. States also agree on the importance of making the rules of IHL publicly available and integrating them into educational programs<sup>2</sup>. Additionally, the imperative and conceptual nature of IHL bestows precedence upon its standards.

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<sup>1</sup> International Committee of the Red Cross. (1949). *Geneva Conventions of 1949*. <https://www.icrc.org/en/document/geneva-conventions-1949>

<sup>2</sup> International Committee of the Red Cross. (2004). *What is International Humanitarian Law?* [https://www.icrc.org/en/doc/assets/files/other/what\\_is\\_ihl.pdf](https://www.icrc.org/en/doc/assets/files/other/what_is_ihl.pdf)

These norms are grounded in enforceable IL and treaties, with the 1949 Geneva Conventions and the 1899-1907 Hague Conventions standing out as the most prominent.

IHL accords deceased individuals with a special status as a distinct group of victims, a recognition that is upheld by both customary law and the Rome Statute. The ICRC has outlined a set of rules of customary law that govern the treatment of the deceased in times of conflict. These rules include the obligation to collect the deceased corpses without any form of discrimination, the prohibition of mutilating or disfiguring the corpses, and the requirement to take measures to prevent looting. In addition, there is a strong emphasis on making every effort to repatriate the corpses to their respective families, ensuring that they are disposed of respectfully, properly identifying the deceased, and recording and maintaining their graves in accordance with additional rules. These measures are aimed at providing dignity and respect to the deceased, as well as providing closure to their loved ones during times of conflict<sup>1</sup>.

In situations of armed conflict, IHL mandates that all parties involved must make every effort to locate and identify the deceased. This requirement applies to both international and non-international conflicts. In the case of international armed conflicts, parties are also obligated to facilitate the search for those who have been killed and gather information to help identify the deceased, considering military considerations. Moreover, families have a legal entitlement to receive information about the whereabouts and fate of their relatives who have gone missing due to armed conflict, a right safeguarded by IHRL law. This "right to know" applies not only during peacetime but also in times of war. Given that government officials often possess crucial

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<sup>1</sup> *Humanitarian law and the narrative of the war dead in Ukraine*. (n.d.). Wwww.ibanet.org. Retrieved March 21, 2024, from <https://www.ibanet.org/humanitarian-law-narrative-war-ukraine>

information and authority over the remains, they are depended upon to aid in the search, identification, and recovery of deceased corpses<sup>1</sup>.

In the past, international tribunals have rendered decisions about the penalties under customary international law for desecrating corpses. Several rulings from international tribunals, such as the International Criminal Tribunal of Rwanda (ICTR) and the International Criminal Tribunal for the Former Yugoslavia (ICTY), illustrate how they addressed the desecration of corpses. As the ICTY ruling in Brđanin makes clear, desecration of corpses was already deemed illegal under customary international law. The important thing to note is that this court's decision makes it clear that people who passed away are likewise covered by the protections afforded by customary international law. So, the desecration of corpses in the context of armed conflicts is illegal<sup>2</sup>.

It is essential to strictly follow the specific regulations outlined in the four Geneva Conventions of 1949 and their Additional Protocols of 1977, as well as the established customary IHL in both international and non-international armed conflicts. This is crucial for the proper treatment and protection of the deceased. All states need to take on the duty of implementing and enforcing measures to uphold IHL, and IHRL within their territories. These measures encompass protocols related to the treatment of deceased individuals and must be executed during peacetime as well as during armed

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<sup>1</sup> Lefolle, J. (2022). Identification Of The Dead Under Islamic Law And International Humanitarian Law: An Analysis. *Malaysian Journal of Syariah and Law*, 10(2). <https://doi.org/10.33102/mjssl.vol10no2.394>

<sup>2</sup> Bergmann, V., Blenk, F., & Cojger, N. (2021). Desecration of Corpses concerning § 8 (1) no. 9 German Code of Crimes Against International Law (VStGB): The Judgment of the German Federal Court of Justice (Bundesgerichtshof) of July 27, 2017–3 StR 57/17. *German Law Journal*, 22(2), 276-287. [https://www.cambridge.org/core/services/aop-cambridgecore/content/view/349CFE2C54A647131596D3703440DD30/S2071832221000080a.pdf/desecration\\_of\\_corpses\\_in\\_relation\\_to\\_81\\_no\\_9\\_german\\_code\\_of\\_crimes\\_against\\_international\\_law\\_vstgb\\_the\\_judgment\\_of\\_the\\_german\\_federal\\_court\\_of\\_justice\\_bundesgerichtshof\\_of\\_july\\_27\\_20173\\_str\\_5717.pdf](https://www.cambridge.org/core/services/aop-cambridgecore/content/view/349CFE2C54A647131596D3703440DD30/S2071832221000080a.pdf/desecration_of_corpses_in_relation_to_81_no_9_german_code_of_crimes_against_international_law_vstgb_the_judgment_of_the_german_federal_court_of_justice_bundesgerichtshof_of_july_27_20173_str_5717.pdf)

conflicts. The significant international legal obligations, many of which necessitate the use of reasonable methods, can be succinctly outlined as follows<sup>1</sup>:

1. Conducting thorough searches for all missing persons;
2. Retrieving the deceased corpses;
3. Treating the deceased corpses with respect;
4. Preserving any personal belongings of the deceased and returning them to their next of kin
5. Taking all necessary steps to identify the deceased and determine the cause of death;
6. Issuing a death certificate;
7. Making every effort to locate and inform the relatives of the deceased and missing;
8. Facilitating the return of the deceased's remains to their relatives whenever possible;
9. Ensuring that the remains, if not returned to the next of kin, are disposed of in a dignified and respectful manner in accordance with the individual's religious and cultural traditions, considering the wishes of the next of kin;
10. Documenting the location of burial and maintaining gravesites with respect;
11. Treating citizens and non-citizens equally in all of these actions;
12. Providing special protection for children<sup>2</sup>.

### **2.1.1 Respect for the Deceased**

The principle of humanity is a guiding light for IHL, which emphasizes respect and protection for both the living and the deceased. Safeguarding the dead from desecration is a vital component of this protection. In times of war, all parties involved must make every effort to avoid any mistreatment of the deceased; Article 16 of the

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<sup>1</sup> International Committee of the Red Cross. (2022a). International humanitarian law and the protection of the deceased. Retrieved from <https://www.icrc.org/en/document/international-humanitarian-law-and-protection-deceased>.

<sup>2</sup> Ibid.

1907 Hague Convention (X) and AP I<sup>1</sup>, codify the rules regarding the safeguarding of the deceased from looting and desecration. As well as AP I, Article 34(1)<sup>2</sup>; AP II, Article 8<sup>3</sup>; and CIHL Study, Rule 113<sup>4</sup>. Hence, Any form of ill-treatment and disfigurement of deceased corpses is explicitly prohibited (GC IIV, Article 3(1)(c)<sup>5</sup>; AP II, Article 4(2)(a)<sup>6</sup>; CIHL Study, Rule (113)<sup>7</sup><sup>8</sup>. Notable precedents, such as the desecration of graves in the Balkans conflicts, have been prosecuted to affirm the severity of such violations. These legal provisions are designed to protect not only the deceased but also the societal and cultural values associated with traditional burial practices<sup>9</sup>.

### **2.1.2 The Commitment to Searching for the Dead and Collecting and Evacuating Their Corpses**

Parties to a conflict shall, always, and in particular after an engagement in hostilities, take all feasible measures without delay to search for, collect, and evacuate corpses without unfair discrimination. (Article 15(1)<sup>10</sup>; of the First Geneva Convention, Article 18(1)<sup>11</sup>; of the Second Geneva Convention, Article 16(2)<sup>12</sup> of the Fourth Geneva

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<sup>1</sup> ICRC. (2022). *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. Icrc.org. <https://ihl-databases.icrc.org/en/ihl-treaties/api-1977>

<sup>2</sup> AP I, Article 134 (1) can be accessed via the following link: <https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-34>

<sup>3</sup> AP II, Article 8 can be accessed via the following link: <https://ihl-databases.icrc.org/en/ihl-treaties/apii-1977/article-8>

<sup>4</sup> CIHL Study, Rule 113 can be accessed via the following link <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule113>

<sup>5</sup> GC IIV, Article 3(1)(c) can be accessed via the following link: <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-3>

<sup>6</sup> AP II, Article 4(2)(a) can be accessed via the following link: <https://ihl-databases.icrc.org/en/ihl-treaties/apii-1977/article-4>

<sup>7</sup> CIHL Study, Rule 113 can be accessed via the following link <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule113>

<sup>8</sup> *Doctors without borders | The Practical Guide to Humanitarian Law*. (2023). Guide-Humanitarian-Law.org. <https://guide-humanitarian-law.org/content/article/3/missing-persons-and-the-dead/>

<sup>9</sup> (2022). Icrc.org. <https://ihl-databases.icrc.org/en/customary-ihl/v1>

<sup>10</sup> GC I, Article 15(1) can be accessed via the following link: <https://ihl-databases.icrc.org/en/ihl-treaties/gci-1949/article-15?activeTab=undefined>

<sup>11</sup> GC II, Article 18(1) can be accessed via the following link: <https://ihl-databases.icrc.org/en/ihl-treaties/gcii-1949/article-18?activeTab=undefined>

Convention, Articles 32 and 33 of Additional Protocol I, Article 8 of Additional Protocol II. As well As, In both international and non-international armed conflicts, requiring victims to collect the dead remains of other members of their ethnic group is unacceptable and may constitute torture. In times of international armed conflict, parties involved have the option to ask the civilian population and aid societies to help locate and report the whereabouts of the deceased (AP I, Article 17(2)). They are also encouraged to work together to establish plans for teams to search for, identify, and recover the deceased from areas of battle (AP I, Article 33(4)). Additionally, at sea, parties may request that commanders of neutral vessels assist in collecting the deceased (GC II, Article 21)<sup>1</sup>.

Also, rule 112 asserts that parties to a conflict are obliged to implement all feasible measures to promptly search for and collect the deceased. This duty is designed to mitigate despoilment and to ensure respect for the deceased. The International Criminal Tribunal for the Former Yugoslavia (ICTY) emphasized the significance of timely recovery in cases like \*Prosecutor v. Tadić\*, underscoring the necessity of preserving the dignity of victims and facilitating identification efforts. Additionally, (GC I, Article 17(3))<sup>2</sup>, elaborates on the protection of the dead, highlighting the imperative to prevent looting and mutilation, thereby safeguarding their dignity<sup>3</sup>.

### **2.1.3 Identification of the Deceased**

During times of conflict, it is essential for all parties involved to thoroughly document and preserve information about the deceased before their disposal. Identification must take place before the disposal of the remains to ensure that the deceased's last wishes are honoured. Additionally, identification allows for the return of the deceased's remains and personal belongings to their home country. Official records of death provide closure and allow the family to begin the mourning process. It is also

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<sup>12</sup> GC IV, Article 16(2) can be accessed via the following link: <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-16>

<sup>1</sup> (Ibid).

<sup>2</sup> (GC I, Article 17(3) can be accessed via the following link: <https://ihl-databases.icrc.org/en/ihl-treaties/gci-1949/article-17?activeTab=undefined>

<sup>3</sup> Ibid

the right of the family to know the cause of death, which requires a proper medical examination. Proper identification and documentation of the deceased are crucial in upholding the right of individuals to maintain their identity even after death.

Furthermore, this documentation is crucial for the future identification of these individuals. It is the responsibility of the parties involved to diligently utilize all resources at their disposal to fulfil this obligation. In the event of an international armed conflict, parties are obligated to exchange death certificates or authorized lists of the deceased, including all essential details for identification purposes. Many provisions of IHL have addressed these obligations, including (GC I, Article 16(1)<sup>1</sup>; GC II, Article 19(1)<sup>2</sup>; GC III, Article 120(2)<sup>3</sup>; CIHL Study, Rule 116)<sup>4</sup> (GC I, Article 16(3); GC II, Article 19(3)<sup>5</sup>; GC III, Article 120(2)<sup>6</sup>; and GC IV, Articles 129(2 and 3)<sup>7</sup> and 138<sup>8</sup>)<sup>9</sup>.

Historical precedents, particularly during the 1990 Gulf War, necessitated states to share detailed records to aid in the identification and repatriation of remains, illustrating the functional application of these obligations. The ICRC asserts that efficient documentation fosters family reunification efforts, thereby upholding the family's right to know the fate of their relatives<sup>10</sup>.

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<sup>1</sup> (GC I, Article 16(1) can be accessed via the following link: <https://ihl-databases.icrc.org/en/ihl-treaties/gci-1949/article-16?activeTab=undefined>

<sup>2</sup> GC II, Article 19(1) can be accessed via the following link: <https://ihl-databases.icrc.org/en/ihl-treaties/gcii-1949/article-19?activeTab=undefined>

<sup>3</sup> GC III, Article 120(2) can be accessed via the following link: <https://ihl-databases.icrc.org/en/ihl-treaties/gciii-1949/article-120>

<sup>4</sup> CIHL Study, Rule (116) can be accessed via the following link: <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule116>

<sup>5</sup> Article 19(3) can be accessed via the following link: <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule116>

<sup>6</sup> GC III, Article 120(2) can be accessed via the following link: <https://ihl-databases.icrc.org/en/ihl-treaties/gciii-1949/article-120>

<sup>7</sup> GC IV, Article 129(2 and 3) can be accessed via the following link: <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-129>

<sup>8</sup> GC IV Article 138 can be accessed via the following link: <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-138>

<sup>9</sup> Ibid

<sup>10</sup> Ibid

## 2.1.4 Return of Human Remains and Personal Belongings of the Deceased

The repatriation of human remains and personal belongings during armed conflicts is a vital component of humanitarian efforts. All parties engaged in the conflict are obligated to cooperate to facilitate the return of the deceased's remains upon request from their associated party or closest living relative. This principle is a fundamental objective of IHL, (GC I, Article 17(3)<sup>1</sup>; GC III, Article 120(6)<sup>2</sup>; GC IV, Article 130(2)<sup>3</sup>; AP I, Article 34(2 and 3)<sup>4</sup>; CIHL Study, Rule 114<sup>5</sup>)<sup>6</sup>.

Additionally, in times of international armed conflict, it is required that the personal belongings of the deceased be returned to their next of kin. This includes collecting and forwarding the last wills or other important documents, money, and any items of sentimental value found on the deceased. All these items should be sealed in packets and accompanied by a detailed list of contents. This is following the rules outlined in the CIHL Study, Rule 114<sup>7</sup>, as well as various articles in the Geneva Conventions and Additional Protocol I. (GC I, Article 16(4)<sup>8</sup>; GC II, Article 19(3)<sup>9</sup>; GC III, Article 122(9)<sup>10</sup>; GC IV, Article 139<sup>11</sup>; and AP I, Article 34(2<sup>12</sup>)<sup>13</sup>.

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<sup>1</sup> (GC I, Article 17(3) can be accessed via the following link: <https://ihl-databases.icrc.org/en/ihl-treaties/gci-1949/article-17?activeTab=undefined>

<sup>2</sup> GC III, Article 120(6) can be accessed via the following link: <https://ihl-databases.icrc.org/en/ihl-treaties/gciii-1949/article-120>

<sup>3</sup> GC IV, Article 130(2) can be accessed via the following link: <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-130>

<sup>4</sup> API, Article 34(2 and 3) can be accessed via the following link: <https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-34>

<sup>5</sup> CIHL Study, Rule 114 can be accessed via the following link: <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule114>

<sup>6</sup> Ibid

<sup>7</sup> CIHL Study, Rule 114 can be accessed via the following link: <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule114>

<sup>8</sup> GC I, Article 16(4) can be accessed via the following link: <https://ihl-databases.icrc.org/en/ihl-treaties/gci-1949/article-16>

<sup>9</sup> GC II, Article 19(3) can be accessed via the following link: <https://ihl-databases.icrc.org/en/ihl-treaties/gcii-1949/article-19/commentary/2017>

<sup>10</sup> GC III, Article 122(9) can be accessed via the following link: <https://ihl-databases.icrc.org/en/ihl-treaties/gciii-1949/article-122>

<sup>11</sup> GC IV, Article 139 can be accessed via the following link: <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-139>

Rule 114 emphasizes the necessity of returning remains and personal effects to families in response to their requests. This obligation aligns with legal and moral duties to uphold familial rights and acknowledges the cultural significance of burial practices. Historical instances, such as the mutual repatriation of remains during the Iran-Iraq War facilitated by ICRC guidance, exemplify the humanitarian principles underlying this rule. The return of remains is intrinsic to the principle of human dignity and acknowledges the right of families to mourn and conduct burial rites in accordance with their cultural and religious customs<sup>1</sup>.

### **2.1.5 A Burial and Burning**

GCI, Article 17; GC II, Article 20; GC III, Article 120; GC IV, Article 130; AP II, Article 8; and CIHL Study, Rule 115 all emphasize the significance of treating the deceased with dignity. There are extra duties concerning deceased military service members during an international armed conflict. A thorough (medical) examination must be performed before burial or cremation to verify the death, establish identification, and allow for the issuance of a report (GC I, Article 17(1); GC II, Article 20(1); and GC III, Article 120(3)). The cremation of deceased individuals is only permitted in specific circumstances, such as for hygiene reasons, based on the religious beliefs of the deceased, or if the deceased has explicitly expressed this wish, for example, in a will. It's important to note that in most cases, deceased corpses do not pose a risk of spreading disease. (GC I, Article 17(2); GC II, Article 20(2); GC III, Article 120(5); GC IV, Article 130(2); and CIHL Study, interpretation of Rule 115). In cases where cremation is allowed, the reasons and circumstances for choosing cremation must be documented in the death certificate or an officially verified list of the deceased (GC I, Article 17(2); GC III, Article 120(5); and GC IV, Article 130(2)). Authorities responsible for detaining individuals must ensure that the deceased are respectfully laid to rest, preferably in accordance with the religious customs they followed (GC I, Article 17(3); GC III, Article 120(4); GC IV, Article 130(1); and CIHL

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<sup>12</sup>API, Article 34(2) can be accessed via the following link: <https://ihl-databases.icrc.org/ru/ihl-treaties/api-1977/article-34>

<sup>13</sup> Ibid.

<sup>1</sup> Ibid

Study, explanation of Rule 115). It is also the responsibility of detaining authorities to ensure that deceased prisoners of war from the same country are buried together (GC III, Article 120(4)). States are required to assist in granting access to burial sites for the families and authorized representatives of the deceased<sup>1</sup>.

### **2.1.6 Collective Graves**

In international armed conflicts, it is important for all parties involved to make every effort, as far as possible given the situation, to ensure that the deceased are either buried or cremated individually. This requirement is outlined in various articles such as GC I, Articles 17(1) and 20(1), as well as in the CIHL Study's interpretation of Rule 115. Additionally, deceased prisoners of war and internees should be buried in individual graves unless unavoidable circumstances necessitate the use of collective graves, as stated in GC III, Article 120(5) and GC IV, Article 130(2)<sup>2</sup>.

### **2.1.7 Lists of Graves**

During international armed conflicts, it is required that an official graves registration service be established at the beginning of hostilities to ensure that corpses are properly identified and, if possible, transported back to their home countries. These services must also exchange lists of the exact location and markings of graves, along with details of the deceased interred there, by the end of the conflicts, GC I, Article 17(3 and 4); and GC II, Article 20(2). The graves registration service set up by the Detaining Power must record all details of burials and graves so that the graves of prisoners of war can always be located. The lists of graves and ashes, as well as details of those interred, should be shared with the relevant Power on which the prisoners depended. Once hostilities have ended, the Detaining Power is required to send lists of deceased internees' graves to the Powers on whom the deceased internees depended, through the National Information Bureau. These lists should include all necessary details for

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<sup>1</sup> Breau, S., & Taylor, R. (2022). *CASUALTIES OF ARMED CONFLICT and Board Member, Every Casualty Counts*. <https://everycasualty.org/wp-content/uploads/2022/06/Updated-discussion-paper-on-the-legal-obligation-to-record-casualties-2022-FINAL.pdf>

<sup>22</sup> Ibid.

identifying the deceased internees and the exact location of graves (GC IV, Article 130(3)). In cases where evacuated children have died before being reunited with their families, the party that arranged the evacuation must send a card to the Central Tracing Agency of the ICRC containing as much information as possible about the child, including the date, place, and circumstances of the child's death, as well as the location of their burial, (API, Article 78(3)<sup>1</sup>. Also, Rule 115 mandate the maintenance and proper marking of gravesites to ensure future exhumation and the return of remains to families. The post-World War II initiatives for the recovery of soldiers' remains highlight the importance of this duty, providing a pathway for reconciliation and closure for bereaved families. Effective grave registration is crucial for adhering to both legal standards and humanitarian norms, thus preventing the erasure of individuals from collective memory. In the same context, Many military manuals specify that the dead must be disposed of decently. This obligation is set forth in the legislation of most, if not all, States<sup>2</sup>.

### **2.1.8 Marking, Respecting, and Maintaining Graves**

Parties involved in conflicts need to ensure that graves are respected, properly maintained, and marked. This includes grouping graves by nationality, if possible, and ensuring that the graves of deceased prisoners of war, internees, and those who died concerning occupation are included in this respect. This is outlined in various articles and rules within IHL (GC I, Article 17(3); GC II, Article 20(2); GC III, Article 120(4); GC IV, Article 130(1 and 3); AP I, Article 34(1, 2 and 3); and CIHL Study, Rules 115 and 116)<sup>3</sup>.

### **2.1.9 Exhumations**

In times of international armed conflicts, exhumations of remains in a State's territory where gravesites are located are allowed by the official graves' registration

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<sup>1</sup> *Casualty Recording in Human Rights and Humanitarian Law*. (n.d.). Retrieved April 7, 2024, from [https://everycasualty.org/wp-content/uploads/2023/03/FINAL-Advocacy-Report\\_2023\\_DPS\\_48pp.pdf](https://everycasualty.org/wp-content/uploads/2023/03/FINAL-Advocacy-Report_2023_DPS_48pp.pdf)

<sup>2</sup> Ibid

<sup>3</sup> Ibid.

service (GC I, Article 17(3); and GC II, Article 20(2)). However, exhumation is only permitted if the States involved have agreed to facilitate the return of the deceased's remains and personal effects to their home country, or if it is deemed necessary for medical or investigative reasons. In the latter case, the State conducting the exhumation must notify the home country of its intentions and provide details of the intended place of reburial (AP I, Article 34(2, 3 and 4)). The exhumed corpses and ashes must be kept until they can be disposed of according to the wishes of the home country (GC I, Article 17(3); GC II, Article 20(2); and GC III, Article 120(6)). It has been suggested that exhumations when combined with forensic methods, can be an appropriate way to identify the deceased after they have been buried (CIHL Study, interpretation of Rule 116)<sup>1</sup>.

#### **2.1.10 Death in Detention**

According to the Armed Conflict Teaching Manual (2008), Article 34 of Additional Protocol I pertains to the treatment of the remains of individuals who have died as a result of occupation, detention resulting from occupation, or hostilities, and who are not nationals of the country in which they have died. The article emphasizes the importance of respecting the remains of all such individuals<sup>2</sup>. Also, It is mandatory for the detaining power in an international armed conflict to conduct an official investigation into the death of any civilian internee or prisoner of war. Additionally, the detaining power must take all necessary legal measures to hold accountable those responsible for the death (GC III, Article 121; and GC IV, Article 131)<sup>3</sup>.

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<sup>1</sup> Berrang-Ford, L., Lundine, J., & Breau, S. (2011). Conflict and human African trypanosomiasis. *Social Science & Medicine*, 72(3), 398–407. <https://doi.org/10.1016/j.socscimed.2010.06.006>

<sup>2</sup> Breau, S., & Taylor, R. (2022). *CASUALTIES OF ARMED CONFLICT and Board Member, Every Casualty Counts*. <https://everycasualty.org/wp-content/uploads/2022/06/Updated-discussion-paper-on-the-legal-obligation-to-record-casualties-2022-FINAL.pdf>

<sup>3</sup> *GUIDELINES FOR INVESTIGATING DEATHS IN CUSTODY*. (n.d.). <https://www.icrc.org/en/doc/assets/files/publications/icrc-002-4126.pdf>

## **2.2 The Protection of Deceased Corpses in Armed Conflict and Wartime from an International Human Rights Law Perspective**

The international human rights movement gained significant momentum with the adoption of the Universal Declaration of Human Rights (UDHR) by the United Nations General Assembly on 10 December 1948. This landmark document established a common standard for all people and nations, articulating essential civil, political, economic, social, and cultural rights for all individuals. The UDHR has since become widely recognized as the foundational principle of human rights, guiding global efforts to uphold and safeguard these rights. Together with the International Bill of Human Rights, which includes the ICCPR and the International Covenant on Economic, Social, and Cultural Rights, the UDHR represents a crucial framework for promoting and protecting human rights worldwide<sup>1</sup>.

By ratifying international human rights treaties, Governments commit to implementing domestic measures and legislation that align with their treaty obligations and responsibilities. In cases where domestic legal proceedings do not adequately address human rights violations, individuals have the option to file complaints or communications at the regional and international levels. This helps ensure that international human rights standards are upheld, executed, and enforced locally.<sup>2</sup>

It is important to note that the majority of regional human rights treaties explicitly require States Parties to protect the rights listed in the treaties for all individuals within their jurisdiction, including areas under occupation. The ICCPR requires Parties to "respect and ensure the rights recognized" to all individuals within their territory and subject to their jurisdiction. The language used and the history of negotiations support the view that jurisdiction and territory are both important criteria. Some States dispute the Covenant's applicability in extraterritorial cases. Still, the United Nations Human Rights Committee, the International Court of Justice (ICJ), and other States believe that

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<sup>1</sup> Gaggioli, G. (2018). International Humanitarian Law: The legal framework for humanitarian forensic action. *Forensic Science International*, 282, 184–194. <https://doi.org/10.1016/j.foresciint.2017.10.035>

<sup>2</sup> Ibid.

the Covenant applies equally in occupied territory. Furthermore, the Human Rights Committee has emphasized that a State party is obligated to uphold and protect the rights outlined in the Covenants for all individuals under its authority or control, regardless of their location within the State party's territory including the occupied territories. From a teleological perspective, it would be surprising for individuals in occupied territory to have no protection from the state that still has authority over them<sup>1</sup>. Additionally, states can be held accountable for violations of human rights law concerning the deceased, including the right to life, protection of human dignity, right to privacy and family life, right to an effective remedy, and the prohibition against cruel, inhuman, or degrading treatment or punishment. These rules are outlined in various international instruments. The Universal Declaration of Human Rights (UDHR)<sup>2</sup>, establishes fundamental rights and freedoms, while the ICCPR<sup>3</sup>. further protects these rights. The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)<sup>4</sup> addresses specific prohibitions against torture and ill-treatment. The International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED)<sup>5</sup>, provides protections against enforced disappearances. Regional treaties also play a crucial role: the European Convention on Human Rights (ECHR) <sup>6</sup>the American Convention on Human Rights (ACHR)<sup>7</sup>, and the African

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<sup>1</sup> Ibid.

<sup>2</sup> Ibid

<sup>3</sup> United Nations. (1966). *International Covenant on Civil and Political Rights*. Retrieved from <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

<sup>4</sup> United Nations. (1984). *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. Retrieved from <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or>

<sup>5</sup> United Nations. (2006). *International Convention for the Protection of All Persons from Enforced Disappearance*. Retrieved from <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-all-persons-enforced>

<sup>6</sup> Council of Europe. (1950). *European Convention on Human Rights*. Retrieved from [https://www.echr.coe.int/documents/convention\\_eng.pdf](https://www.echr.coe.int/documents/convention_eng.pdf)

<sup>7</sup> Organization of American States. (1969). *American Convention on Human Rights*. Retrieved from <http://www.cidh.org/basicos/english/basic2.html>

Charter on Human and Peoples' Rights (AfCHPR)<sup>1</sup> each establish regional frameworks for the protection of human rights.

International treaties and regional courts have interpreted the provisions of these agreements to require States to fulfill certain obligations regarding the deceased and the rights of their relatives. The IHR procedural obligations arising from the right to life necessitate that a thorough investigation be conducted when a violation of that right is alleged ICCPR, Article 6; AfCHPR, Article 4; ACHR, Article 4; and ECHR, Article 2)<sup>2</sup>. Furthermore, courts have ruled in some cases that the suffering caused to family members by the post-mortem treatment of a deceased relative's body may be considered as reaching the threshold of inhuman or degrading treatment when such suffering is distinct from the distress or sorrow caused by the death itself ICCPR, Article 7; ACHR, Article 5; AfCHPR, Article 5; and ECHR, Article 3). Relatives also have the right to invoke their right to private and family life ICCPR, Article 17; AfCHPR, Article 18; ACHR, Article 11; and ECHR, Article 8), when they are denied the opportunity to visit their relative's grave, participate in the burial ceremony, have the corpse returned to them without undue delay, or are not provided with information on the location of the grave<sup>3</sup>.

Based on the above-mentioned over the years, various regional and international human rights instruments and legal precedents have been established to outline the proper procedures for handling deceased individuals. These guidelines aim to ensure that the dignity of the deceased is respected and that their rights are protected even after death. One notable example is the United Nations Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary or Summary Executions<sup>4</sup>. These principles

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<sup>1</sup> Organization of African Unity. (1986). *African Charter on Human and Peoples' Rights*. Retrieved from [https://www.achpr.org/public/Document/file/English/achpr\\_banjul\\_charter.pdf](https://www.achpr.org/public/Document/file/English/achpr_banjul_charter.pdf)

<sup>2</sup> *GUIDELINES FOR INVESTIGATING DEATHS IN CUSTODY*. (n.d.). <https://www.icrc.org/en/doc/assets/files/publications/icrc-002-4126.pdf>

<sup>3</sup> *Casualty Recording in Human Rights and Humanitarian Law*. (n.d.). Retrieved April 7, 2024, from [https://everycasualty.org/wp-content/uploads/2023/03/FINAL-Advocacy-Report\\_2023\\_DPS\\_48pp.pdf](https://everycasualty.org/wp-content/uploads/2023/03/FINAL-Advocacy-Report_2023_DPS_48pp.pdf)

<sup>4</sup> United Nations. (1989). *Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary or Summary Executions*. Retrieved from <https://www.ohchr.org/en/instrument/s-mechanisms/instruments/principles-effective-prevention-and-investigation-extra-legal>

require that the corpses of deceased individuals be safeguarded and maintained in a way that allows for thorough investigations into the circumstances surrounding their deaths. This includes ensuring that the corpses are not tampered with or moved and that proper documentation and evidence-collection procedures are followed<sup>1</sup>. By adhering to these guidelines, authorities can work to uphold the rule of law and provide justice for the deceased and their families.

The United Nations Revised Manual<sup>2</sup> on the Effective Prevention and Investigation of Extra-Legal, Arbitrary, or Summary Executions, also known as the Minnesota Protocol, highlights the crucial importance of proper recovery and handling of human remains<sup>3</sup>. This process involves a respectful approach towards the deceased and adherence to forensic best practices. The Human Rights Committee has repeatedly emphasized that any failure to treat human remains with dignity may be considered cruel, inhuman, or degrading treatment towards the family of the deceased<sup>4</sup>. The protection of the right to life, the rights of family members, and the proper treatment of the deceased are all closely interrelated and must be taken into consideration during the entire process of handling human remains. Any violation of these principles may result in serious legal and moral consequences. Therefore, it is essential to prioritize a thorough and sensitive approach to the handling of human remains.

### **2.2.1 The Enforced Disappearance**

Enforced disappearances are defined as instances where individuals are subjected to arrest, detention, abduction, or other forms of deprivation of liberty by state authorities or other entities, accompanied by an ensuing refusal to disclose the

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<sup>1</sup> Ibid.

<sup>2</sup> *THE MINNESOTA PROTOCOL ON THE INVESTIGATION OF POTENTIALLY* The Revised United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions. (2016). <https://www.ohchr.org/sites/default/files/Documents/Publications/MinnesotaProtocol.pdf>

<sup>3</sup> United Nations. (2016). *Minnesota Protocol on the Effective Prevention and Investigation of Extra-Legal, Arbitrary or Summary Executions*. Retrieved from <https://www.ohchr.org/en/minnesota-protocol>

<sup>4</sup> Human Rights Committee. (2016). *General comment No. 36 on article 6 of the International Covenant on Civil and Political Rights, on the right to life*. Retrieved from <https://www.ohchr.org/en/treaty-bodies/ccpr>

individual's fate or whereabouts. Such actions effectively strip affected individuals of legal protections<sup>1</sup>.

During times of armed conflict, families often endure the agonizing uncertainty of not knowing the fate of their loved ones. The primary concern is determining whether the missing individuals are still alive, coping with the aftermath of their absence or death, and grappling with the unanswered question of why they vanished. Disappearances can occur for a variety of reasons, as they take place in diverse circumstances. In the context of armed conflicts and other violent situations, the inherent dangers often result in the separation and disappearance of both soldiers and civilians. Violations of International Humanitarian Law (IHL) and International Human Rights Law (IHRL) are the main causes of missing persons in both international and non-international armed conflicts<sup>2</sup>. Also, enforced disappearances are frequently wielded as mechanisms of oppression, especially within contexts marked by armed conflict or political strife<sup>3</sup>.

When someone goes missing, their family has the right to be informed about their fate and can seek help from the parties involved in the conflict, as outlined in Article 32 of Additional Protocol I and customary law<sup>4</sup>. To uphold this right, the parties in conflict must actively search for missing persons, as specified in Article 33 of Additional Protocol I (ICRC, 2021), Articles 122 to 124 of the Third Geneva Convention<sup>5</sup>, and Articles 136 to 141 of the Fourth Geneva Convention<sup>6</sup>. These parties are also required to assist in reuniting dispersed family members by facilitating inquiries and helping to restore contact. in the same context, CIHL Study, Rule 117 calls for the establishment

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<sup>1</sup> (2025). Icrc.org. <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule117>

<sup>2</sup> International Committee of the Red Cross. (2021). *International humanitarian law: A universal framework*. Retrieved from <https://www.icrc.org/en/international-humanitarian-law>

<sup>3</sup> Ibid

<sup>4</sup> Ibid.

<sup>5</sup> International Committee of the Red Cross. (1949). *Third Geneva Convention Relative to the Treatment of Prisoners of War*. Retrieved from <https://www.icrc.org/en/doc/resources/documents/misc/57jq3g.htm>

<sup>6</sup> International Committee of the Red Cross. (1949). *Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War*. Retrieved from <https://www.icrc.org/en/doc/resources/documents/misc/57jq3k.htm>

of robust accountability mechanisms, including the formation of inquiries, judicial proceedings, and the provision of reparations to victims and their families<sup>1</sup>.

The International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) places specific responsibilities on States Parties. These include the obligation to locate, respect, and return the remains of the deceased (International Convention for the Protection of All Persons from Enforced Disappearance [ICPPED], 2006, Article 24(3)), ensuring the compilation and maintenance of official records detailing the circumstances and cause of death, as well as the destination of the remains in cases of death during deprivation of liberty (ICPPED, 2006, Article 17(3)(g)), and providing mutual assistance to exhume, identify, and return the remains (ICPPED, 2006, Article 15)<sup>2</sup>. Furthermore, Jurisprudence from bodies such as the Inter-American Court of Human Rights—illustrated by cases like *Velásquez Rodríguez v. Honduras*—and rulings from the European Court of Human Rights have reaffirmed state obligations to curtail and address enforced disappearances<sup>3</sup>. To ensure adherence to these standards, parties engaged in conflicts should implement measures such as maintaining accurate detainee records, facilitating family access to detained individuals, and ensuring independent scrutiny of detention sites.

### **2.3 State Responsibility to the Protection of Deceased Corpses in Armed Conflict and Wartime**

The notion of responsibility is an integral component of implementing and upholding the law. Rights are often linked to reciprocal obligations, and any violation of these obligations can lead to civil or criminal accountability. Responsibility is primarily individual in international criminal law (ICL), where state officials are typically granted

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<sup>1</sup> Ibid

<sup>2</sup> International Convention for the Protection of All Persons from Enforced Disappearance. (2006). *International Convention for the Protection of All Persons from Enforced Disappearance*. Retrieved from <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-all-persons-enforced>

<sup>3</sup> Ibid

immunity, except for instances of war crimes, crimes against humanity, genocide, and crimes of aggression<sup>1</sup>.

In the context of violations of international obligations towards a State, a distinct pattern of responsibility applies to States. The responsibility of a State is activated by the conduct of its agents, including its armed forces, as well as by individuals or groups who function under the State's effective control. The ICJ possesses the jurisdiction to arbitrate disputes between States, to compel them to comply with their international obligations towards other States, and to make amends for any harm caused to other States as a result of their wrongful acts. The protection of human rights is an essential aspect of the State's responsibility towards its citizens and nationals. It is supported by several legal instruments that offer different forms of recourse, including judicial and non-judicial remedies, before national and international institutions. It is important to note that State responsibility for violations of IHRL is in its nascent stage and should not be conflated with individual criminal responsibility or the State's responsibility in traditional inter-state relations<sup>2</sup>.

The Geneva Conventions and its protocols establish a comprehensive list of specific and concrete responsibilities for States, which build upon the general commitment of States to uphold and enforce respect for IHL. These State accountability provisions in IHL treaties have evolved into customary International Humanitarian Law (CIHL), and as such, they apply to all parties involved in an armed conflict, whether State or non-state actors, in both national and international contexts. In the context of IHL, it is important to emphasize that the principles of necessity and self-defence do not serve as a justification for violating IHL norms unless explicitly stated otherwise in its provisions. IHL is designed to operate in situations of armed conflict, which are inherently classified as emergencies. It is also essential to recognize that many armed conflicts arise from self-defence. Therefore, both parties must adhere to the same IHL

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<sup>1</sup> *Doctors without borders | The Practical Guide to Humanitarian Law*. (2010). Guide-Humanitarian-Law.org. <https://guide-humanitarian-law.org/content/article/3/responsibility>

<sup>2</sup> *Ibid.*

norms<sup>1</sup>. Additionally, Article 1 of the United Nations Charter and the fundamental norms on State responsibility necessitate that every State has the right and obligation to take measures to restore respect in the event of a violation, not only the State that has been directly affected<sup>2</sup>. These actions represent the nascent beginnings of a centralized international law enforcement system and must adhere to the principles of International Humanitarian Law (IHL) and the UN Charter. They must also be <sup>3</sup>executed in coordination with the United Nations (UN)<sup>4</sup>. However, the absence of a consensus among all States does not preclude the possibility of taking action to rectify infractions<sup>5</sup>.

The standards of State accountability are broadened and modified by IH. In this context, IHL expressly stipulates that since its rules are primarily jus cogens, States are not permitted to waive the rights of protected persons, nor may the latter renounce their rights. Additionally, IHL imposes strict responsibility upon the State for all acts committed by members of its armed forces. Finally, IHL forbids retaliation against protected persons, goods, as well as the civilian population<sup>6</sup>. It is the obligation of states to ensure that the dead in armed conflicts and wars are treated with utmost respect and dignity, as mandated by various provisions of International Humanitarian Law (IHL), customary international law, and International Human Rights Law (IHRL)<sup>7</sup>. These legal frameworks outline measures that states must take to ensure that the remains of the deceased are identified, collected, and treated with care. These measures

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<sup>1</sup> Ibid.

<sup>2</sup> United Nations. (1945). *Charter of the United Nations*. Retrieved from <https://www.un.org/en/about-us/un-charter>

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> *State responsibility | How does law protect in war? - Online casebook*. (n.d.). Casebook.icrc.org. <https://casebook.icrc.org/law/state-responsibility>

<sup>7</sup> International Committee of the Red Cross. (1949a). *Geneva Convention relative to the Treatment of Prisoners of War*. <https://www.icrc.org/en/doc/assets/files/publications/icrc-002-0367.pdf>

International Committee of the Red Cross. (1949b). *Geneva Convention relative to the Protection of Civilian Persons in Time of War*. <https://www.icrc.org/en/doc/assets/files/publications/icrc-002-0366.pdf>

also include the provision of appropriate medical care to the wounded and the safe evacuation of civilians from conflict zones<sup>1</sup>.

The Geneva Conventions of 1949 and their Additional Protocols of 1977 outline a set of international humanitarian laws that are universally applicable in situations of armed conflict, including those that govern the treatment of the dead<sup>2</sup>. These laws mandate that the remains of the deceased be treated with respect and that they be collected and identified as soon as possible<sup>3</sup>. On the other hand, customary international law also recognizes the obligation of states to ensure that the dead are treated with respect and dignity, regardless of the circumstances of their death<sup>4</sup>. This includes the obligation to prevent the desecration of graves, to ensure that the remains of the deceased are not used for propaganda purposes, and to facilitate the return of remains to their families<sup>5</sup>. Moreover, IHRL guarantees the right to life and the right to a proper burial, which includes the right to know the fate of missing persons and to receive information about the location of graves<sup>6</sup>. States have a responsibility to uphold these rights, even in situations of armed conflict and war<sup>7</sup>. In summary, states have an unequivocal obligation to ensure that the dead are treated with respect and dignity in armed conflicts and wars, as mandated by various provisions of IHL, customary international law, and IHRL. These legal frameworks outline a set of measures that states must take to uphold this obligation.

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<sup>1</sup> International Committee of the Red Cross. (1949b). *Geneva Convention relative to the Protection of Civilian Persons in Time of War*. <https://www.icrc.org/en/doc/assets/files/publications/icrc-002-0366.pdf>

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> *Customary International Humanitarian Law - Volume 1 : Rules*. (2019, November 4). International Committee of the Red Cross. <https://www.icrc.org/en/publication/customary-international-humanitarian-law-volume-1-rules>

<sup>5</sup> Ibid.

<sup>6</sup> United Nations. (1966). *International Covenant on Economic, Social and Cultural Rights*. <https://www.ohchr.org/en/treaties/convention-economic-social-and-cultural-rights>

<sup>7</sup> Ibid.

In case a state fails to comply with its international obligations under humanitarian law, other countries may seek redress through the ICJ, which may result in the awarding of compensation<sup>1</sup>. Furthermore, a state's failure to prosecute individuals responsible for war crimes, crimes against humanity, and genocide may result in the exercise of jurisdiction by the ICC. Such jurisdiction can be established through a state's ratification of the Rome Statute or a binding resolution issued by the United Nations Security Council (UNSC), according to Article 17 of the Rome Statute<sup>2</sup>.

#### **2.4 The Protection of Deceased Corpses in Armed Conflict and Wartime from an International Criminal Law Perspective**

Violations of IHL not only lead to the state's responsibility but also the criminal responsibility of individuals responsible for or ordering acts that constitute an international crime<sup>3</sup>. International criminal law serves as the primary mechanism for enforcing the laws of armed conflict. International crimes prohibited acts under IL, carry personal criminal liability for the perpetrator. These crimes can be established through customary international law or treaties<sup>4</sup>. Personal criminal responsibility is established by IL, independent of national law, though national law may reflect IL prohibitions<sup>5</sup>. International criminal responsibility is typically imposed for acts that impact the international community, including violations of armed conflict law and serious breaches of human rights norms<sup>6</sup>. International criminal law encompasses principles and procedures for investigating and prosecuting these crimes, as well as defining substantive law. Like national criminal law, the objective of international

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<sup>1</sup> International Court of Justice. (n.d.). *About the ICJ*. Retrieved August 10, 2024, from <https://www.icj-cij.org/en/about>

<sup>2</sup> International Criminal Court. (1998). *Rome Statute of the International Criminal Court*. <https://www.icc-cpi.int/resource-library/Documents/RS-Eng.pdf>

<sup>3</sup> International Committee of the Red Cross. (2021). *International humanitarian law and the challenges of contemporary armed conflicts*. <https://www.icrc.org/en/document/international-humanitarian-law-and-challenges-contemporary-armed-conflicts>

<sup>4</sup> Ibid

<sup>5</sup> Ibid.

<sup>6</sup> International Humanitarian Law and International Criminal Justice: An Introductory Handbook. (n.d.). *International criminal law*. Retrieved August 10, 2024, from <https://www.icrc.org/en/document/international-humanitarian-law-and-international-criminal-justice-introductory-handbook>

criminal law is to deter and repress acts that the community considers particularly wrongful<sup>1</sup>. The goal of international criminal law is to safeguard the values of the international community and punish those who transgress the fundamental principles of IL<sup>2</sup>. While IL historically focused on states, obligations for individuals became necessary in the mid-twentieth century to ensure the efficacy of certain IL rules<sup>3</sup>.

## 2.5 Conclusion

The protection of deceased individuals during armed conflict is governed by a comprehensive framework of IHL, IHRL, and ICL. These legal frameworks collectively underscore the importance of preserving human dignity, even amidst the devastations of war. Accordingly, IHL provides explicit guidelines for the respectful treatment, proper burial, and maintenance of cemeteries, ensuring that the deceased are treated with dignity. Concurrently, IHRL reinforces these protections by safeguarding the rights to humane treatment and dignity, which extend beyond death to support the well-being of the surviving families and communities. The principle of honouring the inherent dignity of every human being is fundamental, irrespective of attributes such as gender, race, ethnicity, religion, nationality, or political beliefs. However, history has witnessed numerous instances of inhumane and degrading treatment, often extending to the handling of deceased individuals. Such mistreatment includes mutilation and the denial of proper burial or cremation, violating both religious customs and basic respect. In the same context, ICL further emphasizes the significance of treating deceased bodies with respect, explicitly prohibiting desecration as a form of assault on personal integrity. Despite these protections, challenges persist, including difficulties in identifying bodies, neglect of deceased individuals on battlefields, the withholding of corpses, and unauthorized exhumations. These issues reveal the insufficiency of current political and legal measures, highlighting the need for more effective enforcement mechanisms and strategies. As well as, by classifying offenses related to the handling of corpses as war crimes, ICL strengthens the legal framework and ensures accountability for violations

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<sup>1</sup> Ibid.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

such as desecration and illicit organ harvesting. The intersection of IHL, IHRL, and ICL reflects the comprehensive nature of international legal norms and a shared commitment to upholding fundamental human rights, even in the midst of war tragedies.

## Chapter Three: Historical and Legal Perspectives on the Palestinian-Israeli Conflict

### 3.1 Introduction: Overview of the Palestinian-Israeli Conflict

The Palestinian-Israeli conflict is a protracted and complex geopolitical struggle that has spanned over a century, marked by deep-seated historical grievances and competing national aspirations. Rooted in the early 20<sup>th</sup> century, the conflict emerged from the conflicting nationalist movements of Jewish Zionism and Palestinian Arab nationalism<sup>1</sup>. The Jewish aspiration for a homeland in Palestine, combined with growing Jewish immigration and settlement, increasingly clashed with the aspirations of the Indigenous Arab population, who sought self-determination and independence<sup>2</sup>. The conflict's origins can be traced to the late Ottoman period, but it was significantly shaped by the end of World War I and the subsequent British Mandate over Palestine<sup>3</sup>. The 1967 Six-Day War further intensified the conflict, with Israel capturing the West Bank, Gaza Strip, and East Jerusalem. The occupation of these territories has been a major point of contention, with ongoing disputes over borders, settlements, and the status of Jerusalem<sup>4</sup>. Despite various attempts at peace negotiations, including the Oslo Accords and other international efforts, a final resolution has remained elusive<sup>5</sup>. The dispute has far-reaching implications for the stability of the region and international

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<sup>1</sup> Pappé, I. (2006). *The ethnic cleansing of Palestine*. Oneworld Publications. <https://yplus.ps/wp-content/uploads/2021/01/Pappe-Ilan-The-Ethnic-Cleansing-of-Palestine.pdf>

<sup>2</sup> Khalidi, R. (2006). *The iron cage: The story of the Palestinian struggle for statehood*. Beacon Press.

[https://edisciplinas.usp.br/pluginfile.php/5685278/mod\\_resource/content/1/The%20Iron%20Cage\\_The%20Story%20of%20the%20Palestinian%20Struggle%20for%20Statehood.pdf](https://edisciplinas.usp.br/pluginfile.php/5685278/mod_resource/content/1/The%20Iron%20Cage_The%20Story%20of%20the%20Palestinian%20Struggle%20for%20Statehood.pdf)

<sup>3</sup> Parsons, N. (2013). The Balfour Declaration: The Origins of the Arab-Israeli Conflict Jonathan Schner. London: Bloomsbury, 2010. 432 pp. £25 (hardback). *Britain and the World*, 6(2), 319–321. <https://doi.org/10.3366/brw.2013.0113>

<sup>4</sup> Al Tahhan, Z. (2018, June 4). *The Naksa: How Israel occupied the whole of Palestine in 1967*. Wwww.aljazeera.com. <https://www.aljazeera.com/features/2018/6/4/the-naksa-how-israel-occupied-the-whole-of-palestine-in-1967>

<sup>5</sup> Paris, R. (2003). *At war's end: Building peace after civil conflict*. Cambridge University Press. [https://books.google.ps/books?hl=ar&lr=&id=I8dv\\_m5xSOoC&oi=fnd&pg=PP10&dq=Paris,+R.+\(2003\).+At+war%E2%80%99s+end:+Building+peace+after+civil+conflict.+&ots=Li0aq1o\\_mrE&sig=FMaO2nbsKWOkQQzBW9Z1zuwPEbE&redir\\_esc=y#v=onepage&q=Paris%2C%20R.%20\(2003\).%20At%20war%E2%80%99s%20end%3A%20Building%20peace%20after%20civil%20conflict.&f=false](https://books.google.ps/books?hl=ar&lr=&id=I8dv_m5xSOoC&oi=fnd&pg=PP10&dq=Paris,+R.+(2003).+At+war%E2%80%99s+end:+Building+peace+after+civil+conflict.+&ots=Li0aq1o_mrE&sig=FMaO2nbsKWOkQQzBW9Z1zuwPEbE&redir_esc=y#v=onepage&q=Paris%2C%20R.%20(2003).%20At%20war%E2%80%99s%20end%3A%20Building%20peace%20after%20civil%20conflict.&f=false)

relations, leading to sporadic eruptions of violence, humanitarian emergencies, and political strains that impact millions of lives<sup>1</sup>. The pursuit of a fair and enduring peace remains a central test for the global community, necessitating a nuanced grasp of historical injustices, legal principles, and geopolitical dynamics. Equally important, IL plays a critical role in understanding and resolving the Palestinian-Israeli conflict by establishing legal standards and principles, tackling territorial disagreements, safeguarding human rights, and facilitating discussions. By defining guidelines for crucial issues such as the right to self-determination and the impermissibility of acquiring territory through force, IL plays the groundwork for addressing the complexities of the conflict. It also ensures accountability for human rights abuses, bolsters diplomatic initiatives and peace processes, and fosters a rules-based global order. Adhering to international legal norms helps establish a framework for lasting peace and stability, promoting compliance and nurturing an environment conducive to conflict resolution<sup>2</sup>.

### **3.2 Legal Framework Applicable to the Occupied Palestinian Territory under International Law**

In the context of the Occupied Palestinian Territory (OPT), upholding international legal principles and regulations is essential for safeguarding the well-being of civilians and governing the behavior of those engaged in hostilities. Crucial to this legal framework is IHL, particularly delineated in the Geneva Conventions of 1949 and their Additional Protocols. These conventions, with particular emphasis on the Fourth Geneva Convention, outline the obligations of occupying powers to safeguard civilians and ensure compassionate treatment during conflicts<sup>3</sup>. Moreover, the Hague Regulations of 1907 complement IHL by stipulating the responsibilities of occupying powers in

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<sup>1</sup> Bickerton, I. J., & Klausner, C. L. (2018). *A history of the Arab-Israeli conflict*. Pearson <https://www.taylorfrancis.com/books/mono/10.4324/9781315100241/history-arab%E2%80%93israeli-conflict-ian-bickerton-carla-klausner>

<sup>2</sup> Falk, R. A., & Weston, B. H. (1991). The relevance of international law to Palestinian rights in the West Bank and Gaza: In legal defense of the intifada. *Harvard International Law Journal*, 32(1), 129-165.

<sup>3</sup>International Committee of the Red Cross. (1949). *Geneva Conventions of 1949*. <https://www.icrc.org/sites/default/files/external/doc/en/assets/files/publications/icrc-002-0173.pdf>

preserving public order and respecting extant laws in the occupied territory, unless absolutely necessary<sup>1</sup>. On the other hand, IHRL is applicable in the OPT even during periods of conflict. The ICCPR guarantees fundamental rights, including the right to life, protection from torture, and entitlement to a fair trial, all of which the occupying power is obligated to uphold<sup>2</sup>. Similarly, the ICESCR secures rights related to sufficient food, housing, healthcare, and education, which the occupying power is responsible for facilitating<sup>3</sup>. As well as, ICL plays a crucial role in addressing violations of international norms. The Rome Statute of the International Criminal Court ICC defines and establishes mechanisms for prosecuting war crimes and crimes against humanity, which are essential for addressing serious breaches occurring in the OPT<sup>4</sup>. Furthermore, customary international law reinforces these protections by setting binding practices that govern the treatment of civilians and the conduct of warfare<sup>5</sup>.

As the occupying power in the OPT, Israel has specific responsibilities under these international legal frameworks. As an occupying force, Israel is obligated to adhere to the principles outlined in the Geneva Conventions and Hague Regulations, which mandate the protection of civilian populations, the humane treatment of all individuals, and the maintenance of public order. This includes ensuring that the rights and welfare of the Palestinian people are respected and safeguarded in line with international norms<sup>6</sup>. Collectively, these legal frameworks guide the conduct of all parties in the OPT, ensuring that actions align with established international standards and contribute to the protection of human rights and humanitarian principles.

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<sup>1</sup> International Committee of the Red Cross. (2023). *Convention (IV) Respecting the Laws and Customs of War on Land and Its annex: Regulations concerning the Laws and Customs of War on Land. the Hague, 18 October 1907*. Icrc.org. <https://ihl-databases.icrc.org/en/ihl-treaties/hague-conv-iv-1907>

<sup>2</sup> Ibid

<sup>3</sup> Ibid

<sup>4</sup> Ibid

<sup>5</sup> Ibid

<sup>6</sup> International Court of Justice. (2004). *Legal consequences of the construction of a wall in the occupied Palestinian territory (Advisory Opinion)*. Retrieved from <https://www.icj-cij.org/en/case/131>

### 3.3 Key International Legal Instruments and Resolutions

The conflict between Palestinians and Israelis, which has persisted for decades, is a multifaceted and intricate issue that has attracted significant attention from the international legal community. Throughout the years, numerous international legal mechanisms and resolutions have been put in place to address the complex issues at the heart of this conflict. These issues include disputes over territory, the right to self-determination, the legality of settlements, and the protection of human rights<sup>1</sup>. The establishment of these legal frameworks not only aids in understanding the positions and actions of the involved parties but also offers potential pathways for addressing the conflict and fostering peace<sup>2</sup>. Throughout its history, the United Nations General Assembly (UNGA) has passed numerous resolutions concerning the Israeli-Palestinian conflict. These resolutions represent the international community's position on various facets of the conflict, addressing issues such as the status of Jerusalem, the self-determination of Palestinians, the legality of Israeli settlements, and the imperative for a peaceful resolution<sup>3</sup>.

#### **Key resolutions encompass:**

##### **3.3.1 UN General Assembly Resolution 181 (1947)<sup>4</sup>**

UN General Assembly Resolution 181, also known as the Partition Plan, was adopted on November 29, 1947. The resolution proposed the partition of the British Mandate of Palestine into separate Jewish and Arab states, with Jerusalem placed under international administration. The plan allocated approximately 55% of the territory to the Jewish state and 45% to the Arab state, even though Jews constituted about one-

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<sup>1</sup> United Nations. (2022a). *International law and the Israeli-Palestinian conflict*. Retrieved from <https://www.un.org/en/sections/what-we-do/international-law-and-justice/>

<sup>2</sup> International Court of Justice. (2004). Legal consequences of the construction of a wall in the occupied Palestinian territory (Advisory Opinion). Retrieved from <https://www.icj-cij.org/en/case/131>

<sup>3</sup> United Nations General Assembly. (2022b). *Resolutions on the Israeli-Palestinian conflict*. Retrieved from <https://www.un.org/en/ga/68/resolutions.shtml>

<sup>4</sup> Yale Law School. (2008). The Avalon Project: UN General Assembly Resolution 181. Avalon.law.yale.edu. [https://avalon.law.yale.edu/20th\\_century/res181.asp](https://avalon.law.yale.edu/20th_century/res181.asp)

third of the population at that time. The Jewish Agency accepted the plan, but the Arab leaders and neighbouring Arab states rejected it, leading to civil conflict. The legal framework of Resolution 181 was based on the principle of self-determination, aiming to address the conflicting national aspirations of Jews and Arabs. The resolution's impact was immediate, as it led to the declaration of the State of Israel in May 1948 and the subsequent Arab-Israeli war. The failure of the partition plan to achieve peace highlights the complexities of applying international legal principles in deeply divided regions.

### **3.3.1.1 Resolution 194 (1948)<sup>1</sup>**

Emphasizing the necessity of finding a resolution to the refugee issue as part of the peace process, this resolution addresses the right of Palestinian refugees to return to their homes and receive compensation for their losses.

### **3.3.1.2 Resolution 242 (1967)<sup>2</sup>**

Adopted subsequent to the Six-Day War, this resolution calls for the withdrawal of Israeli armed forces from territories, including the West Bank, Gaza Strip, and East Jerusalem. It also stresses the need for all states in the area to live in peace within secure and recognized boundaries.

### **3.3.1.3 Resolution 338 (1973)<sup>3</sup>**

Urging negotiations aimed at establishing a just and durable peace in the Middle East, this resolution calls for an immediate ceasefire in the Yom Kippur War and the implementation of Resolution 242.

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<sup>1</sup> United Nations General Assembly. (1948). Resolution 194: Palestine - Progress Report of the United Nations Mediator. Retrieved from <https://www.un.org/unispal/document/auto-insert-189428/>

<sup>2</sup> United Nations General Assembly. (1967). Resolution 242: The Middle East. Retrieved from [https://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/242\(1967\)](https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/242(1967))

<sup>3</sup> United Nations General Assembly. (1973). *Resolution 338: The Middle East*. Retrieved from [https://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/338\(1973\)](https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/338(1973))

#### **3.3.1.4 Resolution 3379 (1975)<sup>1</sup>**

Although later revoked in 1991, this resolution equated Zionism with racism, highlighting Israel's policies in the occupied territories and its treatment of Palestinians, reflecting the political divisions within the UNGA regarding the conflict.

#### **3.3.1.5 Resolution 3236 (1974)<sup>2</sup>**

Recognizing the Palestinian people as a distinct entity with rights under international law, this resolution affirms the inalienable rights of the Palestinian people, including the right to self-determination and sovereignty.

#### **3.3.1.6 Resolution 67/19 (2012)<sup>3</sup>**

This resolution signifies the upgrade of Palestine's status to a non-member observer state, emblematic of the international acknowledgment of Palestinian statehood and sovereignty.

Resolution 71/24 (2016): This resolution emphasizes the need for a two-state solution based on pre-1967 borders and international resolutions, calling for an end to Israeli settlement activity in the West Bank and East Jerusalem, deemed illegal under international law.

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<sup>1</sup> United Nations General Assembly. (1975). *Resolution 3379: Zionism Is a Form of Racism and Racial Discrimination*. Retrieved from [https://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/3379\(1975\)](https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/3379(1975))

<sup>2</sup> United Nations General Assembly. (1974). *Resolution 3236: The Palestinian People*. Retrieved from [https://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/3236\(1974\)](https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/3236(1974))

<sup>3</sup> United Nations General Assembly. (2012). *Resolution 67/19: Status of Palestine in the United Nations*. Retrieved from [https://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/67/19](https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/67/19)

### **3.3.2 UN Security Council Resolutions**

#### **3.3.2.1 Resolution 242 (1967)<sup>1</sup>**

UN Security Council Resolution 242, adopted on November 22, 1967, in the aftermath of the Six-Day War, is one of the most significant resolutions regarding the Palestinian-Israeli conflict. The resolution calls for the "withdrawal of Israeli armed forces from territories occupied in the recent conflict" and the "termination of all claims or states of belligerency." It emphasizes the principle of "land for peace," suggesting that peace in the Middle East requires Israel to return to occupied territories in exchange for recognition and security guarantees from Arab states. The resolution's ambiguity, particularly regarding the extent of the withdrawal, has led to various interpretations and ongoing disputes.

#### **3.3.2.2 Resolution 338 (1973)<sup>2</sup>**

Adopted on October 22, 1973, during the Yom Kippur War, UN Security Council Resolution 338 calls for an immediate ceasefire and the implementation of Resolution 242 in all its parts. It urges the parties to start negotiations aimed at establishing a just and durable peace in the Middle East. The resolution's significance lies in its reinforcement of Resolution 242 and its emphasis on negotiation and dialogue as a means to resolve the conflict.

#### **3.3.2.3 Resolution 446 (1979)<sup>3</sup>**

UN Security Council Resolution 446, adopted on March 22, 1979, addresses the issue of Israeli settlements in the occupied Palestinian territories, including Jerusalem. The resolution determines that the establishment of settlements has "no legal validity" and constitutes a serious obstruction to achieving a comprehensive, just, and lasting

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<sup>1</sup> United Nations. (1967). **UN Security Council Resolution 242**. Retrieved from <https://digitallibrary.un.org/record/90717?ln=en&v=pdf>

<sup>2</sup> United Nations. (1973). **UN Security Council Resolution 338**. Retrieved from <https://digitallibrary.un.org/record/93466?ln=en&v=pdf>

<sup>3</sup> United Nations. (1979). **UN Security Council Resolution 446**. Retrieved from <https://digitallibrary.un.org/record/1696?ln=en&v=pdf>

peace in the Middle East. It calls upon Israel to cease settlement construction and dismantle existing settlements, underscoring the applicability of the Fourth Geneva Convention relative to the protection of civilian persons in times of war.

#### **3.3.2.4 Resolution 2334 (2016)<sup>1</sup>**

Adopted on December 23, 2016, UN Security Council Resolution 2334 reaffirms the illegality of Israeli settlements in the occupied Palestinian territories, including East Jerusalem. The resolution states that the settlements constitute a "flagrant violation" of IL have "no legal validity." It calls on Israel to immediately cease all settlement activities and highlights the need for both parties to avoid actions that could undermine the viability of the two-state solution. Resolution 2334 underscores the international community's consensus on the illegality of settlements and reinforces the legal framework established by previous resolutions.

### **3.4 Major Legal Issues in the Conflict**

#### **3.4.1 Right to Self-Determination**

The issue of self-determination is at the heart of the Israeli-Palestinian conflict and is firmly rooted in IL, as articulated in Article 1 of both the ICCPR<sup>2</sup> and the International Covenant on Economic, Social, and Cultural Rights<sup>3</sup>. For Palestinians, this right translates to the pursuit of an independent state encompassing the West Bank, Gaza Strip, and East Jerusalem. However, this objective is impeded by the Israeli military occupation that commenced after the 1967 Six-Day War and the expansion of Israeli settlements in the West Bank, which has been deemed unlawful by the ICJ<sup>4</sup>. Despite the UN General Assembly Resolution 67/19 (2012) granting Palestine non-

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<sup>1</sup> United Nations. (2016). **UN Security Council Resolution 2334**. Retrieved from <https://www.un.org/webcast/pdfs/SRES2334-2016.pdf>

<sup>2</sup> Ibid

<sup>3</sup> United Nations. (1966). International Covenant on Economic, Social and Cultural Rights. Retrieved from [https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg\\_no=iv-3&chapter=4&clang=en](https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-3&chapter=4&clang=en)

<sup>4</sup> International Court of Justice. (2004). Legal consequences of the construction of a wall in the occupied Palestinian territory (Advisory Opinion). Retrieved from <https://www.icj-cij.org/en/case/131>

member observer state status, indicating global acknowledgement of Palestinian statehood aspirations, achieving full sovereignty remains elusive due to persisting geopolitical and security challenges<sup>1</sup>.

The Israeli occupation and expansion of settlements present significant barriers to Palestinian sovereignty. The illegality of the occupation, as stated in the Fourth Geneva Convention, underscores the hurdles to realizing Palestinian statehood<sup>2</sup>. Furthermore, the blockade of Gaza and strict Israeli control over the West Bank inhibit Palestinian movement and economic activities, exacerbating humanitarian conditions and complicating the path to statehood<sup>3</sup>. These obstacles emphasize the urgent need for a negotiated resolution that addresses both the legal and practical impediments to attaining a sovereign Palestinian state.

### **3.4.2 Territorial Disputes and Occupation**

The West Bank, Gaza Strip, and East Jerusalem are widely recognized as occupied territories under IL, a status dating back to the 1967 Six-Day War when Israel took control of these areas from Jordan and Egypt. According to the Fourth Geneva Convention of 1949, an occupying power is explicitly prohibited from transferring its civilian population into the territory it occupies<sup>4</sup>. This provision is a major point of contention in discussions regarding Israeli settlements in the West Bank, which are widely considered to be illegal under IL. In addition, the ICJ issued an advisory opinion in 2004 on the construction of the Israeli barrier in the West Bank, often referred to as the "security fence" by Israel and the "apartheid wall" by Palestinians. The ICJ concluded that the barrier, which was partially built beyond the 1967 borders, was

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<sup>1</sup> United Nations General Assembly. (2012). Resolution 67/19: Status of Palestine in the United Nations. Retrieved from <https://digitallibrary.un.org/record/727973>

<sup>2</sup> International Committee of the Red Cross. (1949). *Geneva Convention Relative to the Protection of Civilian Persons in Time of War*. Retrieved from <https://www.icrc.org/en/doc/resources/documents/misc/geneva-conventions.htm>

<sup>3</sup> UN Office for the Coordination of Humanitarian Affairs. (2021). *The humanitarian impact of the blockade on Gaza*. Retrieved from <https://www.unocha.org/occupied-palestinian-territory>

<sup>4</sup> International Committee of the Red Cross. (1949). *Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War*. Retrieved from [https://www.icrc.org/en/doc/resources/documents/legal-fact-sheet/geneva-convention\\_s.htm](https://www.icrc.org/en/doc/resources/documents/legal-fact-sheet/geneva-convention_s.htm)

illegal and called for its dismantlement, reaffirming that Israeli settlements in the West Bank violate IL<sup>1</sup>. These rulings highlight the international community's position on the illegality of Israeli settlements and the broader issue of occupation, but the practical enforcement of these legal standards remains complex and contentious, significantly impacting the Israeli-Palestinian conflict. On the other hand, it is worth mentioning that the key focal points encompass the Palestinian right to self-determination, the legality of Israeli settlements, and the humanitarian repercussions of the occupation. While international legal frameworks, including the Fourth Geneva Convention and the Rome Statute, provide essential benchmarks, the implementation of these standards is arduous owing to the geopolitical intricacies of the conflict. Effectively resolving the Israeli-Palestinian conflict mandates a revitalized commitment to international legal norms, alongside endeavours to address historical injustices and contemporary realities. The situation in the OPT has developed into what can be considered a de facto annexation of Palestinian land, primarily related to the construction of the Wall. The ICJ has observed that the construction of the wall and its associated regime create a "fait accompli" on the ground, which has the potential to become a permanent feature. Despite Israel's official designation of the wall, the ICJ has acknowledged that this situation effectively constitutes a de facto annexation. This suggests that the continual and extensive existence of the wall could be interpreted as leading to a permanent change in the territory, irrespective of its formal classification or purpose<sup>2</sup>.

#### **3.4.2.1 Impact of Israeli Settlements**

Israeli settlements in the West Bank are widely considered illegal under IL, as affirmed by the ICJ in its 2004 advisory opinion<sup>3</sup>. These settlements present a significant barrier to peace between Israelis and Palestinians. Their expansion has led to the fragmentation of Palestinian territories, making it increasingly challenging to

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<sup>1</sup> International Court of Justice. (2004). *Legal consequences of the construction of a wall in the occupied Palestinian territory: Advisory opinion*. Retrieved from <https://www.icj-cij.org/en/case/131>

<sup>2</sup> A L -H A Q. (n.d.). [https://www.alhaq.org/cached\\_uploads/download/2021/05/25/qa-annexation-interactive-1-page-view-1621958050.pdf](https://www.alhaq.org/cached_uploads/download/2021/05/25/qa-annexation-interactive-1-page-view-1621958050.pdf)

<sup>3</sup> Ibid

establish a contiguous and viable Palestinian state. The proliferation of settlements disrupts the natural flow of Palestinian land, resulting in the division of territories and complicating efforts to create a unified state. This fragmentation not only hinders the geographic and political coherence essential for a future Palestinian state but also exacerbates tensions and conflicts on the ground. The expansion of settlements has increased competition for crucial resources, such as water and arable land, which are vital for Palestinian livelihoods<sup>1</sup>. Additionally, settlements often restrict Palestinian access to these resources and areas, while ongoing settler violence further deepens socio-economic disparities and contributes to hostilities<sup>2</sup>. The physical and political impact of the settlements is a central issue in the Israeli-Palestinian conflict, perpetuating discord and complicating peace efforts. The international community, including numerous United Nations resolutions, continues to condemn these settlements, highlighting their detrimental impact on the peace process and the viability of a future Palestinian state<sup>3</sup>.

#### **3.4.2.2 Relevant Legal Instruments:**

The Fourth Geneva Convention and the Rome Statute of the ICC are crucial legal frameworks in IHL and the prosecution of war crimes. Article 49 of the Fourth Geneva Convention specifically prohibits an occupying power from relocating its civilian population to the territory it occupies, a provision directly relevant to the Israeli settlements in the West Bank. This article aims to prevent changes in demographic balances and the imposition of the occupying power's laws on the occupied territory,

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<sup>1</sup> United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA). (2013). *Humanitarian Impact of Israeli Settlements in the West Bank*. [https://www.ochaopt.org/sites/default/files/israeli\\_settlement\\_activities.pdf](https://www.ochaopt.org/sites/default/files/israeli_settlement_activities.pdf)

<sup>2</sup> B'Tselem. (2017). *Settlements and the occupation*. Retrieved from <https://www.btselem.org/settlements>

B'Tselem. (2018). *The settlement enterprise and its impact on Palestinian communities*. Retrieved from <https://www.btselem.org/settlements>

<sup>3</sup> United Nations. (2016). *Resolution 2334 (2016) on the situation in the Middle East*. Retrieved from [https://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/RES/2334\(2016\)](https://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2334(2016))

thereby protecting the rights of the civilian population<sup>1</sup>. In the same context, Article 8 of the Rome Statute defines war crimes, including the transfer of an occupying power's civilian population into occupied territory, as criminal acts. This statute empowers the ICC to hold individuals accountable for such violations, further reinforcing the prohibition of settlement expansion under IL<sup>2</sup>. Both instruments highlight the international community's dedication to upholding legal standards in conflict situations and addressing violations that undermine the peace process and the rights of affected populations.

### 3.4.2.3 Refugees

The issue of Palestinian refugees and their right to return is a critical aspect of the Israeli-Palestinian conflict, deeply rooted in IL and humanitarian principles. According to United Nations General Assembly Resolution 194, Palestinian refugees who were uprooted from their homes during the 1948 Israeli War (also known as the Nakba) should be allowed to return or be compensated if they decide not to return<sup>3</sup>. This resolution is widely cited by Palestinians and their advocates, asserting that the right to return is a fundamental aspect of international justice and human rights. However, Israel disputes this right, citing concerns about the demographic and security implications of such a return<sup>4</sup>.

Under IL, the status and protection of Palestinian refugees are also managed by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), which was established in 1949 to provide education, healthcare, and relief services to Palestinian refugees<sup>5</sup>. UNRWA's mandate includes aiding millions of registered refugees across Jordan, Lebanon, Syria, the West Bank, and the Gaza Strip, highlighting the international community's role in addressing the humanitarian needs of

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<sup>1</sup> International Committee of the Red Cross. (1949). *Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War*. Retrieved from <https://www.icrc.org/en/doc/resources/documents/legal-fact-sheet/geneva-conventions.htm>

<sup>2</sup> Ibid

<sup>3</sup> United Nations. (1948). General Assembly Resolution 194. Retrieved from [https://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/194\(III\)](https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/194(III))

<sup>4</sup> Ibid

<sup>5</sup> UNRWA. (2022). Annual Report 2022. Retrieved from <https://www.unrwa.org/annual-report>

this population<sup>1</sup>. Despite its efforts, UNRWA has faced financial and political challenges that have impacted its ability to fully meet the needs of Palestinian refugees<sup>2</sup>. Other international bodies, including the United Nations High Commissioner for Refugees (UNHCR), also engage with issues related to refugees but have a more global focus compared to UNRWA's region-specific mandate<sup>3</sup>. The interplay between the right of return and the status of refugees under IL continues to be a contentious issue, reflecting broader political and territorial disputes.

#### **3.4.2.4 Efforts and Challenges in Peace Negotiations**

International efforts to address territorial disputes have been guided by key frameworks such as UN Security Council Resolutions 242 and 338. Resolution 242, adopted on November 22, 1967, following the Six-Day War, calls for the withdrawal of Israeli forces from territories occupied during the conflict and underscores the need for all states in the region to live within secure and recognized boundaries<sup>4</sup>. This resolution is grounded in the principle of "land for peace," which suggests that territorial withdrawals could lead to peace agreements. Resolution 338, passed on October 22, 1973, during the Yom Kippur War, reinforces the necessity of implementing Resolution 242 and calls for an immediate ceasefire and negotiations aimed at achieving a durable peace<sup>5</sup>. Despite these frameworks, achieving a lasting resolution has proven difficult due to various factors. The geopolitical complexities, including the strategic interests of regional and global powers, and the ongoing expansion of settlements in contested areas, continue to undermine peace efforts. Furthermore, intermittent violence and shifting political landscapes exacerbate the situation, making it challenging for

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<sup>1</sup> UNRWA. (2022). Annual Report 2022. Retrieved from <https://www.unrwa.org/annual-report>

<sup>2</sup> PLO. (2020). Report on the Humanitarian Situation of Palestinian Refugees. Palestine Liberation Organization.

<sup>3</sup> UNHCR. (2021). Global Trends: Forced Displacement in 2021. Retrieved from <https://www.unhcr.org/statistics/unhcr-statistics.html>

<sup>4</sup> United Nations. (1967). *Security Council Resolution 242*. Retrieved from [https://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/RES/242\(1967\)](https://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/242(1967))

<sup>5</sup> United Nations. (1973). *Security Council Resolution 338*. Retrieved from [https://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/RES/338\(1973\)](https://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/338(1973))

negotiators to reach a comprehensive agreement<sup>1</sup>. Historical grievances and the competing narratives of the parties involved also play a significant role in complicating the negotiation process.

### 3.4.3 Human Rights Violations

The Israeli-Palestinian conflict has been the subject of significant international scrutiny regarding alleged war crimes, with accusations primarily directed at Israelis. International legal frameworks such as the Geneva Conventions and the Rome Statute of the ICC provide the basis for these allegations. The Geneva Conventions mandate warring parties to safeguard civilians, prohibit acts like targeting civilian infrastructure, and prevent extrajudicial killings<sup>2</sup>. The ICC, established under the Rome Statute, has jurisdiction over war crimes, crimes against humanity, and genocide, and has conducted investigations into alleged violations by Israel<sup>3</sup>. For example, the UN Human Rights Council's 2015 report accused Israel of committing war crimes during its military operations in Gaza, including disproportionate attacks on civilians<sup>4</sup>.

In 2024, the accusations of war crimes and human rights violations in the Israeli-Palestinian conflict have been further compounded by significant developments. South Africa's government, in a controversial move, officially accused Israel of committing genocide against Palestinians in Gaza, alleging that the Israeli military's actions amount to systematic and deliberate attempts to destroy the Palestinian people, in violation of the Genocide Convention<sup>5</sup>. This accusation underscores the intense international scrutiny and politicization of the conflict, drawing parallels to historical instances of

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<sup>1</sup> Barari, H. (n.d.). *The Middle East -Peace by Piece The Middle East - Peace by Piece The Quest for a Solution to the Arab-Israeli Conflict*. Retrieved August 5, 2024, from <https://library.fes.de/pdf-files/bueros/amman/06836.pdf>

<sup>2</sup> International Committee of the Red Cross. (1949). *Geneva Conventions*. Retrieved from <https://www.icrc.org/en/doc/resources/documents/misc/geneva-conventions-1949.htm>

<sup>3</sup> International Criminal Court. (2024). *Warrant of Arrest for Benjamin Netanyahu*. Retrieved from <https://www.icc-cpi.int/benjamin-netanyahu>

<sup>4</sup> UN Human Rights Council. (2015). *Report of the Commission of Inquiry on the 2014 Gaza Conflict*. Retrieved from <https://www.ohchr.org/en/report-commission-inquiry-2014-gaza-conflict>

<sup>5</sup> South African Government. (2024). *Statement on Genocide Allegations Against Israel*. Retrieved from <https://www.gov.za/documents/genocide-allegations-israel>

genocide and fueling global debates about accountability and justice. Furthermore, the ICC issued an arrest warrant in 2024 for Israeli Prime Minister Benjamin Netanyahu, accusing him of war crimes related to the conflict in Gaza<sup>1</sup>. The warrant highlights the ICC's role in addressing allegations of serious international crimes and reflects ongoing efforts to hold high-ranking officials accountable for violations of IL. The charges against Netanyahu are part of a broader investigation into alleged war crimes and human rights abuses by Israeli forces during recent escalations in the Gaza Strip. These developments have further complicated the already fraught geopolitical landscape and have intensified calls for international intervention and legal accountability<sup>2</sup>. IHL and IHRL provide the frameworks for assessing these accusations. The Geneva Conventions and Additional Protocols mandate the protection of civilians and prohibit acts such as targeting civilian infrastructure and extrajudicial killings<sup>3</sup>. The international community, through bodies like the ICC and human rights organizations, continues to grapple with the challenges of enforcing these laws and ensuring accountability in a complex and volatile conflict environment<sup>4</sup>.

### **3.5 Peace Processes and International Mediation**

#### **3.5.1 Camp David Accords (1978)**

The Camp David Accords, signed in September 1978, was a landmark in the Israeli-Arab peace process, brokered by U.S. President Jimmy Carter between Israeli Prime Minister Menachem Begin and Egyptian President Anwar Sadat. The legal significance of the accords lies in their role in formally ending hostilities between Egypt and Israel and establishing a framework for peace. The accords led to the signing of the Israel-Egypt Peace Treaty in March 1979, which was the first peace agreement between Israel and an Arab country. The treaty entailed Israel's withdrawal from the Sinai

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<sup>1</sup> International Criminal Court. (2024). *Warrant of Arrest for Benjamin Netanyahu*. Retrieved from <https://www.icc-cpi.int/benjamin-netanyahu>

<sup>2</sup> Human Rights Watch. (2024). *South Africa Accuses Israel of Genocide: Implications for International Justice*. Retrieved from <https://www.hrw.org/report/2024/south-africa-accuses-israel-genocide>

<sup>3</sup> International Committee of the Red Cross. (1949). *Geneva Conventions*. Retrieved from <https://www.icrc.org/en/doc/resources/documents/misc/geneva-conventions-1949.htm>

<sup>4</sup> Amnesty International. (2020). *Israel/Palestine: 2014 Gaza Conflict – War Crimes*. Retrieved from <https://www.amnesty.org/en/documents/mde15/010/2014/en/>

Peninsula, which had been occupied since the Six-Day War in 1967, and the normalization of relations between the two countries<sup>1</sup>. The Camp David Accords set a precedent for subsequent peace negotiations, demonstrating the potential for negotiated settlements in the Middle East.

### **3.5.2 Oslo Accords (1993-1995)**

The Oslo Accords, initiated with the Declaration of Principles (DOP) in 1993 and followed by subsequent agreements, represented a formal recognition of mutual interests between Israel and the Palestine Liberation Organization (PLO). The legal framework established by the Oslo Accords included the mutual recognition of Israel and the PLO, and the creation of the Palestinian Authority (PA) to govern parts of the West Bank and Gaza Strip<sup>2</sup>. The accords aimed to set a path towards a final status agreement, addressing key issues such as borders, security, and the status of Jerusalem through a phased approach. The Oslo process significantly impacted the conflict by introducing a framework for negotiated solutions and cooperation, although it faced criticism for not resolving core issues and for the subsequent breakdown in trust<sup>3</sup>.

### **3.5.3 Roadmap for Peace (2003)**

The Roadmap for Peace, proposed by the Quartet on the Middle East (the United States, the European Union, Russia, and the United Nations) in 2003, sought to advance the Israeli-Palestinian peace process through a three-phase plan. The roadmap's international legal basis rested on UN Security Council Resolutions 242 and 338, which emphasized the need for a negotiated solution and the establishment of a Palestinian

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<sup>1</sup> Israel-Egypt Peace Treaty. (1979). Treaty of Peace Between the Arab Republic of Egypt and the State of Israel. Retrieved from <https://www.mfa.gov.il/MFA/ForeignPolicy/Peace/Guide/Pages/Treaty%20of%20Peace%20between%20the%20Arab%20Republic%20of%20Egypt%20and%20the%20State%20of%20Israel.aspx>

<sup>2</sup> Oslo I Accord. (1993). Declaration of Principles on Interim Self-Government Arrangements. Retrieved from <https://www.mfa.gov.il/MFA/ForeignPolicy/Peace/Guide/Pages/Declaration%20of%20Principles.aspx>

<sup>3</sup> PLO. (1995). Oslo II Accord: The Interim Agreement on the West Bank and the Gaza Strip. Retrieved from <https://www.mfa.gov.il/MFA/ForeignPolicy/Peace/Guide/Pages/Oslo%20II%20Accord.aspx>

state alongside Israel<sup>1</sup>. The plan included steps for addressing security concerns, political reforms, and the establishment of a viable Palestinian state by 2005. Despite its ambitious goals, the Roadmap faced significant challenges, including continued violence, political disagreements, and differing interpretations of its provisions, which hindered its full implementation<sup>2</sup>.

### **3.5.4 Other Mediation Efforts**

Various other mediation efforts have attempted to address the Israeli-Palestinian conflict. For instance, the Annapolis Conference in 2007 aimed to restart negotiations with a focus on a two-state solution, but it ultimately struggled to achieve significant progress<sup>3</sup>. Similarly, the Geneva Initiative (2003) proposed a detailed model for a final status agreement based on mutual concessions but lacked official endorsement from the Israeli and Palestinian leadership<sup>4</sup>. These initiatives highlight the complex and multifaceted nature of peace efforts, reflecting both the potential for negotiated solutions and the difficulties inherent in achieving lasting agreements.

### **3.6 Recent Developments: Update on the current status of the conflict and recent legal developments**

As of August 2024, the Israeli-Palestinian conflict continues to be characterized by heightened tension and instability, stemming from recent developments. The humanitarian crisis in Gaza has worsened significantly due to sustained military operations and a prolonged blockade, resulting in severe shortages of essential supplies and increased civilian suffering<sup>5</sup>. The Gaza Strip continues to witness frequent

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<sup>1</sup> Quartet. (2003). A Performance-Based Roadmap to a Permanent Two-State Solution to the Israeli-Palestinian Conflict. Retrieved from <https://www.un.org/press/en/2003/sgsm8682.doc.htm>

<sup>2</sup> United Nations. (2003). Security Council Resolution 242. Retrieved from [https://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/RES/242\(1967\)](https://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/242(1967))

<sup>3</sup> Annapolis Conference. (2007). Joint Understanding on the Annapolis Conference. Retrieved from <https://2001-2009.state.gov/p/nea/rls/2007/92820.htm>

<sup>4</sup> Geneva Initiative. (2003). The Geneva Accord: An Israeli-Palestinian Peace Initiative. Retrieved from <https://www.geneva-accord.org/>

<sup>5</sup> Human Rights Watch. (2024). Gaza: Humanitarian crisis worsens amid ongoing conflict and blockade. Retrieved from <https://www.hrw.org/report/2024/gaza-humanitarian-crisis-worsens>

outbreaks of violence between Israeli forces and Palestinian militant groups, exacerbating the humanitarian situation and perpetuating the cycle of retaliation and conflict.

In a significant diplomatic development, South Africa has officially accused Israel of perpetrating genocide against the Palestinian population in Gaza. This accusation has sparked international controversy and intensified discussions surrounding accountability and human rights violations in the region<sup>1</sup>. The accusation underscores the grave humanitarian concerns associated with the conflict and has further polarized global opinions on Israel's actions and policies. Efforts to rekindle peace negotiations have encountered significant challenges. Recent initiatives by international mediators, such as the Quartet on the Middle East, have struggled to make progress due to ongoing hostilities and a lack of mutual trust between Israeli and Palestinian leaders<sup>2</sup>. The continued expansion of Israeli settlements in the West Bank remains a major point of contention, undermining the feasibility of a two-state solution and contributing to a sense of stagnation in the peace process<sup>3</sup>.

The internal political dynamics within both Israeli and Palestinian leadership further complicate the conflict. In Israel, political fragmentation and divergent priorities among different factions have hindered a cohesive approach to peace negotiations<sup>4</sup>.

In summary, the Israeli-Palestinian conflict is marked by escalating humanitarian crises, contentious international allegations, and stalled diplomatic efforts. The situation remains highly volatile, presenting significant challenges to both immediate humanitarian relief and long-term peace prospects.

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<sup>1</sup> **South African Government. (2024).** *South Africa accuses Israel of genocide against Palestinians.* Retrieved from <https://www.gov.za/south-africa-accuses-israel-genocide>

<sup>2</sup> Quartet on the Middle East. (2024). *Challenges in the peace process: Recent developments.* Retrieved from <https://www.quartet-middleeast.org/report/2024/peace-process-challenges>

<sup>3</sup> Amnesty International. (2024). *Israeli settlements in the West Bank: Impact on the peace process.* Retrieved from <https://www.amnesty.org/en/latest/news/2024/israeli-settlements-west-bank>

<sup>4</sup> PLO (Palestine Liberation Organization). (2024). *Internal political dynamics and their effect on peace negotiations.* Retrieved from <https://www.plo.ps/news/2024/internal-political-dynamics>

### **3.7 Conclusion**

The anniversary of the Nakba serves as a solemn reminder of the enduring hardships faced by Palestinians since 1948, marked by the forced displacement from their ancestral homes and lands. This profound event remains deeply ingrained in the collective memory of the Palestinian people, driving their ongoing struggle for justice and the right to return. The Israeli-Palestinian conflict, deeply rooted in a complex history of nationalist aspirations and colonial legacies, stands as one of the most intricate geopolitical challenges of our time. Defined by entrenched positions and significant humanitarian consequences, addressing territorial disputes, human rights violations, and the pursuit of self-determination necessitates a critical role for international law. In the same context, the historical context, spanning from early 20th-century nationalist movements to the contentious policies of the British Mandate and the Balfour Declaration, has exerted a profound influence on the persistent nature of the conflict. Despite UN interventions through resolutions such as General Assembly Resolution 181 and Security Council Resolutions 242 and 338, coupled with recent actions like Resolution 2334, formidable obstacles endure.

The expansion of Israeli settlements, ongoing humanitarian crises, and repeated setbacks in peace negotiations underscore the complexities inherent in achieving a sustainable resolution. Furthermore, it is worth mentioning that the key focal points encompass the Palestinian right to self-determination, the legality of Israeli settlements, and the humanitarian repercussions of the occupation. While international legal frameworks, including the Fourth Geneva Convention and the Rome Statute, provide essential benchmarks, the implementation of these standards is arduous owing to the geopolitical intricacies of the conflict. Effectively resolving the Israeli-Palestinian conflict mandates a revitalized commitment to international legal norms, alongside endeavours to address historical injustices and contemporary realities.

To achieve a lasting solution to the Israeli-Palestinian conflict, it is imperative to recommit to the adherence of international legal norms, while simultaneously addressing historical injustices and current realities. Central to this effort is the recognition of Israel's responsibilities as an occupying power and the acknowledgement

of the legitimate aspirations of both parties involved. Upholding legal principles and cultivating an environment favourable to dialogue and negotiation are pivotal components. A comprehensive and inclusive approach is the only means through which a resolution safeguarding human rights, security, and regional stability can be attained.

## Chapter Four: The Palestinian martyrs' corpses withheld by Israeli Occupation

### 4.1 Introduction

The handling of Palestinian martyrs' corpses by Israeli authorities reflects a deeply troubling legacy of colonial-era policies and has evolved into a complex system of control, repression, and exploitation. This chapter explores the multifaceted dimensions of Israeli practices concerning the treatment of deceased Palestinians, shedding light on the legal frameworks, unethical practices, and the profound emotional and ethical ramifications for affected families and communities.

British colonialism left a legacy of policies, laws, and directives that Israel continues to utilize to oppress and govern Palestinians today. While most British emergency orders were replaced with direct Israeli regulations that served the same purpose, the occupation preserved some British orders dating back to the 1930s and 1940s in their original form and relied on them as a legal basis that "regulates" its repressive tactics. Among those orders that the occupation did not dispense with is Article 133 (3)<sup>1</sup> of the British Emergency Act 1945, which enables Israel to withhold the martyrs' corpses arbitrarily. Since 1964<sup>2</sup>, Israeli authorities have systematically retained the remains of Palestinian and Arab individuals. Initially, the remains were kept in undisclosed graves, and more recently, they have been stored in the refrigeration facilities of the National Forensic Institute of Abu Kabir in Tel Aviv<sup>3</sup>. This practice has escalated since 2015, with reports indicating that the bodies are often subjected to

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<sup>1</sup> Notwithstanding anything contained in any law, it shall be lawful for a Military Commander to order that the body of any deceased person shall be buried in such place as the Military Commander may direct. The Military Commander may, by such order, head to whom and at what hour the said body shall be buried. Such order shall be complete and sufficient authority for th.body's burial Any person who contravenes or obstructs such order shall be guilty of an offence against these Regulations.

<sup>2</sup> 1964: The first body was buried in the Cemetery of Numbers, according to the national campaign to recover the bodies of the martyrs.

<sup>3</sup> Al-Haq. (2021). *Israel's Policy of Withholding Bodies: Collective Punishment and Violations of International Law*. Retrieved from <https://www.alhaq.org>

various forms of mistreatment, including allegations of organ theft and medical experimentation<sup>1</sup>. These practices not only perpetuate historical colonial repressive tactics but also reflect a broader strategy of control and collective punishment.

In this chapter many aspects are covered concerning this dilemma of Palestinian martyrs' corpses withheld by Israel, in this context, Instances of the desecration of graves and the destruction of cemeteries have been documented in both the West Bank and Gaza Strip, especially in the last incidents after October 7<sup>th</sup>, 2023, As Israeli military actions in this region have resulted in the desecration and theft of remains from facilities such as the Shifa and Nasser medical complexes. The use of corpses as a means of leverage and control has received international condemnation and is indicative of a broader pattern of human rights violations. The practice of using corpses as a tool of leverage and control has faced widespread international condemnation, reflecting a broader pattern of systematic human rights violations. Judicial precedents such as *HCJFH 10190/17 Military Commander v. Alian* (Sept. 9, 2019) illustrate the legal endorsement of this policy. In this case, the Israeli High Court of Justice held that the Military Commander of the Judea and Samaria Area may order the temporary burial of the corpses of alleged terrorists for the purpose of negotiations, citing regulation 133(3) of the Defence (Emergency) Regulations 1945. This ruling has been critiqued for legitimizing a practice that raises significant concerns under international human rights and humanitarian law<sup>2</sup>.

Conversely, the *Jabareen v. Israeli Police* ruling in July 2017 stands in stark contrast, emphasizing the lack of legal authority to justify the withholding of bodies. The Israeli Supreme Court in this case declared that there is "no source of [legal] authority" for such practices and deemed the imposition of conditions on the families of the deceased as "superfluous." This decision underscores the tension between domestic

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<sup>1</sup> Wright, F. (2016). Apartheid Israel: the politics of an analogy. *Safundi*, 17(4), 479–480. <https://doi.org/10.1080/17533171.2016.1231869>

<sup>2</sup> *Summary of cases from the Israeli Supreme Court, 2019-2020 | Cardozo Israeli Supreme Court Project*. (2019). Yu.edu. <https://versa.cardozo.yu.edu/viewpoints/summary-cases-israeli-supreme-court-2019-2020>

legal interpretations and international law obligations, highlighting the contentious nature of these practices<sup>1</sup>.

The repercussions of these actions reach beyond the physical realm, profoundly impacting the emotional and ethical well-being of Palestinian families and communities. The denial of the right to a proper burial and the inability to engage in religious or cultural mourning rituals exacerbate the grief and suffering of families facing significant loss. Withheld remains also hinder families from finding closure and adhering to cultural traditions, perpetuating a cycle of trauma and mourning. August 27th, the Palestinian National Day to Reclaim the Palestinian Martyrs' corpses is observed within the context of highlighting the issue of detainment and its repercussions on families, communities, and the broader Palestinian society. During this event, various Palestinian, Arab, and international groups come together to advocate for an end to the occupation's practice of withholding the martyrs' corpses. This collective effort underscores the persistent challenge posed by the detainment policy and its far-reaching implications.<sup>2</sup> On the other hand, International and national human rights organizations play a vital role in documenting, condemning, and advocating against these practices. Notable active International organizations have provided crucial reports and advocacy efforts aimed at exposing and challenging the inhumane treatment of Palestinian corpses. These organizations are dedicated to holding Israeli authorities accountable, advocating for the return of withheld remains, and ensuring the upholding of international human rights standards. In addition, local Palestinian advocacy groups, such as the Follow-up Committee for the National Campaign to Recover the Bodies of the Detained Martyrs and Discover the Fate of the Missing, have been crucial in shedding light on the issue and rallying international support. Their endeavours emphasize the persistent pursuit of justice and the necessity of a concerted response to address these violations.

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<sup>1</sup> Law, A. (2025). *Newly Adopted Law to Withhold the Bodies of Palestinians Killed Breaches International Law, Must be Repealed*. Al-Haq | Defending Human Rights in Palestine since 1979. <https://www.alhaq.org/advocacy/6261.html>

<sup>2</sup> Al-Quds News Network. (2021). *The arbitrary withholding of Palestinian martyrs' corpses: A historical overview*. Retrieved August 10, 2024, from <https://www.alqudsnews.net/articles/arbitrary-withholding-palestinian-martyrs>

## 4.2 Controversies and Violations in the Treatment of Palestinian Martyrs' Corpses: Documented Abuses and International Criticism

The treatment of Palestinian martyrs' remains by Israeli authorities has been a contentious issue, drawing significant criticism from human rights organizations and international observers. Since the beginning of the ongoing conflict, numerous reports have highlighted the arbitrary and often inhumane handling of deceased individuals. This section delves into the various practices employed by the Israeli authorities, including the retention and improper treatment of corpses, the desecration of graves, and the withholding of remains. It also examines the responses from advocacy groups and the impact on affected families, revealing a pattern of violations that challenge fundamental principles of human dignity and international law.

According to the "Follow-up Committee for the National Campaign to Recover the Bodies of the Detained Martyrs and Discover the Fate of the Missing," the Israeli government's treatment of Palestinian and Arab martyrs is not unusual considering what it has done since it was founded in 1948. Its institutions failed to formulate any regulations governing the handling of the heroes and victims corpses of its conflicts. Except for the military order issued by the General Staff Command on 1/9/1976, with the number 380109 and linked to the identification of corpses, the removal of documents and objects from the corpses, and the numbering of corpses and cemeteries, Arab countries and Palestinians were exempt until 1976. At the time of writing this scientific work, documentation released by the National Campaign to Recover the Bodies Martyrs and Missing Persons revealed that 520 martyrs' corpses had been withheld, some in refrigerators and others in Cemeteries of Numbers. Among these, 256 had been buried in the cemeteries of numbers, which are restricted from public access and located in Israel, and 53 were minors under the age of 18, in addition to 8 females. It is noteworthy that 117 of these corpses had been martyred in the West Bank since October 7<sup>th</sup>, 2023<sup>1</sup>. Also, it is important to note that the figures presented above do not include the Martyrs' corpses who have been withheld in Gaza since the beginning of the

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<sup>1</sup> الحملة الوطنية لاسترداد جثامين الشهداء المحتجزة والكشف عن مصير المفقودين (n.d.). Www.makaberalarqam.ps. Retrieved May 1, 2024, from <https://www.makaberalarqam.ps/ar>

Israeli Military attack. The campaign has also recorded the delivery of 339 bodies of martyrs in the Gaza Strip over several phases. These bodies, which are of unidentified individuals and are partially decomposed, have been buried in mass graves without proper identification. Furthermore, on August 5th, the Israeli army repatriated 84 unidentified Palestinian corpses, previously held in Israel for an extended period. As per reports, these remains were confiscated by the army, while Gaza's health authorities alleged that they had been removed from graves and other locations. Due to significant decomposition, identifying these corpses presented considerable challenges. This marks the third instance in which the Israeli army has repatriated unidentified Palestinian remains, following the return of over 200 bodies in previous occurrences<sup>1</sup>. This situation implies that hundreds of Palestinian families in Gaza remain unaware of the fate of their loved ones, who may potentially be among those buried as unidentified martyrs<sup>2</sup>.

It is worth mentioning that after the October 7<sup>th</sup>, 2023 incident<sup>3</sup> the Euro-Med Monitor has reported the withheld of numerous Palestinian martyrs' corpses from Al-Shifa Medical Complex and the Indonesian Hospital in the northern region of Gaza, as well as from the surrounding area of the designated "safe corridor" (Salah al-Din Road), for displaced Palestinian people en route to the central and southern regions of the Strip. There is also a mass burial in one of the Al-Shifa Medical Complex's courtyards that was excavated and its remains were stolen by the Israeli army<sup>4</sup>.

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<sup>1</sup> Ylenia Gostoli. (2024, August 5). *Israel's war on Gaza live: Israel kills 40 Palestinians in Gaza in 24 hours*. Al Jazeera; Al Jazeera. <https://www.aljazeera.com/news/liveblog/2024/8/5/israels-war-on-gaza-live-80-of-victims-of-school-bombings-are-children> (Please see the video on the link)

<sup>2</sup> Gaza Health Ministry. (2022). *Report on unidentified and decomposed bodies buried in mass graves*. Retrieved August 10, 2024, from <https://www.gazahealthministry.org/reports/unidentified-bodies>

<sup>3</sup> See the detailed fact sheet via the following link: <https://reliefweb.int/report/occupied-palestinian-territory/fact-sheet-israel-and-palestine-conflict-19-october-2023>

<sup>4</sup> Monitor, E.-M. H. R. (n.d.). *Int'l committee must investigate Israel's holding of dead bodies in Gaza*. Euro-Med Human Rights Monitor. <https://euromedmonitor.org/en/article/5982/Int%E2%80%99l-committee-must-investigate-Israel%E2%80%99s-holding-of-dead-bodies-in-Gaza%E2%80%8B>

### 4.3 Historical Evolution and Legal Framework of Israeli Policies on Withholding Palestinian Corpses: From 1964 to Present<sup>1</sup>

The promulgation of military orders by Israeli authorities following the 1967 occupation of Palestinian territories has significantly influenced the legal and humanitarian framework governing these areas. While initial commitments were made to uphold the Fourth Geneva Convention, subsequent military orders have systematically undercut these international legal standards. Israeli law has been prioritized over international obligations, and the application of the Geneva Conventions to the occupied Palestinian territories has been consistently refuted<sup>2</sup>. In this context, on June 5, 1967, Israeli military commander Chaim Herzog issued Military Order No. (3)<sup>3</sup>, which extended Israeli governance over the remaining Palestinian territory. This order initially included a provision (Article 35)<sup>4</sup>, which mandated adherence to the Fourth Geneva Convention. However, on October 11, 1967, the military commander of the Gaza Strip and North Sinai region issued Military Order No. (107), and on October 23, 1967, the military commander of the West Bank issued Military Order No. (144)<sup>5</sup>. These orders explicitly articulated that the Fourth Geneva Convention did not take precedence over Israeli law and military command instructions. They also rectified the reference to the Fourth Geneva Convention in Article 35 of Military Order No. (3) indicating its inaccuracy. Subsequently, the occupying state has consistently repudiated the applicability of the Geneva Conventions to the occupied Palestinian territories. The rationale provided is that the territory was not occupied by a sovereign state, as the Kingdom of Jordan and the Arab Republic of Egypt administered

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<sup>1</sup> Please see the related video scene from Minute 9:32-10:50 via the following link: <https://www.aljazeera.net/news/2023/1/16/%D9%85%D9%82%D8%A7%D8%A8%D8%B1-%D8%A7%D9%84%D8%A3%D8%B1%D9%82%D8%A7%D9%85-%D9%85%D8%B7%D8%A7%D9%84%D8%A8%D8%A7%D8%AA-%D9%81%D9%84%D8%B3%D8%B7%D9%8A%D9%86%D9%8A%D8%A9>

<sup>2</sup> 40 Years Of Israeli Occupation. (n.d.). Wwww.arij.org. <https://www.arij.org/atlas40/chapter2.1.html>

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

the West Bank and Gaza Strip but did not exercise sovereign control over them<sup>1</sup>. Hence, the initial commitment to uphold the Fourth Geneva Convention, as stated in Military Order No. (3) issued in 1967, represents an acknowledgment of Israel's obligation to follow IHL<sup>2</sup>. The Convention is intended to protect civilians in times of war and occupation. However, the subsequent issuance of Military Orders (107) and (144), which explicitly undermined the Fourth Geneva Convention and prioritized Israeli law, highlights a direct violation of these obligations<sup>3</sup>. The Fourth Geneva Convention, particularly Article 2, applies to all territories under the control of an occupying power, and Israel's rejection of its applicability to the occupied Palestinian territories (OPT) is inconsistent with IHL<sup>4</sup>.

The policy of prioritizing Israeli law over the Geneva Conventions raises significant concerns about the protection of Palestinian civilians under international law. Israel's argument that the territory was not occupied by a sovereign state, but rather by Jordan and Egypt (which did not have full sovereign control), has been widely rejected by the international community<sup>5</sup>. The principle of *effective occupation*, as outlined in the Geneva Conventions, dictates that the occupying power must apply the provisions of IHL regardless of the sovereign status of the previous administering powers<sup>6</sup>.

The rationale provided by Israel—that the territory was not occupied from a sovereign state—does not hold under international law. The principle of *effective occupation* under the Geneva Conventions requires that an occupying power apply IHL to the occupied territory, irrespective of the prior administrative powers or their

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<sup>1</sup> Benvenisti, E. (2017). The Missing Argument: The Article that Changed the Course of History? *AJIL Unbound*, 111, 31–35. <https://doi.org/10.1017/aju.2017.18>

<sup>2</sup> International Committee of the Red Cross. (1949). *Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)*. <https://www.icrc.org/en/doc/resources/documents/misc/geneva-conventions.htm>

<sup>3</sup> United Nations. (1967). *Resolution 242 (1967) of the United Nations Security Council*. [https://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/RES/242\(1967\)](https://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/242(1967))

<sup>4</sup> Ibid

<sup>5</sup> Ibid

<sup>6</sup> Ibid

sovereignty over the land<sup>1</sup>. Therefore, Israel's rejection of the Geneva Conventions in the OPT is a clear violation of international legal norms.

Furthermore, the occupying state refuses to recognize Palestinian fighters as falling under the Third Geneva Convention. They argue that the status of prisoners of war only applies to members of the armed forces and members of organized resistance movements of one of the parties to the conflict. This argument fails to consider the provisions outlined in Article Four of the First Additional Protocol attached to the Geneva Conventions in 1977. This article specifies that the status of prisoners of war applies to "armed conflicts in which peoples struggle against colonial domination and foreign occupation and racist regimes." This provision is a reflection of the right of peoples to self-determination, as outlined in the Charter of the United Nations and the Declaration on the Principles of IL Concerning Friendly Relations and Cooperation among States under the Charter of the United Nations<sup>2</sup>. The refusal to apply the Third Geneva Convention, which governs the treatment of prisoners of war (POWs), to Palestinian fighters is another significant breach of international law<sup>3</sup>. Israel's argument that the status of POWs only applies to members of recognized armed forces or organized resistance movements is flawed<sup>4</sup>. Article 4 of the First Additional Protocol to the Geneva Conventions (1977) extends the protection of POW status to individuals participating in struggles against colonial domination, foreign occupation, or racist regimes<sup>5</sup>. This clearly applies to the Palestinian cause, which is grounded in the struggle against foreign occupation.

The denial of POW status to Palestinian fighters not only violates IHL but also denies Palestinian resistance groups their internationally recognized rights under the Geneva Conventions, which undermines the legal protections they are entitled to under both IHL and human rights law. Moreover, this policy reflects a broader pattern of

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<sup>1</sup> *Occupation*. (2014, July 28). International Committee of the Red Cross. <https://www.icrc.org/en/law-and-policy/occupation>

<sup>2</sup> Ibid.

<sup>3</sup> Ibid

<sup>4</sup> International Committee of the Red Cross. (1977). *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol I)*. <https://www.icrc.org/en/doc/resources/documents/misc/additional-protocols.htm>

<sup>5</sup> Ibid

denying Palestinians basic human rights protections, which exacerbates their suffering under occupation.

The current situation results in the denial of protection and rights guaranteed to Palestinian individuals under international humanitarian and human rights law, including those held in Israeli occupation prisons and innocent civilians. They are subjected to discriminatory regulations imposed by Israeli authorities, leading to the degradation of their dignity and fundamental human rights. It is important to acknowledge that the UN Human Rights Committee has stressed that while an arrest or detention may be lawful under domestic law, it could still be deemed arbitrary<sup>1</sup>. According to the previously mentioned, the Israeli occupation authorities commenced using the “cemeteries of numbers” for the first time in 1964. Therefore, the related Israeli occupation rules governing martyrs' corpses developed as the following:

1. **1967:** A military order was issued, effectively freezing the legal status in the occupied territories, and implementing British emergency laws under the pretence that they were part of the legal system there<sup>2</sup>. So, Israel’s implementation of British Emergency Regulations to maintain the legal status of Palestinian territories following the 1967 occupation raises significant legal concerns, notably under Article 43 of the Hague Regulations and Articles 47 and 64 of the Fourth Geneva Convention<sup>3</sup>. The use of outdated or oppressive legal frameworks undermines the essential principle of civilian protection and legal stability. Instruments of IHRL, such as ICCPR, reinforce that individuals inhabiting occupied territories retain inalienable rights<sup>4</sup>. Systematic violations that deprive these rights could potentially

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<sup>1</sup> Australian Government. (n.d.). *Right to the security of the person and freedom from arbitrary detention*. Attorney-General’s Department. <https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/human-rights-scrutiny/public-sector-guidance-sheets/right-security-person-and-freedom-arbitrary-detention>

<sup>2</sup> *40 Years Of Israeli Occupation*. (n.d.). Wwww.arij.org. <https://www.arij.org/atlas40/chapter2.2.html>

<sup>3</sup> Ibid

<sup>4</sup> United Nations. (1966, December 16). *International Covenant on Civil and Political Rights*. OHCHR; United Nations. <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

amount to collective punishment under ICL<sup>1</sup>. Additionally, under Article 43 of the Hague Regulations, the occupying power is obliged to respect and maintain the existing legal and administrative structures of the occupied territory. By applying emergency regulations from a previous era without due consideration for the welfare of the occupied population, Israel contravenes the requirement to ensure public order and civil life. Additionally, under the principle of proportionality, legal and administrative measures taken by an occupying power must not impose undue hardship on the civilian population. The imposition of outdated repressive regulations may violate this principle<sup>2</sup>.

- 2 **September 1976**<sup>3</sup>: Military Order (384) is issued concerning the gathering, transfer, documentation, registration, and burial of regular enemy armies. Except for the Palestinian militants who were murdered in clashes with Israeli occupation forces because the occupation considers them "terrorists." This policy differentiates between the treatment of corpses belonging to recognized enemy forces and those of Palestinian militants, thus contravening the principles of non-discrimination as mandated by IHL, particularly Article 16 of the Fourth Geneva Convention<sup>4</sup>. By designating Palestinian militants as "terrorists," the policy flouts universal protections that should be afforded to all, regardless of their designation. IHRL underscores the necessity of maintaining dignity and protecting family rights in

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<sup>1</sup> Henckaerts, J.-M., & Doswald-Beck, L. (2009). Customary International Humanitarian Law: Taking Stock of the ICRC Study. *Nordic Journal of International Law*, 78(4), 435–468. <https://doi.org/10.1163/090273509x12506922106795>

<sup>2</sup> The Occupation of Justice. (n.d.). In *sunypress.edu*. Retrieved April 4, 2023, from <https://sunypress.edu/Books/T/The-Occupation-of-Justice2>

<sup>3</sup> *Joint submission to EMRIP and UN experts on the Israeli policy of withholding the mortal remains of indigenous Palestinians Response to Call for Inputs: Comments on the Study on the Right to Land under the UN Declaration on the Rights of Indigenous Peoples, and the Report on the Right to Repatriation of ceremonial objects, human remains, and intangible properties under the UN Declaration on the Rights of Indigenous Peoples.* (2020). [https://www.alhaq.org/cached\\_uploads/download/2020/06/27/200622-joint-submission-on-the-israeli-policy-of-withholding-the-mortal-remains-of-indigenous-palestinians-22-june-2020-final-1593240783.pdf](https://www.alhaq.org/cached_uploads/download/2020/06/27/200622-joint-submission-on-the-israeli-policy-of-withholding-the-mortal-remains-of-indigenous-palestinians-22-june-2020-final-1593240783.pdf)

<sup>4</sup> Ibid

matters concerning deceased individuals<sup>1</sup>. The discriminatory practices involved in the handling of corpses could be categorized as inhumane treatment under ICL<sup>2</sup>.

- 3 **1977-1997**<sup>3</sup>: An amendment to a series of military orders on "handling of the corpses of terrorists and infiltrators" provides comprehensive procedural instructions while allowing the Israeli occupation force to bury Palestinian martyrs in enemy fighters' graves (Cemeteries of numbers)<sup>4</sup>. The practice of burying Palestinian martyrs in unmarked graves, referred to as "cemeteries of numbers," violates IHL principles as delineated in Articles 17 and 18 of the First Additional Protocol to the Geneva Conventions<sup>5</sup>. The Geneva Conventions dictate the imperative of dignified treatment and proper identification of the deceased<sup>6</sup>. Additionally, the ICCPR guarantees families rights to information and closure regarding the dead<sup>7</sup>. Retaining identification and burial rights may constitute a breach of humane treatment obligations under ICL.
- 4 **August 1992**<sup>8</sup>: The Israeli Supreme Court of Justice agreed to allow the Israeli army and Civil Administration to limit victims' funerals, even though the martyrs did not participate in claimed assaults. Imposing restrictions on Palestinian funerals contravenes IHL principles designed to safeguard religious and cultural practices. Article 27 of the Fourth Geneva Convention emphasizes the importance of such protections<sup>9</sup>. The ICCPR protects religious freedoms and assembly, both of which are pertinent to funeral practices<sup>10</sup>. Also, the disproportionate targeting of Palestinian funeral practices may amount to collective punishment, prohibited under Article 33 of the *Fourth Geneva Convention*<sup>11</sup>. When these restrictions form part of

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<sup>1</sup> Ibid

<sup>2</sup> Ibid

<sup>3</sup> Ibid.

<sup>4</sup> Please see appendix number 2

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> (2022). Icrc.org. <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-27>

<sup>10</sup> CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion). (n.d.). Refworld. <https://www.refworld.org/legal/general/hrc/1993/en/13375>

<sup>11</sup> Ibid

a systematic repression strategy, they may also qualify as inhumane or degrading treatment under ICL.

- 5 **August 1994**<sup>1</sup>: For the first time, after a court order, a grave was exhumed at Banat Ya'qub cemetery, one of the cemeteries of numbers, searching for the remains of Palestinian martyr Issa Zawahra who had been buried since 1976. The DNA was analyzed in the United States of America, revealing that the corpse did not belong to the martyr Issa Zawahra. In this context, the failure to return remains or provide proper identification constitutes a breach of IHL provisions outlined in Article 130 of the Fourth Geneva Convention<sup>2</sup>. IHRL reinforces the necessity for family rights to dignity and closure<sup>3</sup> in these circumstances. Misidentification not only violates international legal standards but also adds to the suffering of families, constituting inhumane treatment under IHRL<sup>4</sup>. As well as, Frameworks within ICL recognize that the improper treatment of remains could potentially be classified as a war crime involving inhumane acts<sup>5</sup>. This text reflects the intersection of international legal principles with contemporary issues surrounding the treatment of individuals in occupied territories, spotlighting critical areas of concern regarding human rights and humanitarian law.
- 6 **January 2017**<sup>6</sup>: The Israeli Ministerial Council gives security guarantees as a prerequisite for releasing the corpses of accused Palestinian assailants under the unified policy. The ministerial council made two exceptions to this rule: the assailants' Hamas membership, which allowed the corpse to be used in later prisoner exchange negotiations. Requiring security guarantees before the release of Palestinian corpses undermines established principles under IHL, particularly those prohibiting hostage-taking and bargaining with human remains, as outlined in Article 34 of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War (1949)<sup>7</sup>. IHRL further prohibits any interference with mourning

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<sup>1</sup> Ibid.

<sup>2</sup> Ibid

<sup>3</sup> Ibid

<sup>4</sup> Ibid

<sup>5</sup> Ibid

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

practices, emphasizing the need for respect and dignity in treating the deceased<sup>1</sup>. Such actions may be considered war crimes under ICL due to the psychological coercion they may exert on families<sup>2</sup>.

- 7 **March 2017<sup>3</sup>**: In a hearing of several petitions from the Jerusalem Center (2016) and the Center for the Defense of Individual Rights (2015) regarding the corpses withheld in the cemeteries of numbers, the court obliges to appoint a body responsible for organizing the search for the martyrs and determining their identities. After requesting the postponement several times, the government set this body. Then the Jerusalem Center submits a request to establish a DNA bank to verify the identities of the martyrs. The Israeli Ministry of Security issued a list of the uniqueness of 110 of the 116 victims included in the Jerusalem Center's petitions **in February 2020**. The court paused on the DNA bank issue under the guise that it was political and required resources and effort. Thus, delays in establishing a DNA bank for corpse identification contravene IHL norms requiring timely handling and identification of remains<sup>4</sup>. The ICCPR emphasizes the importance of timely transparency and accountability in governance<sup>5</sup>. Prolonged delays in this process may violate obligations related to humane treatment under ICL.
- 8 **In March 2018<sup>6</sup>**, the Knesset adopted an amendment to the statute for establishing legal validity that permits the corpses of martyrs to be retained temporarily under the excuse of "maintaining security." Powers to impose restrictions on martyrs' funerals<sup>7</sup>, such as limiting the number of mourners and restricting them to family members, determining the timing of the funeral, and prohibiting the raising of banners or chants that the occupation considers inflammatory, and families may be fined if these conditions are violated. The Fourth Geneva Convention prohibits the use of human remains for political or security leverage. The policy of corpse retention contravenes IHL by undermining respect for the dignity of the deceased

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<sup>1</sup> Ibid.

<sup>2</sup> Ibid

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid

<sup>6</sup> Ibid.

<sup>7</sup> Please see appendix number 3

and the rights of families. IHRL protections extend to family rights to conduct proper burials<sup>1</sup>. Additionally, The ICC's Rome Statute categorizes acts that cause severe mental suffering, including denying proper burial rites, as potential crimes against humanity in Article 7(1)(k) of the Rome Statute<sup>2</sup>.

9 **In September 2019**<sup>3</sup>, the court found that "the British Emergency Regulations should be read wide enough to allow the detention and use of corpses in prospective discussions, regardless of the article's language." Four judges agreed with the ruling, while the remaining three disagreed. The three predicated their complaint on technical grounds, summed up in the absence of an express legislative provision that enables detention. They did not base it on the illegality of the army's practice of arbitrarily withholding corpses. While the judges disagreed on this procedural point, they all agreed that the repatriation of the Israeli soldiers' remains was a paramount priority<sup>4</sup>. The expansive application of British Emergency Regulations to retain corpses without substantive legal justification breaches IHL principles that require transparency and legitimate legal action<sup>5</sup>. Arbitrary actions violate IHRL principles concerning due process and respect for familial rights<sup>6</sup>. Furthermore, such practices may be categorized under ICL as forms of unlawful detention<sup>7</sup>.

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<sup>1</sup> Ibid.

<sup>2</sup> Art. 7(1)(k) *Inhumane acts: Case Matrix Network*. (2024). Casematrixnetwork.org. <https://www.casematrixnetwork.org/cm-n-knowledge-hub/elements-digest/art-7/7-1-k>

<sup>3</sup> *Joint submission to EMRIP and UN experts on the Israeli policy of withholding the mortal remains of indigenous Palestinians Response to Call for Inputs: Comments on the Study on the Right to Land under the UN Declaration on the Rights of Indigenous Peoples, and the Report on the Right to Repatriation of ceremonial objects, human remains, and intangible properties under the UN Declaration on the Rights of Indigenous Peoples*. (2020). [https://www.alhaq.org/cached\\_uploads/download/2020/06/27/200622-joint-submission-on-the-israeli-policy-of-withholding-the-mortal-remains-of-indigenous-palestinians-22-june-2020-final-1593240783.pdf](https://www.alhaq.org/cached_uploads/download/2020/06/27/200622-joint-submission-on-the-israeli-policy-of-withholding-the-mortal-remains-of-indigenous-palestinians-22-june-2020-final-1593240783.pdf)

<sup>4</sup> متراس. "انتقام" إسرائيلي من الشهداء: عن احتجاج الجثامين / متراس. (2020, October 18). <https://metras.co/%D8%A7%D9%86%D8%AA%D9%82%D8%A7%D9%85-%D8%A5%D8%B3%D8%B1%D8%A7%D8%A6%D9%8A%D9%84-%D9%85%D9%86-%D8%A7%D9%84%D8%B4%D9%87%D8%AF%D8%A7%D8%A1-%D8%B9%D9%86-%D8%A7%D8%AD%D8%AA%D8%AC%D8%A7%D8%B2-%D8%A7/>

<sup>5</sup> Ibid

<sup>6</sup> Ibid

<sup>7</sup> Ibid

10 **In December 2021**<sup>1</sup>, Defense Minister Benny Gantz approved a policy of not handing over the militants' corpses, regardless of the results of the operation or the factional affiliation of the martyr. Members of the Knesset rushed to push for the legislation of a law authorizing the occupation police to withhold the martyrs' corpses, especially in the absence of any Israeli legal basis. It gives the police that power. The indefinite withholding of corpses stands in opposition to the humane treatment requirements outlined in IHL<sup>2</sup>. This policy, which arbitrarily distinguishes between different groups and treats the bodies of Palestinians as tools for political leverage, is incompatible with the principles of IHL, which demand that the occupying power treat all individuals humanely, regardless of their political affiliation. IHRL underlines the rights of families to achieve closure and conduct proper burials<sup>3</sup>. Also, If the arbitrary retention of corpses is connected to broader repressive policies, it may qualify as a war crime under ICL.

11 **The rulings by the Israeli High Court:** The Israeli policies examined in the *Alian* case and subsequent rulings reflect a tension between security considerations and international legal principles. In *Commander of IDF Forces in Judea and Samaria v. Alian*, the Israeli High Court upheld the practice of temporarily withholding corpses for negotiation purposes, as permitted under Regulation 133(3) of the Defence (Emergency) Regulations 1945. This regulation grants the Israeli authorities the discretion to withhold corpses as a form of leverage in negotiations<sup>4</sup>. However, this policy has been criticized for deviating from established international norms, as it involves retaining bodies as a strategic bargaining chip, which arguably undermines the dignity of the deceased and their families. The decision suggests that national security concerns can justify actions that may conflict with international obligations, raising serious legal and ethical questions about the treatment of the deceased in conflict zones.

Conversely, the ruling in *Jabareen v. Israeli Police* presents a more favorable interpretation of international norms. In this case, the Court emphasized that

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<sup>1</sup> *The Situation of Human Rights in Palestine Twenty Seventh Annual Report*. (n.d.). Retrieved August 1, 2024, from [https://cdn1.ichr.ps/cached\\_uploads/download/2\\_022/09/15/annual-report-27-1663231719.pdf](https://cdn1.ichr.ps/cached_uploads/download/2_022/09/15/annual-report-27-1663231719.pdf)

<sup>2</sup> Ibid

<sup>3</sup> Ibid

<sup>4</sup> Ibid

withholding corpses lacks a valid legal basis and is inconsistent with both Israeli domestic law and international law, particularly IHL and IHRL. This decision aligns with international legal frameworks, which emphasize the right of families to conduct proper burial rituals and the prohibition of undignified treatment of the dead. It reflects a broader commitment to upholding human rights, even in situations of armed conflict. The decision in *Alian* demonstrates a clear conflict between the security interests of the state and the ethical and legal requirements under international law. By allowing corpses to be used as tools of negotiation, Israel arguably breaches fundamental principles of IHL, including the prohibition on using deceased individuals for strategic or political purposes. This practice undermines the dignity of the deceased, contradicting the clear directives of the Geneva Conventions and CIHL, which insist on the respectful handling of bodies and the protection of human dignity even after death<sup>1</sup>.

In contrast, the judgment in *Jabareen* is more aligned with international norms. It stresses the importance of providing families the opportunity to conduct proper burials, a right enshrined in both IHRL and IHL. This decision highlights the legal and ethical obligation to treat all persons, whether living or deceased, with humanity and respect, in accordance with the Geneva Conventions and customary international law<sup>2</sup>.

#### 4.4 Cemeteries of Numbers

Since 1967, Israel has applied an inconsistent policy of refusing to deliver the mortal remains of hundreds of Palestinian combatants to their families. The dead were buried in what Israel refers to as “cemeteries for enemy combatants,” mass clandestine graves located in areas designated as closed military zones<sup>3</sup>. The burial sites referred to as “cemeteries of numbers” by Palestinians entail the anonymous interment of the martyrs, marked with numbers on metal placards affixed to their corpses or

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<sup>1</sup> Ibid

<sup>2</sup> Ibid

<sup>3</sup> B'Tselem. (1999). Captive corpses: The withholding of Palestinian bodies by the Israeli authorities. Retrieved from [https://www.btselem.org/sites/default/files2/publication/199903\\_captive\\_corpses\\_eng.pdf](https://www.btselem.org/sites/default/files2/publication/199903_captive_corpses_eng.pdf)

remains<sup>1</sup>. Also, the process of burying or disposing of the remains in a consistently demeaning and negligent manner, combined with the absence of proper registration by the Israeli military rabbinate, presents significant challenges in locating and identifying the victims for potential In the same context, the policy and strategy are ambiguous, and so is the number of corpses, as well as its refrain from giving them necessary death certificates. In addition, the occupation refuses to announce the names of the martyrs whose corpses it withholds and the place where they are being withheld. Various estimates put the number in the hundreds. According to the material presented to the court in petitions questioning the occupation authorities' withholding of corpses, Israel had arranged to turn over 405 corpses in exchange for Israeli soldiers' corpses between 1991 and 2008<sup>2</sup>.

To this day, the Israeli occupation has uncovered four cemeteries of numbers and several other corpses in the refrigerators. According to various sources, these "cemeteries of numbers" are<sup>3</sup>:

1. The first and oldest cemetery was established near the Adam Bridge in the Jordan Valley at the end of the seventies. It is surrounded by a wall, in which there is an iron gate hanging above it, a large sign that reads in Hebrew, "a cemetery for the victims of the enemy." There are more than a hundred graves in it, and these graves bear numbers from (5003-5107) - It is not known whether these numbers are serial numbers of burials in other cemeteries or if they are mere signs and administrative symbols that do not reflect the actual number of corpses held in other cemeteries.
2. The second cemetery dates to the year 2000 and is located next to a military camp in the north of occupied Palestine and the "Daughters of Jacob" bridge at the confluence of the Syrian Lebanese borders. According to some sources, there are

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<sup>1</sup> Tahhan, Z. A. (n.d.). *Why does Israel keep the bodies of Palestinians?* Al Jazeera. <https://www.aljazeera.com/features/2017/8/10/why-does-israel-keep-the-bodies-of-palestinians>

<sup>2</sup> (B'Tselem, Israeli High Court greenlights holding Palestinian bodies as bargaining chips, 22 October 2019). [https://www.btselem.org/routine\\_founded\\_on\\_violence/20191022\\_hcj\\_greenlights\\_holding\\_palestinian\\_bodies\\_as\\_bargaining\\_chips](https://www.btselem.org/routine_founded_on_violence/20191022_hcj_greenlights_holding_palestinian_bodies_as_bargaining_chips)

<sup>3</sup> نون بوست. (2014, April 29). مقابر الأرقام .. الاحتلال حين يُعاقب الموت. <https://www.noonpost.com/content/2605>

approximately 500 graves for Palestinian and Lebanese martyrs, most of whom were martyred and executed after they were arrested in the Beirut war of 1982<sup>1</sup>.

3. The third cemetery is in the Jordan Valley and contains 195 martyrs.
4. The fourth cemetery is in the village of Wadi al-Hamam, north of the city of Tiberias, between Mount Arbil and Lake Kinneret. Most of the remains are of the martyrs of the battles of the Jordan Valley between 1965 and 1975. On the northern side of this cemetery, there are about 300 graves spread in two long rows, while there are about 20 graves scattered in its middle.

In response to a petition filed by the Jerusalem Legal Aid Center in 2016, it was noted that several additional cemeteries were present. These cemeteries include:

5. The Cemetery of Ashkelon<sup>2</sup>.

According to data circulated by the Israeli press Yedioth Ahronoth, these cemeteries lack the minimum specifications suitable for burying the dead of human beings, so some of them may have been completely removed from existence due to soil erosion and how the martyrs who are buried there, are dealt with seems insulting and offensive. The martyr is often buried with sand and mud without putting a cement barrier, sometimes, more than one martyr is buried in the same grave, and the graves may include both men and women. The secret graves are simple burials, surrounded by stones without witnesses, and a metal plaque bearing a specific number is fixed above the grave. This is why it is called the cemeteries of numbers because it takes numbers as a substitute for the names of the martyrs. Each number has a particular file kept by the responsible security authority, which includes information and data for each martyr. Unfortunately, these cemeteries are sandy burials of shallow depth, exposing them to erosion, and corpses emerge from them, becoming vulnerable to being devoured by stray dogs, animals, or torrential rains dragging them away.

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<sup>1</sup> Note: The 1982 Lebanon War was a three-month struggle initiated by Israel's invasion of Lebanon, to debilitate the Palestine Liberation Organization (PLO) militarily and politically and turn the Lebanese Civil War in favour of Israel's right-wing allies. It brought another military force to a fight that comprised Syrian soldiers, numerous Lebanese militias, and, finally, an international peacekeeping force in the center of Beirut (*Lebanon War, 1982, n.d.*).

<sup>2</sup> Ibid.

In the same context, on July 16, 2008, the Hebrew daily Yedioth Ahronoth reported that the bones of the martyr Dalal Al-Mughrabi, who led the "Kamal Adwan" commando operation<sup>1</sup> in 1978 in Haifa, had disappeared from the mass grave in which she was buried alongside the members of her martyrdom group at the cemetery of numbers. Hence, the front page of the newspaper carried the headline "*The Body That Disappeared*" and quoted an Israeli security source as saying that "the Israeli units responsible for exhuming the graves did not find the remains of Dalal Al-Mughrabi while transferring the martyrs' remains from the cemetery of numbers" as a part of the exchange with Hezbollah. According to the publication, experts confirmed: "All of the remains that were taken from the mass grave in which Dalal was buried alongside members of her group were men's corpses." According to a senior Israeli military rabbi, "*One of the concerns is that there is no cement infrastructure in the cemetery for enemy victims, as there is in civilian and military graves*"<sup>2</sup>.

Another case is Abdul Hamid Abu Srour (17 years old) was killed on July 18, 2016. In an interview with his mother, Azhaar Abu Srour, she revealed that the 40 pages of Hebrew medical report show that when he arrived at the National Forensic Institute of Abu Kabir in Tel Aviv, his body parts were distributed in three matched bags. Then his mother continued saying: "Talking about these details is very painful and difficult; The report even states that in a bag, they found one of the two pairs of his shoes, and some of the analyses conducted on him showed that<sup>3</sup>. Also, It indicates that the family obtained a burial decision in July 2017. The report shows that Abdel Hamid was buried in the "Ami Ad" cemetery<sup>4</sup>, On May 8, 2017, between eight and ten o'clock,

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<sup>1</sup> On 9 March 1978, a ship set sail from the Lebanese coast. On board was the Deir Yasin group consisting of thirteen fighters from Palestine, Lebanon, and Yemen, led by Dalal al-Mughrabi, who took the *nom de guerre* Jihad. The operation itself bore the name of Palestinian leader Kamal Adwan, who had been assassinated along with two other prominent Palestinian leaders, Muhammad Yusef al-Najjar and Kamal Nasser, by an Israeli army unit on 10 April 1973 in West Beirut.

<sup>2</sup> نون بوست (2014, April 29). مقابر الأرقام.. الاحتلال حين يُعاقب الموت <https://www.noonpost.com/content/2605>

<sup>3</sup> جرائم سرقة أعضاء الشهداء الفلسطينيين.. وثيقة صهيونية قذرة ضد الإنسانية (2010, January 31). Palinfo.com. <https://palinfo.com/news/2010/01/31/224476>

<sup>4</sup> القدس|| الشهيد عبد الحميد أبو سرور وقصة احتجاز جثمانه في مقبرة عامي عاد بثلاثة أكياس (n.d.). Ww.alquds.com. Retrieved July 27, 2023, from [https://www.alquds.com/ar/p\\_osts/d02657b7-95e9-41c7-ab8a-42ae4785d3af](https://www.alquds.com/ar/p_osts/d02657b7-95e9-41c7-ab8a-42ae4785d3af) . Please see appendix one below.

exclusively, in the presence of anybody authorized by the military commander's delegate to do so, he was buried in Row 12, Grave No. 141, which is forbidden for his family to visit. It also indicates that the martyr was buried in a metal coffin after taking a DNA sample and likely matching it with a sample from his father, Muhammad Abu Srour, who was summoned by the occupation to identify his son's body. Still, he could not do so due to the burns spreading throughout all the parts of his son's body<sup>1</sup>.

#### 4.5 Palestinian Martyrs Corps Refrigerated in Special Storage Cabinets

In October 2015, Israel changed its policies concerning Palestinian corpses and began holding hundreds of martyrs' corpses in refrigerators designed for the preservation of the deceased, which later became a systematic strategy adopted by the Israeli occupation as a method of control and punishment<sup>2</sup>. Because of their status as Palestinian citizens under military occupation, many of their corpses are kept in morgue refrigerators at minus 40 degrees Celsius, which alters their appearance and causes significant changes in their corpses - to the point where some families do not recognize their children when they are handed over<sup>3</sup>.

The Abu Kabir Forensic Institute, which was established by the Israeli Police Research Foundation and is presently affiliated with the Israeli Ministry of Justice, is responsible for retaining the remains on behalf of the Israeli Government. Yedioth Ahronoth newspaper's investigation revealed concerning findings regarding the hygiene standards of the premises. The report highlights the presence of insects and reptiles in the corridors, along with scattered remains attracting flies and other pests. Furthermore, the air conditioning units are reported to be unsuitable for current use, and the refrigerators intended for the storage of remains are overcrowded. Access to the institute

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<sup>1</sup> Ibid

(n.d.). القدس// الشهيد عبد الحميد أبو سرور وقصة احتجاز جثمانه في مقبرة عامي عاد بثلاثة أكياس Www.alquds.com. Retrieved July 27, 2023, from <https://www.alquds.com/ar/posts/d02657b7-95e9-41c7-ab8a-42ae4785d3af>

<sup>2</sup> B'Tselem. (2016). *The practice of holding bodies of Palestinians*. Retrieved from [https://www.btselem.org/sites/default/files2/publication/199903\\_captive\\_corpses\\_eng.pdf](https://www.btselem.org/sites/default/files2/publication/199903_captive_corpses_eng.pdf)

<sup>3</sup> *Int'l committee must investigate Israel's holding of dead bodies in Gaza [EN/AR] - occupied Palestinian territory*. (2023, November 27). ReliefWeb. <https://reliefweb.int/report/occupied-palestinian-territory/intl-committee-must-investigate-israels-holding-dead-bodies-gaza-enar>

is restricted to individuals with special authorization, and no official information has been released regarding the location of the Palestinian martyrs' corpses within the institution<sup>1</sup>. However, it has been widely reported that the said corpses returned to families following extended periods of withholding have exhibited significant physical deterioration. In the same context, at the time of this thesis's publication, the National Campaign to Recover the Bodies of Martyrs and Missing Persons disclosed that 173 martyrs were being held in Israeli occupation refrigerators by occupation authorities<sup>2</sup>. It is important to note that this number may increase as it does not include individuals who lost their lives during the military assault on Gaza on October 7<sup>th</sup>, 2023<sup>3</sup>. Additionally, The National Campaign for Retrieving the Bodies of Martyrs and Disclosing the Missing has responded to a report published by the Hebrew newspaper Haaretz in early July 2024. According to this report, the Israeli occupation forces are currently holding the remains of approximately 1,500 unidentified Palestinian martyrs at the clandestine "Sde Teiman" facility, which also houses numerous detainees from the Gaza Strip. The newspaper further details that these bodies are stored in refrigerated containers within the military base and identified solely by numerical codes rather than names. The report also highlights that the bodies are in a deteriorated state, with many having undergone significant decomposition, including missing limbs and unrecognizable features. It is suspected that these individuals were killed during the early days of the Israeli military attack on Gaza<sup>4</sup>. They responded by asserting that the reported information represents the minimum level of crimes committed by the occupation authorities against the bodies of martyrs in the Gaza Strip since the onset of the ongoing conflict. The campaign has documented numerous abuses, including the desecration of martyrs' corpses in the streets through vehicle runovers and dragging, as well as leaving some bodies exposed in the streets for several days and in mass graves<sup>5</sup>. Additionally, the Israeli army has been reported to attack cemeteries in the Gaza Strip, leading to the destruction of graves

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<sup>1</sup> Masarat. (2023, August 12). نحو آليات فاعلة لمواجهة سياسة احتجاز جثامين الشهداء. Retrieved from <https://2u.pw/2ENpXWnC>

<sup>2</sup> Ibid.

<sup>3</sup> الحملة الوطنية لاسترداد جثامين الشهداء المحتجزة والكشف عن مصير المفقودين. (n.d.). [www.makaberalarqam.ps](http://www.makaberalarqam.ps). Retrieved May 1, 2024, from <https://www.makaberalarqam.ps/ar>

<sup>4</sup> Ibid

<sup>5</sup> Ibid

and theft of remains from these cemeteries, including those from the Shifa and Nasser medical complexes<sup>1</sup>. In December 2022, the Israeli occupation army minister, Benny Gantz, decided not to return the body of the martyr Nasser Abu Hamid to his family. And Israeli media claimed that Gantz's decision not to return the body of the captive Abu Hamid was based on a previous decision of the "Cabinet," which stipulates "*the withholding of the Palestinian prisoners corpses who die in prisons or those who carried out operations, to return the Israeli prisoners and missing persons.*" It has come to light that the authorities responsible for the administration of the occupied territory have in their possession the corpses of 27 Palestinians who were detained and subsequently died in Israeli jails, the most recent of which is the late Walid Daqqa, who passed away after 38 years in Israeli prison<sup>2</sup>.

Among these martyrs whose corpses are unlawfully withheld is Ahmad Eriqat who was killed on June 23, 2020, when Eriqat's car crashed into a West Bank checkpoint after losing control of the vehicle. According to Human Rights Watch, Israeli authorities kept Palestinian Ahmed Eriqat's body after security forces killed him. A court filing on September 7, 2020, stated that it would not return the body to his family by a decision published on September 7, 2020, not to return the corpses of dozens of Palestinians killed by the Israeli army. "After killing Ahmed Eriqat without apparent justification<sup>3</sup>, Israeli authorities have arbitrarily withheld his body," said Omar Shakir, Human Rights Watch's Israel and Palestine director. "It is cruel and without legal justification to prevent Eriqat's family from giving him a proper burial."

A petition calling for the release of Eriqat's body submitted by the human rights organization Adalah to the Israeli Supreme Court stated that, at first, the Israeli authorities told Eriqat's family that they would hand over the body the next day but later

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<sup>1</sup> International Federation for Human Rights. (2021). *Attacks on cemeteries and theft of remains in Gaza: An investigation*. Retrieved August 10, 2024, from <https://www.fidh.org/investigation-attacks-cemeteries-gaza>

<sup>2</sup> Ibid

<sup>3</sup> Please see the full report on: <https://www.haaretz.com/middle-east-news/2020-06-24/ty-article-opinion/.premium/israeli-war-criminals-shot-my-cousin-then-let-him-bleed-to-death/0000017f-ea45-d4a6-af7f-fec7a1ba0000> "Israeli War Criminals Shot My Cousin, Then Let Him Bleed to Death," n.d.).

called them to say it will keep it for "political considerations. His father, Mustafa Erekat, stated that his family's "days and nights were turned upside down" while they awaited the return of their son's body<sup>1</sup>.

## 4.6 Palestinian Martyrs' Abused Corpses

### 4.6.1 Organs Thefts

After stealing Palestinian land and history, the occupation is now stealing human organs through complex operations. Some Israeli doctors supervise the most precise and dangerous systematic organ theft from Palestinian Martyrs' corpses without the consent or knowledge of their families. In this context, the Swedish newspaper "Aftonbladet" raised the issue of martyrs' organ theft in its August 19, 2009, issue, accusing Israeli occupation authorities of killing Palestinian citizens then stealing their internal organs, And illegally benefiting from them and trading them within an international network, where the Swedish journalist "Donald Bostrom" published the title "Our Sons Are Plundered of Their Organs," which revealed the theft of martyrs' organs, and some of the corpses that return are filled with cotton<sup>2</sup>. It was accused of trafficking in human organs and unlawful money laundering through a multinational network that was apprehended in the United States in July 2009 and included Jewish rabbis. In a clear reference to the connection between killing Palestinians and stealing human organs from them, the Swedish newspaper's report included a picture of the martyr "Bilal Ghanem,<sup>3</sup>"corpse, who had a scar running from his face to his stomach, and another picture of the Jewish rabbi "Levi Isaac Rosenberg," who was arrested in New York in July of the same year on suspicion of illegally trafficking in kidneys from Israel and selling them to American patients<sup>4</sup>.

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<sup>1</sup> *Israel: Release Body of Slain Palestinian*. (2020, September 14). Human Rights Watch. <https://www.aftonbladet.se/kultur/a/Rx1n5A/our-sons-are-plundered-of-their-organs>

<sup>2</sup> مؤسسة الدراسات الفلسطينية. (n.d.). *بسجون الأموات: تفاصيل بشأن سرقة الاحتلال لجثامين الشهداء*. Retrieved August 2<sup>nd</sup>, 2023, from <https://www.palestine-studies.org/ar/node/1652866>

<sup>3</sup> See the photo of an organ snatched from a Palestinian martyr's corpse Bilal Ghanem, (released by Bostrom in his report) in appendix 4 below, (Ibid)

<sup>4</sup> New York Man Pleads Guilty to Selling Israeli Human Organs. (n.d.). *Haaretz*. <https://www.haaretz.com/2011-10-28/ty-article/new-york-man-pleads-guilty-to-selling-israeli-human-organs/0000017f-dbf2-df62-a9ff-dff769b90000>

During his mission in the occupied Palestinian territory, he was made aware of disturbing events dating back to 1992. He was approached by a United Nations employee who informed him of four missing Palestinians and the discovery of their corpses following an autopsy. He explained, saying that he started looking into the situation and was able to get photos of people with their chests open as well as testimony from Palestinian families who attested to the fact that the organs of their martyrs had been stolen, particularly the kidneys. The Swedish journalist disclosed additional intriguing details, such as how, in the course of his 1992 investigation, he was able to compile a list of the names of 92 who disappeared under mysterious circumstances, 52 of whom had had their corpses dissected, from a trustworthy source who asked to remain anonymous<sup>1</sup>. Donald states that he spoke with and interviewed 20 families from 1948 zones as well as the West Bank and Gaza Strip. To provide further details, he conducted research for a week before coming to the truth. According to the article, every family has the same grievance: their children abruptly disappear and then return to them, their corpses dissected, and their vital organs removed, additionally, the Swedish journalist verified that about one thousand Palestinian victims had their organs taken through abdominal incisions; he also mentioned that he was given a video recording by one of the families detailing the atrocity that the Israeli authorities had performed against their son's corpse<sup>2</sup>. In addition to the subsequent journalistic investigation, released by the American network "CNN" in early September 2009, it published additional data demonstrating that Israel is the world's largest centre for the trade in human organs<sup>3</sup>.

The Israeli occupation authorities have adopted a policy of returning the Palestinian martyrs' corpses to their families after being held for a period; their corpses were frozen at 40 degrees below zero. As a result, after receiving the said corpses, the families of many martyrs described seeing the corpses stitched together in separate incidents as if they had been dissected. Moreover, it seemed as if something had been

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<sup>1</sup> مؤسسة الدراسات الفلسطينية. (n.d.). *سجون الأموات: تفاصيل بشأن سرقة الاحتلال لجثامين الشهداء*. Retrieved August 2<sup>nd</sup>, 2023, from <https://www.palestine-studies.org/ar/node/1652866>

<sup>2</sup> Ibid.

<sup>3</sup> *Al-Estiklal Newspaper*. (2024). Alestiklal.net. <https://www.alestiklal.net/en/article/why-is-israel-withholding-the-bodies-of-hundreds>

taken from inside them, and some of them saw the disappearance of some organs when they received the corpse, and they were forced to bury them in strict conditions<sup>1</sup>. On the other hand, the admission by Dr. Yehuda Hiss, former head of Israel's Abu Kabir Forensic Institute, came amidst a heated controversy ignited by a report from the Swedish newspaper Aftonbladet<sup>2</sup>. This report alleged that Israel was killing Palestinians to harvest their organs, a claim Israel vehemently denied, labelling it as "antisemitic" and a "blood libel." The controversy intensified with a television documentary that could potentially inflame sentiments in the Arab and Muslim world and reinforce negative stereotypes about Israel's treatment of Palestinians. The Iranian state-run Press TV highlighted the issue with graphic images of deceased and injured Palestinians<sup>3</sup>. The revelation from Hiss, who was interviewed in 2000 by American academic Nancy Scheper-Hughes, noted that in the 1990s, Abu Kabir specialists harvested skin, corneas, heart valves, and bones from deceased Israeli soldiers, citizens, Palestinians, and foreign workers without obtaining permission from their families<sup>4</sup>. Although the Israeli military confirmed these practices occurred, it asserted that they had ceased a decade prior. Hiss himself stated, "*We started to harvest corneas ... whatever was done was highly informal. No permission was asked from the family.*" Scheper-Hughes, who released the interview, emphasized to the Associated Press that although Palestinians were not the only victims, the symbolic significance of harvesting organs from a population deemed adversarial was a critical issue that needed to be addressed<sup>5</sup>.

In her book "On Their Dead Bodies," Dr. Meira Weiss revealed the case of organ trafficking of Palestinian martyrs. She stated that from 1996 to 2002, she was present at the Abu Kabir Institute of Forensic Medicine in Tel Aviv to conduct scientific research. There she saw how the organs were stolen, and she did not, Particularly from the Palestinians. Weiss, an Israeli expert in anthropology, said: During my stay at the

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<sup>1</sup> مؤسسة الدراسات الفلسطينية. (n.d.). *سجون الأموات: تفاصيل بشأن سرقة الاحتلال لجثامين الشهداء*. Retrieved August 2<sup>nd</sup>, 2023, from <https://www.palestine-studies.org/ar/node/1652866>

<sup>2</sup> Black, I. (2009, December 21). *Doctor admits Israeli pathologists harvested organs without consent*. The Guardian. <https://www.theguardian.com/world/2009/dec /21/israeli-pathologists-harvested-organs>

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

institute, I witnessed how they were taking organs from a Palestinian body and not taking in return from the soldiers. She added: They were taking corneas, skin, and heart valves, noting that non-professional people could not notice the lack of these organs, as they put a plastic thing in place of the corneas and took the skin from the back so that the family would not see it<sup>1</sup>. Therefore, Israeli occupation stated that it had stopped stealing the organs of Palestinian martyrs after Meira Weiss exposed what she observed behind these doors. Still, its obligation to prohibit autopsies from releasing arbitrarily withheld corpses raises numerous issues about the truth of this statement<sup>2</sup>. In the same context, It was revealed in 2009 that the Israeli Ministry of Health held the world's largest human skin bank, despite having the lowest rate of organ donation among its citizens. The origins of this reserve remain unknown. In the same context, a 2014 study by the Israeli Hebrew Channel showed that Israel had 170 square meters of human skin in its possession. This is a significant quantity when one takes into account the established date of the said bank and the number of donors<sup>3</sup>. Also, Dr Riyad Mansour, the Palestinian Representative to the UN, stated in an open letter to UN Secretary-General Ban-Ki Moon in November 2015 that Palestinians murdered and arrested by Israeli forces in East Jerusalem were being returned with "missing corneas and other organs." On the contrary, Israel's UN Ambassador Danny Danon refuted these charges ascribing them to "anti-Semitic intentions"<sup>4</sup>.

One of the most painful instances of Israeli policies concerning the treatment of Palestinian bodies is exemplified by the case of Muhammad Abu al-Nasr. In 1989, Abu al-Nasr was killed by the Israeli military, and subsequently, his body was initially confiscated and transported to an undisclosed location. After pressure from the International Committee of the Red Cross, Israel ultimately returned the body to his

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<sup>1</sup> DOP, M. Y. |. (2022, May 23). *Israeli Occupation Violates Sanctity of Dead, Detained Palestinians Bodies*. Days of Palestine. <https://daysofpalestine.ps/israeli-occupation-violates-sanctity-of-dead-detained-palestinians-bodies/>

<sup>2</sup> Ibid.

<sup>3</sup> الاحتلال متهم بسرقة جلود الشهداء الفلسطينيين بالدليل (n.d.). Wwww.youtube.com. Retrieved January 15, 2024, See the detailed report via <https://youtu.be/K6xeudw4jdQ?si=W4d4tjuqGFOq14UP>

<sup>4</sup> Kiskadden-Bechtel, S. (2016). Triage and the Israel-Palestine Conflict: A Case of Medical Tourism. *Voices in Bioethics*, 2. <https://doi.org/10.7916/vib.v2i.5986>

family. However, upon inspecting the contents of the coffin, the family discovered that the remains did not belong to Muhammad Abu al-Nasr, but rather were fragments of a horse's body lacking vital organs. Following the public disclosure of the incident by the family, the Red Cross took action once more. Upon the second return of the body, it was ascertained that it pertained to a different individual, evident from the separated head and disparities in the number of gunshot wounds, which did not correspond to those sustained by Abu al-Nasr. After persistent endeavours and delays, the Red Cross documented the case, and eventually, the authentic remains of Muhammad Abu al-Nasr were surrendered to his family<sup>1</sup>. On the other hand, the family of the martyr Bilal Ahmed Ghanem also called on the legal institutions to stand by them to form an impartial investigation committee regarding the case of the martyrdom of their son in 1992, the theft of his body, and handing him over empty of his internal organs<sup>2</sup>. Jalal Ghanem, the brother of the martyr, says that *"the Israeli army shot the young man, hitting him in the stomach and the feet"*. About a week after his martyrdom, the occupation army informed the martyr's family of its intention to hand over the body. Still, it stipulated that they not organize a funeral and forced them to bury him in the presence of a very limited number of family men and the late-night hours when a curfew was imposed on the village. However, when they received the body, his brother confirmed that it was open from the top of the head to the bottom of the abdomen, and only then did the family learn that the body had been subjected to autopsy without their consent. The Israeli army tried to force the family to sign consent for an autopsy, but they refused, fully aware that their son's organs had been stolen. The brother of the martyr, Ghanem, ends his speech by saying: *"Today we are ready to agree to reopen the martyr's grave, despite the difficulty of the matter for the family, but as a request for justice and fairness for the Palestinian people because we know that Bilal is not the only one who was subjected to this tragedy"*<sup>3</sup>. Moreover, the Ghanem family was not the only family to steal organs from their kid. Instead, hundreds of Palestinian families have

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<sup>1</sup> سرقة أعضاء جثامين الشهداء المحتجزة: (n.d.). سرقة أعضاء جثامين الشهداء المحتجزة: الأبعاد السياسية والقانونية. <https://linksshortcut.com/DAdqE>. الأبعاد السياسية والقانونية

<sup>2</sup> See the full video report on the following link: <https://youtu.be/tcwDZe6W7nQ> (Palestinians Accuse Israel of Organ Theft - 31 Aug 09, n.d.)

<sup>3</sup> جرائم سرقة أعضاء الشهداء الفلسطينيين.. وثيقة صهيونية قذرة ضد الإنسانية (2010, January 31). Palinfo.com. <https://palinfo.com/news/2010/01/31/224476>

had the organs of their sons stolen. The Gaza City-based Tarazi family has accused the Israeli authorities of robbing their son Khader of his organs after his death at the hands of their soldiers in 1988 AD during the first-ever Palestinian intifada. The family of martyr Fadel Odeh Shaheen, 47, stated that the autopsy was conducted at the Judicial Institute in Abu Kabir and accused the government of taking their son's kidneys and corneas. The martyr's corpse had marks of punctures from the base of his chin to the base of his abdomen, and his eyes were observed to be continuously leaking blood<sup>1</sup>.

Although there were numerous reports in both Israeli and International media regarding stolen organs from Palestinian martyrs' corpses, the families were unable to confirm such claims upon receiving the corpses. This was due to the lack of a proper autopsy and thorough examination. Efforts were made by the Israeli authorities to conceal a crime, particularly the corpses of martyrs from the Jerusalem uprising in 2015-2016<sup>2</sup>. These corpses were preserved in refrigerators for a significant period. Numerous factors contributed to this concealment, including:

- The Israeli authorities have been known to obstruct the access of impartial or Palestinian entities to view or perform examinations on the Martyrs' corpses. They prefer to expedite the extradition and burial process which often results in the martyrs being denied the opportunity to undergo an autopsy and have their organs preserved.
- Because of the extended durations the corpse was kept in the refrigerator, it is brought frozen with a thick film of ice covering it. This makes it challenging to complete the autopsy before at least 24 to 48 hours have passed. However, families often hasten the burial out of concern that if the terms set out by the family upon turning over the corpse are broken, the body will be taken again, or even because of religious beliefs.
- Due to time constraints, families often have to choose between an urgent examination or a 3D tomography, even though many doctors believe these

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<sup>1</sup> Ibid.

<sup>2</sup> Masarat (2024, April 7). نحو آليات فاعلة لمواجهة سياسة احتجاز جثامين الشهداء. <https://www.Masarat.ps/Article/6256/>. Retrieved May 1, 2024, from <https://linksshortcut.com/fmuVp>



indication of the theft of vital organs from these martyrs' corpses. He disclosed the presence of Palestinian martyrs' corpses, whose stomachs had been cut open lengthwise. He clarified that the hospital had taken pictures of the said corpses and recorded their post-delivery conditions, highlighting the fact that the withholding of corpses and the organ theft of the Palestinian martyrs constituted a war crime<sup>1</sup>. Furthermore, Al-Thawabta drew attention to the fact that the Israeli occupation purposefully withheld the eighty Palestinian martyrs' corpses for a considerable amount of time until they began to dissolve or were on the verge of decomposing. This suggests that the Israeli occupation took the martyrs' organs before closing their corpses. The occupation returned the said corpses on Tuesday, December 26, 2023. He said, "*We do not rule out at all that the occupation stole vital organs from them such as corneas, skin, heart valves, bones, etc., stressing that this was repeated with Dozens of prisoners and detainees in Israeli occupation prisons.*" He also confirmed that there were obvious scars and tears on the corpses and that each corpse's tearing was distinct from the other. He purposefully delayed delivering them until they were exhausted<sup>2</sup>.

In the same context, around 1,100 tombs at the Al-Tuffah neighborhood cemetery, east of Gaza City were dug up by the Israeli occupation army, according to Palestinian official authorities. The occupying mechanisms also "razed them and removed the martyrs' corpses and also the dead from them." The authorities added that the Israeli occupying army took 150 newly buried martyrs' corpses and moved them to an undisclosed location after digging up the graves and bulldozing the said cemetery<sup>3</sup>. On the other hand, on December 20<sup>th</sup>, 2023, extensive damage was reported by the Euro-Med Monitor team at a cemetery located about 1.7 kilometers east of the central region of Khan Yunis in the southern Gaza Strip. The Israeli bulldozing activities resulted in the destruction of graves covering an area of around 2,500 square meters. Earlier in the same month, the Israeli army conducted a raid at Al-Fallujah Cemetery in Jabalia,

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<sup>1</sup> Ibid.

<sup>2</sup> Ibid.

<sup>3</sup> ACLED. (2023, October 20). *Fact Sheet: Israel and Palestine Conflict (19 October 2023) - occupied Palestinian territory* | ReliefWeb. Reliefweb.int. <https://reliefweb.int/report/occupied-palestinian-territory/fact-sheet-israel-and-palestine-conflict-19-october-2023>

situated in the northern Gaza Strip, where they desecrated graves and gravestones and even stole multiple Palestinian martyrs' corpses<sup>1</sup>.

#### 4.6.2 Experimental Operations on the Martyrs Corpses

The matter does not stop at the withholding of the Palestinian martyrs' corpses, their organs are also stolen, and their corpses are subjected to medical experiments, whether by medical students in Israeli universities or by new doctors serving in the ranks of the occupation army. Often, the occupation uses martyrs' corpses as a "goodwill gesture" towards us. According to Dr Saleh al Na'ami, a Palestinian researcher, many studies have been carried out on this issue. "Ariel Dad, an Israeli military physician who is now in the Knesset," said Dr. Al-Na'ami, "admitted that corpses of Palestinian fighters were used for medical experiments."<sup>2</sup> Moreover, During the weekly government meeting in Ramallah on July 4, 2022, former Palestinian Prime Minister Muhammad Shtayyeh accused Israel of Withholding the corpses of Palestinian martyrs and using them for medical research in laboratories at Israeli universities. Shtayyeh stated that this practice increases the suffering of families mourning the loss of their loved ones and violates human rights, scientific principles, and ethics. Although he did not name the specific universities involved, Shtayyeh condemned the blatant disregard for the sanctity of human life<sup>3</sup>.

#### 4.7 Enforced Disappearance

As per the report submitted by the Working Group on Enforced or Involuntary Disappearances, under the Commission on Human Rights resolution 2001/46 titled "Question of enforced disappearances," three cases were reported to the group. The first

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<sup>1</sup> Monitor, E.-M. H. R. (n.d.). *Israeli army defiles hundreds of graves in the Gaza Strip, steals dead bodies*. Euro-Med Human Rights Monitor. <https://euromedmonitor.org/en/article/6083/Israeli-army-defiles-hundreds-of-graves-in-the-Gaza-Strip>

<sup>2</sup> (Bodies of Palestinian fighters returned home, Middle East Monitor, February 17, 2014). Date accessed April 27, 2024 <https://www.middleeastmonitor.com/20140217-bodies-of-palestinian-fighters-returned-home/>

<sup>3</sup> جثامين الشهداء تُستخدم بمختبرات جامعات إسرائيلية! السلطة الفلسطينية تندد وتدعو " (2022, July 4). الأناضول. ArabicPost.net; عربي بوست — <https://linkshortcut.com/Kwnuz>

one occurred in Jerusalem in 1992, where a person failed to return home from work and was reportedly detained in prison in Tel Aviv. The second case concerns a Palestinian who was arrested in 1971 on the day a bomb exploded in Gaza and was last seen in a detention camp. The third case involves a Palestinian from the occupied West Bank who was allegedly detained in Hebron in 1991 by Israeli security forces. Israeli military or security forces were reportedly responsible for all three cases. During the review period, the Working Group sent a copy of a case that was transmitted to the Palestinian Authority to the Government of Israel, following its methods of work. The case involves a United States citizen of Palestinian descent who disappeared near the Israeli settlement of Ofrah and was allegedly abducted by the Israeli Defense Forces (IDF)<sup>1</sup>. Previously, the Working Group was able to provide clarity on a particular case thanks to information provided by a source. However, despite multiple reminders, the Government has yet to provide any information on the two remaining cases. As a result, the Working Group is still unable to provide any updates on the whereabouts or fate of those who have disappeared.<sup>2</sup>

A notable case of arbitrary withholding involves Mr. Anis Doula, who spent 22 years in occupation prisons, the last of which was Ashkelon Prison, in which he fell as a martyr after he waged a “hunger strike” in 1980 to improve the detention conditions for prisoners. Nevertheless, the occupation authorities do not recognize his body and deny his existence.<sup>3</sup> According to reports, the Israeli authorities notified the family a few months after the victim's passing that they intended to hand over the remains for burial. They even provided the date and location of the handover. Unfortunately, the remains were not returned on the agreed-upon date and were subsequently held by Israeli authorities without any apparent reason or explanation. Under the heading “missing,” despite the recognition of the so-called “Israeli Supreme Court” of an autopsy in 1982<sup>4</sup>.

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<sup>1</sup> *Civil & political rights/Enforced or involuntary disappearances - CHR - Working Group report (excerpts)*. (n.d.). Question of Palestine. Retrieved April 26, 2024, from <https://www.un.org/unispal/document/auto-insert-188770/>

<sup>2</sup> Ibid.

<sup>3</sup> See the related video scene from minute 8:39- 9:31 via the following link: <https://linkshortcut.com/huPro>

This prompts the question, where has the occupation arbitrarily withheld his body for more than forty-four years, is it in Ashkelon prison or refrigerators or secret prisons? The secret of his body's disappearance can only be understood as the occupation's fear of exposing its crime against the martyrs. This case might be classified as enforced disappearance under IL.

Additionally, On December 12, 2018, Saleh Omar Saleh Barghouthi left his home to work as a cab driver. Later that day, his family received a call from an acquaintance informing them that he had been shot and arrested by Israeli Special Forces near Ramallah. Conflicting reports emerged about his condition, with some claiming he had died. In the evening, over 100 Israeli Special Forces reportedly raided the Barghouthi family's home, using live ammunition and assaulting the men inside. The military commander allegedly informed Ms. Barghouthi's late husband that they had killed Saleh. Ms. Barghouthi has granted an organization power of attorney to locate her son's remains, which are being withheld by Israeli authorities without explanation<sup>1</sup>. This denial of a dignified burial according to Islamic traditions compounds the family's grief. Al-Haq has pointed out inconsistencies in the IOF's response regarding the death of

Omar Barghouthi's son. The initial account stated that the IOF had killed him, but the Israeli authorities now allege that Saleh was taken to a hospital, where he later died of injuries. This second account, combined with other information available to Al-Haq, suggests that Saleh has been subjected to an enforced disappearance. Saleh's mother has been denied the right to see her son and confirm his identity.<sup>2</sup> The phenomenon of forced disappearance, which has been experienced by Palestinians throughout the years of occupation, has had a profound impact on the families of the victims.<sup>3</sup> This issue has implications for both human rights and justice. The plight of the families left behind has been largely overlooked, despite the clear need for attention to be given to this matter.

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<sup>1</sup> Ibid.

<sup>2</sup> *Al-Haq Sends Urgent Appeal to UN Special Procedures on the Enforced Disappearance of Saleh Omar Barghouthi*. (n.d.). Al-Haq | Defending Human Rights in Palestine since 1979. Retrieved April 26, 2024, from <https://www.alhaq.org/advocacy/6119.html>

<sup>3</sup> See the detailed report via the following link: <https://spcommreports.ohchr.org/TMResuItsBase/DownloadPublicCommunicationFile?gId=27564>

According to Euro-Med Human Rights Monitor, more than 13,000 Palestinians are unaccounted for, either buried under rubble, in mass graves, or forcibly disappeared in Israeli detention facilities. The Israeli army has not disclosed the circumstances surrounding their deaths, and independent investigators have not been able to verify or uncover the details of their passing. The victims' identities remain unknown, their remains have not been repatriated, and their families have not been notified<sup>1</sup>. The estimate of these missing persons is based on preliminary reports, although the actual figure is expected to be higher. Due to the continued military assaults and siege carried out by the Israeli government, coupled with the unlawful tactics employed by the Israeli armed forces that have disrupted Palestinian families, including their forced evacuation without safe routes, separation of family members, relocation to unfamiliar territories, detainment and forced disappearance of some, and severing communication channels, it is presently unfeasible to verify the exact number of missing persons<sup>2</sup>.

Furthermore, Palestinian human rights organizations have raised concerns regarding the "enforced disappearance" of approximately 1,000 workers in Israel. Accordingly, a joint statement issued by the Ministry of Detainees and Ex-Detainees Affairs, The Palestinian Prisoners' Club Association, and the Addameer Prisoner Support and Human Rights Association emphasized the ongoing crime of enforced disappearance against Gaza detainees. According to the Palestinian Ministry of Labor, prior to October 7<sup>th</sup>, 2023, an estimated 10,300 Palestinian workers from Gaza were present in Israel, of which 3,200 were released at the Karm Abu Salem crossing at the beginning of November 2023<sup>3</sup>.

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<sup>1</sup> Monitor, E.-M. H. R. (n.d.). *13,000 Palestinians reportedly missing in the Gaza Strip*. Euro-Med Human Rights Monitor. <https://euromedmonitor.org/en/article/6264/13>

<sup>2</sup> Ibid.

<sup>3</sup> admin. (2024, May 3). "Collective Punishment" - Israel Withholds 500 Bodies of Palestinian Detainees. Palestine Chronicle. <https://www.palestinechronicle.com/collective-punishment-israel-withholds-500-bodies-of-palestinian-detainees/>

#### **4.8 Ethical and social implications of withholding the Palestinian Martyrs' Corpses by Israel**

The human body, whether living or deceased, is constantly situated within its political context. In settler-colonial regimes, the body is redefined as a political entity, serving as a battleground for reshaping the power dynamics between the colonizer and the colonized. This redefinition of the body is elucidated by Judith Butler, who explains how the Israeli military system not only marginalizes living Palestinians but also portrays the death of Palestinians as a non-intrinsic loss, unworthy of compassion or lamentation. This stance allows Israel to impose imprisonment and indefinite detention of Palestinian bodies. Numerous inquiries have explored the direct impact of the political environment on the Palestinian body in their day-to-day life. Conversely, only a few studies have investigated the socio-political imprints on the flesh and form of the Palestinian corpse during its post-life existence<sup>1</sup>.

The withholding of Palestinian martyrs' Corpses has substantial ethical, emotional, and social implications. Ethically, it signifies a profound disregard for human dignity and a violation of international humanitarian laws. The Geneva Conventions and other pertinent international humanitarian laws emphasize the dignified treatment and repatriation of deceased combatants. Article 130 of the Third Geneva Convention specifically mandates that parties to a conflict ensure proper care for the deceased and the return of their remains to their families when feasible.<sup>2</sup> By depriving families of the right to a respectful burial, the withholding of corpses disrupts essential traditional and religious practices, essential to their cultural and spiritual beliefs. For Palestinians, Islamic traditions and cultural customs necessitate the prompt and respectful burial of deceased individuals as mandated by Islamic law and cultural norms. This practice is

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<sup>1</sup> Joukhadar, A. (2018). Suspended death on freezing corpses and muting death of Palestinian women martyrs. *Third World Thematics: A Third World Quarterly Journal*, 3(4), 487-502. [https://www.researchgate.net/publication/326950610\\_Suspended\\_death\\_on\\_freezing\\_corpses\\_and\\_muting\\_death\\_of\\_Palestinian\\_women\\_martyrs\\_Third\\_World\\_Thematics- A Third World Quarterly Journal ISSN 2380-2014](https://www.researchgate.net/publication/326950610_Suspended_death_on_freezing_corpses_and_muting_death_of_Palestinian_women_martyrs_Third_World_Thematics- A Third World Quarterly Journal ISSN 2380-2014)

<sup>2</sup> International Committee of the Red Cross. (2020). *International humanitarian law and the protection of the dead*. Retrieved from <https://www.icrc.org/en/document/humanity-after-life-respect-and-protection-dead>

critical not only for the spiritual solace of the deceased but also for providing closure and comfort to the bereaved families, in adherence to the principles of honor and respect in death. The denial of these practices not only contravenes ethical standards but also intensifies the suffering of families and communities, who are deprived of the opportunity to perform vital rituals central to their cultural and religious identity.<sup>1</sup>

The unresolved status of withheld martyrs can significantly compound trauma and protract grief, casting families into a state of enduring mourning and uncertainty. The absence of closure regarding the fate of deceased loved ones can profoundly impact psychological well-being, leading to heightened emotional distress. Extensive research suggests that prolonged ambiguity concerning the whereabouts of missing or deceased individuals frequently results in heightened psychological strain. Families grappling with such uncertainty are more susceptible to enduring chronic mental health challenges, encompassing depression and anxiety. Notably, it accentuates that the uncertainty surrounding the location of loved ones can exacerbate feelings of helplessness and despondency, intensifying symptoms of psychological distress.<sup>2</sup> Furthermore, the inability to conduct traditional and culturally significant burial rites further complicates the grieving process. Proper burial rituals are pivotal for attaining emotional closure and recuperation, offering a structured avenue for individuals to navigate their grief and commence the journey forward. In the absence of the opportunity to partake in these rites, families are deprived of vital rituals that facilitate mourning and emotional convalescence.<sup>3</sup> The absence of such rituals not only prolongs the grieving process but also hampers the development of coping mechanisms essential for emotional well-being.

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<sup>1</sup> Daher-Nashif, S. (2020). Colonial management of death: To be or not to be dead in Palestine. *Current Sociology*, 69(7), 945–962. <https://doi.org/10.1177/0011392120948923>

<sup>2</sup> Hilberdink, C. E., Ghainder, K., Alexandre Dubanchet, Hinton, D., Manik, A., Hall, B. J., & Bui, E. (2023). Bereavement Issues and Prolonged Grief Disorder: a Global Perspective. *Global Mental Health*, 10, 1–37. <https://doi.org/10.1017/gmh.2023.28>

<sup>3</sup> Joukhadar, A. (2018). Suspended death on freezing corpses and muting death of Palestinian women martyrs. *Third World Thematics: A Third World Quarterly Journal*, 3(4), 487-502. <https://doi.org/10.1080/23802014.2018.1515717>

In interviews conducted with mothers who have experienced profound loss due to the arbitrary withholding of their children's remains, the deep emotional and psychological toll of such experiences becomes evident.

Nazeha Khalil, a bereaved mother, recounted her agonizing ordeal since the loss of her son, Safwat Khalil. For over two decades, she has grappled with the unbearable pain of being unable to reclaim her son's remains for a proper Islamic burial. Khalil's poignant reflections reveal the constant sorrow she has endured since Safwat's passing. She describes the limited solace available to mothers of martyrs, prisoners, and the missing, whose only comfort lies in the prospect of a narrow grave that might one day cradle their loved ones. This grave would provide them with a place to stand beside their offspring in times of yearning and engage in heartfelt conversations<sup>1</sup>.

Similarly, Darine Abu Aisha's family has faced a similar plight. In an interview, her grieving mother shared her unwavering hope and prayers for the return of her daughter's remains, nearly 22 years after Darine was martyred on February 27, 2002. Reflecting on the enduring anguish following her daughter's martyrdom, she lamented, "Each day, I awaken with Darine in my thoughts, sensing her calling upon us to strive for her retrieval and interment in our midst." She further conveyed the uncertainty surrounding Darien's resting place, stating, "To this day, uncertainty shrouds Darien's resting place, leaving us to ponder whether she was interred in unmarked graves or remains within the morgue's icy confines, compounding our anguish and distress with each passing day<sup>2</sup>."

Historically, colonial powers have exerted control over the living by managing the dead and imposing regulations on funerals and burials as part of their governance strategies. In contemporary contexts, Israel exemplifies this modern colonial approach in its management of Palestinian deaths, which can be understood through a framework of "disciplinary, biopolitical, and necropolitical" power dynamics. In this context, the identity of deceased Palestinians is often rendered irrelevant; instead, they are reduced to mere components of a national body rather than recognized as individual persons.

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<sup>1</sup> N. Khalil personal communication, January 10<sup>th</sup>, 2024.

<sup>2</sup> W. Abu Aisha, personal communication, February 20<sup>th</sup>, 2024

However, when Israel engages in negotiations for the release of these bodies, it shifts to an individualistic discourse, leveraging personal appeals as a means to exert pressure on the families. Conversely, many Palestinian families resist these pressures by viewing the deceased as national symbols rather than individual cases. This collective perspective transforms their grief into a broader national struggle, reinforcing resistance against Israel's conditions. This unity helps them resist the temptation to accept the return of the bodies under individual terms. Israel's conditions are designed to eliminate the symbolic presence of Palestinian martyrs and cleanse its space of signs of resistance<sup>1</sup>. By imposing conditions such as nighttime burials, Israel aims to not only observe and control the funeral processes but also to suppress public expressions of mourning. This strategy of individualizing grief and restricting the visibility of funerals serves to diminish the presence of the deceased and the collective sorrow of the families. The concealment of bodies and the regulation of burial practices effectively contribute to the erasure of the deceased's existence and the silencing of their families' voices<sup>2</sup>.

The act of refraining from releasing bodies in Palestinian society disrupts essential rituals tied to death and mourning. Traditional Palestinian practices encompass collective mourning customs, including communal prayers and mourning gatherings, which play a crucial role in assisting families and communities in coping with loss and nurturing unity<sup>3</sup>. The absence of proper burials obstructs families from participating in these customary ceremonies, leading to the breakdown of social unity and reinforcing feelings of shared suffering and injustice<sup>4</sup>. This disruption not only affects individual families but also undermines community cohesion, thereby fueling a broader sense of grievance and injustice that can exacerbate existing tensions and conflicts<sup>5</sup>. On a larger scale, this sustained state of uncertainty and emotional turmoil has implications for both

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<sup>1</sup> Daher-Nashif, S. (2020). Colonial management of death: To be or not to be dead in Palestine. *Current Sociology*, 69(7), 945–962. <https://doi.org/10.1177/0011392120948923>

<sup>2</sup> Ibid

<sup>3</sup> Suleiman, M. (2018). The cultural and social impacts of mourning practices in Palestinian society. *Journal of Middle Eastern Studies*, 50(3), 321-340.

<sup>4</sup> Kenan, Y. (n.d.). *States of Mourning: Nationalism and Mourning in Palestinian and Israeli Literatures After 1948*.

[https://deepblue.lib.umich.edu/bitstream/handle/2027.42/169645/yaelke\\_1.pdf?sequence=1&isAllowed=y](https://deepblue.lib.umich.edu/bitstream/handle/2027.42/169645/yaelke_1.pdf?sequence=1&isAllowed=y)

<sup>5</sup>Ibid

local and international relations, highlighting the urgent need for a resolution and the observance of humanitarian principles to restore dignity and uphold the social customs essential to Palestinian identity<sup>1</sup>.

#### **4.9 International Law Perspectives on the Withholding of Palestinian Martyrs' Corpses by Israel Authorities**

The Fourth Geneva Convention was drafted in 1949 to improve the protection of inhabitants in occupied territories. Among its provisions, Article 2 stands out as a successful attempt to address some of the shortcomings of the Hague Conventions and Regulations. This article states that the Convention applies to all cases of declared war or armed conflict between two or more High Contracting Parties, regardless of whether one party acknowledges the state of war. Additionally, it applies to cases of partial or total occupation of a High Contracting Party's territory, even if there is no armed resistance. These provisions provide greater clarity on the Convention's scope and applicability in conflict and occupation situations.

Based on the aforementioned information and Article 42 of the 1907 Hague Regulations, the Palestinian land is currently subject to military control, therefore requiring adherence to the 1949 Fourth Geneva Convention for safeguarding civilians during times of conflict. The Security Council of Nations strongly supports this stance in Resolution 242 of 1967<sup>2</sup>, urging Israel to vacate the occupied Palestinian territories. This resolution was later reinforced by Resolution 338 of 1973, which emphasized the implementation of UN Security Council Resolution No. 242, calling for Israel's withdrawal from the Palestinian territory under occupation. Also, The ICJ has confirmed the legal status of the OPT as occupied territory in its 2004 Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory. The ICJ affirmed that the 1907 Hague Regulations and the 1949 Fourth Geneva Convention apply to the region, emphasizing Israel's obligations as an

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<sup>1</sup> Ibid

<sup>2</sup> *Document Viewer*. (2025). Un.org. [https://docs.un.org/en/S/Res/242\(1967\)](https://docs.un.org/en/S/Res/242(1967))

occupying power to protect the rights of civilians. This interpretation aligns with UN Security Council Resolution 242<sup>1</sup> (1967), and Resolution 338 (1973).

In addition to General Assembly Resolution No. 43/58 of 6/12/1988<sup>2</sup> and Resolution No. 44/48 of 8/1/1989<sup>3</sup>, which considered cases of severe violation of the Fourth Geneva Convention provisions during the first Palestinian Intifada (1987-1993) war crimes and an affront to humanity.

Also, the United Nations Human Rights Committee adopted a resolution on 10/19/2000<sup>4</sup> condemning Israel and affirming its obligation as an occupying power to the Fourth Geneva Convention and the First Additional Protocol annexed to it in 1977. Nonetheless, Israel rejects this viewpoint and denies the Fourth Geneva Convention's application to the occupied Palestinian areas to avoid accountability for its continuous violations of the Convention's prohibitions. In the same context, the Israeli High Court's ruling in the *Alian* case, authorizing the retention of Palestinian corpses for negotiation purposes, presents profound legal challenges under international law frameworks. This practice contravenes core principles of IHL, particularly the obligations set forth in the Fourth Geneva Convention and its Additional Protocols, which mandate the dignified treatment of human remains and prohibit their exploitation for coercive or degrading purposes<sup>5</sup>. IHL, as enshrined in instruments such as the ICCPR, further underscores the right to a dignified burial and safeguards against cruel, inhuman, or degrading treatment. The denial of these rights, coupled with the psychological harm inflicted on bereaved families and restrictions on cultural and religious funeral practices, constitutes a grave violation of established human rights

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<sup>1</sup> Year: 1973), U. S. C. (28th. (1974). Resolution 338 (1973) /: [adopted by the Security Council at its 1747th meeting], of 22 October 1973. *Digitallibrary.un.org*. <https://digitallibrary.un.org/record/93466?ln=en&v=pdf>

<sup>2</sup> *UN General Assembly Resolution 43/58 (December 1988)* available at: <https://www.jewishvirtuallibrary.org/un-general-assembly-resolution-43-58-december-1988> (UN General Assembly Resolution 43/58 (December 1988), n.d.)

<sup>3</sup> *UN General Assembly Resolution 44/48 (December 1989)* available at: <https://www.jewishvirtuallibrary.org/un-general-assembly-resolution-44-48-december-1989> (UN General Assembly Resolution 44/48 (December 1989), n.d.)

<sup>4</sup> *UN Human Rights Committee resolution on 10/19/2000* available at: <https://digitallibrary.un.org/record/435686> (October 2000, 2001)

<sup>5</sup> *Ibid*

norms<sup>1</sup>. Under ICL, the utilization of corpses as instruments of political negotiation may amount to inhumane acts proscribed by Article 7(1)(k) of the Rome Statute, thereby rising to the level of crimes against humanity if pursued as part of a systematic policy<sup>2</sup>. The state's judicial endorsement of such practices underscores Israel's responsibility for breaches of peremptory international legal obligations and highlights the necessity for effective accountability measures to address these violations and reaffirm the primacy of international legal norms in occupied territories.

Furthermore, considering the above-mentioned, the arbitrary withholding of Palestinian martyrs' corpses by Israel is considered a "collective punishment," according to Article 50 of the 1907 Hague Convention on the Laws and Customs of War, which prohibits the policy of detaining the martyrs' corpses and imposing restrictive and humiliating conditions on their relatives before handing over the corpses, as well as the Article 87<sup>3</sup> of the Third Geneva Convention and Article 33<sup>4</sup> of the Fourth Geneva Convention. These legal provisions forbid the commission of war crimes by occupying forces against civilian populations, including the use of collective punishment.

Also, Article 17 of the First Geneva Convention (1949) stipulates that parties to a conflict must ensure the remains of the dead are treated with respect and that graves are appropriately marked and maintained<sup>5</sup>. Israel's prolonged retention of Palestinian martyrs' corpses, particularly in the so-called "Cemeteries of Numbers," directly contravenes this provision by obstructing families from conducting proper burials, a fundamental human right. Additionally, Article 120 of the Third Geneva Convention (1949) requires that any prisoner of war who dies in captivity be buried in accordance with their religious and cultural practices<sup>6</sup>. While this article pertains to prisoners of war, the underlying principles regarding the treatment of the deceased can be applied to

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<sup>1</sup> Ibid

<sup>2</sup> Ibid

<sup>3</sup> Please see the link below: <https://ihl-databases.icrc.org/en/ihl-treaties/gciii-1949/article-87?activeTab=undefined>

<sup>4</sup> Please see the link below: <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-33>

<sup>5</sup> (2024). Icrc.org. <https://ihl-databases.icrc.org/en/ihl-treaties/gci-1949/article-17>

<sup>6</sup> International Committee of the Red Cross (ICRC). (1949). *Geneva Convention (III) relative to the Treatment of Prisoners of War*. [https://www.icrc.org/en/doc/assets/files/other/icrc\\_002\\_0173.pdf](https://www.icrc.org/en/doc/assets/files/other/icrc_002_0173.pdf)

civilian martyrs, particularly in an occupation context, as Israel's actions deprive families of the right to honor their dead<sup>1</sup>. Similarly, Article 130 of the Fourth Geneva Convention (1949) mandates that the remains of deceased civilians be treated with dignity, including proper burial, a requirement violated by Israel's refusal to return the bodies of martyrs for proper burial<sup>2</sup>. This failure not only causes psychological harm to the families of the deceased but also undermines the dignity of the dead, a core tenet of international humanitarian law<sup>3</sup>.

Further, Additional Protocol I, Article 34 (1977), reinforces the prohibition against withholding corpses and requires that deceased individuals be treated according to their religious rites, where possible<sup>4</sup>. Israel's systematic practice of holding martyrs' bodies without returning them for burial breaches this obligation, effectively desecrating the bodies and violating the religious and cultural rights of the families<sup>5</sup>. Additionally, Customary International Humanitarian Law (CIHL) Rule 114 prohibits the desecration or mutilation of the dead, a prohibition that applies in both international and non-international armed conflicts. The treatment of Palestinian martyrs' corpses by Israeli authorities, which includes holding bodies in refrigerators or denying proper burial, is a clear violation of this rule, as it constitutes an act of desecration and mutilation<sup>6</sup>.

The arbitrary withholding of martyrs' corpses is not only a violation of the Geneva Conventions and Additional Protocols but also represents a form of collective punishment, which is prohibited under international law<sup>7</sup>. This policy exacerbates the

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<sup>1</sup> Cassese, A. (2013). *Cassese's International Criminal law; Antonio Cassese ... Et al.* (pp. 63–66). Oxford University Press. [https://books.google.ps/books?id=4LSPtqicFUcC&printsec=frontcover&source=gbs\\_ge\\_summary\\_r&cad=0#v=snippet&q=deceased&f=false](https://books.google.ps/books?id=4LSPtqicFUcC&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=snippet&q=deceased&f=false)

<sup>2</sup> International Committee of the Red Cross (ICRC). (1949). *Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War.* [https://www.icrc.org/en/doc/assets/files/other/icrc\\_002\\_0174.pdf](https://www.icrc.org/en/doc/assets/files/other/icrc_002_0174.pdf)

<sup>3</sup>Ibid

<sup>4</sup> International Committee of the Red Cross (ICRC). (1977). *Additional Protocol I to the Geneva Conventions.* [https://www.icrc.org/en/doc/assets/files/other/icrc\\_002\\_0176.pdf](https://www.icrc.org/en/doc/assets/files/other/icrc_002_0176.pdf)

<sup>5</sup> United Nations. (2007). *Report of the United Nations Committee against Torture: Israel.* United Nations. <https://www.ohchr.org/en/treaties/cat>

<sup>6</sup> Ibid

<sup>7</sup> Ibid

suffering of Palestinian families and communities, denying them the basic dignity and closure that comes with the proper burial of their loved ones. Israel's actions, therefore, represent a flagrant disregard for the principles of international humanitarian law, including the fundamental human rights to bodily integrity, religious freedom, and family rights<sup>1</sup>. As such, these actions should be condemned by the international community and addressed through appropriate legal and diplomatic channels.

Article 120 of the Third Geneva Convention, relating to the Treatment of Prisoners of War, and Article 130 of the Fourth Geneva Convention, relating to the Protection of Civilian Persons in Times of War, both state that "*the detaining authorities shall ensure that prisoners of war who have died in captivity are honorably buried, if possible according to the rites of the religion to which they belonged, and that their graves are respected, suitably maintained Similarly.*" In addition to Article 34 of Annex I (Protocol) Additional to the Geneva Conventions, which states that the remains of those who died because of the occupation, or during incarceration because of the occupation, or during hostilities, must be respected. Also, respect and follow procedures commensurate with their religious culture and not violate their remains, provided that, as soon as circumstances permit, it must provide adequate data and information about them to protect and maintain their burials on an ongoing basis and to facilitate access of the dead to burials and make practical arrangements for that, including reducing the return of the dead's remains and personal belongings to the cemetery.

Also, upon the 2014 State of Palestine's accession to Geneva Convention III, captured Palestinians who took part in belligerent acts against the occupier should be treated as prisoners of war because they belong to a party to an armed conflict. These individuals fall under three categories: members of security forces, affiliates of armed resistance groups, and uprisings who fight the occupants spontaneously or individually. Also, under the relevant articles of the Geneva Convention, torture, or other inhuman treatment, including biological experimentation, constitutes a grave violation of these articles in the case of an international armed conflict.

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<sup>1</sup> Ibid

It is worth mentioning that parties to a conflict are required to take all necessary precautions to protect the wounded and killed, as well as any person in grave danger, from plunder and ill-treatment (Article 15<sup>1</sup> of the First Geneva Convention, and Articles 16<sup>2</sup> from the same convention).

Article 1 of the Convention against Torture applies to the occupation authorities' withholding of martyrs' corpses in refrigerators and cemeteries because it is deemed a form of torture committed against the martyrs' and their families. Withholding the corpses and the failure to bury them cause great pain, which is intended to be suffered.

The regulation of medical procedures through the Additional Protocols (AP) to the Geneva Conventions is a crucial aspect of the prohibition of organ harvesting. Specifically, the APs forbid the removal of tissues or organs for transplantation during international armed conflicts (IACs) (AP I, art. 11), except Article 11(3) of AP I. It is important to note that organ harvesting cannot be consented to during an armed conflict, except for those individuals who fall outside the scope of Article 11 of AP I. IHL's ban on mutilation in both International Armed Conflicts (IACs) and non-International Armed Conflicts (NIACs) is a fundamental aspect of the restriction on organ harvesting. It stems from the Geneva Conventions, namely the need to provide humane treatment outlined in Common Article 3 and, in our case the (AP I, art. 11). Organ removal from a living person is mutilation. As a result, regardless of nationality or loyalty, any civilian (person hors de conflict) is now broadly protected from organ harvesting.

According to the interpretation of hors de combat provided by the ICC's Ntaganda Pre-Trial Chamber, the prohibition against mutilation includes even disabled or immobile members of an armed party whose organs have been stolen. The correct interpretation of preventing warring factions from abusing their fighters or using organ harvesting as a way to further their goals in the conflict is of utmost importance. It is

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<sup>1</sup> At all times, and particularly after an engagement, Parties to the conflict shall, without delay, take all possible measures to search for and collect the wounded and sick, to protect them against pillage and ill-treatment, to ensure their adequate care, and to search for the dead and prevent their **being despoiled**.

<sup>2</sup> Please see the article via the link below: <https://ihl-databases.icrc.org/en/ihl-treaties/gci-1949/article-16>

crucial to acknowledge that this issue holds significant relevance in the current study, as the research focuses on the occupied party, which is not responsible for its soldiers. Hence, it is essential to examine the impact of such practices on the occupied group, as it can affect their physical and mental well-being, as well as their ability to resist and recover from the conflict. So, the practice of disfiguring the dead is forbidden by IHL and the prohibition of outrages upon personal dignity<sup>1</sup>.

On the other hand, Israel's continued refusal to go through the necessary process to identify those buried in the cemeteries of numbers violates UN Security Council Resolution 2474, which requires member states to protect individuals from enforced disappearance because of armed conflict in areas under their sovereignty. Member states are required, among other things, to issue and provide *"appropriate means of identification, including for members of the armed forces, to establish national information offices in the event of armed conflict, written registration services and death registries, and to ensure appropriate accountability in cases of missing persons."* By ignoring its duty to identify withheld corpses using existing scientific tools. Israel additionally violates its commitments under the Israeli Supreme Court's judgment from 2017, which includes the examination of DNA samples.

Furthermore, the practices of withholding the Palestinian martyrs' corpses, whether in refrigerators or the Cemeteries of numbers and imposing conditions and restrictions on the funerals and burial ceremonies of martyrs violate Article 12 (2)<sup>2</sup> of the Universal Declaration of the Rights of Indigenous Peoples. In 2015, the United Nations Committee against Torture confirmed its report, which confirmed that Israel practices torture when holding martyrs' corpses, specifically torturing their families. In addition, the arbitrary withholding of Palestinian martyrs' corpses and the occupation authority's refusal to disclose their whereabouts may be considered as a crime of enforced

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<sup>1</sup> International Criminal Court. (2011). *Elements of crimes*. The Hague: International Criminal Court. Retrieved from <https://www.icc-cpi.int/sites/default/files/Publications/Elements-of-Crimes.pdf>

<sup>2</sup> Art.12. (2) States shall seek to enable the access and repatriation of ceremonial objects, and human remains in their possession through fair, transparent, and effective mechanisms developed in conjunction with the indigenous peoples concerned.

disappearance, which is included in the Universal Convention for the Protection of All Persons from Enforced Disappearance.

In the same context, Article 8 of the Rome Statute of the ICC affirmed the court's jurisdiction to address war crimes that severely violate a person's dignity. Thus, the restriction against mutilating corpses in international armed conflicts is included in the crime of "committing an attack upon personal dignity" Article 8(2)(b)(21")footnote 49. In this scientific work, the crime of arbitrary withholding of Palestinian martyrs' corpses, that Israeli occupation authorities commit is considered as part of a general and systematic policy, with the complicity of judicial authorities. Additionally, because Israeli authorities don't follow the same protocols in their military or civilian cemeteries, their policy of burying Palestinian Martyrs' corpses is considered an apartheid crime under Article 7 of the Rome Statute of the ICC.

Organ Theft and Experimental Operations on the Palestinian Martyrs' Corpses breach (IHRL), (IHL), (ICL), and medical ethics, underscoring the universal prohibition against such acts. Additionally, article 3 of the Universal Declaration of Human Rights (UDHR) guarantees the right to life, liberty, and security of a person, which extends to the protection of bodily integrity, even posthumously. Non-consensual organ removal or experimentation infringes on this right<sup>1</sup>. Similarly, Article 7 of the ICCPR prohibits torture, cruel, inhuman, or degrading treatment, encompassing both organ theft and experimental operations due to the severe physical and psychological harm they cause<sup>2</sup>. The United Nations Convention Against Torture (CAT) further reinforces that such acts may amount to torture because of the suffering they inflict<sup>3</sup>.

Also, IHL explicitly prohibits the desecration of bodies during armed conflicts. Article 3 common to the Geneva Conventions mandates humane treatment for those no longer part of hostilities, including the deceased, and Additional Protocol I, Article 75(2)(b), forbids violence against the dignity of the dead, such as mutilation or

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<sup>1</sup> Ibid

<sup>2</sup> Ibid

<sup>3</sup> Ibid

unauthorized experimentation<sup>1</sup>. Under CIL, Rule 90 of the ICRC's study on Customary International Humanitarian Law emphasizes the protection of bodily integrity and prohibits the non-consensual removal of organs or experimental operations on corpses<sup>2</sup>.

Additionally, acts of organ theft or experimental operations on corpses may qualify as war crimes or crimes against humanity under the Rome Statute if they are part of a widespread or systematic practice during armed conflict or as part of an attack against civilians<sup>3</sup>.

Furthermore, medical ethics unequivocally condemn non-consensual organ removal and unauthorized experimentation on the deceased. The Declaration of Helsinki (1964) and the Declaration of Istanbul (2018) highlight the necessity of informed consent in all medical procedures, including posthumous organ donation, and explicitly denounce trafficking and exploitation<sup>4</sup>. In the same context, States bear the responsibility to prevent such violations under the State Responsibility for Internationally Wrongful Acts (2001), which emphasizes accountability for breaches of international law.<sup>5</sup>

Moreover, International mechanisms, such as the United Nations Human Rights Council (UNHRC) and the ICC, provide frameworks for investigating and prosecuting these violations to ensure justice and uphold human dignity<sup>6</sup>.

Under the framework of international law, various mechanisms exist to ensure accountability for violations of IHL, particularly concerning the desecration and withholding of corpses. The Rome Statute of the ICC delineates war crimes in Article 8, categorically condemning actions that undermine the dignity of the deceased, including

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1 Ibid

2 Ibid

3 Ibid

4 World Medical Association. (1964). *Declaration of Helsinki: Ethical Principles for Medical Research Involving Human Subjects*. <https://www.wma.net/what-we-do/medical-ethics/declaration-of-helsinki/>

5 International Court of Justice. (1970). *State Responsibility for Internationally Wrongful Acts*. [https://legal.un.org/ilc/texts/instruments/english/draft\\_articles/9\\_6\\_2001.pdf](https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf)

6 Ibid

the unlawful withholding or maltreatment of bodies<sup>1</sup>. Individuals implicated in these breaches may face prosecution either in the ICC or in domestic courts that exercise universal jurisdiction—which allows for the prosecution of severe international crimes irrespective of where they were committed<sup>2</sup>.

Moreover, states also bear responsibility under international law for systematic violations of IHL. The ongoing withholding of Palestinian martyrs' remains by Israel, coupled with alleged abuses of these remains, positions the state under potential international legal scrutiny. Mechanisms such as United Nations resolutions—including Security Council Resolution 242 undertake the obligation of states to comply with international norms. States that neglect to prevent, investigate, or punish such violations risk facing sanctions or diplomatic repercussions, which may range from formal condemnation to economic and military restrictions<sup>3</sup>.

Additionally, affected individuals or their families have the option to pursue civil remedies by filing cases before international human rights bodies, such as the UNHRC or regional courts like the European Court of Human Rights (ECHR). Such claims could be grounded in violations of fundamental rights enshrined in treaties such as the International Covenant on Civil and Political Rights (ICCPR), which safeguards the dignity and rights of the deceased and their families<sup>4</sup>.

Sanctions and enforcement measures play a crucial role in addressing these violations. For instance, diplomatic actions—including arms embargoes or referrals to the ICC—can be implemented to hold violators accountable. These mechanisms function to not only punish the transgressors but also to deter future violations and encourage adherence to IHL norms.

The systematic refusal to return Palestinian martyrs' corpses, along with their mistreatment, represents serious breaches of IHL and invokes the accountability of both

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<sup>1</sup> Ibid

<sup>2</sup> Ibid

<sup>3</sup> Ibid

<sup>4</sup>Ibid

individuals and states. Such actions highlight the pressing necessity for robust enforcement of international law to assure accountability, deliver justice to victims, and deter future infractions.

#### **4.10 Conclusion**

The Israeli military orders established post-1967 occupation have consistently violated the provisions of the Fourth Geneva Convention and various human rights protections afforded to Palestinians. This refusal to adhere to international law, especially the Geneva Conventions, has perpetuated ongoing suffering and humiliation for both Palestinian combatants and non-combatants. One particularly troubling practice is the withholding of corpses, which has been codified through military orders and reinforced by judicial rulings. This approach not only raises significant ethical questions but also illustrates a profound conflict between national security interests and the inherent right to human dignity, thereby destabilizing essential Palestinian cultural and religious customs. Eyewitness and family members of those affected have shared heartbreaking stories about the denial of proper burials for their loved ones, exacerbating their grief. In some reports, families have had to wait years for the return of the martyrs' corpses, with no clear explanation or accountability from the authorities.

Judicial decisions, such as those in the *Alian* and *Jabareen* cases, poignantly illuminate the discord between security-driven policies and established international legal frameworks. The *Alian* case permits the utilization of corpses as a bargaining tool, resulting in a clear violation of international norms. In contrast, the *Jabareen* ruling emphasizes the fundamental right to a dignified burial. Collectively, these cases highlight an urgent need for the consistent application of international law to safeguard Palestinian rights and uphold their dignity in the face of ongoing occupation.

Moreover, the reported actions—including enforced disappearances, the prolonged storage of remains, and interment in "cemeteries of numbers"—constitute significant breaches of these legal obligations. Furthermore, incidents of grave desecration and mistreatment intensify the violation of rights to dignity and respect. These practices not only infringe upon individual rights but also impose profound

psychological distress on bereaved families, hindering their mourning processes and denying them the opportunity for respectful burials.

Moreover, the allegations of the exploitation of Palestinian corpses for purposes such as organ harvesting and unauthorized medical experimentation aggravate these human rights violations. Such actions breach ethical standards set forth by the Nuremberg Code<sup>1</sup> and the guidelines established by the World Health Organization. They also clash with universally accepted norms that advocate respect and compassion for the deceased.

Additionally, these behaviors infringe upon rights to cultural and religious practices, as recognized by the International Covenant on Economic, Social and Cultural Rights (ICESCR). They erode the collective identity and historical memory of the Palestinian people, suggesting a systemic policy aimed at exerting control and suppressing resistance. These actions reveal a coordinated strategy of oppression rather than isolated incidents. Addressing these significant human rights violations necessitates immediate and robust action from the international community, including human rights organizations and legal institutions, to ensure accountability and justice. Establishing effective mechanisms for investigating these abuses and holding perpetrators accountable is crucial. Only through sustained efforts can the essential principles of human dignity and respect for the deceased be upheld, thereby fostering a future rooted in justice and accountability.

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<sup>1</sup> Office of Research Integrity. (n.d.). Nuremberg Code: Directives for Human Experimentation | ORI - The Office of Research Integrity. Ori.hhs.gov. <https://ori.hhs.gov/content/chapter-3-The-Protection-of-Human-Subjects-nuremberg-code-directives-human-experimentation>

## **Chapter Five: The Role of Human Rights Organizations in Addressing the Withholding of Palestinian Martyrs' Corpses by Israel—General Conclusion and Recommendations**

### **5.1 Efforts of Palestinian Human Rights Organizations in Reclaiming Withheld Palestinian Corpses: Advocacy and Legal Challenges**

Several Palestinian human rights organizations actively work to reclaim the remains of Palestinians withheld by Israel. Overall, Palestinian human rights organizations play a vital role in addressing human rights violations and seeking justice for victims. Through their monitoring, documentation, legal analysis, litigation, empowerment, advocacy, and international cooperation efforts, they strive to hold Israel accountable for its actions and uphold human rights, justice, and accountability principles.

**The National Campaign to Recover the Bodies of the Detained Martyrs and Discover the Fate of the Missing** is a Palestinian initiative that advocates for the recovery of Palestinian martyrs' corpses withheld by Israeli authorities. The campaign seeks to illuminate the fate of missing Palestinians and to press Israel to release the corpses of those who have been killed or detained. The National Campaign to Recover the Bodies of the Detained Martyrs and Discover the Fate of the Missing is a significant movement that serves to promote justice, accountability, and the rights of Palestinian victims and their families. This campaign is aimed at addressing the Israeli practice of withholding Palestinian corpses and information, which has caused immense suffering to the families of the deceased. The movement advocates for the recovery of the corpses and the revelation of the fate of the missing persons to provide closure and solace to the affected families. The campaign has several key objectives, including advocacy and awareness, legal action, support for families, coordination and collaboration, and public awareness and mobilization<sup>1</sup>. Regarding advocacy and awareness, the campaign aims to raise awareness about the issue of Palestinian corpses being withheld by Israel and the plight of the families affected by this practice. Through advocacy efforts, it seeks to

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<sup>1</sup> الحملة الوطنية لاسترداد جثامين الشهداء المحتجزة والكشف عن مصير المفقودين (n.d.). Www.makaberalarqam.ps. Retrieved May 1, 2024, from <https://www.makaberalarqam.ps/ar>

mobilize domestic and international support for the recovery of the corpses and the provision of closure to the families. In terms of legal action, the campaign may engage in legal advocacy, including filing petitions, submitting complaints to international human rights bodies, and pursuing legal avenues to pressure Israel to release the corpses and provide information on the fate of the missing. The campaign also provides support and assistance to the families of the detained martyrs and missing persons, including legal aid, psychosocial support, and assistance in navigating the complexities of the Israeli legal system. Regarding coordination and collaboration, the campaign may collaborate with other Palestinian human rights organizations, civil society groups, and international partners to amplify its advocacy efforts and coordinate actions aimed at addressing the issue. Finally, through public events, media outreach, and social media campaigns, the campaign seeks to raise public awareness about the issue and mobilize support for its objectives<sup>1</sup>.

Many organizations have been working tirelessly to advocate for the rights of Palestinians and bring to justice those responsible for human rights abuses committed by Israeli authorities. These organizations face several challenges in their efforts to hold Israel accountable for withholding Palestinian corpses, including legal, political, and practical obstacles. Despite these challenges, Palestinian human rights organizations continue to persist in their endeavours to seek justice and accountability for victims of these human rights abuses. The obstacles they face include navigating complex legal frameworks, dealing with political pressure, and overcoming practical challenges such as access to evidence and resources. However, they remain steadfast in their commitment to this cause, firmly believing that the victims of these atrocities must serve justice. Some of these organizations include JLAC (Jerusalem Legal Aid and Human Rights Center)<sup>2</sup>, Palestinian Centre for Human Rights (PCHR), Al-Haq<sup>3</sup>,

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<sup>1</sup> Ibid.

<sup>2</sup> Please see the full information about JLAC organization via the following link: <https://www.jlac.ps/en>

<sup>3</sup> Please see the full information about Al Haq organization via the following link: <https://www.alhaq.org/about-alhaq/7136.html>

Adalah<sup>1</sup>, Addameer Prisoner Support and Human Rights Association<sup>2</sup>, and Al-Mezan Centre for Human Rights<sup>3</sup>.

Many of these human rights organizations, adopt a multi-faceted approach to reclaiming the Palestinian corpses that Israel withholds. This approach typically encompasses legal, advocacy, and grassroots methods. These organizations work towards the restoration of Palestinian dignity and respect for human rights through a concerted effort that involves various stakeholders. The legal methods adopted by these organizations involve challenging Israel's policy of withholding the corpses of Palestinians in Israeli custody<sup>4</sup>.

Advocacy efforts to address the issue of Palestinian corpses withheld by Israel involve a multifaceted approach that integrates local grassroots initiatives with international advocacy. The grassroots approach mobilises local communities to advocate for the return of Palestinian corpses to their families. These local efforts are complemented by a range of strategies designed to amplify the voices of Palestinian human rights organizations and attract international attention to the issue.

- **Legal Advocacy and Litigation:** These organizations often utilize legal avenues to challenge Israel's withholding of Palestinian corpses. This may include filing petitions or lawsuits in Israeli courts, as well as submitting complaints to international human rights bodies or legal mechanisms<sup>5</sup>. Legal arguments may focus on violations of IHL, IHRL, and domestic Israeli law<sup>6</sup>.

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<sup>1</sup> Please see the full information about Adalah organization via the following link: <https://www.adalah.org/en/content/view/7189>

<sup>2</sup> Please see the full information about Addameer Prisoner Support and Human Rights Association via the following link: <https://www.addameer.org/about/our-work>

<sup>3</sup> Please see the full information about Al-Mezan Centre for Human Rights organization via the following link: <https://www.mezan.org/public/en/page/11/About-Us>

<sup>4</sup> B'Tselem – *The Israeli Information Center for Human Rights in the Occupied Territories* / Global Studies Center. (2023). Pitt.edu. <https://www.ucis.pitt.edu/global/b%E2%80%99tselem-%E2%80%93-israeli-information-center-human-rights-occupied-territories>

<sup>5</sup> Addameer. (2023). *Legal challenges against the withholding of Palestinian corpses*. Retrieved from <https://www.addameer.org/>

<sup>6</sup> International Criminal Court. (2024). *International Criminal Law overview*. Retrieved from <https://www.icc-cpi.int/>

- **Documentation and Evidence Gathering:** Organizations engage in systematic documentation and evidence gathering of cases where Palestinian corpses are withheld by Israel. This includes collecting testimonies from victims' families, documenting forensic evidence, and compiling detailed reports on individual cases of withholding<sup>1</sup>. This documentation serves as the basis for legal advocacy efforts and raises awareness about the issue<sup>2</sup>.
- **Public Awareness and Advocacy Campaigns:** Palestinian human rights organizations conduct public awareness and advocacy campaigns to shed light on the issue of withheld corpses and garner support for their cause. This may involve organizing protests, rallies, and media events to raise awareness among local and international audiences. Advocacy efforts also target policymakers, diplomats, and international organizations to pressure Israel to release the corpses<sup>3</sup>.
- **International Diplomacy and Advocacy:** Organizations engage in diplomatic efforts to raise the issue of withheld corpses at the international level. This includes lobbying foreign governments, diplomatic missions<sup>4</sup>, and international organizations to take action on the issue. Palestinian human rights organizations may also participate in international conferences, forums, and hearings to advocate for accountability and justice<sup>5</sup>.
- **Collaboration and Networking:** Organizations collaborate with other human rights groups, legal experts, and civil society organizations at the local, regional,

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<sup>1</sup> Palestinian Center for Human Rights. (2023). *Reports on withheld corpses*. Retrieved from <https://www.pchrgaza.org/>

<sup>2</sup> Al Haq. (2023). *Documentation of cases involving withheld Palestinian corpses*. Retrieved from <https://www.alhaq.org/>

<sup>3</sup> *The National Campaign for Retrieval of the bodies of Palestinian and Arab War Victims Open Letter to UNSCO | Masader*. (2017). Masader.ps. <https://www.masader.ps/en/node/86266>

<sup>4</sup> Palestinian Mission to the UN. (2023). *Diplomatic advocacy on withheld corpses*. Retrieved from <https://www.palestine-un.org/>

<sup>5</sup> *The National Campaign for Retrieval of the bodies of Palestinian and Arab War Victims Open Letter to UNSCO | Masader*. (2017). Masader.ps. <https://www.masader.ps/en/node/86266>

and international levels<sup>1</sup>. This collaboration strengthens advocacy efforts, shares resources, and expertise, and amplifies the voices of victims and their families<sup>2</sup>.

- **Legal Empowerment and Support for Victims' Families:** Organizations provide legal assistance, counselling, and support to the families of victims whose corpses are withheld by Israel. This may include legal representation, psychosocial support, and assistance in navigating legal procedures and mechanisms<sup>3</sup>.
- **Capacity Building:** Palestinian human rights organizations are taking steps to reclaim the martyrs' corpses of those withheld by Israel. These organizations are focused on capacity-building initiatives that include legal training, documentation skills, advocacy techniques, strategic planning, networking, and collaboration. Through their legal training and workshops, staff and members gain a deeper understanding of IHL, IHRL, and ICL of this issue<sup>4</sup>. They also aim to improve their documentation skills to ensure accurate recording of cases involving withheld corpses. Advocacy techniques are tailored to raise awareness and promote accountability, while strategic planning and campaigns help address the issue of withheld corpses through careful coordination. Capacity-building initiatives foster networking and collaboration within the Palestinian human rights community and with international partners, allowing for joint advocacy and resource mobilization. Ultimately, these initiatives empower Palestinian organizations for human rights to effectively reclaim withheld corpses by Israel and advocate for justice and accountability for the victims and their families<sup>5</sup>.

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<sup>1</sup> Human, P. (2021). *Palestinian Human Rights Organizations Council*. Al-Haq | Defending Human Rights in Palestine since 1979. <https://www.alhaq.org/palestinian-human-rights-organizations-council>

<sup>2</sup> Solidarity, in. (2024). *PHROC Stands in Solidarity with the Manasrah Family for Refusing to Receive their Son's Frozen Body*. Al-Haq | Defending Human Rights in Palestine since 1979. <https://www.alhaq.org/palestinian-human-rights-organizations-council/6425.html>

<sup>3</sup> Ibid

<sup>4</sup> International, in. (2024). *Building the Capacity of Palestinian Civil Society Organisations in International Humanitarian Law*. Al-Haq | Defending Human Rights in Palestine since 1979. <https://www.alhaq.org/alhaq-center/6973.html>

<sup>5</sup> Ibid.

Hence, the strategy to reclaim Palestinian corpses withheld by Israel is multifaceted and requires sustained efforts across legal, advocacy, and grassroots channels. These organizations work tirelessly to uphold the rights of victims and their families, seek accountability for violations, and bring about positive change in the human rights situation in the occupied Palestinian territories. Moreover, On February 6th, 2024, the UN Special Rapporteur on the extrajudicial, summary, or arbitrary executions solicited contributions for their upcoming report on safeguarding the human remains of deceased individuals, including those subjected to unlawful killing. In response, a joint report was submitted by Al-Haq, Addameer Prisoner Support and Human Rights Association, Palestinian Centre for Human Rights (PCHR), Al Mezan Center for Human Rights, and Jerusalem Legal Aid and Human Rights Center (JLAC)<sup>1</sup>. This report underscored Israel's ongoing and systematic oppression of Palestinians, which extends beyond lethal acts of violence. More specifically, the submission highlighted instances of Palestinian bodies being mutilated by the Israeli occupying forces (IOF), the deliberate withholding of Palestinian corpses, including those of prisoners and detainees, the utilization of mass graves particularly during the ongoing genocide in the Gaza Strip, and the desecration of Palestinian graves and cemeteries. Moreover, the report contextualized these harsh policies and practices within the broader framework of Israel's Zionist settler-colonialism and apartheid regime<sup>2</sup>.

### **5.1.1 The Challenges Faced by Palestinian Human Rights Organizations in Reclaiming Withheld Palestinian Corpses Stem From Several Factors**

Palestinian organizations play a critical role in advocating for the rights of Palestinians and seeking justice for victims of human rights abuses committed by Israeli authorities. Holding Israel accountable for withholding Palestinian corpses involves navigating a complex legal landscape filled with various challenges. One of the major

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<sup>1</sup> *Palestinian Organisations Send Submission to the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions on Israel's Continued Oppression of Palestinians Beyond Their Killing-jlac.* (n.d.). [www.jlac.ps](https://www.jlac.ps/en/Article/938/Palestinian-Organisations-Send-Submission-to-the-Special-Rapporteur-on-Extrajudicial). Retrieved May 11, 2024, from <https://www.jlac.ps/en/Article/938/Palestinian-Organisations-Send-Submission-to-the-Special-Rapporteur-on-Extrajudicial>

<sup>2</sup> Ibid.

obstacles is the lack of effective legal recourse, as mechanisms to address Israeli human rights violations within international frameworks are often insufficient. Despite international conventions prohibiting enforced disappearance and arbitrary detention of corpses, enforcing these laws against a powerful entity like Israel presents significant challenges. Additionally, Palestinian organizations face limited access to Israeli courts, where bias and discriminatory practices may impede their quest for justice. Israel's assertion of state sovereignty over the Occupied Palestinian Territories further complicates matters, with political considerations often overshadowing human rights concerns in legal proceedings<sup>1</sup>. Additionally, Palestinian human rights advocates often confront intimidation, harassment, and arrests by Israeli authorities, impeding their efforts significantly. The challenges they face encompass resource constraints, including inadequate funding and expertise, which obstruct their capacity to navigate intricate legal issues. Despite widespread international denunciation of Israel's human rights transgressions, diplomatic endeavours to enforce accountability are frequently hampered by political alliances, curbing the efficacy of international pressure in addressing legal complexities. Notwithstanding these obstacles, Palestinian human rights organizations persist in their pursuits, showcasing unwavering commitment to attaining justice and redress for victims of human rights violations<sup>2</sup>.

The Palestinian human rights organizations face many challenges, including limited funding and resources, Israeli restrictions on movement and access, complex legal and political landscape, lack of effective enforcement mechanisms, fragmentation and coordination challenges, security risks and intimidation, and limited international support. To address these shortcomings, sustained international pressure on Israel to respect human rights and adhere to IL, increased support for Palestinian human rights

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<sup>1</sup> Fact-finding mission to Israel and the Occupied Palestinian Territories -Bridges instead of walls -Conditions and challenges experienced by human rights defenders in carrying out their work The Observatory -Forefront / 1 Conditions and challenges experienced by human rights defenders in carrying out their work: Findings and recommendations of a fact-finding mission to Israel and the Occupied Palestinian Territories carried out by Forefront and by the World Organisation Against Torture (OMCT) and the International Federation for Human Rights (FIDH) in their joint program the Observatory for the Protection of Human Rights Defenders. (n.d.). <https://www.fidh.org/IMG/pdf/il395a.pdf>

<sup>2</sup> Ibid.

organizations, greater coordination and collaboration among human rights organizations, resource mobilization, and strengthening legal mechanisms for accountability are essential <sup>1</sup>.

## **5.2 The Global Response: International Human Rights Organizations' Role in Reclaiming Palestinian Martyrs' Corpses:**

The efforts of international human rights organizations to retrieve the Palestinian Martyrs' corpses withheld by Israeli authorities are crucial in addressing ongoing human rights abuses in the region. These organizations play a pivotal role in raising global awareness about the situation, documenting specific violations of human rights, providing essential legal support to the affected families, and exerting pressure for compliance with IL<sup>2</sup>. Collaborating with local Palestinian human rights organizations further amplifies the impact of these efforts, fostering a more comprehensive approach to addressing the issue<sup>3</sup>. While the involvement of many international human rights organizations is significant, there is a pressing need for concrete, on-the-ground actions to bring about meaningful change. The following organizations are involved in advocating for justice and accountability for Palestinian victims and their families: the ICRC, Amnesty International, Human Rights Watch, the International Federation for Human Rights (FIDH), and the United Nations Office of the High Commissioner for Human Rights (OHCHR), etc<sup>4</sup>... Leveraging their global reach, expertise in human rights advocacy, and diplomatic channels, these organizations strive to promote justice and uphold human rights for Palestinians affected by the withholding of their loved ones' corpses. They pursue various approaches, such as issuing reports, conducting

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<sup>1</sup> Ibid.

<sup>2</sup> International Committee of the Red Cross (ICRC). (2023). *Humanitarian issues related to withheld corpses*. Retrieved from <https://www.icrc.org/>

<sup>3</sup> Human Rights Watch. (2023). *Documentation of violations in the Israeli-Palestinian conflict*. Retrieved from <https://www.hrw.org/>

<sup>4</sup> For comprehensive details regarding the operations of the International Organization in OPT, please refer to page 6 in the following link for further information: <https://ijrpr.com/uploads/V5ISSUE1/IJRPR22003.pdf>

investigations, providing legal representation, lobbying governments and international bodies, and organizing campaigns to raise awareness and mobilize public support<sup>1</sup>.

International human rights organizations have played a pivotal role in advocating for the release of Palestinian corpses, which are being withheld by Israel. However, the attainment of tangible outcomes in this regard is fraught with difficulties due to political dynamics, legal complexities, and the reluctance of Israeli authorities to comply with international demands. Nevertheless, these organizations have contributed significantly to raising awareness about the issue on the global stage, documenting human rights violations, and exerting pressure on Israeli authorities to adhere to IL human rights standards. Furthermore, their efforts have helped to mobilize public support and solidarity for the Palestinian cause<sup>2</sup>. While significant progress has yet to be made in securing the release of all withheld Palestinian corpses, the organizations involved in this effort have effectively kept the issue at the forefront of international discourse. Through their advocacy efforts, they have held Israeli authorities accountable for their actions and contributed to incremental advancements in the promotion of human rights. It is important to note that the work of these organizations remains ongoing as they continue to push for justice, accountability, and respect for human rights in the Israeli Palestinian context. Furthermore, their unwavering commitment to this cause has resulted in increased international scrutiny of Israel's human rights record<sup>3</sup>.

### **5.2.1 Obstacles and Hurdles: International Human Rights Organization Efforts to Reclaim Palestinian Martyrs' Corpses from Israeli Authorities:**

International organizations play a crucial role in safeguarding human rights in Palestine, despite encountering various challenges. These challenges include the persistent political conflict, with the Israeli occupation of Palestinian territories posing a

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<sup>1</sup> Amnesty International. (2024). *Campaigns and advocacy efforts for Palestinian rights*. Retrieved from <https://www.amnesty.org/>

<sup>2</sup> Mag. (2024). The Role of International Organizations in Protecting Human Rights in Palestine. *International Journal of Research Publication and Reviews*, 5(1), 4052–4067. <https://doi.org/10.55248/gengpi.5.0124.0314>

<sup>3</sup> Ibid.

significant barrier to human rights promotion and protection<sup>1</sup>. The Israeli government often restricts the access of international organizations to these territories and has targeted Palestinian human rights defenders. Additionally, international organizations face limited enforcement mechanisms, making it challenging to hold governments accountable for human rights abuses and to enforce recommendations effectively. Furthermore, some states, notably the United States, have been resistant to international scrutiny of their human rights records, adding another layer of complexity to the work of international organizations in Palestine<sup>2</sup>. Also, it can be challenging for international organizations to enforce accountability for human rights violations in Palestine. Nevertheless, these organizations persist in their crucial role of safeguarding human rights in Palestine. They serve as a lifeline for the Palestinian people and ensure that the human rights situation in the Palestinian territories remains in the spotlight.

In securing the return of Palestinian martyrs' corpses currently held by Israel, International human rights organizations are confronted with a myriad of challenges in their endeavours, these challenges are intricate and multifaceted, comprising a spectrum of issues that necessitate careful consideration for successful resolution, and foremost among these hurdles is the significant limitation of access to the locations where the corpses are being withheld, as Israel has enforced strict restrictions on movement and entry to these areas. Hence, this lack of access impedes the ability of humanitarian groups to effectively assess the situation and advocate for the return of the corpses<sup>3</sup>. Moreover, legal barriers pose formidable challenges, as Israel contends that the withholding of these corpses is integral to its national security policies, raising concerns that releasing them could compromise security interests. This legal complexity adds layers of intricacy to the efforts of international human rights organizations, requiring

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<sup>2</sup> Ibid.

<sup>3</sup> Fact-finding mission to Israel and the Occupied Palestinian Territories -Bridges instead of walls -Conditions and challenges experienced by human rights defenders in carrying out their work The Observatory -Forefront / 1 Conditions and challenges experienced by human rights defenders in carrying out their work: Findings and recommendations of a fact-finding mission to Israel and the Occupied Palestinian Territories carried out by Forefront and by the World Organisation Against Torture (OMCT) and the International Federation for Human Rights (FIDH) in their joint program the Observatory for the Protection of Human Rights Defenders. (n.d.). <https://www.fidh.org/IMG/pdf/il395a.pdf>

thorough navigation of international legal frameworks and diplomatic channels. Additionally, resistance from Israeli authorities presents a substantial obstacle, with their reluctance to comply with international demands further hindering progress. This resistance is often justified on the grounds of security concerns and national sovereignty, reinforcing the complexity of the situation. In navigating these challenges, international human rights organizations must contend not only with legal and political obstacles but also with practical constraints such as limited resources and security risks<sup>1</sup>.

So, addressing these challenges in returning the Palestinian martyrs' corpses withheld by Israel requires sustained commitment, collaboration among stakeholders, and creative approaches to advocacy and diplomacy. While progress may be incremental, international human rights organizations play a crucial role in amplifying the voices of affected communities, exposing human rights violations, and advocating for justice and accountability.

### **5.2.2 Unmet Responsibilities: Examining the Inadequate Response of International Organizations, in Reclaiming Palestinian Martyrs' Corpses from Israeli Authorities:**

The failure of international organizations to meet their responsibilities in addressing the issue of reclaiming Palestinian martyrs' corpses from Israeli authorities is underscored by several key factors. Firstly, there is a notable absence of assertive action from entities like ICRC, tasked with upholding humanitarian principles in conflict zones. Despite clear violations of IL by Israel in withholding these corpses, the response from such organizations appears inadequate, lacking the necessary pressure to prompt Israel to release them. This deficiency in assertiveness may arise from various factors, including political considerations, resource constraints, or diplomatic sensitivities, thereby highlighting a systemic failure to advocate for the rights of Palestinians in this context effectively. Furthermore, international organizations' insufficient prioritization of this issue contributes to its prolonged neglect. The lack of robust advocacy fails to

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<sup>1</sup> Ibid.

mobilize the support and attention needed to address the matter effectively<sup>1</sup>. Without concerted efforts to elevate the significance of reclaiming Palestinian corpses, the rights of the affected individuals are marginalized, perpetuating their vulnerability and exacerbating the overall humanitarian situation. Additionally, limited engagement with Israeli authorities represents a significant obstacle to progress in resolving this issue<sup>2</sup>. The absence of sustained dialogue and negotiation inhibits the ability of international organizations to secure meaningful outcomes and hold Israel accountable for its actions. Inadequate monitoring and reporting further compound the problem, as the lack of comprehensive documentation hampers efforts to advocate for justice and accountability on behalf of the victims<sup>3</sup>. Moreover, legal and diplomatic constraints restrict the capacity of international organizations to intervene effectively in reclaiming Palestinian corpses. Access restrictions and limitations on permissible activities hinder their ability to address the issue satisfactorily, leaving the rights of Palestinians unfulfilled and their grievances unresolved.

In conclusion, the failure of international organizations to adequately respond to the withholding of Palestinian martyrs' corpses by Israeli authorities is characterized by a lack of assertive action, insufficient prioritization, limited engagement with relevant stakeholders, inadequate monitoring and reporting, and legal and diplomatic constraints. Addressing these shortcomings requires a concerted effort to reevaluate strategies, enhance advocacy efforts, and prioritize the rights of Palestinians in conflict zones.

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<sup>1</sup> Human Rights Watch. (2023). *A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution*. Retrieved from <https://www.hrw.org/report/2021/04/27/threshold-crossed/israeli-authorities-and-crimes-apartheid-and-persecution>

<sup>2</sup> Amnesty International. (2023). *Israel/Occupied Palestinian Territories: Human rights violations*. Retrieved from <https://www.amnesty.org/en/location/middle-east-and-north-africa/middle-east/israel-and-occupied-palestinian-territories/report-israel-and-occupied-palestinian-territories/>

<sup>3</sup>International Federation for Human Rights (FIDH). (2024). *Palestine: FIDH's Work and Advocacy*. Retrieved from <https://www.fidh.org/en/region/north-africa-middle-east/israel-palestine/>

### **5.3 Conclusion**

The ongoing issue of the withholding of Palestinian martyrs' corpses by Israeli authorities represents a critical intersection of international humanitarian law and human rights, highlighting significant shortcomings in the responses of global organizations. This situation illustrates a profound institutional and diplomatic failure, which is characterized by a series of systemic deficiencies in the enforcement of legal and humanitarian protections.

Firstly, the actions taken—or rather, not taken—by organizations like the International Committee of the Red Cross (ICRC) raise pertinent questions regarding their commitment to upholding the dignity of individuals during armed conflict, as enshrined in International Humanitarian Law (IHL). The clear violations related to the right to a respectful burial and the prohibition of degrading treatment represent a stark contradiction to the stated mandates of these institutions. The reluctance to assertive pressure on Israel to release the corpses of the deceased could be attributed to complex political dynamics, resource constraints, and wider geopolitical considerations that inhibit effective interventions.

Moreover, the response—or lack thereof—from the United Nations and various humanitarian agencies to the issue of withholding Palestinian martyrs' corpses as a human rights concern reflects an unsettling trend of the deprioritization of Palestinian rights within international forums. Such neglect not only perpetuates vulnerabilities but also exacerbates the ongoing humanitarian crises faced by Palestinian families. The denial of proper burials not only infringes upon individual rights but destabilizes vital cultural and religious practices, fundamentally impacting Palestinian identity. As well as, the lack of coherent legal action, whether through the International Criminal Court (ICC) or other accountability mechanisms, serves to normalize practices of dehumanization and perpetuate an environment of impunity.

Palestinian human rights organizations such as Al-Haq, Addameer, and the Palestinian Center for Human Rights (PCHR) have been instrumental in documenting the adverse impacts of these practices. Their advocacy and legal efforts highlight the

psychological trauma inflicted upon families due to the denial of proper burials. However, these organizations encounter formidable challenges, including limited international recognition and inadequate support for pressuring Israel into adherence to international law. Their successes in raising awareness are often overshadowed by geopolitical forces that shield Israel from accountability.

In conclusion, the inadequate international response to the withholding of Palestinian corpses illuminates crucial gaps in the enforcement of humanitarian and human rights law. This situation not only reflects political and diplomatic hesitance but also underscores a broader unwillingness to confront violations within an ongoing conflict. Systemic neglect exacerbates the humanitarian crisis and undermines the credibility of international law as a protective mechanism, further marginalizing affected communities and rendering them vulnerable to continued exploitation and suffering.

#### **5.4 General Conclusion**

The treatment of the corpses of Palestinian martyrs under Israeli occupation epitomizes significant violations of IHL, IHRL, and ICL. Systematic practices such as the withholding of martyrs' corpses, the desecration of graves, and the denial of dignified burials starkly contravene fundamental legal and ethical principles that are intended to uphold human dignity, even beyond death. These actions not only diminish the integrity of the deceased but also inflict deep psychological trauma on mourning families, disrupt cultural and religious customs, and undermine the collective identity and historical memory of the Palestinian people. The implications extend beyond individual loss, affecting social cohesion and the transmission of cultural heritage, thus warranting urgent international attention and action.

In the same context, legal frameworks governing the treatment of deceased individuals, particularly in contexts of conflict, underscore vital principles that demand adherence to dignity and respect. The Fourth Geneva Convention, along with its Additional Protocols and the Rome Statute of the ICC, establishes clear mandates

regarding the respectful handling of human remains, proper burial practices, and the observance of cultural and religious traditions. Specifically, Article 130 of the Fourth Geneva Convention explicitly prohibits the inhumane treatment of the deceased, while Article 17 of the First Geneva Convention affirms the necessity of dignified burials. Additionally, Customary IHL (Rules 115 and 116), explicitly mandates the dignified treatment, documentation, and return of the deceased in armed conflict, reinforcing the obligation to address these violations. IHRL further enforces these protections by recognizing the intrinsic dignity of every individual, which persists even posthumously.

Contrastingly, reports of Israeli practices—such as the use of "cemeteries of numbers" for storage of remains, instances of enforced disappearances, and the desecration of graves—represent blatant violations of these established obligations. Judicial decisions in cases such as *Alian* and *Jabareen* reveal a disconcerting interplay between national security imperatives and the fundamental rights of human dignity, highlighting inconsistencies in the enforcement of international legal standards. Moreover, allegations regarding organ theft and unauthorized medical experimentation on Palestinian corpses pose significant ethical concerns that not only violate the principles articulated in the Nuremberg Code but also breach international health regulations. Such actions could indeed elevate these practices to the status of crimes against humanity, calling for urgent scrutiny and accountability within the international legal community.

Thus, these violations are not isolated incidents; rather, they reflect an institutionalized policy reinforced through military orders, administrative practices, and judicial rulings. The use of corpses as bargaining tools, the prolonged withholding of remains, and the denial of dignified burials are systemic strategies that perpetuate dehumanization and psychological warfare against Palestinian families. Such practices fundamentally undermine the principles of IHL, IHRL, and ICL, which aim to safeguard the rights of individuals and communities during times of conflict.

A significant finding of this analysis is the inadequacy of the international response to these violations. Institutions such as the ICRC, the United Nations, and the ICC have failed to consistently uphold international legal frameworks. This inaction, influenced

by geopolitical dynamics and political hesitations, has normalized these violations, perpetuated impunity, and marginalized Palestinian voices within global legal and humanitarian discourse.

Furthermore, academic discussions frequently overlook crucial intersections between legal norms and their practical enforcement. Existing literature often neglects a comprehensive examination of the psychological and sociocultural impacts that legal practices exert on Palestinian communities. Additionally, there is a notable lack of evaluation regarding the obstacles that obstruct the effective enforcement of legal mechanisms designed to address these violations. The impact of geopolitical factors on the inconsistent application of international legal obligations is also frequently disregarded. This gap highlights the urgent need for a more nuanced and interdisciplinary approach to understanding legal enforcement and its ramifications.

The withholding of Palestinian Martyrs' corpses represents a serious breach of international law, particularly under the provisions of the Geneva Conventions. Such actions, especially when used as bargaining tools, are classified as war crimes as per the Rome Statute, demanding unwavering condemnation from the global community. Hence, reported instances of organ theft raise significant ethical and legal concerns, infringing upon established norms such as the Nuremberg Code and various international health standards. So, these actions could be classified as crimes against humanity, necessitating serious scrutiny and intervention.

The issue of the arbitrary withholding of Palestinian martyrs' corpses represents a significant and contentious aspect of human rights and international humanitarian law. Addressing this matter effectively necessitates the implementation of comprehensive legal measures, including filing legal petitions, engaging in international advocacy campaigns, and utilizing established mechanisms such as the ICC or seeking advisory opinions from the ICJ. Such actions are crucial in compelling compliance with international legal standards.

Various legal avenues, particularly those rooted in universal jurisdiction, provide potential pathways for accountability. Nevertheless, the enforcement of these

mechanisms often encounters substantial obstacles due to political resistance and a general lack of international will, which complicates and hinders the pursuit of justice in this context.

Reconceptualizing the arbitrary withholding of corpses to explicitly include the retention of Palestinian remains serves to strengthen its classification as a violation of human rights under both International Human Rights Law (IHRL) and International Humanitarian Law (IHL). This broader legal framework not only enhances the understanding of these violations but also opens novel avenues for accountability and redress.

Moreover, the systemic nature of these violations points to a more extensive strategy of oppression aimed at undermining Palestinian identity and dignity. The practice of withholding the remains of martyrs transcends mere legal implications; it constitutes a humanitarian crisis that necessitates immediate international intervention. Upholding the principles of human rights and justice requires a concerted effort to confront these violations within the larger context of the ongoing conflict. This approach emphasizes that the protection of human dignity is inextricably linked to the quest for sustainable peace and justice in the region.

## **5.5 Recommendations**

### **5.5.1 International Legal Action and Advocacy**

The practice of arbitrarily withholding the corpses of Palestinian martyrs constitutes a violation of international humanitarian law (IHL) and international human rights law (IHRL). To address this issue effectively, it is essential to establish a specialized legal and medical task force that includes experts in forensic science, international law, and human rights. This task force would be responsible for compiling legal dossiers that could initiate judicial proceedings aimed at securing the return of these withheld martyrs' corpses while holding the responsible parties accountable.

### **5.5.2 Establishment of a Centralized Information Database**

To facilitate advocacy and legal action, a comprehensive digital repository should be created to document cases of withheld Palestinian martyrs' corpses systematically. This repository must contain verified information, including circumstances of death, autopsy findings, and human rights violations, such as organ theft or desecration. Such a database would not only support legal tracking of individual cases but also enhance the ability to generate international advocacy efforts.

### **5.5.3 Strategic Legal and Diplomatic Engagement**

A national legal coalition should be formed, bringing together Palestinian governmental entities, human rights organizations, and international legal experts. This coalition must engage diplomatically with European Union institutions, United Nations agencies, and relevant human rights rapporteurs, mobilizing both political and legal mechanisms to urge Israel to comply with its international legal obligations.

### **5.5.4 Recognition of Arbitrary Withholding in International Law**

It is crucial to formally introduce the terminology "Arbitrary Withholding of Corpses" into international legal discourse, establishing it as a distinct legal classification. This would reinforce the characterization of such actions as human rights violations and war crimes under the Geneva Conventions and the Rome Statute of the International Criminal Court (ICC).

### **5.5.5 Integration into UN Mechanisms**

The UN Working Group on Arbitrary Detention should expand its mandate to encompass instances of arbitrary corpse withholding, particularly under Category V. Incorporating this issue into its framework would create a structured approach to addressing the systematic practices of corpse retention and enable coordinated international interventions aimed at securing their return.

### **5.5.6 Accountability and Criminal Prosecution**

Rigorous investigations should be launched to identify and prosecute individuals responsible for policies that involve withholding, desecration, or exploitation of the corpses of Palestinian martyrs. Legal proceedings should be pursued at both national and international levels, holding perpetrators accountable under the frameworks of human rights and international criminal law.

### **5.5.7 Amendments to the Rome Statute**

Palestine should advocate for an amendment to Article 8 of the Rome Statute to explicitly categorize the arbitrary withholding of corpses as a war crime. This addition would bolster legal avenues for prosecution and facilitate international criminal investigations into these practices.

### **5.5.8 Comprehensive Investigation of Alleged Violations**

International legal and human rights mechanisms, such as the UN Special Rapporteur on Extrajudicial Executions and the Working Group on Enforced Disappearances, should be mobilized to investigate the treatment of Palestinian corpses, including cases of extrajudicial executions, enforced disappearances, and organ harvesting. The findings of such investigations should be presented to international judicial bodies to support further legal action.

### **5.5.9 Legal Challenges Against Israeli Supreme Court Rulings**

A unified legal approach must be adopted to challenge Israeli Supreme Court decisions that enable the arbitrary withholding of corpses. Coordinated legal efforts should work to expose the court's role in perpetuating these policies, thereby amplifying international pressure to bring an end to these violations.

### **5.5.10 Strengthening Coordination with Victims' Families**

Effective communication strategies must ensure that families of martyrs receive continuous updates on legal proceedings, court rulings, and developments regarding the

return of their loved ones' remains. This necessitates coordination with legal representatives and human rights organizations to provide essential legal, psychological, and advocacy support.

#### **5.5.11 Legislative Reforms within Palestine**

The Palestinian legal system must introduce specific legislation criminalizing the withholding of corpses, thereby guaranteeing legal recourse for affected families. This would establish a national legal framework to bolster international legal actions and reinforce Palestine's standing in disputes before international bodies.

#### **5.5.12 Engagement with Regional and International Courts**

Efforts should focus on filing cases with the International Court of Justice (ICJ) regarding Israel's violations of International Humanitarian Law (IHL) and International Human Rights Law (IHRL). Concurrently, legal actions should be pursued in regional human rights courts, such as the European Court of Human Rights (ECHR) and the African Court on Human and Peoples' Rights, to leverage Israel's diplomatic and economic connections with these regions.

#### **5.5.13 Sanctions and Diplomatic Pressure on Israel**

Advocacy efforts should aim for targeted sanctions against individuals and institutions complicit in the policy of withholding Palestinian martyrs' corpses. Measures could include travel bans, asset freezes, and restrictions on military aid from international entities, thereby increasing the consequences of Israel's non-compliance with international norms.

#### **5.5.14 Forensic Identification and Independent Oversight Mechanisms**

In collaboration with international forensic organizations, such as the International Committee of the Red Cross (ICRC) and Physicians for Human Rights, Palestine should establish an independent forensic oversight mechanism. This body

would be responsible for verifying returned remains and documenting cases of organ theft, mutilation, or tampering for future legal procedures.

#### **5.5.15 Utilization of Universal Jurisdiction**

Legal actions should be initiated in the domestic courts of third-party states that uphold universal jurisdiction for war crimes and crimes against humanity. These initiatives would facilitate the issuance of international arrest warrants against Israeli officials responsible for the withholding of corpses, similar to actions taken against those implicated in extrajudicial killings.

#### **5.5.16 Pressure on International Human Rights Organizations to Take a Stronger Stance**

Organizations like Human Rights Watch (HRW) and Amnesty International should prioritize the issue of corpse withholding as a distinct war crime. Enhanced international scrutiny would exert greater pressure on governments and international institutions to take meaningful action.

#### **5.5.17 Public Awareness Campaigns and Media Mobilization**

A comprehensive global advocacy campaign is needed to raise awareness regarding the withholding of Palestinian corpses. This campaign should encompass documentaries, international petitions, legal reports, and testimonies presented before international bodies, such as the United Nations Human Rights Council (UNHRC). Engaging civil society and media networks is vital to mobilizing public opinion and garnering international support.

#### **5.5.18 Enhanced Support for Families of Martyrs**

It is essential to expand psychological and legal support services for families of martyrs, offering counseling, legal guidance, and advocacy training.

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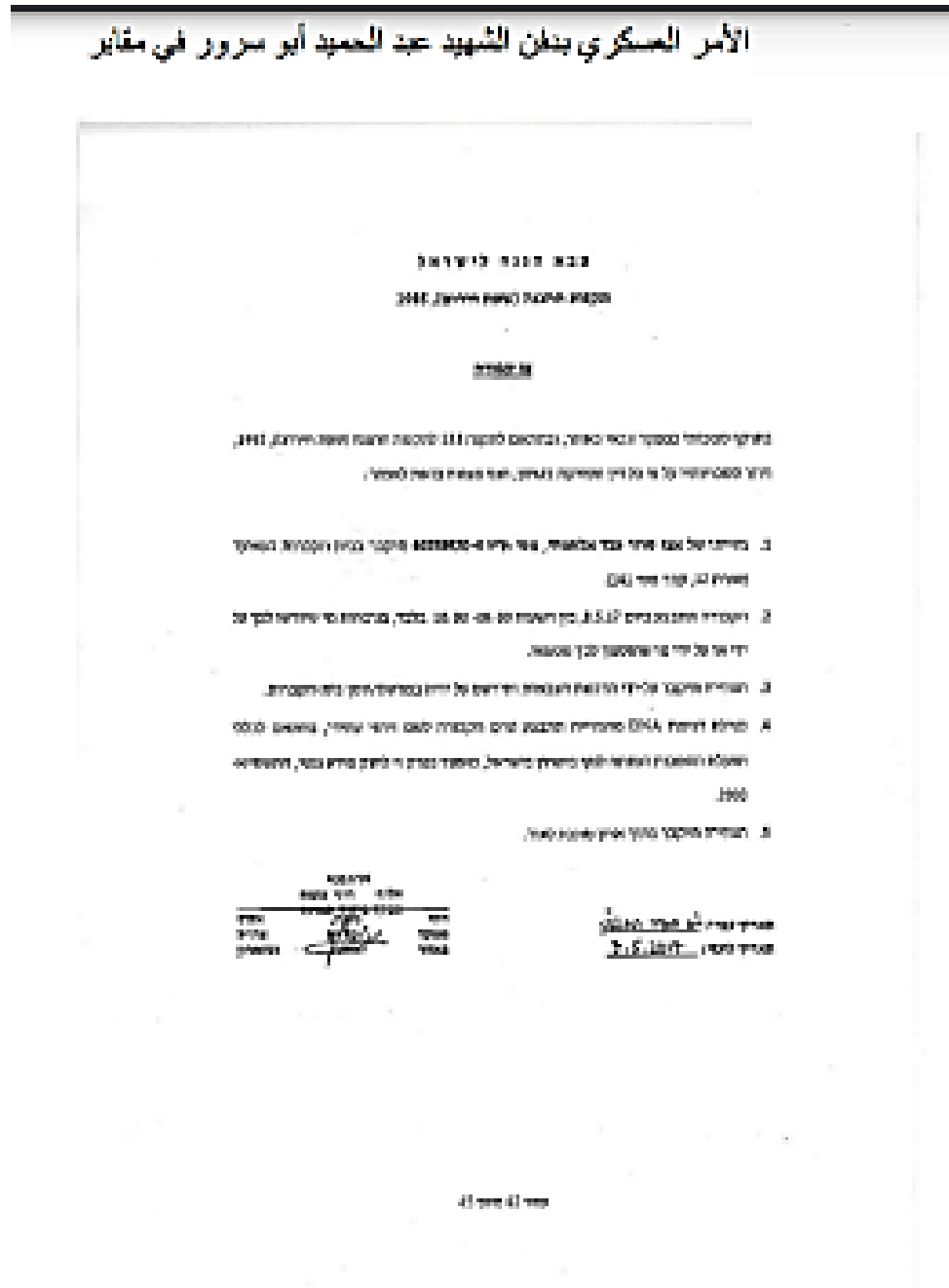
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## Appendices

### Appendix one<sup>1</sup>: Military order for the burial of martyr Abdul Hamid Abu Surur in the cemetery of Numbers



من . . (n.d.) منظور القانون الدولي الشريعة احتجاز جثامين جامعة القدس عمادة الدراسات العمياء<sup>1</sup>  
<https://dspace.alquds.edu/server/api/core/bitstreams/436b1c6d-5eda-4bab-abe9-5f8edf396096/content>

Appendix Two<sup>1</sup>: Military order for the burial of martyr Imad Awad in the

الأمر العسكري بدفن الشهيد عماد عوض الله في مقابر الأرقام

הע/2

אמור

על קבורה

בתוקף סמכותי לפי תקנה 133 (ז') לתקנות החנוכה ולטענת חרם) 1954 הנני מצווה

שחזרית של

א'א'א'א' א'א'א' א'א'א' א'א'א'א'א'א'א'

תוקמר בבית הקברות לחללו אויב שליד בער יאדם"

ניצ 16752001 חלקת ז' מטי קבר 512

על ידי חוליות קבורה של צה"ל

משרד הביטחון והצבא  
המטה הכללי  
המפקד הכללי

משה יעלון, אלוף  
אלוף מיקוד המרכז

אמור

עמוד 11 מתוך 45

<sup>1</sup> Ibid.

## cemetery of Numbers

### Appendix three<sup>1</sup>: Military Order for Imposed Conditions by the Israeli Occupation for the burial of Martyr Baha Alian after his body was handed over

#### الشروط التي وضعها الاحتلال لدفن الشهيد بهاء عليان.



30/08/16	תאריך
ישראל	מדינה
הרשות	מחוז
המפקדה	היחידה

**הנאים מוטלים לקבורת ב"ח עליאן ת"ז 308443449**

1. בתאריך 30/08/16 בשעה 13:00 יערך משגש בין בא סחם של משפחת המנוח עו"ד מוחמד מחמוד ובני משפחת המחל ונקבעו הנאים לקבורתו.
2. הנפה תצטא בהגנים אלו במסך לרפואה משפחית. המשטרה מסכימה כי הנפה תיסגר למשפחה במקום שיקבע על ידי המשטרה.
3. הנפה תחבר למשפחה בזמן הקרובים בין השעות 23:00 ליעת 01:30 המשטרה תצטרף לראת לפני הנפית הנפה לעורך דין מוחמד מחמוד. למשג עם המשטרה יצאו 4 בקרי המשפחה ויקבלו את הנפה במקום זה.
4. מרגע קבלת הנפה, הנפה תחבר יחד עם בני המשפחה באופן ישיר במקום המשג לבית הקברות שיקבע על ידי המשטרה ללא עצריות או חניות במקומות אחרים.
5. מבית הקברות יחד נסחום 20 קרובי משפחה שיקבעו את הקבורה, במהלך הקבורה לא יקראו קריאת המתה, לא יבצעו צילום או תוליה מכל סוג ועדוא.
6. מרגע סדירת הנפה על המשפחה לסיים את הליך הקבורה תוך יעה.
7. בסיום הלוויה יצאו הנכודים מבית הקברות ללא תולכות לביתם.
8. לתכנות הנאים יפקיחו בני המשפחה 20 אלף ש"ח במידת ריגודו בתנאים יחודי הכסף למשפחה.
9. אבי מידע את המשפחה כי הנפית או חרות סוד במקום מגורי המחל הוא בני משפחתו יחייבו הנפדת כוחות משטרה לחקים ותמשפחות שלא תתבצע קבורה הנפה תיחוד למסכן לרפואה משפחית.
10. אבי מידע את המשפחה כי דחיות הקבורה תחוד את ריקבון הנפה, לאשריח הנאים באכו על החתום

רמ"ק יגאל אלמליח  
רמ"ח מת"ם

עו"ד מוחמד מחמוד  
ב"ח כוח המשפחה

30/08/16  
308443449

<sup>1</sup> Ibid.

**Appendix Four<sup>1</sup>: Organs snatched from a Palestinian martyrs corpse Bilal**



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<sup>1</sup> Ibid.

## احتجاز الاحتلال الإسرائيلي لجثامين الشهداء الفلسطينيين: تقييم من منظور

### القانون الدولي

إعداد: هند خليل

لجنة الإشراف:

د. رزق سمودي

أ. د. أيمن يوسف

د. أحمد البشتاوي

### ملخص

تتناول هذه الأطروحة الممارسة الإسرائيلية المتمثلة في احتجاز جثامين الشهداء الفلسطينيين، معتبرة إياها انتهاكاً جسيماً لمعايير القانون الدولي وأحد أشكال العقاب الجماعي المحظور صراحةً بموجب القانون الدولي. ومن خلال تحليل قانوني شامل، تقييم الدراسة سياسة إسرائيل في الاحتفاظ بجثامين الفلسطينيين ومدى امتثالها للالتزامات القانونية الدولية، مع استكشاف التداعيات الإنسانية والسياسية الأوسع نطاقاً لهذه الممارسات.

وتتناول الدراسة المبادئ القانونية الأساسية، بما في ذلك حظر المعاملة القاسية واللاإنسانية والمهينة، وحقوق الكرامة للمتوفين وعائلاتهم، والالتزامات القانونية المتعلقة بالمعاملة اللائقة، والتعرف على هوية الجثامين، وإعادتها إلى ذويها. وتعتمد الدراسة منهجية قانونية نوعية تركز على التحليل المعياري، والاجتهادات القضائية، والاتفاقيات الدولية، والشهادات، وذلك لتقييم ممارسات إسرائيل كقوة قائمة بالاحتلال ضمن الأطر القانونية ذات الصلة.

تكشف النتائج أن احتجاز جثامين الشهداء الفلسطينيين يشكل انتهاكاً خطيراً للقانون الدولي، وتقدم الأطروحة مصطلحاً قانونياً جديداً وهو "الاحتجاز التعسفي للجثامين"، الذي يستند إلى مفهوم "الاعتقال التعسفي" في القانون الدولي. كما تحدد الدراسة انتهاكات للقانون الجنائي الدولي، تشمل الاختفاء القسري، والممارسات غير المشروعة التي تُرتكب بحق الجثامين بعد الوفاة، مثل الإتجار غير القانوني بالأعضاء وسرقتها.

واستجابةً لهذه الانتهاكات، تقدم الأطروحة مجموعة من التوصيات القانونية والسياسية التي تهدف إلى تفعيل آليات المساءلة الدولية، بما في ذلك إمكانية تحريك دعاوى أمام المحكمة الجنائية الدولية (ICC) وهيئات الأمم المتحدة لحقوق الإنسان. كما تدعو إلى اتخاذ مبادرات دبلوماسية وقانونية لتعزيز الالتزام بالمعايير القانونية القائمة، وإلى الاعتراف الرسمي بمفهوم "الاحتجاز التعسفي للجثامين" في الخطاب القانوني الدولي. علاوة على ذلك، تشدد الدراسة على ضرورة توفير سبل الانتصاف القانونية والتدابير التعويضية لأسر الضحايا، بما يشمل الدعم النفسي، وتحسين آليات التوثيق، وإتاحة سبل اللجوء القضائي.

الكلمات المفتاحية: جثامين الشهداء الفلسطينيين، السلطات الإسرائيلية، القانون الدولي، الاحتجاز التعسفي، المساءلة القانونية.