

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



Master Program in International Law and Diplomacy

**The Impact of the Prolonged Israeli Occupation on the
Effectiveness of the Applicability of the Hague and Fourth
Geneva Conventions in the Occupied Palestinian Territories**

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Arab American University

Faculty of Graduate Studies

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Thesis Approval

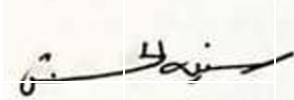

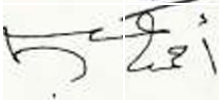
The Impact of the Prolonged Israeli Occupation on the Effectiveness of the Applicability of the Hague and Fourth Geneva Conventions in the Occupied Palestinian Territories

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Declaration

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

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Dedication

To my mother, father, family and relatives ,

To my wounded homeland from the sea to the river, and from Ras al-Naqoura in the north to the Gulf of Aqaba in the south,

To the souls of our martyrs, wounded and prisoners,

To my Palestinian people and their sole legitimate representative, the Palestine Liberation Organization,

To those who believed in me and encouraged me to reach this achievement,

I dedicate to you the fruit of this humble effort,

Ahmad Mohammad Ahmad Erjoub

Acknowledgements

Praise be to God, by whose grace good deeds are done, praise be to God who helped me to complete this mission,

To my father, mother, brothers, sister and all my relatives,

And to the supervisor of my thesis, Dr. Sunia Al-Husseini, whose supervision was warm, and urges work and diligence, and did not skimp on science and guidance,

And to all my distinguished professors who enriched my career with science and knowledge, and to my colleagues who were the best companions on this journey,

And to my prestigious university, which I am proud of, it has provided me with material and moral capabilities, and none of its employees, whether administrative or others, has spared in helping and providing support,

And to all those who had a role in the completion of this work, and to all those who supported and encouraged me to complete it,

To all of you, sincere gratitude and appreciation,

Ahmad Mohammad Ahmad Erjoub

The Impact of the Prolonged Israeli Occupation on the Effectiveness of the Applicability of the Hague and Fourth Geneva Conventions in the Occupied Palestinian Territories

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Abstract

This thesis aimed to determine the legal framework governing the state of occupation, and to indicate the legality of the Israeli occupation of Palestinian territories under the law of war justifications, and under international humanitarian law, and aimed to clarify the characteristic that distinguished this occupation from other occupations in the world, which is that it is long-term, The thesis also aimed to find out the responsibility of Israel, third countries and the United Nations towards ending this occupation.

The researcher used the descriptive analytical method, and the researcher used the relevant reports on the situation in the occupied Palestinian territories, issued by the United Nations, international institutions and independent civil society organizations in Palestine and Israel. As well as the opinions of experts in international law, the researcher based his findings on the rules of international law, including the Hague Regulations of 1907, the rules of the Fourth Geneva Convention of 1948, as well as on UN resolutions, including those issued by the International Court of Justice, including its advisory opinion issued in 2024 "on the legal effects resulting from the policies and practices of the Israeli occupation in the occupied Palestinian territories", in addition to the court's rulings in similar cases, and to the relevant UN resolutions.

The thesis concluded that the Israeli occupation arose from the illegal use of military force under the War Justifications Law, and Israel was not in a state of self-defense in the 1967 war, but rather it was the one that began the aggression against Egypt, and despite this conclusion reached by the researcher, but it was assumed that the Israeli occupation arose from the legitimate use of force, and moved to analyze its policies and practices in the occupied Palestinian territories, and the researcher concluded that the continuation of the Israeli occupation is illegal under International humanitarian law. In the last chapter, the researcher explained the responsibility of Israel, third countries and the United Nations for ending the Israeli occupation.

Keywords: Israeli occupation, Occupied Palestinian Territories, Long-term occupation, Law of Justifications of War, International Humanitarian Law.

Table of Contents

Declaration	I
Dedication	II
Acknowledgements	III
Abstract	IV
Introduction	VII
1. The Legal Framework Governing The State Of Occupation	1
1.1 Law of Justifications of War	2
1.1.1 Use of Force in Self-Defense	3
2.1.1 Use of Force in Case of Self-Determination	7
3.1.1 Use of Force by the Security Council	10
4.1.1 The Responsibility to Protect and the Use of Force	14
5.1.1 Unlawful Occupation Under the Law of War Grounds	21
2.1 International Humanitarian Law (Law of War).	25
1.2.1 Principle 1: Non-Sovereignty.	30
2.2.1 Principle 2: The Best Interest of the Occupied Population.	35
3.2.1 Third Principle: Temporary Occupation.	38
4.2.1 Fourth Principle: Good Faith.	40
2. The Legality Of The Israeli Occupation	45
1.2 Under the Law of War Grounds	46
2.2 Under International Humanitarian Law	54
1.2.2 Settlement and Natural Resources	55
1.1.2.2 Settlement and Natural Resources	56
1.1.2.2 Israel's legal mechanisms for land grabbing	65
2.2.2 Application of Israeli Domestic Law and Apartheid	73
1.2.2.2 Application of Israeli domestic law	73
2.2.2.2 Apartheid	78
3.2.2 Right to self-determination	85
1.3.2.2 Right to internal self-determination	85
2.3.2.2 Right to external self-determination	95

2.2.3.3 Palestine and South-West Africa (formerly Namibia)	100
4.2.2 Long-Term Israeli Occupation	104
3. Responsibility Of Israel And The International Community Under International Law	115
1.3 Israel's Attitude Towards the Rules of Law	115
2.3 Responsibility of Israel	125
3.3 Responsibility of Third States and The United Nations	137
3.3.1 Responsibility of Third States	137
2.3.3 Responsibility of The United Nations	143
Findings and Recommendations	148
References	150
ملخص	155

Introduction

The Israeli occupation arose on the Palestinian territories after the 1967 war between Israel and the Arab countries, and since that year this occupation is still continuing, as it is considered the longest occupation in the world, and therefore it is called the long-term Israeli occupation, and despite its continuation for more than 57 years, there are no signs indicating that it is approaching its end, on the contrary, there is a lot of evidence indicating that Israel is approaching the legal annexation of the occupied Palestinian territories, in whole or parts of them. Israel legally annexed East Jerusalem in 1980.

This occupation, which was distinguished from all occupations in the world by its long duration, the occupation during those long years made major changes in the occupied Palestinian territories, so it became necessary to research the legality of the policies and practices of the occupation in its management of those territories, or in other words, to search for the legality of the continuation of the occupation in the occupied Palestinian territories, and it is necessary to clarify Israel's obligations under international law, and to know the problem of long-term occupation, and whether the occupation is long-term Increase or decrease its obligations under the law, and what are the obligations of third countries and the United Nations to end this occupation.

These axes will be detailed in three chapters, in the first chapter the legal framework governing the state of occupation will be clarified, and the clarification will be abstract away from the Palestinian case, where the illegal occupation will be clarified under the law of war justifications, as well as the illegal occupation will be clarified under international humanitarian law, then we will move to the second chapter, where this chapter will clarify the legality of the Israeli occupation of the Palestinian territories, under the two laws, and then we will show the responsibility of Israel and the international community towards ending the Israeli occupation in chapter three.

Importance of the study:

1. The importance of this study stems from the fact that it is the first study to address the subject of the Israeli occupation following the issuance of the advisory opinion of the International Court of Justice on "the legal implications arising from Israel's policies and practices in the Occupied Palestinian Territory, including East Jerusalem".

2. The study provides a theoretical framework for the law governing the state of occupation in general and abstract away from the Palestinian case, and then moves in a second chapter showing the legality of the Israeli occupation.
3. Sets out the obligations under international law incumbent on Israel and the international community (third states and the United Nations) to end the Israeli occupation of Palestinian territories.

Study problem:

How legal is Israel's long-term occupation of Palestinian territories under the Law of War and international humanitarian law?

Study Questions:

1. What is meant by the concept of the law of war grounds? When is occupation legal or illegal under this law?
2. What is meant by IHL? When is occupation legal or illegal under this law?
3. What is the problem of long-term occupation?
4. What is Israel's position on the application of the rules of international law governing the state of occupation in the occupied Palestinian territories?
5. What is the responsibility of Israel, third countries and the United Nations towards ending Israel's long-term occupation of Palestinian territories?

Objectives of the study:

1. Determine the legal framework governing the state of occupation.
2. Know the legality of Israel's use of military force in the 1967 war.
3. Know the legality of Israel's policies and practices in the occupied Palestinian territories.
4. Clarify the problem of long-term occupation.
5. Statement of Israel's position towards the application of the rules of international law governing the state of occupation in the Palestinian territories.
6. Know the responsibilities of Israel, third countries and the United Nations towards ending the occupation of Palestinian territories.

Hypotheses of the study:

The study assumes that the Israeli occupation arose as a result of the use of military force in the 1967 war in violation of the law of justifications of war, and that its policies and practices in the Palestinian territories violate international humanitarian law, and that the obligations imposed on it are not less long-term but rather increase.

Study limits and limitations:

Spatial boundaries are the map of Mandatory Palestine, while time boundaries include the period from Partition Resolution No. 181 of 1947 until 2024.

Study Methodology:

This thesis adopted the descriptive analytical approach.

Previous Literary Studies:

1. John Quigley, Vito Todeschini, Ray Murphy, Anita Ferrara and Susan Power, et al. - Editors Nada Kiswanson and Susan Bauer - "Prolonged Occupation and International Law - Israel and Palestine" - Brill Neghoff Press - International Humanitarian Law Series - Volume 66 Year of publication 2023.
2. B'Tselem -Israel's Settlement Policy in the West Bank – 2022.
3. The United Nations Committee on the Exercise of the Inalienable Rights of the Palestinian People, and the Irish Center for Human Rights - The Legitimacy of the Israeli Occupation of the Occupied Palestinian Territory, including East Jerusalem -2023.
4. Micheline Dick and Issam Khalil -Prolonged occupation under international humanitarian law -Birzeit University, Faculty of Law and Public Administration, Constitutional Law Unit - 2020.

Legal academic research has witnessed an increasing interest in studying topics related to the Israeli occupation of the Palestinian territories, and the four literary studies mentioned above are considered one of the most prominent literary studies whose topics are close to the subject of my thesis, The first and third studies examined many issues related to the Israeli occupation of Palestinian territories, and the two studies dealt with the problem of my thesis "How legal is the long-term Israeli occupation of Palestinian territories under the law of justifications of war and international humanitarian law?" But what distinguished my thesis is that it provided a comprehensive framework for the law governing the state of occupation in an abstract and general manner away from the

Palestinian case, as for the second and fourth studies, as is clear from their title, each of them was specialized in a specific issue, while my thesis included many issues so that it could answer the main question of the thesis.

1. The Legal Framework Governing the State of Occupation

In public international law, the state of belligerent occupation is regulated by two basic concepts, the first called the law of justification of war, and the second called international humanitarian law (the law of war), both of which regulate the use of force by the state and other international actors. But they work differently, and that's what causes tension between the two concepts. The first concept distinguishes between parties to an armed conflict, distinguishing between the party that has used military force in a lawful manner consistent with the relevant legal standards and the party that has used it unlawfully.

International humanitarian law considers parties to an armed conflict equally, focusing on the protection of purely humanitarian objects and persons affected by such armed conflict, regardless of the question of how the armed conflict began, who is the aggressor, and who is attacked.¹ International humanitarian law regulates the use of military force to meet the humanitarian requirement of respect for victims of war in all circumstances and by whomsoever they belong².

The separation of the two concepts is therefore a fundamental principle of international law, as each party to an armed conflict is obliged to apply international humanitarian law regardless of whether it has used force lawfully or not. The primary objective of this chapter is to minimize suffering in armed conflict³. Without separation of the two concepts, the implementation of IHL will be impossible, as each party to the armed conflict will claim to be a victim of aggression⁴. The principle of separation of the two concepts was codified in the preamble to Additional Protocol I to the Geneva Conventions of 1977⁵.

¹ See Advisory Opinion of the International Court of Justice on the Threat or Use of Nuclear Weapons issued on October 15, 1996, A/51/218, Arabic version, p. 297, where the advisory opinion states: "The law of war applies to any use of force, regardless of the grounds for resorting to force."

² Kiichiro Okimoto - Cumulative requirements for the law of justification of war and the law of war in the context of self-defense - Chinese Journal of International Law - Vol. 11 - March 2012 - pp. 48-49.

³ Ibid.

⁴ See International [Humanitarian Law Answers to Your Questions](#), ICRC, December 2014, p. 9.

⁵The preamble to Additional Protocol I to the Geneva Conventions of 1977 reads: "... The provisions of the Geneva Convention of 1949 and the provisions of this Protocol shall be strictly applicable in all circumstances and to all persons enjoying the protection of these Conventions without any adverse distinction based on the nature or origin of the armed conflict..."

On the basis of the foregoing, when the law of war considers the issue of occupation, it looks at the origin of the armed conflict and its causes that led to the use of military force that resulted in the occupation. If the occupation results from the lawful use of military force, it means that the occupation under the law of war has arisen lawfully, and vice versa.

As for international humanitarian law, as mentioned, it focuses all its attention on the protection of the civilian population, and it regulates the conduct of the occupying power in the occupied territories, through this law it is possible to assess the legality of the policies and practices of this authority in the occupied territories. If the occupying Power violates the rules and principles of international humanitarian law during its administration of the occupied territory, this may indicate that the occupation has become illegal. We will detail the illegal occupation, whether under the law of war grounds or under the law of war in the following two sections:

1.1 Law of Justifications of War

The law of war is those rules that determine when a state and other international actors may or may not use force in accordance with international law⁶. Article 2(4) clearly prohibits the use of force⁷, and this prohibition contained in this article has been elaborated in two subsequent General Assembly resolutions, Resolution 2625 on the Declaration on Principles of International Law concerning Friendly Relations among States⁸ and Resolution 3314 on the definition of aggression⁹.

As for the rules authorizing the use of military force, we will find them in Articles 42 and 51 of the Charter of the United Nations, and in General Assembly resolution 2105 on the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples. The latter legitimized liberation movements and peoples under

⁶ See International [Humanitarian Law: Answers to Your Questions](#), ICRC, December 2014, p. 8.

⁷ Article 2(4) of the Charter of the United Nations states: "All Members of the Organization shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State or in any other manner inconsistent with the purposes of the United Nations."

⁸ Resolution 2625 [was passed](#) by the General Assembly at its 25th session on October 24, 1970.

⁹ Resolution 3314 [was adopted](#) by the General Assembly at its 29th session on 14 December 1974

foreign colonialism and apartheid in the use of force and armed struggle to exercise their right to self-determination¹⁰.

With regard to Article 42, the Security Council is empowered to use such military measures as are necessary to maintain or restore international peace and security if the measures it has taken under Article 41 have failed¹¹, and Article 51 of the Charter has been granted an exception to the prohibition of the use of force, namely self-defence¹². There are legal norms permitting the use of military force in the case of gross violations of human rights.

The cases in which international law permits the use of military force are four cases, which will be explained in the following four sections, and the fifth section will explain the illegal occupation arising in other than those four cases.

1.1.1 Use of Force in Self-Defense

Article 2/4 of the Charter of the United Nations prohibits Member States from using or threatening to use force in their relations, a fundamental principle of international law, but which has become an international custom according to the decision of the International Court of Justice in the case "Military and paramilitary activities in and against Nicaragua" in 1986¹³. However, this prohibition is not absolute, since the Charter itself, in Article 51, permits the use of force in self-defence.

¹⁰Resolution 2105 [was adopted](#) by the General Assembly at its 25th session on December 20, 1965. Resolution 10 "recognizes the initiation of the struggle of peoples under colonial rule for the exercise of their right to self-determination and independence, and calls upon all States to provide material and moral assistance to liberation movements in colonial territories."

¹¹ See Articles 41 and 42 of the Charter of the United Nations.

¹² Article 51 of the Charter states: "Nothing in the present Charter shall impair or impair the inherent right of States, individually or collectively, to defend themselves if an armed force attacks a Member of the United Nations until the Security Council has taken the necessary measures to maintain international peace and security. The Charter - has the right to take at any time such actions as it deems necessary to maintain or restore international peace and security."

¹³ See Decision of the International Court of Justice in the case concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America) of 27 June 1986, para. 4, 6, pp. 212-213. Paragraph 4 of the resolution reads: "Decides that the United States of America has carried out certain attacks on the territory of Nicaragua ... has acted against the Republic of Nicaragua in breach of its obligation under customary international law not to use force against another State."

The right of self-defence for use by States has conditions that must be met, Article 51 mentions the requirement of armed attack¹⁴, The use of the right of self-defence by a State preconditions the occurrence of an armed attack¹⁵, and the International Court of Justice in the Nicaragua case, in the Threat or Use of Nuclear Weapons case in 1996 and in other cases, mentioned other conditions from In order to use this right, namely necessity, proportionality¹⁶, and immediacy¹⁷.

The concept of armed aggression means the use of force, but the opposite is not true: the former is used in the text of Article 51 and the latter in the text of Article 2/4; Armed attack is considered the most serious form of use of force¹⁸, and it is the one that authorizes the State under attack to use the option of self-defence.

If an attack does not amount to an armed attack takes place against a State, the latter has legal options other than the use of military force, most notably the countermeasure, which was stipulated in the 2002 General Assembly resolution on the responsibility of States for internationally wrongful acts in Article 22¹⁹, and the countermeasure was restricted by a set of conditions, the most important of which is the condition of

¹⁴ Article 51 of the Charter of the United Nations states: "Nothing in the present Charter shall impair or impair the inherent right of States, individually or collectively, to defend themselves if an armed force attacks a Member of the United Nations until the Security Council has taken the necessary measures to maintain international peace and security.

¹⁵ See the decision of the International Court of Justice in the Nicaragua case, paragraphs 191, 232, "where the former states, 'Whether individual or collective, self-defence may only be exercised in response to an armed attack...' In the text of the second paragraph, "... In order to determine whether the United States was justified in exercising self-defence, the Court had to ascertain whether the conditions for the exercise of this right of collective self-defence existed, and therefore considered whether the States concerned believed that they were victims of an armed attack ...".

¹⁶ See the decision of the International Court of Justice on Nicaragua, *op. cit.*, paras. 187-201 (prohibition of the use of force and the right of self-defence), p. 218, "... the question of whether the response to an attack is legitimate or not depends on **the criteria for the necessity** and proportionality of **measures taken in self-defence.**" See Advisory Opinion of the International Court of Justice on the Threat or Use of Nuclear Weapons issued on 15 October 1996, A/51/218, Arabic version, p. 24, para. 41. The paragraph stated that "subjecting the exercise of the right of self-defence to the conditions of necessity and proportionality is a rule of customary international law".

¹⁷ Rizk Ahmed Samoudi - See The State of Self-Defense as a Result of Cyberattacks in the Light of the Rules of Public International Law - University of Sharjah Journal of Legal Sciences - Volume 15 - Issue 2 - December 2018 - Page 342.

¹⁸ This is in accordance with General Assembly resolution 3314 (XXIX) of 14 December 1974 on the definition of aggression, where the text of the resolution states "... Aggression is the most egregious and dangerous form of unlawful use of force."

¹⁹ See General Assembly resolution 56/83 of 28 January 2002 (A/RES/56/83), article 22 (Countermeasures in respect of an internationally wrongful act), which states that "an act of a State not in conformity with an international obligation vis-à-vis another State shall be unlawful if and to the extent that such act constitutes a countermeasure taken against the latter State in accordance with the provisions of Part Three, chapter II".

proportionality between the breach and the corresponding breach²⁰, as confirmed by the International Court of Justice in the case concerning the Gabčíkovo-Nagymaros Project in 1997²¹.

Armed aggression does not include military exercises and skirmishes on the border, nor does it include assistance to the opposition or rebels in a country in the form of providing weapons, logistical support and other forms of support²², as well as attacks on water areas and commercial ships are not considered an armed attack on that country²³, unlike an attack on military ships, as confirmed by the International Court of Justice in the Nicaragua case and in the oil rigs case between the United States and Iran in 2003²⁴.

Such acts, while considered to be the use of force, did not amount to an armed attack, which conferred the use of the right of self-defence under Article 51 of the Charter. General Assembly resolution 3314 of 1974 on the definition of aggression stated "sufficient gravity" to qualify an attack as a military attack (an act of aggression).²⁵

It is not possible for a country to attack another country under the pretext that the latter was preparing to launch an attack on it, and that the former carried out a pre-emptive strike, or what is known as pre-emptive self-defense, and this is confirmed by Security Council resolution 487 and General Assembly resolution 36/27 regarding the Israeli aggression against a nuclear plant in Iraq known as the "Tammuz or Osirak reactor" and

²⁰ See *ibid.*, article 51 (proportionality), which states that "countermeasures must be proportionate to the damage suffered, ..."

²¹ See the judgment of the International Court of Justice in the Gabčíkovo-Nagymaros Project case (Hungary/Slovakia) of 25 September 1997, p. 6 of the Judgment, where the text of the Judgment "... The Court further considers that the change of course of the Danube by Czechoslovakia is not a legitimate reciprocity because it was disproportionate to the act to which it was reacted."

²² See the judgment of the International Court of Justice in the Nicaragua case, *op. cit.*, 218, 220.

²³ See the judgment of the International Court of Justice - in the case concerning Oil Platforms (Islamic Republic of Iran v. United States of America) - issued on 6 November 2003 - Arabic version - page 25 - paragraph 71 - where this is understood to be understood from reading the entire text of the judgment, where it is stated in the text "... The United States also confirmed in its notice to the Security Council and before the Court that the ship accident ... The latest incident was in a series of missile attacks on U.S.-flagged ships... The Court concluded, apart from the question of Iran's responsibility, that it did not consider that these incidents, even if considered in the aggregate, constituted an armed attack on the United States."

²⁴ See the decision of the International Court of Justice on oil rigs, *op. cit.*, paragraph 70, where the text reads "... The Court does not exclude the possibility that the mining of a single military vessel would be sufficient for the realization of the inherent right of self-defence, ...".

²⁵ See General Assembly resolution 3314 (XXIX) of 14 December 1974 on the definition of aggression, article 2 states: "Although the Security Council ... to conclude that there is no justification for ruling that an act of aggression has been committed in the light of other circumstances relevant to the case, including ... Its consequences are not serious enough."

was used for peaceful purposes in 1981. Israel bombed the plant under the pretext that Iraq was developing nuclear bombs and they will use them against them²⁶.

The resolutions strongly condemned Israel, affirmed the illegality of the Israeli military attack against Iraq and obligated Israel to compensate Iraq for the damage caused by the bombing²⁷. Retaliatory strikes in which the state uses military force for the purpose of retaliation and punishment, such strikes are illegal and the term is not even used in political speeches.

As for the requirement of necessity, it means a situation in which the aggressed State is compelled to resort to self-defence by the use of military force, and peaceful means of resolving the dispute are no longer possible, Or it was resorted to and did not succeed in stopping the attack of the other state. As for the requirement of proportionality, which is available only after the condition of necessity has been fulfilled²⁸, which means that the response by the aggressed State is almost identical to the attack of the aggressor State, and that the response measures taken do not exceed the objective that the aggressor State must seek, which is to stop and repel the attack, not to exterminate the aggressor or commit genocide against its population²⁹, and to seek to maintain international peace and security, and to abide by international humanitarian law³⁰.

²⁶ See [the website of Al Jazeera Media Network](#) via the attached link.

²⁷ See [Security Council resolution 487-S_RES_487](#) (1981), adopted on 19 June 1981, where the first paragraph of the resolution states: "Strongly condemns the Israeli military raid, which constitutes a flagrant violation of the Charter of the United Nations and the principles of international conduct."

See Assembly resolution 36/27, adopted on 13 November 1981, where the first paragraph of the resolution reads: "Strongly condemns Israel for its unprecedented, deliberate act of aggression committed in violation of the Charter of the United Nations and the rules of international conduct...", and paragraph 6 obliges Israel to make reparation, stating "Demands that Israel, ... to pay prompt and adequate compensation for material damage and loss of life suffered as a result of that act."

These decisions imply the wrongfulness of the pre-emptive defence of the opposed.

²⁸ See the decision of the International Court of Justice in the case of oil platforms between Iran and America - previous reference - p. 26 - where the text states: "As for the requirement of proportionality, it could have been considered an attack ... proportionate if I court concluded that it was necessary to respond to a ship accident..."

²⁹ See Advisory Opinion of the International Court of Justice on the Threat or Use of Nuclear Weapons issued on October 15, 1996, A/51/218, Arabic version, p. 302.

³⁰ See Advisory Opinion of the International Court of Justice on the Threat or Use of Nuclear Weapons of 15 October 1996 (A/51/218), Arabic version, p. 296, where it states: "If a State is attacked, it is clear that under the United Nations it is entitled to self-defence. Once this State enters into the realm of the law of war, the principles of humanitarian law apply to the conduct of the operation of self-defence."

2.1.1 Use of Force in Case of Self-Determination

At the beginning of our discussion of the law of justification of war and the law of war, we mentioned that one of the legal justifications for the use of force is its use pursuant to the right to self-determination in a war of national liberation. The right to self-determination is enshrined in the Charter of the United Nations in Articles 1 (2) and 55³¹.

as well as in common article 1 of the Covenants³². The International Court of Justice has affirmed that "the right of peoples to self-determination is one of the fundamental principles of contemporary international law".³³ It is considered "a fundamental human right ... In cases of foreign occupation ... constitutes a peremptory norm of international law."³⁴

And It was mentioned in General Assembly resolution 1514³⁵ of 1960, which was described as the Great Document on Decolonization, which marked the beginning of the modern position on the subject and the beginning of the irreversible trend towards the eradication of colonialism from its roots³⁶, and in General Assembly resolution 3314 of 1974 on the definition of aggression.

³¹ The second paragraph of Article I of the Charter of the United Nations states that "the development of friendly relations among nations on the basis of respect for the principle of equal rights and self-determination of peoples ..." Article 55 provides that "... In order to establish sound and friendly relations among the United Nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall: ..."

³² The first paragraph of common article I of the two covenants states that "All peoples have the right to self-determination. By virtue of this right, they are free to determine their political status and to pursue their economic, social and cultural development."

³³ See Advisory Opinion of the International Court of Justice on "[Legal Consequences of Israeli Occupation Policies and Practices in the Occupied Palestinian Territory, including East Jerusalem](#)" of 19 July 2024, p. 65, para. 232.

³⁴ Ibid., paragraph 233

³⁵ [General Assembly resolution 1514 \(XV\)](#) of 12 December 1960 entitled "Declaration on the Granting of Independence to Colonial Peoples and Countries" stated "All peoples have the right to self-determination. By virtue of this right, they freely determine their political status and freely pursue their economic, social and cultural development."

³⁶ See the report (The Right to Self-Determination and Implementation of United Nations Resolutions), study by Hector Gross Espoel, Special Rapporteur of the Commission on Prevention of Discrimination and Protection of Minorities, [E/CN.4/Sub.2/405/Rev.1](#), chap. I, p. 11.

Article 3 of this resolution stated to acts that are considered hostilities, but are restricted under article 7³⁷. In order not to prejudice in any way the right to self-determination, liberty and independence, the acts committed by liberation movements fighting for self-determination, freedom and independence do not fall within the acts of aggression provided for in article 3 of the resolution, and article VII states that peoples struggling for self-determination have the right to struggle and to seek and receive support³⁸.

General Assembly resolution 36/103 of 1981 on non-interference in the internal affairs of States affirmed the right and duty of States to uphold self-determination³⁹, as well as in General Assembly resolutions on the importance of the universal realization of the right of peoples to self-determination and the speedy granting of independence to colonial countries and peoples in order to guarantee and observe human rights effectively, emphasized support for the struggle by all available means, including armed struggle⁴⁰.

Unfortunately, occupied peoples rarely achieve self-determination without resorting to the use of force in the form of a war of national liberation⁴¹, a conflict that is explained in article 1, paragraph IV, of Additional Protocol I to the four Geneva

³⁷ Article 7 of [Resolution 3314](#), adopted by the General Assembly at its 29th session on 14 December 1974, states: "Nothing in this definition in general, nor in Article 3 in particular, may in any way prejudice the right derived from the Charter to self-determination, liberty and independence of peoples deprived of this right by force ... or the right of these peoples to fight for that goal and to seek and receive support, ..."

³⁸ Ibid.

³⁹ See [General Assembly resolution 36/103](#) of 9 December 1981 (Declaration on the Inadmissibility of Intervention of All Kinds in the Internal Affairs of States) - the text reads: "4. Nothing in the present Declaration shall prejudice in any way the right of peoples under colonial domination, foreign occupation or racial consideration to self-determination, liberty and independence, as well as their right to seek and receive support for the purposes and principles of the Charter".

⁴⁰ See General Assembly resolution 3070 (XXVIII) of 1973, paragraph 2. See [General Assembly resolution 45/130 \(XLV\) of 1990](#), para. 2, which states: "2. Reaffirms the legitimacy of the struggle of peoples for independence, territorial integrity, national unity and freedom from colonial domination, apartheid and foreign occupation by all available means, including armed struggle". See the relevant resolutions between 1973 and 1990, where resolutions between those two years used the term "armed struggle".

3382 (XXX)-1975; A/RES/31/34 -1976; A/RES/32/14 -1977; A/RES/33/24-1978; A/RES/34/44 -1979; A/RES/35/35-1980; A/RES/36/9 -1981; A/RES/37/43 -1982; A/RES/38/17 -1983; A/RES/39/17 -1984; A/RES/40/25 -1985; A/RES/41/101 -1986; A/RES/42/95-1987; A/RES/43/106 -1988; A/RES/44/79-1989.


In resolution [46A/RES/46/87-1991](#), paragraph 2 only mentions the phrase "by all available means" without mentioning the phrase "including armed struggle", and as is well known, the first phrase automatically includes the second, and in resolution [A/RES/47/23-1992](#), the resolution affirms in its paragraph 4 "its support for the struggle of peoples under colonial rule to exercise their right to self-determination", and the following resolutions: For this resolution, the wording was similar to it, see resolution [A/RES/48/52-1993](#), resolution [A/RES/49/89-1994](#), see resolution [A/RES/50/39-1995](#), and see resolution [A/RES/77/149-2023](#).

⁴¹ See Noel Higgins and Kieran O'Reilly, The Use of Force, Wars of National Liberation and Self-Determination in the South Ossetian Conflict, *Journal of International Criminal Law*, July 2009, p. 574.

Conventions of 1977, which states: "The situations referred to in the preceding paragraph include armed conflicts in which peoples struggle against colonial domination, foreign occupation and racist regimes. in the exercise of the right of peoples to self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations."


When the law of justifications of war relates to the legality of the use of force pursuant to the right to self-determination, it appears very complex and ambiguous at times, and perhaps the most problematic in this regard is the question of determining which people can claim the right to self-determination and the use of force pursuant to this right.

And the United Nations has issued two important reports prepared by (Hector Gross Esbill) and (Aurelius Cretescu)⁴² on the issue of self-determination, and they ⁴³identified the characteristics that are associated with the people who are entitled to the right to self-determination⁴⁴, and (Karen Parker) summarized⁴⁵ These characteristics are: "a history of independence or autonomy in a specific region, a distinct culture and the will and ability to restore autonomy."⁴⁶

⁴² Isbel and Cretescu are special rapporteurs of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, which was renamed in 1999 by Economic and Social Council resolution 1999/256 and renamed the Sub-Commission on the Promotion and Protection of Human Rights. For more details, go through the electronic link attached to this code  by clicking on it with Ctrl.

⁴³ The two reports are: (The right to self-determination - implementation of United Nations resolutions) study prepared by (Hector Gross Espiel) - bearing the symbol [E/CN.4/Sub.2/405/Rev.1](#) . The other report is "The Right to Self-Determination - Its Historical Development through United Nations Instruments", a study by Aurelius Cretescu - under the symbol [E/CN.4/Sub.2/404/Rev.1](#) - both of which were issued in the same year 1981.

⁴⁴ The two reports do not explicitly mention the characteristics and devote a chapter or section to them, as the first report can deduce some characteristics from the introduction, especially section (C) and from the first chapter. As for the second report, some characteristics can be deduced from chapter III, section (E), entitled "Beneficiaries of equal rights and self-determination".

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⁴⁶ See [Understanding Self-Determination: The Basics - Karen Parker](#) - Presentation to the First International Conference on the Right to Self-Determination - United Nations - Geneva - August 2000.

3.1.1 Use of Force by the Security Council

As we have already mentioned, one of the principles of general international law is contained in article 2 (4), which is the prohibition of the threat or use of force in international relations⁴⁷, and we have said that there are exceptions to this customary rule, including the use of military force by the Security Council.

The United Nations Security Council is entrusted with the responsibility for the maintenance of international peace and security under Article 24 (1) of the Charter⁴⁸, and in order to carry out this responsibility the Charter has given it the necessary powers to do so, the most important of which is the power to take coercive measures in accordance with the provisions of Chapter VII of the Charter (Articles 39 to 51), including military actions contained in Article 42⁴⁹.

Article 39 of the Charter sets out the situation in which the Council can take military measures, namely "if there has been a threat to or breach of the peace or an act of aggression".⁵⁰ Article 43 sets out the mechanism for mobilizing armed forces and placing them at the disposal of the Council, which is that all Members of the United Nations "shall place at the disposal of the Security Council, at its request and in accordance with a special agreement or agreements, the necessary armed forces, assistance and facilities ... That includes the right of passage."⁵¹

The first occasion on which the Council resorted to military measures was during the Korean War in 1950⁵², when it passed a resolution imposing military measures in

⁴⁷ International Court of Justice - Judgment in the case concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America) - rendered on 27 June 1986 - para. 4, 6 - pp. 212-213. Paragraph 4 of the resolution reads: "Decides that the United States of America has carried out certain attacks on the territory of Nicaragua ... has acted against the Republic of Nicaragua in breach of its obligation under customary international law not to use force against another State."

⁴⁸ The Charter of the United Nations – Article 24(1) provides that "In the interest of the expeditious and effective action of the United Nations, the members of that body confer on the Security Council the primary responsibility for the maintenance of international peace and security and agree that the Security Council acts on their behalf in the discharge of its duties imposed on it by such liability."

⁴⁹ UN Charter - Article 42 provides that "If the Security Council considers that the measures provided for in Article 41 are inadequate or prove to be inadequate, it may take such action as may be necessary by air, sea and land forces to maintain or restore international peace and security."

⁵⁰ UN Charter - Article 39.

⁵¹ Ibid., Article 43.

⁵² United Nations Security Council Resolution [84 S/RES/84 \(1950\)](#) of 7 July 1950 Complaint of aggression against the Republic of Korea Paragraph 3 "Recommends that all Members providing **military forces** and

support of United Nations efforts to counter the North Korean attack on South Korea. He resorted to it on other occasions, including the Second Gulf War in 1990⁵³.

The Security Council sought to study the military dimensions of Article 43 and determine how to put the arrangements contained in it into practice, and the Council entrusted this to the Committee of the Staff of the War provided for in Article 47 of the Charter by its resolution No. 1 of January 25, 1946⁵⁴, where the Committee held a series of meetings, through which it was able to formulate the basic principles that must govern the process of formation and organization of the armed forces of the United Nations in accordance with Article 43, and sent its report to the Council at the beginning of the year. 1947, but was unable to continue its work because of the cold war climate, which she referred to in her report to the Council the same year⁵⁵.

The mechanism established by Article 43 of the Charter to place the necessary military force at the disposal of the Council through which it "maintains or restores international peace and security" has not yet taken place⁵⁶, which is why the Council authorized Member States and regional organizations to use military force on occasions that the Council considered to threaten international peace and security, such as in the Second Gulf War⁵⁷.

other assistance pursuant to the aforementioned Security Council resolutions make such forces and other assistance available to a unified command under the supervision of the United States of America;"

⁵³ United Nations Security Council - [Resolution 678 - S/RES/678 \(1990\)](#) - 92 November 1990 - Iraq and Kuwait - paragraph 2. The text of the resolution states: "The Security Council, ... Acting under Chapter VII of the Charter, ... 2. Authorizes Member States cooperating with the Government of Kuwait, unless the resolution on or before the resolution is fully implemented on or before the above-mentioned resolutions, ... to use **all necessary means to support and implement resolution 660 (1990)** and all subsequent relevant resolutions and to restore international peace and security in the region;"

⁵⁴ United Nations Security Council - [Resolution 1 - S/RES/1 \(1946\)](#) - of January 25, 1946 - paragraph 3.

⁵⁵ See the United Nations Security Council - [Official website via the link attached to the text](#). See Alexandra Novoselov - United Nations Military Staff Committee: Recreating a Lost Capacity - Edited by Thomas J. Weiss - CUNY Graduate Center - New York, USA and Rordon Wilkinson University in Sussex, Brighton, UK - First published 2018 - page 58.

⁵⁶ Ibid.

⁵⁷ United Nations Security Council - [Resolution 678 - S/RES/678 \(1990\)](#) - 92 November 1990 - Iraq and Kuwait - paragraph 2. Reference No. 6 on the previous page.

And the Council's authorization of the intervention of NATO in Bosnia and Herzegovina in 1995⁵⁸. In Libya in 2011⁵⁹, in 1994 the Council authorized Member States to form a multinational force under unified command and control, with the aim of returning the legitimate powers of the Government of Haiti⁶⁰.

In 1999, the Council also authorized the establishment of an Australian-led multinational force to establish peace and security in East Timor.⁶¹ This year, 1999, the Security Council decided to deploy an international civilian and security presence in Kosovo under United Nations auspices with a view to preventing renewed hostilities in Kosovo and creating a secure environment in which refugees can safely return home⁶².

From an early date, as a result of the failure of Military Staff Committee to fulfil its responsibilities, the Security Council delegated its powers under Chapter VII of the Charter, including the authority to take military measures, to Member States and regional

⁵⁸ United Nations Security Council - [Resolution 1031 - S/RES/1031 \(1995\)](#) - of December 15, 1995 - paragraph 14. The text of the resolution states: "The Security Council, ... Acting under Chapter VII of the Charter of the United Nations, ... 14. Authorizes Member States acting through the North Atlantic Treaty Organization (NATO) ... to establish a multinational implementation force under existing command and control to carry out the role specified in Annexes 1.A and 2 of the Peace Agreement;". See Council resolution [1948 S/RES/1948 \(2010\)](#) 2010, paragraphs 14 and 15. Paragraph 15 states that the Security Council "authorizes Member States to take all necessary measures, at the request of EUFOR or NATO headquarters, to defend the force or the presence of the organization, respectively, and to assist both organizations in the performance of their missions, ..."

⁵⁹ United Nations Security Council - [Resolution 1973 - S/RES/1973 \(2011\)](#) - of 17 March 2011 - paragraph 4 - The text of the resolution reads "The Security Council, ... Acting under Chapter VII of the Charter of the United Nations, ... 4. Authorizes Member States that have notified the Secretary-General, acting at the national level or through regional organizations or arrangements, and in cooperation with the Secretary-General, **to take all necessary measures**, notwithstanding paragraph 9 of resolution 1970 (2011), to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya, including Benghazi, to the exclusion of any foreign occupying power in any form and on any part of Libyan territory, ...". The North Atlantic Treaty Organization (NATO) considered The phrase "take all necessary measures" is an implicit authorization by the Security Council to use military force in Libya to protect civilians and achieve international peace and security.

⁶⁰ United Nations Security Council Resolution [940 S/RES/940 \(1994\)](#) of 31 July 1994 Paragraph 4 of 31 July 1994 4. Authorizes Member States, acting under Chapter VII of the Charter of the United Nations, to form a multinational force under unified command and control and, in this context, to use all necessary means to facilitate the departure of the military command from Haiti ... and to facilitate the immediate return of the legitimately elected President and the powers of the legitimate Government of Haiti..."

⁶¹ United Nations Security Council - [Resolution 1264 - S/RES/1264 \(1999\)](#) - of 15 September 1999 - paragraph 3 - the text of the resolution states: "The Security Council, ... Acting under Chapter VII of the Charter of the United Nations, ... 3. Authorizes the establishment of a multinational force under a unified command structure, pursuant to a request by the Government of Indonesia to the Secretary-General ... Its tasks are to: restore peace and security to East Timor, ... It authorizes the States participating in the multinational force to take all necessary measures to carry out this mandate;".

⁶² United Nations Security Council - Resolution [1244 - S/RES/1244 \(1999\)](#) - Kosovo - of 10 June 1999 - Annex 2, paragraphs 3 and 4 - where the fourth paragraph states that "The international security presence, in which NATO will be heavily involved, must be deployed under unified command and control and authorized to provide safe access for all Kosovars and facilitate the safe return of all displaced persons and refugees to their homes."

organizations, and the Council passed resolutions under Chapter VII of the Charter, without explicitly mentioning Article 42 in those resolutions.

In these resolutions, the Security Council authorizes peacekeeping missions and multinational forces, including those deployed by regional organizations, to use "all necessary measures" or "all necessary means". "Take all necessary action" or "take all necessary measures" with regard to the maintenance or restoration of international peace and security⁶³.

The Council now uses these terms and delegates some of its powers to other international actors, even though the responsibility for the maintenance of international peace and security lies solely with the Security Council and this is based on Article 24 (1), which it carries out on behalf of the Members of the United Nations.

Beyond the jurisprudential debate about the legality of such delegation, the view we hold is the legality of the Council's delegation of powers to other international actors, as Article 48 implicitly recognizes the right of the ⁶⁴Article 53(1) includes the possibility of delegating any act of repression, including the use of military force, to regional organizations under its supervision and control⁶⁵.

As mentioned above, the Security Council does not use coercive measures under Chapter VII of the Charter unless "there has been a threat to the peace or a breach of the peace or an act of aggression",⁶⁶ and the first resolution adopted by the Security Council in which the violation of human rights was considered a threat to international peace and security was Resolution 688 of 1991, which concerns the situation in Iraq. In this resolution, the Security Council condemned the repression of the Kurdish civilian population in some areas of Iraq, especially after the first Gulf War.

⁶³ See United Nations Security Council - [Repertoire of the Practice of the Security Council, Supplement 2010-2011](#) - Part VII - page 636.

⁶⁴ Article 48 of the Charter of the United Nations stipulates that "1. The actions necessary for the implementation of the resolutions of the Security Council for the maintenance of international peace and security shall be carried out by all or some of the Members of the United Nations, as decided by the Council. 2. Members of the United Nations shall implement the above resolutions directly and by acting in the specialized international agencies of which they are members."

⁶⁵ Article 53 (1) of the Charter of the United Nations states that "1. The Security Council shall use such regional organizations and agencies in acts of repression, whenever it deems appropriate and shall then operate under its control and supervision. ..."

⁶⁶ UN Charter - Article 39.

The Security Council stressed that such acts constituted a threat to international peace and security⁶⁷, and considered this resolution an important development in the Council's approach to linking human rights violations directly to its and mandate to maintain international peace and security. A new concept he "The Responsibility to Protect" has begun to emerge, allowing the Security Council to use military force, which we will talk about in next section.

4.1.1 The Responsibility to Protect and the Use of Force

The mass atrocities committed in the twentieth century against civilians during the conflicts in Somalia, Rwanda, Bosnia and Kosovo, the mass killings in Srebrenica, the Holocaust, and the massacre arenas in Cambodia⁶⁸, and the failure of the United Nations to respond effectively to these crises⁶⁹, led to the failure of the United Nations Security Council to authorize military action to prevent genocide in Rwanda.

Where between five thousand and one million people were killed in three months by supporters of the Rwandan government.⁷⁰, to make the international community, especially its institutions concerned with the protection of human rights, strive to comply with human rights norms. However, the legal principle of non-intervention in the internal affairs of States, enshrined in Article 2 (7) of the Charter, stands as one of the main obstacles for States wishing to protect civilians in need, whether through the application of diplomatic or military measures.

However, there are proposed solutions on how to address mass atrocities, including the principle of the responsibility to protect (R2P), which is part of a fairly viable solution to bridge the gap between the prohibition of intervention and the use of force and state

⁶⁷ United Nations Security Council Resolution 688 S/RES/688 (1991) of 5 April 1991, paragraph 1, where the text of the resolution states: "The Security Council, ... 1. Condemns the repression of the Iraqi civilian population in many parts of Iraq, which has recently included Kurdish population areas, and the consequences of which threaten international peace and security in the region.

⁶⁸ United Nations - Secretariat - Report of the Secretary-General entitled "[Implementing the responsibility to protect](#)" - A/63/677 - 12 January 2009 - paragraph 4 - page 6.

⁶⁹ Ibid. See Paivy Asikainen - The Responsibility to Protect the International Community - Uppsala University - Department of Law - Fall 2011 Semester - Supervisor: Professor Inger Osterdahl - Page 4.

⁷⁰ Kajsa Lindersköld - The responsibility to protect - a basis for making exceptions to the general prohibition on the use of force? - Faculty of Law Lund University - Supervisor: Santa Slokenberga - Fall Semester 2019 -page 5.

sovereignty on the one hand, and the protection and realization of fundamental human rights on the other. In order to ensure the purpose and purpose of international humanitarian law, the principle⁷¹ of The responsibility to protect is a principle that seeks to ensure that the international community never again fails to act in the face of genocide and other forms of gross human rights violations⁷².

The principle of the responsibility to protect is not a binding legal principle, but rather a new standard used by States as a political tool to pressure a state that is not responsive or unable to commit to protecting its population from gross violations of human rights established in international humanitarian law. War⁷³.

The principle of the responsibility to protect, as we have said, is not a binding legal principle, Some legal experts argue that R2P is contrary to the principles of international law, which are stipulated in the Charter, the Charter stipulates in Article 2 (1) that all States are sovereign equal⁷⁴, Article 2 (7) stipulates the prohibition of interference in the internal affairs of the State⁷⁵, and Article 2 (4) provides for the prohibition of the use or threat of use of force in international relations⁷⁶, the only two exceptions to this prohibition Articles 42 and 51.

The first exception concerned the application of military measures by the Security Council if it considered that the facts before it constituted a threat to international peace

⁷¹ Most commentators have called it a "concept" or "principle" but it has been referred to as a "rule" or an "emerging rule", and since the responsibility to protect has not been adopted in any legally binding document, it does not in itself constitute a legal norm, however, given the fact that the idea has been unanimously adopted by UN member states, that serious efforts are being made to implement it in practice, and that the Security Council has acted on it in the case of Libya, it seems justified. Talk about the responsibility to protect as a principle.

⁷² See International [Humanitarian Law \(IHL: Answers to Your Questions\)](#), ICRC, December 2014, pp. 9-10.

⁷³ See International [Humanitarian Law \(IHL: Answers to Your Questions\)](#), ICRC, December 2014, pp. 9-10.

⁷⁴ UN Charter – Article 2(1) states that "the Commission shall be based on the principle of the sovereign equality of all its members."

⁷⁵ The Charter of the United Nations - Article 2(7) states that "Nothing in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of a State, ...".

⁷⁶ The Charter of the United Nations - Article 2(4) states that "all members of the Organization shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State or in any other manner inconsistent with the purposes of the United Nations."

and security⁷⁷, and the second exception concerned the right to self-defence⁷⁸, and there was no exception referring to the responsibility to protect.⁷⁹ Rather, There is legal precedent confirming the illegality of the use of force to protect the population from humanitarian crises.

The International Court of Justice has rejected the possibility that intervention by force is compatible with international law, and⁸⁰ the Court has affirmed that the use of force is not an appropriate way to monitor or ensure respect for human rights⁸¹. He⁸²described the intervention during the cold war era as having been shamelessly undertaken to promote strategic rather than humanitarian ends⁸³.

While other legal experts believe that there are military interventions that occurred for humanitarian reasons and there was no public criticism of those interventions by countries that did not support them, and the most prominent examples of these interventions are the first Gulf War in the nineties of the twentieth century⁸⁴, where Western countries justified their actions in humanitarian terms, and other countries were implicitly prepared to legitimize Western action⁸⁵.

And There has been no public criticism of these interventions by countries that did not support the intervention, and the emergence of the concept of the "responsibility to

⁷⁷ The Charter of the United Nations - Article 42 stipulates that "If the Security Council considers that the measures provided for in Article 41 are inadequate or prove to be inadequate, it may take such action by air, sea and land forces as may be necessary to maintain or restore international peace and security."

⁷⁸ The Charter of the United Nations, Article 51, states that "Nothing in the present Charter shall impair or impair the inherent right of States, individually or collectively, to defend themselves if an armed force attacks a Member of the United Nations..."

⁷⁹ Jeffrey L. Holzgrave and Robert O. Keohan (eds.) - Humanitarian Intervention - Ethical, Legal and Political Dilemmas - Cambridge University Press - Cambridge 2003 - page 216.

⁸⁰ International Court of Justice - Corfu Canal case (United Kingdom of Great Britain and Northern Ireland - Albania) - Judgment of 9 April 1949 - Summary of Judgments, Advisory Opinions and Orders of the International Court of Justice 1948-1991 - Page 8 - The text of the judgment states: "It considers the right of alleged intervention only as a symptom of a policy of power which has no place in international law."

⁸¹ International Court of Justice - Judgment in the Military and Paramilitary Activities case in and against Nicaragua (Nicaragua v. United States of America) - [Summary of judgments, advisory opinions and orders of the International Court of Justice 1948-1991](#) - Paragraph 256 - Page 221 - The text of the paragraph reads, "With particular regard to the alleged violations of human rights invoked by the United States, the Court held that the use of force by the United States could not be an appropriate way to monitor or ensure respect for these rights normally provided for in the Agreements in force."

⁸² Renn Mullerson, Human Rights Diplomacy, Routledge, London, 1997, p. 150.

⁸³ Mohamed Ayoub - "Humanitarian Intervention and State Sovereignty" - International Journal of Human Rights - Volume 6, Issue 1 - 2002 - Page 81-102.

⁸⁴ Alex J. Bellamy - "Motives, Consequences, Intention and Legitimacy of Humanitarian Intervention" - Journal of Military Ethics - Volume 3 - Issue 3 - 2004 - Pages 216-232 - Page 218.

⁸⁵ Ibid.

protect" has its origins in this occasion – the first Gulf War – which is considered a precedent for humanitarian interventions⁸⁶, and we referred to this at the end of our talk about the use of force by the Security Council in the previous section.

Article 4 (h) of the Constitutive Act of the African Union states that the Union is entitled on the basis of a decision of the General Assembly of the Union to intervene in a member State with regard to serious circumstances, namely war crimes, genocide and crimes against humanity⁸⁷, this provision appears to be contrary to the provisions of the Charter, as it means that the African Union can adopt a resolution granting intervention without resorting to the Security Council⁸⁸, But this means that the idea of humanitarian intervention is widely accepted.

The term "responsibility to protect" emerged as a result of the establishment by the Government of Canada of the International Commission on Intervention and State Sovereignty (ICISS) in September 2000, whose task was to construct a broader concept of "the problem of reconciling intervention for human protection purposes with sovereignty, more specifically, the aim was to try to develop a global political consensus on how to move from controversy - and often paralysis - to action within the international system, particularly through the United Nations".⁸⁹

The establishment of this commission was motivated by the question of then-UN Secretary-General Kofi Annan: "If humanitarian intervention is indeed an unacceptable assault on state sovereignty, how should we respond to Rwanda to gross and systematic violations of human rights that affect every principle of our common humanity?"⁹⁰. In December 2001, the twelve-member Commission, issued a report outlining its findings,

⁸⁶ Ibid. See Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in the International Community*, Oxford University Press, Oxford, 2000, p. 154.

⁸⁷ The Constitutive Act of the African Union, adopted on 11 July 2000, article 4 (h), provides for "the right of the Union to intervene in one of its member States, pursuant to a decision of the Assembly, in grave circumstances: namely, war crimes, genocide and crimes against humanity".

⁸⁸ Eve Massingham - Military intervention for humanitarian purposes: Does the principle of the responsibility to protect strengthen the legitimacy of the use of force for humanitarian purposes? - *International Review of the Red Cross - Glory 91 - Issue 876 - December 2009 - page 814*.

⁸⁹ International Commission on Intervention and State Sovereignty - [Responsibility to Protect](#) - International Development Research Centre - Ottawa - 2001 - Page VII.

⁹⁰ Ibid.

calling on the international community to accept its responsibility to protect populations suffering widespread loss of life and ethnic cleansing⁹¹.

In 2003, Kofi Annan established the United Nations High-Level Panel on Threats, Challenges and Change to "generate new ideas on the types of policies and institutions needed for the United Nations to be effective in the 21st century",⁹² which issued a report accepting "the emerging rule that there is a collective international responsibility to protect, which could be exercised by the Security Council, which authorizes military intervention as a last resort".⁹³ In its report, the High-level Panel stated that "there is growing recognition that the issue is not the 'right to intervene' of any State, but the 'responsibility to protect' each State when it comes to people suffering an avoidable catastrophe - mass murder and rape, ethnic cleansing through forced expulsion and terrorism, deliberate starvation and exposure to disease".⁹⁴

In 2005, the international community adopted the principle of the responsibility of Protection through the General Assembly in the 2005 World Summit Outcome, specifically in paragraphs 138 and 139⁹⁵. At the Conference, world leaders agreed that the concept should apply to genocide, war crimes, ethnic cleansing and crimes against

⁹¹ Ibid.

⁹² Report of the High-level Panel on Threats, Challenges and Change, A Safer World: Our Shared Responsibility - December 2004.

⁹³ Ibid., paragraph 203. See United Nations - Secretariat - Report of the Secretary-General [entitled "Implementing the responsibility to protect" - A/63/677](#) - 12 January 2009 - paragraph 40 - page 24.

⁹⁴ Ibid.

⁹⁵ United Nations General Assembly - [2005 World Summit Outcome - A/RES/60/1](#) - 16 September 2005 - Paragraphs 138-139 - The paragraphs read as follows: "138 – The responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity lies with each individual State. This responsibility entails preventing such crimes, including incitement to commit them, by appropriate and necessary means. We agree to assume that responsibility and will act accordingly. The international community should, as appropriate, encourage and assist States in carrying out this responsibility and support the United Nations in establishing an early warning capacity." **Paragraph 139** reads: "139. The international community, through the United Nations, also has the obligation to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we express our readiness to take timely and decisive action through the Security Council, in accordance with the Charter, including Chapter VII thereof, on a case-by-case basis and in cooperation with relevant regional organizations, as appropriate, in the event of a lack of peaceful means and the apparent inability of national authorities to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. We stress the need for the General Assembly to continue its consideration of The concept of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and the consequences of such responsibility, taking into account the principles of the Charter and international law. We also intend to commit ourselves, as necessary and appropriate, to assisting States in building capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity, and to assist States in situations of tension before crises and conflicts erupt."

humanity⁹⁶. General Assembly resolutions, while non-binding, can sometimes have normative value and are important in establishing the existence or emergence of a rule, as emphasized by the International Court of Justice in its advisory opinion on the threat of nuclear weapons⁹⁷.

On 28 April 2006, the Security Council adopted Resolution 1674 on the Protection of Civilians in Armed Conflict, in which the Council recalled for the first time the principle of the responsibility to protect (R2P), The resolution reaffirmed the provisions of paragraphs 138 and 139 of the 2005 World Summit Outcome⁹⁸, and affirmed its readiness to consider and, where appropriate, adopt appropriate measures in cases of "deliberate targeting of the civilian population and other protected persons, and committing systematic, flagrant and widespread violations...", because "they may constitute a threat to international peace and security"⁹⁹. In February 2008, the UN Secretary-General appointed Ban Ki-moon a Special Adviser to focus on the principle of the responsibility to protect¹⁰⁰. The Council reaffirmed the provisions of paragraphs 138 and 139 in the second preambular paragraph of resolution 1706 of 2006 on the Darfur crisis¹⁰¹.

In January 2009, Secretary-General Ban Ki-moon issued a report entitled "Implementing the responsibility to protect",¹⁰² the title of which shows that his task is not "to reinterpret or renegotiate the conclusions of the Summit, but to find ways to implement its decisions in all honesty and consistency".¹⁰³ The Secretary-General therefore divided the responsibility to protect into three supporting pillars, as expressed in the World Summit Outcome. 2005, "There is no specific sequence from one pillar to

⁹⁶ Ibid., paragraph 138.

⁹⁷ International Court of Justice - Advisory Opinion on (Legality of the Threat or Use of Nuclear Weapons) - issued on October 15, 1996 - A/51/218 - page 34 - paragraph 70.

⁹⁸ United Nations Security Council - [Resolution 1674 - S/RES/1674 \(2006\)](#) - of April 28, 2006 - paragraph 4.

⁹⁹ Ibid., paragraph 26.

¹⁰⁰ United Nations – the official website of the Office of [the Special Adviser on the Prevention of Genocide](#) – can be accessed via the link uploaded with the text.

¹⁰¹ United Nations Security Council Resolution 1706 S/RES/1706 (2006) of 31 August 2006 Preamble 2 "The Security Council, recalling its previous resolutions ... and 1674 (2006) on the protection of civilians in armed conflict, which, inter alia, reaffirms the provisions of paragraphs 138 and 139 of the World Summit Outcome ..."

¹⁰² United Nations - Secretariat - Report of the Secretary-General [entitled "Implementing the responsibility to protect"](#) - A/63/677 - 12 January 2009.

¹⁰³ Ibid., paragraph 2, p. 5.

another, nor is it assumed that any of these pillars is more important than the other",¹⁰⁴ and the three pillars are referred to in paragraphs 138 and 139¹⁰⁵.

These three pillars are, first, the responsibility of the State to protect, the second pillar is international assistance and capacity-building, and the third is the timely and decisive response.¹⁰⁶

It should be noted that the responsibility to protect rests with all States, including the occupying Power, as the occupying Power administers the occupied territory and has the responsibility to protect the population under occupation from all crimes and violations the Linked to the responsibility to protect, Under the first pillar of the responsibility to protect.¹⁰⁷

"This responsibility entails preventing such crimes, including incitement to commit them, by appropriate and necessary means",¹⁰⁸ and requires the occupying Power to become a party to international instruments relating to human rights law and international humanitarian law, to fulfil its obligations under its accession to those instruments, to harmonize its national legislation with their provisions and to cooperate with United Nations human rights mechanisms¹⁰⁹.

Under Pillar II (international assistance and capacity-building) on the responsibility to protect, the international community must encourage and assist the occupying power to fulfill its obligations contained in the first pillar and help it build its capacity to protect¹¹⁰. In the event of a manifest inability of the occupying Power to protect the population of the occupied territory from crimes associated with the responsibility to protect, Member States have a responsibility to act in a timely, collectively and decisively manner to provide enthusiasm to the populations concerned and to compensate for that shortfall, under pillar III (timely and decisive response).¹¹¹

¹⁰⁴ Ibid. - summary - page 2.

¹⁰⁵ Refer to documentation No. 101 in the previous capacity.

¹⁰⁶ Ibid., pp. 2, 12.

¹⁰⁷ Ibid., paragraph 11 (a), p. 11.

¹⁰⁸ Ibid., paragraph 13, p. 13.

¹⁰⁹ Ibid., paragraph 16, p. 14.

¹¹⁰ Ibid., paragraph 28, p. 20.

¹¹¹ Ibid., paragraph 11(c), pp. 11-12. See paragraph 56, page 34.

5.1.1 Unlawful Occupation Under the Law of War Grounds

One of the cases in which military force can be used is self-defence, which is conditional on several conditions, namely necessity and proportionality¹¹². An occupation that arises as a result of an act of aggression is illegal from the outset¹¹³. General Assembly resolution 3314 on the definition of aggression of 1974 considers that among the acts of aggression is temporary military occupation resulting from an invasion or attack contrary to the Charter of the United Nations¹¹⁴, and the Security Council under Article 39 of the Charter decides on the existence of an unlawful act of aggression¹¹⁵. Article 8(2)(a) of the Statute of the International Criminal Court¹¹⁶, classified by the International Law Commission as an international crime¹¹⁷.

Any war of aggression had also been characterized by the League of Nations as an international crime¹¹⁸, and the International Criminal Court had no case law relating to the crime of aggression, but the Nuremberg Tribunal had considered cases in which

¹¹² See Advisory Opinion of the International Court of Justice on the Legality of the Threat or Use of Nuclear Weapons, issued on 15 October 1996, A/51/218, p. 24, para. 41.

¹¹³ See John Quigley – "[Prolonged Occupation and International Law – Israel and Palestine](#)" – Part I – Chapter I – "Israel's Illegal Invasion of Palestine in 1967" – Brill Nijhoff Press – International Humanitarian Law Series – Volume 66 – Year of Publication 2023 – Page 30.

¹¹⁴ See General Assembly resolution 3314 (XXIX) of 14 December 1974 on the definition of aggression – Article 3 (a) – where the article states: "The character of an act of aggression shall apply to any of the following acts, ... (a) The invasion or attack by the armed forces of a State of the territory of another State or any military occupation, even if temporary ...".

¹¹⁵ See Article 39 of the Charter, which states that "The Security Council shall determine whether there has been a threat to the peace, a breach of the peace, or an act of aggression, and shall make recommendations or decide what to be taken." See [Security Council Resolution 660](#) – The situation between Iraq and Kuwait – of 3 August 1990 – Preamble "The Security Council, ... Acting under Articles 39 and 40 of the Charter of the United Nations,"

¹¹⁶ See Rome Statute of the International Criminal Court, Article 8(2)(a), which reads: "For the purpose of this Statute war crimes means: (a) ... (4) Extensive destruction and seizure of property without justifiable military necessity and in violation of the law and in a senseless manner; ..."

¹¹⁷ See [the report of the International Law Commission on the work of its twenty-eighth session](#) - issued on 23 July 1976 - Supplement No. 10 of the 31st session of the General Assembly - Chapter III. Article 19 of the draft reads "... 3- ... On the basis of applicable rules of international law, an international crime can result in particular: (a) a serious breach of an international obligation of fundamental importance for the maintenance of international peace and security, such as the obligation to prohibit aggression;

¹¹⁸ In 1923 the draft Mutual Assistance Treaty adopted by the League of Nations described any war of aggression as an "international crime". See [League of Nations, Official Gazette](#), Fourth Year, No. 12, December 1923, p. 1521.

planning a military occupation amounted to participation in acts of aggression and was a crime within the jurisdiction of the Court under Article 6 of the Tribunal¹¹⁹'s Charter.

Although this article does not explicitly mention military occupation, nor does it indicate that carrying out or planning a military occupation is tantamount to participating in acts of aggression, the court clarified in von Schirach's case that occupation is a crime within the jurisdiction¹²⁰ of the court, as well as in von Papen's case, the court in order to impose criminal responsibility on the defendant considered whether the defendant was a party to the planning of the war of aggression that resulted in the occupation¹²¹. This indicates that occupation resulting from a war of aggression is an international crime for which criminal responsibility is entailed.

Occupation is illegal under the law of war grounds when it is the result of an unlawful invasion and seizure of territory¹²² by force¹²³ or interference in the affairs of

¹¹⁹ The Nuremberg Tribunal is the International Military Tribunal established in Nuremberg, Germany, after World War II under an agreement between the three major Allied powers (the United Kingdom, the United States and the Soviet Union) to try and punish war criminals whose crimes do not have a geographical location. This so-called Agreement on the Prosecution and Punishment of War Criminals in the European Axis was annexed to the [Charter of the Military Tribunal](#) Consisting of 30 articles, the Convention and Charter were drafted at a conference held in London from 62 June to 8 August 1945. **What interests us here is the text of article 6**, which mentions crimes within the jurisdiction of the Court. Article 6 reads as "... The following acts, or any of them, shall be considered crimes within the jurisdiction of the Court for which there is individual responsibility: (a) "Crimes against peace": 'that is, planning , preparing, initiating or waging a war of aggression, waging war in violation of international treaties, agreements or guarantees, or participating in a common plan or conspiracy to achieve any of the foregoing;

¹²⁰ See the text of the judgment of the International Military Tribunal in the von Schirach case through the electronic link attached to this code [🔗](#) by clicking on it with Ctrl. As we have seen before, Austria was occupied under a common aggressive plan. Its occupation is therefore a "crime within the jurisdiction of the Court" within the meaning of the term used in Article 6 (c) of the Charter. Thus, "murder, extermination, enslavement, deportation or inhuman treatment" and "persecution on political, ethnic or religious grounds" in connection with this occupation constitute a crime against humanity under that article.

¹²¹ See the text of the judgment of the International Military Tribunal in the von Papen case through the electronic link attached to this code [🔗](#) by clicking on it with Ctrl. The text of the judgment reads "...Under the Charter, **von Papen can** only be held guilty if he is a party to the planning of a war of aggression. There is no indication that he was a party to plans whereby the occupation of Austria was a step in the direction of further acts of aggression, or even participated in plans to occupy Austria by aggressive war ...".

¹²² See [Security Council Resolution 660](#) – The situation between Iraq and Kuwait – of 3 August 1990 – paragraphs 1 and 2 "The Security Council, ... 1. Condemns the Iraqi invasion of Kuwait; 2. Demands that Iraq withdraw all its forces immediately and unconditionally to..." See [Council Resolution 661](#) on the same situation of 6 August 1990 – preamble: "The Security Council, ... Determined to end Iraq's invasion and occupation of Kuwait and to restore the sovereignty, independence and territorial integrity of Kuwait, ..." See [Security Council Resolution 662](#) of 9 August 1990, paragraphs 1 and 3: "The Security Council, ... 1. Decides that the annexation of Kuwait by Iraq in any form whatsoever and under any pretext whatsoever has no legal validity and is null and void; 3. Demands that Iraq cancel its alleged annexation of Kuwait.

¹²³ See [Security Council Resolution 884](#) - The situation between the Republic of Armenia and the Republic of Azerbaijan - of November 12, 1993 - preamble "The Security Council, ... Reaffirms... affirmation of the inviolability of international borders and the inadmissibility of the acquisition of territory by the use of force;". See [General Assembly resolution 62/243](#) on the situation in the occupied territories of Azerbaijan, adopted on 14 March 2008, paragraphs 1 and 2, which states: "The General Assembly, 1. Reaffirms respect

another State, directly or indirectly, with or without the use of force¹²⁴. The Occupying Power and third States are liable for any loss, damage or injury caused to nationals of the aggressed State and third States, their nationals and corporations¹²⁵ and for reparation for all damages¹²⁶.

for and support for the sovereignty and territorial integrity of the Republic of Azerbaijan within its internationally recognized borders; 2. Demands the immediate, complete and unconditional withdrawal of all Armenian forces from all occupied territories of the Republic of Azerbaijan;".

¹²⁴ See the judgment of the International Court of Justice on Armed Activities in the Territory of the Congo (Democratic Republic of the Congo v. Uganda) - Judgment of 19 December 2005 - paragraph 345 (operative judgment) "The Court finds that the Republic of Uganda, by carrying out military activities against the Democratic Republic of the Congo in the territory of the Democratic Republic of the Congo, occupying Ituri and providing effective military, logistical, economic and financial support to irregular forces operating in the territory of the Democratic Republic of the Congo, has violated the principle of the non-use of force in international relations and the principle of non-intervention;" **See paragraph 165** "... Uganda's actions have also constituted interference in the internal affairs of the Democratic Republic of the Congo and in the civil war there. The extent of Uganda's unlawful military intervention has reached the level of ... It is a grave violation of the prohibition on the use of force provided for in Article 2, paragraph 4, of the Charter."

[See Security Council Resolution 269 of 1969](#) on the case of Namibia, paras. 2 and 4: "The Security Council, 4. Recognizes the legitimacy of the struggle of the people of Namibia against the illegal presence of the South African authorities in the Territory;" **and Resolution 276 of 1970**, paragraph 2: "The Security Council declares that the continued presence of the South African authorities in Namibia is unlawful, and therefore all actions taken by the Government of South Africa on behalf of or in connection with Namibia after the end of the Mandate are illegal and void;" Resolution 435 of 1978, paragraph 2: "The Security Council, 2. Reaffirms that its objective is the withdrawal of the illegitimate administration of South Africa from Namibia and the transfer of power to the people of Namibia..."

See [General Assembly resolution 2372 \(XXII\) of 1968](#) on the question of South-West Africa, paragraphs 7 and 12: "The General Assembly ... Deplores the measures taken by the Government of South Africa to tighten its illegal control over Namibia and to destroy the unity and territorial integrity of the people of Namibia; 12. Reiterates its call upon the Government of South Africa to withdraw immediately and unconditionally all its military and police forces and administration from Namibia;"

¹²⁵ See Security Council resolution 674 of 29 October 1990 on the situation between Iraq and Kuwait, paragraph 8, "Iraq recalls its responsibility under international law for any loss, damage or injury arising in respect of Kuwait and other States, their nationals and corporations as a result of Iraq's unlawful invasion and occupation of Kuwait;". and see [Judgment of the International Court of Justice - on armed activities in the territory of Congo](#) (Democratic Republic of the Congo v. Uganda) - Judgment of 19 December 2005 - paragraph 180 "The Court concludes that the responsibility of Uganda for all acts of its armed forces violates its international obligations and for any negligence in preventing violations of human rights and international humanitarian law by other actors present in the occupied territory, ..." and see [Advisory Opinion of the International Court of Justice on the Legal Implications of the Continued Presence of South Africa in Namibia](#) -of June 21, 1971 -paragraph 118 "... By occupying the Territory unjustly, South Africa bears international responsibilities arising from its continued breach of an international obligation and remains held accountable for any violation of the rights of the people of Namibia, ..."

¹²⁶ See [Judgment of the International Court of Justice - on Armed Activities in the Territory of the Congo](#) (Democratic Republic of the Congo v. Uganda) - op. cit. - Judge Verhoeven's declaration "The duty to respect and ensure respect for human rights and international humanitarian law generally applies to all armed forces present in foreign territory, **in particular when their presence there arises from a violation of the law of the grounds of war**". The duty to make reparation for the damage caused by such a violation also extends to all injurious consequences of the violation, even those resulting from conduct or acts which are themselves consistent with the law of war." See [Security Council Resolution 577 of 1985](#) on the situation in Angola and South Africa, paragraph 7: "The Security Council demands that South Africa pay full and adequate compensation to the People's Republic of Angola for the loss of life and property caused as a result of these acts of aggression."

Third countries are required not to recognize any system established by the occupying power¹²⁷, and not to provide aid and assistance by them to maintain the status of the occupying power¹²⁸, but rather they have the responsibility to provide assistance to end this occupation¹²⁹, and to commit to the implementation of the relevant resolutions issued by the United Nations, and this obligation is naturally imposed on the parties to the conflict as well¹³⁰, and everyone adheres to these decisions from the beginning of

¹²⁷ See Security Council Resolution 662 of 9 August 1990 on the situation between Iraq and Kuwait, paragraph 2: "The Security Council, ... 2. Calls upon all States, international organizations and specialized agencies not to recognize such annexation and to refrain from taking any action or undertaking any transactions that may be construed as indirect recognition of annexation;"

¹²⁸ See [General Assembly Resolution 62/243](#) On the situation in the occupied territories of Azerbaijan, issued on 14 March 2008, paragraph 5, which states: "The General Assembly, reaffirms that no State shall recognize the legitimacy of the situation resulting from the occupation of the territory of the Republic of Azerbaijan and shall not provide any aid or assistance for the maintenance of that situation;" [General Assembly Resolution 2372 \(XXII\) of 1968](#) On the question of South-West Africa Paragraphs 8 and 9 "The General Assembly, 8. Deplores the actions of those States that have encouraged the Government of Southern Africa with their continued political, military and economic cooperation with that Government ... 9. Calls upon all States to refrain from any dealings with the Government of Southern Africa that could perpetuate the illegal occupation of Namibia by Southern Africa," See [Security Council Resolution 269 of 1969](#). On the case of Namibia - paragraph 7: "The Security Council calls upon all States to refrain from any dealings with the Government of South Africa for allegedly acting on behalf of the territory of Namibia;". See Council resolution 276 of 1970, on the same case, paragraph 5. and see [Advisory Opinion of the International Court of Justice on the Legal Implications of the Continued Presence of South Africa in Namibia](#) -of 21 June 1971 -paragraph 2 (operative judgment) "... States Members of the United Nations are obliged to recognize the unlawfulness of South Africa's presence in Namibia and the invalidity of its acts on behalf of or in connection with Namibia, and to refrain from any acts ... It implies recognition of the legitimacy of this presence and this administration, or giving support and assistance to it."

¹²⁹ See [General Assembly resolution 2372 \(XXII\) of 1968](#) on the question of South-West Africa, paragraph 9: "The General Assembly ... Requests... to all States to provide the moral and material assistance necessary for the Namibian people in their legitimate struggle for independence..." See [Security Council Resolution 269 of 1969](#) on the situation of Namibia, paragraph 8: "The Security Council calls upon all States to increase their moral and material assistance to the people of Namibia in their struggle against foreign occupation;" and see [Security Council Resolution 577 of 1985](#) on the situation in Angola and South Africa, paragraph 6: "The Security Council, requests Member States to urgently render all necessary assistance to the People's Republic of Angola in order to strengthen its defence capabilities;" and see paragraph 5 of this resolution, where "the Council commends the People's Republic of Angola for its unwavering support to the people of Namibia in their just and legitimate struggle against the illegal occupation of their territory by South Africa and for the enjoyment of their right ... in self-determination..."

¹³⁰ See Article 25 of the Charter of the United Nations, which states that "Members of the United Nations undertake to accept and implement the resolutions of the Security Council in accordance with the present Charter." See [Advisory Opinion of the International Court of Justice on the Legal Consequences of the Continued Presence of South Africa in Namibia](#) of 21 June 1971, paragraphs 87-116: "... The **General Assembly**... It is wrong to assume that, because it has the power to recommend, it is prohibited from adopting, in special cases within the framework of its competence, resolutions containing provisions or having an effective purpose" and for the Security Council "... Member States must comply with those resolutions of the Security Council, including even those States Members of the Council that voted against them and States Members of the United Nations that are not members of the Security Council..." In

good faith, which we will talk about in the second section of this chapter. We will clarify the responsibility of the occupying power and the international community to end Illegal occupation in the third chapter of this research.

2.1 International Humanitarian Law (Law of War).

The concept of "international humanitarian law", "law of war", "law of armed conflict" or "humanitarian law" These terms are all synonymous, the latter two being the most widespread, and mean the set of legal rules governing the use of force by a State or other subjects of international law in times of armed conflict, whether of international or non-international nature, or for humanitarian reasons, in order to protect persons who are not taking or have ceased to take part in hostilities.

In its advisory opinion on the Legality of the Use or Threat of Use of nuclear weapons of 1996, the International Court of Justice summarized these international instruments constituting international humanitarian law in paragraphs 75 and 76¹³¹, the most important of which are the Hague Conventions (1899 and 1907) and the Geneva Conventions (1864, 1907, 1929 and 1949), as well as the two Additional Protocols to the Geneva Conventions of 1977¹³².

With the adoption of the latter, the Hague and Geneva law have been combined: Geneva law is tasked with protecting victims of armed conflict, and Hague law is tasked with defining the rights and obligations of warring parties in the context of military operations. In the previous advisory opinion on nuclear weapons, the International Court of Justice referred to the two basic principles of international humanitarian law: the principle of distinction between combatants and non-combatants, especially civilians, and the principle of the prohibition of causing unnecessary suffering to combatants¹³³.

paragraph 118 of this advisory opinion, the Court stated: "The Court confirms that the binding decision of a competent organ of the United Nations to the effect that a situation is unlawful cannot be without effects."

¹³¹ Advisory Opinion of the International Court of Justice on the Legality of the Threat or Use of Nuclear Weapons (15 October 1996) - A/51/218 - paragraph 78.

¹³² All IHL conventions can be found in ([IHL Answers to Your Questions](#)) - ICRC - December 2014 - page 14.

¹³³ Advisory opinion of the International Court of Justice on the Legality of the Threat or Use of Nuclear Weapons (Legality of the Threat or Use of Nuclear Weapons) - paragraph 78.

In order to ensure the goal and achieve the purpose of international humanitarian law, the principle of the responsibility to protect has arisen on the shoulders of the international community, and the responsibility to protect is a principle that seeks to ensure that the international community is not preferred again to act in the face of genocide and other forms of gross violations of human rights, The researcher has shown this principle in the previous section.

It has been shown in the previous first section that the military occupation may be necessary when used by the occupying power in order to repel an armed attack occurred on it, and it was not possible to repel this attack and stop it only through it -any occupation-, this occupation then has arisen from the legitimate use of force under the law of justifications of war, it arose from the use of force by the state pursuant to its right to self-defense.¹³⁴

The use of force in self-defense is conditional on two basic conditions, namely necessity and proportionality, and we have talked about these two conditions in the first section, the occupation as an act of self-defense is legitimate as long as the armed attack continues by the aggressor state¹³⁵, and this armed attack by the aggressor state if it has resulted in an occupation it constitutes a continuous armed attack, and remains in this case the work of the right of self-defense by the aggressed state legitimately.

In order to remain legitimate, the occupation must be in accordance with the principles and rules of international humanitarian law¹³⁶, in order to achieve the condition of proportionality - one of the two basic conditions for the right of self-defense - if the occupation becomes a violation of those principles and rules, it may make the self-defense that established the legality of this occupation no longer meets the condition of proportionality, and this may lead to to the conclusion that the occupation has become illegal¹³⁷.

¹³⁴ See [Stephen M. Schwebel – "What is the weight of the invasion?"](#) - American Journal of International Law - Volume 64 - Issue 2 - Pages 344-347 - Publication Date April 1970 - Page 345-347.

¹³⁵ See [Dabo Akande and Antonios Tzanakopoulos -"Use of force in self-defence to recover occupied territories: when is it permissible?"](#) -European Journal of International Law -Volume 32 -pages 1299-1307 -Date published July 14, 2021 -p. ...

¹³⁶ See Advisory Opinion of the International Court of Justice on [the Legality of the Threat or Use of Nuclear Weapons](#), issued on 15 October 1996, A/51/218, para. 42.

¹³⁷ See the report of Michael Lynk, Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, issued on 23 October 2017, [A/72/556](#), paragraph 28.37.

In considering the question of occupation, and determining the extent to which the conduct of the occupying Power is consistent with international humanitarian law, it is first necessary to determine whether the territory is occupied or not, and the territory is considered occupied under international law when the army of a State places under its effective control the territory that does not belong to it¹³⁸, and the occupying Power may be able to enforce its authority without the need for a physical military presence on the ground¹³⁹.

The Occupying Power, having established control over a given territory, may withdraw its physical military presence in part or in full, and therefore territory is considered occupied when the Occupying Power has been established and can be exercised, as affirmed in the text of Article 42 of the Hague Regulations¹⁴⁰. This occupying Power has obligations under the law of occupation "insofar as it is able to exercise elements of its authority in place of local government, and continues to exercise it"¹⁴¹.

The obligations of the occupying Power arise first from two principles: "The prohibition of the acquisition of territory by the threat or use of force, and the right of peoples to self-determination, enshrined in the Charter of the United Nations and also forming part of customary international law".¹⁴² Secondly, they arise from customary international law, and the Hague Regulations of 1907 concerning the Laws and Customs of War on Land are considered to form part of the rules of customary international law, they are not merely provisions of a convention, and therefore the occupying Power, even if it is not a party to it, is obliged to apply its provisions¹⁴³.

¹³⁸ See [Advisory Opinion of the International Court of Justice on "Legal Consequences of Israeli Occupation Policies and Practices in the Occupied Palestinian Territory, including East Jerusalem,"](#) p. 30, para. 90.

¹³⁹ *Ibid.*, paragraph 91.

¹⁴⁰ Article 42 of the Laws and Customs of War on Land (Hague Regulations) of October 18, 1907 stipulates that "the territory of a State shall be considered occupied when it is under the effective authority of the enemy army and occupation shall include only the territory in which such authority may be exercised after its establishment."

¹⁴¹ *Ibid.*, paragraph 92.

¹⁴² *Ibid.*, paragraph 95.

¹⁴³ See [Advisory Opinion of the International Court of Justice on the Legal Consequences of Israel's Construction of the Wall](#) of 9 July 2004 (A/ES-10/273), para. 89, which states that "With regard to international humanitarian law, the Court notes first that Israel is not a party to the Hague Convention IV of 1907, ... The Court considers that the provisions of the Hague Rules have become part of customary law, which is recognized in the first instance of all participants in proceedings before the Court. ...".

Thirdly, the Fourth Geneva Convention, where "the Fourth Geneva Convention applies to any occupied territory in the event of an armed conflict between two or more High Contracting Parties", ¹⁴⁴knowing that a large number of rules of the Fourth Geneva Convention are very fundamental to respect for the human person, and cannot be violated whether or not the State has ratified the Convention¹⁴⁵, "because they constitute principles of customary international law¹⁴⁶. The Fourth Geneva Convention, based on the text of article 154 thereof, is complementary to the rules contained in Chapters II and III of the Hague Regulations.

Fourthly, it arises from international human rights law, since international human rights law and international humanitarian law apply in the case of occupation¹⁴⁷, as the International Court of Justice affirmed in its judgment on armed activities in the territory of the Congo in 2005 that "international human rights instruments apply in relation to acts carried out by a State in the exercise of its extraterritorial jurisdiction", in particular in the occupied territories.¹⁴⁸

The protection afforded by human rights conventions does not cease in the event of armed conflict or occupation except in cases such as those contained in article 4 of the International Covenant on Civil and Political Rights, and the International Court of Justice had clarified the relationship between international human rights law and human rights law in its advisory opinion on the wall of 2004 ¹⁴⁹.

International humanitarian law is complementary to human rights law¹⁵⁰, and they are not mutually exclusive in their application to occupation¹⁵¹, and international law remains applicable in times of conflict and throughout the period of occupation, as

¹⁴⁴ Ibid., paragraph 101.

¹⁴⁵ See Advisory Opinion of the International Court of Justice on "[Legal Consequences of Israeli Occupation Policies and Practices in the Occupied Palestinian Territory, including East Jerusalem](#)," p. 31, para. 96.

¹⁴⁶ Ibid., paragraph 157.

¹⁴⁷ See Advisory Opinion of the International Court of Justice on "[Legal Consequences of Israeli Occupation Policies and Practices in the Occupied Palestinian Territory, including East Jerusalem](#)" of 19 July 2024, p. 31, para. 98.

¹⁴⁸ 2005 ICJ Judgment on Armed Activities in the Territory of the Congo (Democratic Republic of the Congo v. Uganda) 2005, para.

¹⁴⁹ ICJ advisory opinion on the wall - paragraph 106.

¹⁵⁰ See International [Humanitarian Law \(IHL: Answers to Your Questions\)](#), ICRC, December 2014, p. 35.

¹⁵¹ F. Kotroulis, "[Application of international humanitarian and human rights law in situations of prolonged occupation: only a matter of time?](#)" - International Review of the Red Cross - Volume 94 - Issue 885 - Published in Spring 2012 - p. 196.

protected populations enjoy full human rights except in those legitimate exceptions that are strictly justified by either states of emergency or the requirements of military rule under occupation¹⁵².

The law of occupation focuses entirely on the protection of civilians and the regulation of methods and means of warfare, as it does not look at the legality of armed conflicts, does not prohibit the regime of occupation, but grants powers to the occupying Power to exercise them over the occupied territory under its control.¹⁵³

International humanitarian law has three main objectives in regulating the occupation regime: to ensure the return of the occupied territory to a sovereign state, to prevent the occupied territory from becoming the fruit of an invasion, and to protect the people in the occupied territory¹⁵⁴. International humanitarian law is constantly evolving within its founding principles and purposes of its instruments to meet new challenges in the field of humanitarian protection, in which clear answers are not reached in these initial documents¹⁵⁵.

The principles and rules of international humanitarian law include those proposed by Professor Michael Lynk to the General Assembly at the seventy-second session in 2017, where he provided a test to determine the legality of the belligerent occupation, in other words to determine whether the occupier manages the occupation in a manner consistent with international law, especially international humanitarian law, or whether the occupier has exceeded his legal capacity and his rule has become illegal, this test includes four principles: The principle of non-sovereignty, the principle of best interest, the principle of temporary occupation and the principle of good faith, these four principles presented by Lynk are derived from the Charter of the United Nations, the Hague Regulations of 1907, the Fourth Geneva Convention of 1949, its First Additional Protocol

¹⁵² See article 4 of the 1966 International Covenant on Civil and Political Rights.

See N. Lobel, "Human Rights Obligations in Military Occupation", *International Review of the Red Cross*, vol. 94, No. 885, Spring 2012, p. 317.

¹⁵³ See Adam Roberts, "Prolonged Military Occupation: Territories Occupied by Israel since 1967," in *American Journal of International Law*, vol. 84, No. 1, 1990, p. 46. .

¹⁵⁴ See the report of Michael Lynk, Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, A/72/43106, para. 22.

¹⁵⁵ E. Benvenisti, *The International Law of Occupation* (Princeton: Princeton University Press, 2004)

of 1977, and customary international law¹⁵⁶. We will outline these principles in the following sections.

1.2.1 Principle 1: Non-Sovereignty.

This principle is fundamental to modern public international law and can be rooted in Article 4 (2) of the Charter of the United Nations, which prohibits its members from using or threatening to use force against the territorial integrity or political independence of any State. Article 47 of the Fourth Geneva Convention of 1949 stipulates that protected persons present in any occupied territory shall not be deprived of the benefit of the Convention, even if the occupying Power annexes all or part of the occupied territory. to prohibit the acquisition of sovereignty over occupied territory by annexation, as well as the affirmation of article 4 of the Additional Protocol to the Geneva Conventions of 1977¹⁵⁷.

The temporary disappearance of the sovereign State as a result of annexation has been used as a pretext to evade respect for and application of international humanitarian conventions relating to the regulation of the conduct of the occupying Power in occupied territory.¹⁵⁸ It shall cease to operate only as a result of a political act such as the annexation or incorporation of a Territory into a federation, provided that such political action has been recognized and accepted by the international community, failing which the Convention shall continue to apply¹⁵⁹.

The annexation of occupied territories, whether de facto or de jure, is prohibited in international law; it violates the prohibition of the acquisition of territory by force contained in Article 2 (4)¹⁶⁰ of the Charter, the right to self-determination contained in

¹⁵⁶ See the report of Michael Lynk, Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, A/72/43106, paragraphs 27-37.

¹⁵⁷ See Article 7 of Additional Protocol I to the Geneva Conventions of 1977, which states that "... The occupation of a territory or the application of the Conventions and this Protocol shall not affect the legal status of that territory."

¹⁵⁸ See [the ICRC's commentary on the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War](#) , published in Geneva in 1958, vol. IV, p. 18.

¹⁵⁹ See *ibid.*, p. 63.

¹⁶⁰ Article 2(4) states: "All members of the Commission shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State or in any other manner inconsistent with the purposes of the United Nations.

Article 1 (2),¹⁶¹ and constitutes an international crime of aggression for which international criminal responsibility is¹⁶² required.

The Rome Statute used the term "annexation", which included both de jure and de facto annexations, and whether total or partial, of a territory¹⁶³. Annexation by law occurs when land is forcibly seized followed by a declaration of ownership by the acquiring state, indicating its express intention to annex the occupied territory, and de facto annexation is when the state seizes territory by force and does not formally express its intention to annex, but implicitly carries out annexation through its measures and actions¹⁶⁴.

"Although they differ in terms of the means by which annexation takes place, both types of annexation share the same objective – to assert permanent control over the occupied territories," so actions by the occupying Power may refer to annexation if there is an intention to exercise permanent control over the occupied territory, as confirmed by the International Court of Justice in its 2024 Advisory Opinion on Israel's occupation of Palestinian territories¹⁶⁵.

There is a standard developed by Michael Lynk that includes four axes to determine whether the occupying power is annexing the de facto occupied territories¹⁶⁶, and the first axis is the achievement of effective control of the occupying power over the territory, and the occupied territories can be considered under control when these territories remain under enemy for a sufficient period to give the occupation a stable and permanent character and to show the intention to retain them¹⁶⁷. The second axis is its exercise of sovereignty, through active actions consistent with its sovereignty claim over all or part of the territory, such as introducing prohibited changes to domestic legislation, including

¹⁶¹ Article 1 (2) provides as follows: "The development of friendly relations among nations on the basis of respect for the principle of equal rights and self-determination of peoples, as well as other appropriate measures to promote public peace".

¹⁶² See article 8 bis, paragraph 2 (a), "... The adjective act of aggression applies to any of the following acts, (a) the invasion by the armed forces of one State of the territory of another State... or any annexation by force of the territory of another State or part thereof;".

¹⁶³ Ibid.

¹⁶⁴ See [Expert opinion on prolonged occupation behaviour in the Occupied Palestinian Territory](#) -Michael Booth -July 14, 2017 -Page 7.

¹⁶⁵ See Advisory Opinion of the International Court of Justice on "[Legal Consequences of Israeli Occupation Policies and Practices in the Occupied Palestinian Territory, including East Jerusalem](#)" of 19 July 2024, pp. 48, para. 159-160.

¹⁶⁶ See the report of Michael Lynk, Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, issued on 23 October 2017, [A/72/556](#), para. 31.

¹⁶⁷ See House of Lords in the UK – the information website can be accessed by [clicking here](#) 🌐

the application of its internal laws to the occupied territories, and the third is its expression of its intention to annex, perhaps through statements issued by senior political leaders or State institutions that indicate or call for the permanent annexation of parts or parts of the occupied territories.

The fourth is its refusal to comply with international law, such as its refusal to apply the rules of international humanitarian law conventions, or its failure to comply with the directives of the international community regarding respect for the current and future status of the territory.¹⁶⁸

The International Court of Justice affirmed the non-sovereignty of the occupying power in its advisory opinion on the legal consequences for States of the continued presence of South Africa in Namibia¹⁶⁹, and it was stated in the advisory opinion that South Africa is annexing the territory of Namibia *de facto*¹⁷⁰, and the Court confirmed this in its advisory opinion on the wall built by Israel on the occupied Palestinian territories¹⁷¹.¹⁷² The 1998 Rome Statute considered the transfer of civilians from the occupying power to occupied territory a war crime¹⁷³ because it was seen as a way of subsequently claiming property and restricting the right of indigenous people to self-determination.

¹⁶⁸ See [Expert Opinion Regarding Prolonged Occupation Behavior in the Occupied Palestinian Territory \(oPt\)](#) Michael Booth, 14 July 2017, p. 8.

¹⁶⁹ See Advisory Opinion on the Legal Implications for States of the Continued Presence of South Africa in Namibia (South West Africa Despite Security Council Resolution 276 of 21 June 1971, pp. 104-105) and paper - Arabic version - This principle is understood from the content of the text of the advisory opinion of the Court, there is no verbatim text of the phrase, as it is stated in the text of the advisory opinion (in paragraphs 87-116 "... The Security Council subsequently adopted various resolutions, including resolution 276 (1970), which declared the continued presence of South Africa in Namibia illegal." In paragraphs 117-127, "South Africa, being responsible for creating and maintaining that situation, is obliged to terminate it and withdraw its administration from the Territory. States Members of the United Nations are obliged to recognize the illegality and invalidity of South Africa's continued presence in Namibia."

¹⁷⁰ See Advisory Opinion on the Legal Implications for States of South Africa's continued presence in Namibia (South West Africa despite Security Council Resolution 276 of 21 June 1971, Independent Opinion of the Vice-President of the Court, p. 88).

¹⁷¹ See Advisory Opinion of the International Court of Justice on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (OPT), issued on 9 July 2004, para. 117, p. 56, Arabic version, where the text of the advisory opinion states: "The Court recalls that both the General Assembly and the Security Council recall ... to the customary rule that land may not be seized by force."

¹⁷² See *ibid.*, paragraph 121, p. 85, "... The Court considers that the construction of the wall and its associated regime create a 'fait accompli' that could constitute a permanent situation on the ground, which amounts to *de facto* annexation, regardless of the official description Israel gives to the wall."

¹⁷³ See the Rome Statute of the International Criminal Court 1998 - Article 8 (War Crimes), paragraph 2(b)(8).

The Security Council has repeatedly affirmed the inadmissibility of the acquisition of territory by war, for example Resolution 242¹⁷⁴ and Resolution 662¹⁷⁵, and the United Nations General Assembly decided in its resolution No. 2625 (3-25) of 1960 - called the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations - the prohibition of obtaining the right of ownership by conquest¹⁷⁶, an old principle that was referred to in the Ottoman Debt Arbitration case in 1925¹⁷⁷. This principle is peremptory in public international law¹⁷⁸, since international law today does not permit the acquisition of territory by force and considers it illegal¹⁷⁹. There are no exceptions to this jus cogens norm under any circumstances, whether the territory is acquired through self-defence or aggression¹⁸⁰.

If we look at Article 43 of the Hague Regulations and Article 64 of the Fourth Geneva Convention¹⁸¹, we find that they oblige the occupying Power to respect the laws

¹⁷⁴ Security Council Resolution 242 [was adopted](#) on 22 November 1967, where the text of the resolution stated "... Affirming the inadmissibility of the acquisition of territory by war, ... Affirming that, by accepting the Charter of the United Nations, all Member States have undertaken to act in accordance with Article 2 of the Charter..."

¹⁷⁵ Security Council Resolution 662 [was adopted](#) on 9 August 1990, where the principle of non-sovereignty is understood from the content of the resolution, which states in the text "... Deeply alarmed by Iraq's declaration of full and eternal integration with Kuwait, Decides that the annexation of Kuwait by Iraq in any form and under any pretext whatsoever has no legal validity and is null and void..."

¹⁷⁶ The text of the declaration reads, "... The territory of any State may not be acquired by another State as a result of the threat or use of force. The legitimacy of any territorial acquisition resulting from the threat or use of force shall not be recognized."

¹⁷⁷ "The mere belligerent occupation does not in any way constitute a transfer of sovereignty," the case states.

¹⁷⁸ See the report of Michael Lynk, Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, A/72/43106, paragraphs 27-37.

¹⁷⁹ Malcolm Shaw - International Law - Cambridge University Press - 8th edition -2017 - Chapter 9 (Territory) - page 372.

¹⁸⁰ See Antonio Cassese - Book of International Law - Oxford University Press - Second Edition - 2005 - p. 57. "... An invasion does not convey a legal basis for sovereignty, even if it is followed by a de facto occupation and assertion of authority over territory."

¹⁸¹ **Article 43** of the Hague Regulations states that "if the authority of the legitimate power is effectively transferred to the Occupying Power, the latter shall, as far as possible, achieve and ensure security and public order, while respecting the laws in force in the country, except in cases of extreme necessity to do so."

Article 64 of the Fourth Geneva Convention stipulates that "the penal legislation of the occupied territories shall remain in force unless repealed or suspended by the Occupying Power if it threatens its security or constitutes an obstacle to the application of the present Convention. ... The Occupying Power may, however, subject the population of the occupied territory to such laws as it deems necessary to enable it to fulfil its obligations under this Convention, to ensure the orderly administration of the territory and to ensure the security of the Occupying Power and the security of the personnel and property of the occupying forces or administration as well as the installations and lines of communication used by it." Documentation No. 119

in force in the occupied territories and to refrain from making changes to them except in cases of necessity that prevent this, or for specific security considerations, or to enable it to fulfill its obligations.¹⁸² It limits the occupying Power's unilateral appropriation of State legislative powers¹⁸³, as well as permanent adjustments with regard to the basic institutions of the occupying Power, such as from a republican system to a monarchy¹⁸⁴.

The legislative powers granted to the occupying power are limited and must be in cases of legitimate military necessity and in a manner that does not conflict with the best interests of the occupation¹⁸⁵, as private law remains in force in the occupied territories¹⁸⁶, and local institutions in the occupied territories remain intact¹⁸⁷, and we will refer to this in our discussion of the best interest of the protected population.

The principle of non-sovereignty of the occupying Power prohibits the occupying Power from annexing the occupied territories, whether de facto or de jure, or from undertaking a demographic transition in the occupied area, because that would undermine the right of the protectorates to self-determination and would strengthen the occupying Power's claim to sovereignty over that area.¹⁸⁸

The occupying Power cannot swap its territory for the territory of the occupying Power even with the consent of the deposed sovereign;¹⁸⁹ The occupying Power cannot

¹⁸² See [Occupation and other forms of foreign land administration](#) -ICRC -Expert Meeting -Geneva, Switzerland -March 2012 -Page 47

¹⁸³ See Gregory H. Fox - [Changing occupation and unilateral motivation](#) - International Review of the Red Cross - Volume 94, Issue 885 - Spring 2012 - page 237.

¹⁸⁴ See Julius Stone, *Legal Controls of International Conflict*, New York, Reinhart & Co., 1954, p. 698.

¹⁸⁵ See Belgian Court of Appeal in Liège-Mathote *v. Longoy*, Belgium, 19 February 1921, *International Law Reports*, University of Cambridge, Volume 1, Case No. 329.

¹⁸⁶ German-Belgian Mixed Court of Arbitration-Military *v. German State* -January 13, 1923-*International Law Reports* --University of Cambridge -Volume 2-Case No. 4.

¹⁸⁷ This is implied by the text of Article 43 of the Hague Regulations, and by Article 64 of the Fourth Geneva Convention, which we mentioned in document No. 2, as well as by the text of Articles 55 and 65 of the Hague Regulations, which state as follows: "The Occupying Power considers itself only as an administrative officer and beneficiary of institutions, public buildings, forests and agricultural lands owned by the enemy State..." Article 56 stipulates that "municipal property, property of institutions intended for worship, charity and education, and technical and scientific institutions shall be treated as private property, even when it is the property of the State. ...". See also the Belgian Court of Cassation - *Borgenon v. Department of Finance* - May 20, 1946 - *International Law Reports* - University of Cambridge - Glory 13 - Case 153.

¹⁸⁸ See Article 49 of the Fourth Geneva Convention of 1949 – the text of which reads "... The Occupying Power shall not deport or transfer part of its own civilian population into the territory it occupies."

¹⁸⁹ See Yoram Denstein, *International Law of Warlike Occupation*, Cambridge University Press, 2009, para. 789.

dispose of the territory and municipal property of the occupying Power¹⁹⁰, nor can it take actions of a governmental nature affecting the property of persons who are not its nationals¹⁹¹. If the occupying Power carried out such acts, which violated the principle of non-sovereignty, it was acting in a manner incompatible with the requirements of the requirement of proportionality for self-defence.

2.2.1 Principle 2: The Best Interest of the Occupied Population.

This principle means that the occupying Power has the duty to administer the occupied people in its best interests and, above all, to act in the interests of the protected person or entity, which is not expressly stipulated in the Hague Regulations and the Geneva Conventions, but is understood in the spirit of the conventions of international humanitarian law¹⁹², which prohibits it from using its powers granted to it under international law in its own interests.

This principle is similar to the fiduciary relationship in domestic or international law, since the occupying Power is entrusted with the territory over which it has exerted its control, and it must respect its human rights and apply the provisions contained in the Hague Regulations and the Fourth Geneva Convention¹⁹³. The Hague Convention of 1907 devoted a special section to military authority in the territory of an enemy State, the third of which consisted of 15 articles, which set out the powers and duties granted to the occupying Power, and the Fourth Geneva Convention expanded these obligations in section III, which dealt with occupied territory, consisting of 31 articles.

¹⁹⁰ See Article 56 of the Hague Regulations of 1907, the text of which is quoted in Documentation No. 8 on the previous page.

¹⁹¹ See Court of Cassation - [City of Pärnu v. Pärnu Loan Association](#) - Estonia 28 February 1921 - International Law Reports - University of Cambridge - Volume 8 - Case No. 231 - The Estonian Court of Cassation held that municipal real estate must be treated as private property and may not be transferred or mortgaged. See -Civil Court of the Seine-The case [of the Russian Trade Delegation v. French Industrial and Commercial Petroleum Company \(Malubuska Group\)](#) -France -issued on January 12, 1940 - International Law Reports -University of Cambridge -Volume 9 -Case No. 83.

¹⁹² See [the commentary of the International Committee of the Red Cross on the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War](#) - Commentary on Article 7 - issued in Geneva in 1958 - vol. IV - p.

¹⁹³ See the report of Michael Lynk, Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, A/72/43106, para. 33-34.

Article 43 of the Hague Regulations obliges the occupying Power to restore and guarantee, to the extent possible, public order and civilian life, while respecting the laws in force in the country, except in cases where this is categorically prohibited. The Fourth Geneva Convention requires the occupying Power to ensure a wide range of protective measures, including the protection of children,¹⁹⁴ the provision of medical and food supplies¹⁹⁵, the maintenance of hospitals¹⁹⁶, the preservation of natural resources¹⁹⁷, and the prevention of collective punishment and corporal punishment¹⁹⁸.

The occupying Power is also prohibited from plundering and participating in individual or collective forced transfers or deportations of indigenous peoples¹⁹⁹, and the occupying Power is prohibited from transferring civilians from its territory to the occupied territory²⁰⁰.

But their hidden aim was political and racist, as these transfers exacerbated the economic situation of the indigenous population, and their independent existence as a race was at risk²⁰¹.

For example, Article 49 of the Fourth Geneva Convention prohibits the occupying Power from carrying out evictions and detaining protected persons, but this same article allows the occupying power to do so if the security of the population or for reasons so requires. Compulsive military²⁰².

¹⁹⁴ See articles 14, 17, 21, 23, 24, 38 (5), 50, 82, 89, 94 and 132 of the Fourth Geneva Convention of 1949, and Protocol I to the Geneva Conventions of 1977 devotes a special chapter to women and children, see articles 77 and 78 of this Protocol.

¹⁹⁵ See articles 17, 18, 19, 22, 32, 38(1) and (2), 50, 55, 56, 59, 76, 81, 89, 91, 92, 95, 108, 125 and 127 of the Fourth Geneva Convention of 1949.

¹⁹⁶ See articles 56, 57 and 93 of the Fourth Geneva Convention of 1949.

¹⁹⁷ This is understood from the articles indicating that the occupying Power does not have sovereignty over the occupied territory and that it has a duty to maintain the general status of that territory.

¹⁹⁸ See Articles 3(1)(a), 31, 32, 33, 49 and 95 in the text of this article "... No arrested person shall be compelled to perform work for which a doctor of the administration declares physically unfit ...", 100, 127, 147 of the Fourth Geneva Convention of 1949.

¹⁹⁹ See article 49 of the Fourth Geneva Convention of 1949.

²⁰⁰ See article 49 of the Fourth Geneva Convention of 1948.

²⁰¹ See [ICRC Commentary on the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War](#), Commentary on Article 49, Volume IV, issued in Geneva in 1958, p. 283.

²⁰² **Article 49** of the Fourth Geneva Convention states: "The collective or individual forcible transfer or exile of protected persons from occupied territory into the territory of the Occupying Power or to the territory of any other State, occupied or not, whatever the motive, is prohibited. However, the Occupying Power may carry out a total or partial evacuation of a particular occupied area, if the security of the population or for imperative military reasons so requires, The Occupying Power may not detain

Article 78 of the same Convention also allows the occupying power to exercise house arrest or arrests of a protected population, article 143 also allows the occupying power to restrict the entry of representatives of the delegates of the protecting Power, but only for compelling security reasons, and temporarily²⁰³, and articles 55 and 62 allow the occupying power to impose temporary restrictions on foodstuffs, medical supplies and relief parcels if imperative military necessities²⁰⁴.

With regard to legislation, to which we referred in our discussion of the non-sovereignty of the occupying Power, the occupying Power is entitled to enact new legislation and apply it in the occupied territory if such legislation is in the interest of the population or in the common interest of the population and the security interest of the occupying Power²⁰⁵.²⁰⁶

Article 64 of the Fourth Geneva Convention allows for the repeal or suspension of penal codes in the occupied territories by the occupying Power if they threaten its security²⁰⁷, as well as to enact new laws and subject the population of the occupied territory to them if this is to ensure the administration of the occupying Power and the security of the occupying Power, its personnel, property and communication lines²⁰⁸.

protected persons in an area particularly vulnerable to the dangers of war, unless the security of the population so requires or for imperative military reasons."

²⁰³ **Article 78** of the Fourth Geneva Convention states: "If the Occupying Power decides for imperative reasons of security to take security measures vis-à-vis protected persons, it may at the latest impose compulsory residence or internment on them.... shall be reviewed periodically and, if possible, every six months, ...". **Article 143** reads as follows: "Representatives or delegates of the Protecting Powers shall be authorized to go to all places where protected persons are present, ... Such visits shall be prohibited only for reasons necessitated by imperative military necessity, and only on an exceptional and temporary basis. ..."

²⁰⁴ Article 55 reads "... The Occupying Power may not seize food, supplies or medical supplies from what is in the occupied territory except for the need of the occupying forces and administrative personnel, The Protecting Power may at any time ascertain without hindrance the state of supply of food and medicine in the occupied territory, unless temporary restrictions are imposed necessitated by imperative military necessities. Article 62 **states**: "Protected persons in occupied territory shall be allowed to receive individual relief parcels sent to them, subject to imperative security considerations."

²⁰⁵ See Edmund Schwenk, [The Legislative Power of the Military Occupier under Article 43 of the Hague Regulations](#), Yale Law Review (1944-1945), Vol. 54, pp. 393-395, 397.

²⁰⁶ See Supreme Court of the Judicial System - [The King's case against Maung Hmen et al.](#) - promulgated in Burma on March 11, 1946 - International Law Reports - Volume 13 - Case No. 139. On the contrary, orders, declarations, decrees and regulations imposed by the German occupying power with the intention of governing the occupied population of Alto Adige by means of terrorism cannot be lawful, even with regard to compliance with the principles of international law. See Italian Court of Cassation - [Rey Mittermeier](#) case - Issued on May 2, 1946 - International Law Reports - Glory 13 - Case No. 28.

²⁰⁷ See the text of article 64, first paragraph, of the Fourth Geneva Convention of 1949.

²⁰⁸ See the text of article 64, second paragraph, of the Fourth Geneva Convention of 1949.

Therefore, the occupying Power must administer the occupied territory taking into account the balance between the best interest of the protected population and the common interest, and the State that does not take this into account is incompatible with the requirements of the requirement of proportionality in self-defence, and this may lead to the conclusion that the continued use of the right of self-defence by the occupying Power is illegal, which makes the occupation that was the result of the use of force pursuant to this right illegal. A project for military power.

3.2.1 Third Principle: Temporary Occupation.

The temporary nature of occupation is a fundamental and well-established principle of international law, beginning with the Lieber Act (Article 3²⁰⁹), the Brussels Declaration (Article 2²¹⁰) and the Oxford Declaration (Article 41²¹¹).²¹², up to the Hague Regulations of 1907 and the Fourth Geneva Convention of 1949. Although IHL does not specify a specific time limit for the legal duration of occupation, the return of occupied territory to sovereignty must take place within as reasonable and speedy a period of time as possible²¹³.

Article 43 of the Hague Conventions of 1899 and 1907 obliges the occupying Power to respect the laws in force in the occupied territory and prohibits the occupying Power from enacting laws that are not for necessary military reasons.²¹⁴ Article 55 of the Hague

²⁰⁹ Until 1863, the Lieber Act was considered a codification of practice with regard to military rule, article 3 of which indicated that military rule shall be for as long as military necessity so requires, indicating the temporary nature of occupation. See Instructions to the Government of the United States Armies in the Field -April 24, 1863-Article 3.

²¹⁰ Article 2 of the Brussels Declaration indicates that military rule begins when "the authority of the legitimate authority is suspended and in fact transferred to the hands of the occupiers" Sweden's delegate Baron Jumenny at the Brussels Conference explained that "the occupation continues as long as it is actually practiced," and that the temporal aspect was implicit in the revised text. See "Revealing the Problematic Terrain Prolonged Occupation" – Yutaka Arai Takahashi – Journal of Israeli Law – Vol. 52(2) (2019) – pp. 125, 142.

²¹¹ Article 41 of the Oxford Declaration considers territory to be occupied when "the State to which it belongs, in fact, ceases to exercise its normal power" and the occupation continues for the duration of this status. See Laws of War on Land - Oxford - September 9, 1880 - Article 41.

²¹² See Doris Abel Graber, *The Evolution of the Law of War Occupation*, Columbia University Press, 1949, p. 37.

²¹³ [Security Council Resolution 1483](#), adopted on 22 May 2003, dealing with the occupation of Iraq in 2003, recalled the obligation of the occupying authorities to restore the rule of Iraq to its people "as soon as possible".

²¹⁴ See Eyal Benvenisti, *International Law of Occupation*, Oxford University Press 2012, p. 69.

Regulations requires the occupying Power to consider itself only as an administrative official and a beneficiary of public buildings, institutions, forests and agricultural land located in the territory it occupies and owned by the enemy Power.

Article 47 of the Fourth Geneva Convention of 1949 prohibits the occupying Power from annexing the territory under its control or part thereof under its sovereignty, which indicates the temporary nature of the occupation. Articles 54 to 64, which oblige the occupying power to respect the laws in force in the occupied territories and not to make any change regarding the judicial and administrative structure in the country, imply that the occupation regime is restricted in order to maintain the status quo in this country, which indicates that the occupation is temporary²¹⁵.

Occupation cannot be permanent or indefinite, because if it is indefinitely, it becomes illegal, it becomes an invasion, or a new form of colonialism, hiding behind an imagined temporality²¹⁶. Prolonged occupation would amount to de facto annexation and would violate the right of peoples to self-determination, which would be violated whenever there was an occupying power in a foreign country²¹⁷, except in cases where the occupation was for a limited period of time²¹⁸.

Prolonged occupation violates the principles of non-sovereignty of the occupying Power and the principle of the territorial integrity of the State.²¹⁹ A belligerent occupation must end within a reasonable period of time, and this reasonableness is inferred by studying the purpose, nature and circumstances of the occupation²²⁰. As we have already pointed out, international humanitarian law does not specify a specific time period for the

²¹⁵ Orna Ben-Naftali, Elle M. Gross, Keren Michaeli, *Illegal Occupation: Framing the Occupied Palestinian Territory* - Berkeley Journal of International Law - Volume 23 - 2005 - Page 18

²¹⁶ Eyal Gross - *Graffiti on the Wall: Rethinking the International Law of Occupation* - Cambridge University Press - 2017 - p. 51.

²¹⁷ See General Assembly resolution 2625 (XXV) of 24 October 1970, entitled Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, Principle V, "The principle of the equal rights and self-determination of peoples: ... The subjection of peoples to the enslavement, domination and exploitation of aliens is a violation of this principle..."

²¹⁸ See Antonio Cassese, *Self-Determination of Peoples: Legal Revenge*, Cambridge University Press, 1995, p. 99.

²¹⁹ See Salvatore Fabio Nicolosi, "The Law of Military Occupation and the de jure and de facto role of sovereignty", *Polish Yearbook of International Law*, 2011, pp. 165, 184.

²²⁰ Orna Ben-Naftali, Elle M. Gross, Keren Michaeli, *Illegal Occupation: Framing the Occupied Palestinian Territory* - Berkeley Journal of International Law - Volume 23 - 2005 - Page 551

legal duration of the occupation, so when talking about this subject, jurisprudential opinions and differences appear.

The concept of "indefinitely" cannot be replaced by the concept of "temporary", because the temporary situation dictates that it has a definite end, and the indefinite and indefinite situation may or may not have an end, the two situations are very different, and each situation has a significant impact on concrete reality and competing interests.

It is unreasonable to put the concrete situation of occupation in an indefinite time frame, even if the law did not impose on it a specific period of time, but on the other hand, the supreme interests of the people under occupation, which the occupying power must take into account, and the interest of the international system in resuming its natural order of sovereign equality between states, these interests will be meaningless if the occupation is endless, so the two competing interests, the interest of the occupation on the one hand, and the interests The supreme of the people, on the other hand, imposes on the occupation regime to be temporary, which is different from the indefinite.

Provisional time in law is always based on the legal principle of reasonableness, as reasonable time is the basis for the time periods called a certain time in the proceedings, as well as the basis on which to set limits for procedures that are not specified in a certain time, and therefore it cannot be concluded that procedures that are not limited to a certain time limit mean that they are indefinite²²¹. The third principle – the impermanence of occupation – is the most important principle in the normative principles of occupation because it gives meaning and impact – both factual and legal – to the concept of the interests of the occupied people.

4.2.1 Fourth Principle: Good Faith.

The principle requires a State to perform its duties and obligations in an honest, reasonable, diligent and just manner, and with a view to achieving the purposes of legal responsibility arising from any agreement or treaty, the principle of good faith prohibits

²²¹ Orna Ben-Naftali, Eyal M. Gross and Kieren Michaeli - *Illegal Occupation: Framing the Occupied Palestinian Territory* - *Berkeley Journal of International Law* - 2005 - p. 21.

States from carrying out acts that would frustrate the object and purpose of the obligation, or abusing rights in order to conceal an unlawful act, or evading a particular obligation²²².

Article 2 (2) of the Charter of the United Nations²²³, Article 26 of the Vienna Convention on the Law of Treaties²²⁴, and in General Assembly resolution 2625 on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations²²⁵, emphasized its importance.

The International Court of Justice emphasized its importance in the Nuclear Tests case (Australia v. France) in 1974²²⁶, stating that "the principle of good faith is one of the fundamental principles governing the creation and performance of legal obligations, whatever their source". The rationale behind this principle seems self-evident: the international community's need for a system that can guarantee international order and prevent arbitrary behaviour and chaos.

The principle of good faith requires the occupying power during its occupation to administer the occupied territories in good faith, and we can measure whether the occupying power acts in good faith, through its application of the three principles mentioned above, namely that it governs the occupied territories only on the basis that it is a temporary authority that has no sovereignty over these territories, and governs in the best interest of civilians under its authority, in addition to that it acts in accordance with its duties and obligations under international law, complying with humanitarian law.

International and human rights, in full compliance with the resolutions and directives of the United Nations and other official bodies related to the occupation

²²² Stephen R. Einhold - [Good faith in international law](#) - University of Bonn - Institute of Public International Law - May 24, 2013 - Page 8

²²³ Article 2(2) states, "In order to ensure to themselves all the rights and benefits deriving from the status of membership, they shall in **good faith** carry out the obligations they have assumed in this Charter."

²²⁴ Article 26: *pacta sunt servanda* states that "every treaty in force is binding on its parties and they must implement it in good faith."

²²⁵ The preambular text of the Declaration states: "Considering that the faithful observance of the principles of international law concerning friendly relations and cooperation among States and the implementation of the obligation undertaken by States in **good faith**, ..." Among the six principles contained in the Declaration "the principle of the good faith implementation by States of their obligations under the Charter", Resolution No. 2625 was adopted at the 25-24 October 1970 session.

²²⁶ [Judgment of the International Court of Justice, Nuclear Tests](#) (Australia v. France), Judgment of 20 December 1974, para. 46, p. 268.

regime²²⁷. It is inconceivable that the occupying Power administers the occupied territory in good faith if it violates peremptory principles and norms of international law^{228, 229}.

Among the peremptory norms that the occupying Power may not violate are the prohibition on the acquisition of territory by force, the denial of the right of self-determination to the people, the imposition of an apartheid regime of institutionalized racial discrimination to maintain hegemony²³⁰, and the issue of self-determination and the acquisition of territory by force, which we have already discussed in some detail, and we will now talk about violating the prohibition of the imposition of apartheid in the occupied territories.

As mentioned, the prohibition of racial segregation and discrimination is a peremptory norm of international law²³¹, and racial discrimination is defined by the International Convention on the Elimination of All Forms of Racial Discrimination in Article 1 (1) as "any distinction, exclusion, restriction or detail based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or equal exercise of human rights and fundamental freedoms in the political field, economic, social, cultural or any other field of public life."²³².

Apartheid is defined by the International Convention on the Suppression and Punishment of the Crime of Apartheid as acts against humanity "which include similar

²²⁷See the report of Michael Lynk, Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, A/72/43106, para. 37.

²²⁸ According to Article 53 of the 1969 Vienna Convention on the Law of Treaties, **the peremptory norm** of international law is "... That general rule is accepted and recognized by the international community as a whole as a rule that may not be derogated from and which can only be modified by a subsequent rule of general international law of a similar character."

²²⁹ See Ralph Wilde, Using the Master's Tools to Dismantle the Master's House: International Law and Palestinian Liberation, [Palestine Yearbook of International Law](#), 2019-2020, p. 33.

²³⁰ See International Court of Justice Judgment -East Timor Case (Portugal v. Australia) -Judgment in ... 1995 – paragraph 29. See Advisory Opinion of the International Court of Justice on the Legality of the Threat or Use of Nuclear Weapons (15 October 1996), A/51/218, para. 83. See the judgment of the International Court of Justice - Application of the Convention on the Prevention and Punishment of the Crime of Genocide - Preliminary objections - Judgment in ... 1996 - paragraphs 31-32.

²³¹ See articles on responsibility of States for internationally wrongful acts with Commentary 2001, page 112, para. 4. See Advisory Opinion of the International Court of Justice on "[Legal Consequences of Israeli Occupation Policies and Practices in the Occupied Palestinian Territory, including East Jerusalem](#)" of 19 July 2024, p. 55, para. 189.

²³² Article 1(1) of the [International Convention on the Elimination of All Forms of Racial Discrimination](#) - adopted by General Assembly resolution 3068 (XXVIII) - dated November 30, 1973 - entered into force on July 18, 1976.

policies and practices of racial segregation and discrimination practised in southern Africa ... committed for the purpose of establishing and perpetuating the domination and systematic persecution of any other racial group of human beings",²³³ and the Rome Statute considers acts to be "a crime against humanity ... persecution of any specific group or group of the population for political, racial, national, ethnic, cultural, religious or gender reasons" if committed "as part of a widespread or systematic attack directed against any civilian population".²³⁴

The prohibition of discrimination in the enjoyment of human rights and fundamental freedoms is part of the purposes of the United Nations as stated in article 1 (3), and the prohibition of discrimination is contained in article 2 of the Universal Declaration of Human Rights. International humanitarian law prohibits certain forms of discrimination, with article 27 (3) of the Fourth Geneva Convention stating: "Subject to the provisions relating to state of health, age and sex, all persons protected by the Party to the conflict under whose authority they are under their authority shall be treated with the same regard without any adverse distinction as to race, religion or political opinion."

Discrimination is prohibited by many international human rights conventions, such as articles 2 (1) and 26 of the International Covenant on Civil and Political Rights and 2 (2) of the International Covenant on Economic, Social and Cultural Rights. The International Court of Justice has had an advisory opinion on the application of apartheid, the advisory opinion on South-West Africa (Namibia),²³⁵ which is the main precedent from which the prohibition of the application of apartheid in an occupied territory is derived.

In this advisory opinion, the Court rejected the apartheid policy of the South African State in Namibia, and the Court refused to justify it²³⁶, and one of the judges of the Court considered that by applying the laws of apartheid in Namibia, South Africa was contrary to its duties as a mandatory Power, and that the State could not administer a territory

²³³ Articles 1 and 2 of the [International Convention on the Suppression and Punishment of the Crime of Apartheid](#) - issued by the General Assembly of the United Nations - 28th session, 2068th session - on November 2, 1973.

²³⁴ Article 7(1)(7) of the [Rome Statute of the International Criminal Court](#) - promulgated on 17 July 1998 - entered into force on 1 July 2002.

²³⁵ [Advisory Opinion of the International Court of Justice on the Legal Consequences of the Continued Presence of South Africa in Namibia](#) of 21 June 1971.

²³⁶ Ibid

entrusted to it in a manner contrary to the principles and rules of the Charter²³⁷. Another judge concluded that the power of administration and legislation could not be lawful as long as it pursued Such as apartheid that is incompatible with the aims and principles set forth in article 22 of the Covenant²³⁸.

If the occupying Power administers the occupied territory in such a way as to consolidate and maintain a legal system of apartheid, it means that the occupying Power is illegally administering the territory, may indicate a disproportionate use of force for self-defence and may be an indication of bad faith in the administration of the occupied territory²³⁹.

²³⁷ Ibid. - Independent opinion of Judge (de Castro)

²³⁸ Ibid. - Independent opinion of the judge (Padilla Nervo)

²³⁹ See "[The Legality of the Israeli Occupation of the Occupied Palestinian Territory, including East Jerusalem](#)," issued by the UN Committee on the Exercise of the Inalienable Rights of the Palestinian People in partnership with the Irish Centre for Human Rights, 2023, p. 38.

2. The Legality of The Israeli Occupation

The first chapter proved that the occupation that arises as a result of an act of aggression is illegal from its inception under the law of justifications of war, and the occupation if it resulted from the legitimate use of force, but at the same time violates the principles of necessity and proportionality of the right to self-defense and the basic principles on which the belligerent occupation is based, this may indicate that the occupation has become illegal under the law of war (international humanitarian law), and in this chapter the legality of the Israeli occupation of the Palestinian territories will be examined Under the law of war grounds and under international humanitarian law.

The legality of the Israeli occupation under the rules of the two laws will be examined, because this occupation has been established for more than 57 years, that is, it arose a long time ago, so even if it turns out that this occupation arose from the illegal use of military force, there may be doubts about the results reached, as the United Nations has given little attention to how the Israeli occupation began, and whether it began in a way that makes its temporary control legal or not²⁴⁰. Efforts were made to do so in the days immediately following the end of hostilities, but this effort was thwarted by the United States of America²⁴¹. Examining the legality of this occupation under the law of grounds of war is an important addition to the advisory

²⁴⁰ See John Quigley – "[Prolonged Occupation and International Law – Israel and Palestine](#)" – Part I – Chapter I – "The Illegal Israeli Invasion of Palestine in 1967" – [Brill Nijhoff Press](#) – International Humanitarian Law Series – Volume 66 – Year of Publication 2023 – Page 13.

²⁴¹ The United States of America has argued that this issue should not be addressed. See Official Records of the United Nations Security Council - 14 June 1967 - Document [S_PV-1360-EN](#) - Page 20.

opinion of the International Court of Justice issued in July 2024 regarding Israel's occupation of Palestinian territories²⁴².

In this chapter, the legality of the Israeli occupation of the Palestinian territories occupied in 1967 under the law of war justifications will be examined in the first section, and then under international humanitarian law in the second section.

1.2 Under the Law of War Grounds

This section will deal with the facts that occurred in the period leading up to the Six-Day War in 1967, and we will examine the legality of Israel's use of military force in this war, whether it used it in accordance with the provisions of Article 51 of the Charter, i.e. pursuant to the right of self-defense, and in line with its conditions, which are necessity, proportionality and immediacy, or was its use of force an illegal act of aggression, if it was an act of aggression, this confers illegality to this occupation, which arose as a result of the illegal use of force in The Six-Day War of 1967.

In order to know the facts that occurred in the period before the Six-Day War, reference will be made to the statements and comments of Israeli officials and institutions in that period, there is a comment describing these events to the Israeli Ministry of Foreign Affairs recorded on its website, it was stated in this description that Egypt closed the Strait of Tiran on May 22 to Israeli cargo ships, and that this Egyptian behavior constitutes a reason for war, or an act that justifies war, as it is cutting off the main oil resource from Israel, as it is cutting off the only road for Israel To Asia and Iran.

The ministry described that the IDF Chief of Staff Yitzhak Rabin at the time described the impact of these events as potentially putting Israel's existence in grave

²⁴² See Advisory Opinion of the International Court of Justice on "[Legal Consequences of Israeli Occupation Policies and Practices in the Occupied Palestinian Territory, including East Jerusalem](#)" of 19 July 2024.

danger, so Israel pre-empted the inevitable attack, striking the Egyptian Air Force while still on the ground, based on its natural right to self-defense²⁴³.

The Israeli Knesset cabinet had issued a decision on June 4, 1967, published a few years later, ordering Defense Minister Moshe Dayan and Prime Minister Eshkol to set a date for an attack on Egypt, and the next morning, June 5, at 7:45 am was set at the time of launching the "pre-emptive attack" on Egypt²⁴⁴, and the resolution stated that "the armies of Egypt, Syria and Jordan are deployed to launch a multi-front attack that threatens the existence of Israel, and therefore it was decided to launch a military strike aimed at freeing Israel from the siege²⁴⁵.

And in August 1963 an Israeli order on the military government in the state of emergency outlined the expected expansion paths for the next war, including the Sinai Peninsula to the Suez Canal, the Syrian Highlands to Damascus, Lebanon to the Litani River, and the West Bank²⁴⁶.

In the emergency meeting of the Security Council held on the morning of June 5, 1967, the representative of Israel to the session claimed a claim other than the blockade to justify the use of military force by his state, namely that Egypt moved columns of its armored vehicles towards Israel, and Egyptian artillery shelled from the Gaza Strip several Israeli villages adjacent to the Strip, and at the same time Egyptian planes were launching from Sinai airports towards Israel, so Israel used its right to self-defense²⁴⁷.

On June 12, 1967, Eshkol gave a speech to the Knesset in which he recalled his speech to the Knesset on May 29, in which he said that the Israeli forces were "ready to thwart the enemy's plans in all sectors and on all our borders," and said in the speech that the Israeli forces went out and launched air battles and armored battles in the face of the

²⁴³ Israeli Ministry of Foreign Affairs – [1967: The Six-Day War and the Historic Reunification of Jerusalem-2017](#).

²⁴⁴ See John Quigley - The Six-Day War 1967 - in [The Use of Force in International Law: An Issue-Based Approach](#) - Tom Royce, Olivier Courten, Alexandra Hoover - Editors - Oxford University Press - 2018 - page 135.

²⁴⁵ Adapted from Orna Ben-Naftali, Michael Sfar, Al-Hadi Viterbo - [ABCs of the Occupied Palestinian Territory: A Legal Dictionary of Israeli Control over the Occupied Palestinian Territory](#) - Cambridge University Press - 2018 - page 122.

²⁴⁶ Regulatory Order – Military Government in State of Emergency 10/63 – August 1963 – Translated by Akevot. See also "Organization and Training of Military Government Headquarters to Control the Occupied Territories" - Akevot, June 1967.

²⁴⁷ See Yearbook of the United Nations 1967, document [SALES NO.:E.68.I.1](#) , Chapter 9, Outbreak of hostilities on June 5, 1967, and the Security Council considered it, p. 174.

movement of Egyptian forces towards the Egyptian border, and repelling enemy aggression²⁴⁸.

On June 7, the New York Times interviewed Eshkol, the Israeli prime minister at the time, and quoted him as saying that the mere fact that Egypt closed the Strait of Tiran to Israeli ships, and moved its forces to the armistice line, left Israel with one issue, which is whether to respond today or tomorrow, and did not mention the alleged claim that Egypt bombed Israeli villages²⁴⁹.

At the emergency special session of the General Assembly on 17 and 18 June 1967, the representative of Israel cited two arguments on which Israel justified its use of the right to self-defence: the first was that Israel acted in self-defence in response to the Egyptian blockade, which Israel considered an attack and an act of war, and the second was in response to the movement of Egyptian forces by land and sea against the western coast of Israel and the southern territories.²⁵⁰

The head of the United Nations Emergency Force (Indar Jeet Rekhi) had held a meeting in "Tel Aviv" with the Israeli General (Rabin) and (Rekhi) mentioned the details of this meeting in his biography, (Rekhi) stated based on Rabin's clarification of events, that on June 5, the Israeli Air Force succeeded in a surprise attack in destroying the Egyptian Air Force while it was on the ground, before causing any damage to Israeli cities or its military forces²⁵¹.

Rekhi stated that Rabin had planned the ground attack accurately, and that he chose to start his attack on the less densely populated areas in Khan Younis and Rafah in Gaza, with Al-Arish being the focus of his attack, and Rekhi also says in his autobiography that the Israeli military forces were fully prepared for the ground attack, so Israel pretended that the Egyptian forces were the ones who first started the attack, and that they launched

²⁴⁸ See the website of the ["Jewish Virtual Library"](#) – "[Prime Minister Eshkol reviews the Six-Day War – June 12, 1967](#)" – the site link is attached with the text (hyperlink).

²⁴⁹ See John Quigley, *The Six-Day War of 1967*, in *The Use of Force in International Law: An Issue-Based Approach*, Tom Royce, Olivier Curtin, Alexandra Hoover, Editors, Oxford University Press, 2018, p. 133.

²⁵⁰ See United Nations General Assembly - [Fifth Emergency Special Session \(The situation in the Middle East\)](#) - Part I - Verbatim records: A/PV.1525 to A/PV.1559 - June 17, 1967.

²⁵¹ Major General Indar Jeet Rekhi *The Fatal Mistake in Sinai – Withdrawal of the United Nations Emergency Force – Leading to the Six-Day War in June 1967* – Routledge 1981 – Page 134.

a ground counterattack, because it is not appropriate to say that its air force is the one who started War²⁵².

At the outset, before analysing Israeli statements and comments, the Security Council failed to adopt a resolution on aggression, indicating which of the States acted as unlawful acts of aggression²⁵³. However, looking at the records of the 1967 Security Council meetings, we note that the States that abstained in the vote on the Soviet Union draft resolution condemning Israel did not indicate that Egypt had committed an act of aggression²⁵⁴.

In other meetings of the Council, countries such as Cyprus rejected Israel's claims that it acted in self-defense, arguing that it did not find any evidence of an armed attack or invasion of Israeli territory²⁵⁵, and countries such as Zambia and Malaysia considered that pre-emptive strikes do not fall within the scope of self-defense in accordance with Article 51 of the Charter, and Kigley reached these conclusions after a deep examination of the records of the Council's meetings in 1967, where Kigley believes that Israel used force illegally, and that It invaded the Egyptian-occupied Gaza Strip and the Jordan-occupied West Bank, which resulted in the occupation of these areas²⁵⁶.

After reviewing official Israeli statements and comments, they will now be analyzed. As for the Egyptian blockade, it is certain that on May 22, 1967, Egypt closed the Strait of Tiran to Israeli cargo ships, and this argument was the most widely used argument used by Israel to justify its use of military force in self-defense.

At the outset, the blockade is considered an act of aggression under article 3 (c) of the 1974 General Assembly resolution on the definition of aggression²⁵⁷, as well as under

²⁵² Ibid.,

²⁵³ The United Nations Committee on the Exercise of the Inalienable Rights of the Palestinian People, and the Irish Center for Human Rights - [The Legitimacy of the Israeli Occupation of the Occupied Palestinian Territory, including East Jerusalem](#), 2023 - page 42.

²⁵⁴ See United Nations General Assembly, 1548th plenary meeting, held at New York Headquarters, Tuesday, 4 July 1967, 4 p.m., paragraph 14.

²⁵⁵ Official Records of the United Nations General Assembly - June 29, 1967 - UN Doc. A/PV.1541 - pp. 7-8.

²⁵⁶ John Quigley – "Israel's Unlawful Invasion of Palestine in 1967" – in "Prolonged Occupation and International Law, Israel and Palestine" – Nada Kiswanson and Susan Bauer, eds. – April 2023.

²⁵⁷ See General Assembly resolution 3314 (XXIX) of 14 December 1974 on the definition of aggression - Article 3 (c) "Strike a blockade on the ports or coasts of a State by the armed forces of another State;".

article 8 bis (2) (c) of the Rome Statute of the International Criminal Court²⁵⁸. But based on what has been clarified regarding the use of force pursuant to the right of self-defence in the first section of the first chapter of this research, it is not Anything that falls under the concept of aggression is considered to be an armed attack that gives the State the right to use force in self-defence provided for in Article 51 of the Charter.

The concept of "armed attack" contained in article 51 does not include attacks on water areas and merchant ships²⁵⁹, unlike attacks on military vessels²⁶⁰, as confirmed by the International Court of Justice in the Nicaragua case and in the United States and Iran Oil Platforms case in 2003, although such acts are considered to be the use of force, they do not amount to the severity of an armed attack, which grants the aggressed State the use of military force pursuant to the right of self-defence contained in Article 51 of the Charter.

In addition, the Assembly's resolution on the definition of aggression was adopted in 1974, that is, after the war, and according to experts before 1974 in customary international law, including the Paris Declaration of 1856 and the London Declaration in 1909, there was no evidence describing the blockade as an act of aggression²⁶¹.

In addition to the above, the blockade imposed by Egypt was on its sea, the Strait of Tiran belongs to Egypt, the blockade was not imposed on the coasts and ports of Israel²⁶², and countries are entitled to take special precautionary measures on their territories in self-defense, and this was confirmed by the International Court of Justice in

²⁵⁸ [Rome Statute of the International Criminal Court 1998](#) -Article 8 bis (crime of aggression) paragraph (2)(c) "2. ... The adjective of aggressive act applies to any of the following acts ... (c) A blockade of the ports or coasts of one State by the armed forces of another State;".

²⁵⁹ See the judgment of the International Court of Justice - in the case concerning Oil Platforms (Islamic Republic of Iran v. United States of America) - issued on 6 November 2003 - Arabic version - page 25 - paragraph 71 - where this is understood from reading the entire text of the judgment, where it is stated in the text "... The United States also confirmed in its notice to the Security Council and before the Court that the ship accident ... The latest incident was in a series of missile attacks on U.S.-flagged ships... The Court concluded, apart from the question of Iran's responsibility, that it did not consider that these incidents, even if considered in the aggregate, constituted an armed attack on the United States."

²⁶⁰ See the decision of the International Court of Justice on oil rigs, op. cit., paragraph 70, where the text reads "... The Court does not exclude the possibility that the mining of a single military vessel would be sufficient for the realization of the inherent right of self-defence, ...".

²⁶¹ Martin Fink - "The Permanent Crisis of the Law of Naval Warfare" No. 920-921 - International Review of the Red Cross - November 2022. See Declaration of Respect for Maritime Law, Paris, April 16, 1856. See Maritime Laws of War Proclamation, 1909 (208 Consol. TS 338).

²⁶² Tom Ruiz - "Armed Attack" and Article 51 of the Charter of the United Nations - Developments in Customary Law and Practice - Cambridge University Press 2010 - page 277.

the Corfu Canal case in 1949 and stated "especially in its territorial waters²⁶³", Article 51 allows preparation for self-defense or collective defense²⁶⁴.

Therefore, Egypt's behavior in closing the Strait of Tiran to Israeli ships can be considered a precautionary measure within the framework of self-defense, after the Israeli order was issued in August 1963, which specified the expected expansion paths for the next war, which included parts of the State of Egypt from the Sinai Peninsula to the Suez Canal, especially after the Russian warning to Egypt of the possibility of a war instigated by Israel to overthrow the Syrian regime, and this warning preceded the closure of the strait by a few days.²⁶⁵

Experts in international law distinguish between a partial blockade and a total blockade, and that the blockade may be considered in some cases as an armed attack, but the blockade imposed by Egypt on Israel was partial, and did not seriously affect Israel's economy, or its air and sea communications in the Mediterranean, so there was no armed attack²⁶⁶. Israel's arguments that the Egyptian blockade was an armed attack did not receive the support of states in the Security Council²⁶⁷.

At the time, Israel did not consider the blockade an act of aggression, but rather a violation under the agreement, and that it used force in self-defense in response to Egyptian cross-border attacks rather than in response to the Egyptian naval blockade²⁶⁸. Going back to the statements and comments presented at the beginning of this section, we will notice that Israel did not use the justification for responding to Egyptian cross-border attacks much as justification for its use of military force²⁶⁹.

²⁶³ See Judgment of the International Court of Justice – in the case of the Corfu Canal – United Kingdom v. Albania – Substantive Judgment – of 9 April 1949 – p. 29.

²⁶⁴ Schwarzenberger - International Tribunals - Volume II - Law of Armed Conflict - Stevens & Sons Ltd. 1968 - page 35.

²⁶⁵ Meron Madazini - Golda Meir: A Reference Guide to Her Life and Work - Roman and Littlefield 2020 - page 15.

²⁶⁶ See Terry D. Gill – "The Time Dimension of Self-Defense: Anticipation, Anticipation, Prevention and Immediacy" – in Michael N. See Schmidt and Jelena Bejić, *International Law and Armed Conflict: Exploring Fault Lines*, Essay in Honor of Yoram Denstein, Martinus Neghoff, 2007, p. 138.

²⁶⁷ See in general John Quigley, *"The Six-Day War and Israeli Self-Defense"*, Cambridge University Press, 2013.

²⁶⁸ Afra Constantino, *Right of Self-Defense under Customary International Law and Article 51 of the UN Charter* (former N. Sakolas 2000), pp. 77-81.

²⁶⁹ This is evident when referring to official Israeli statements and comments, especially the Foreign Ministry's pre-war comment.

This indicates that the possibility of this incident is very small, because if it actually occurred and an attack by the Egyptian forces took place on Israel, this leaves no doubt about Israel's right to activate and use its right to self-defense, as the Israeli Foreign Ministry's comment does not mention this incident²⁷⁰, and in the interview conducted by the New York Times with (Eshkol) the Israeli prime minister, the latter did not mention the alleged claim that Egypt bombed Israeli²⁷¹ villages.

In the biography of the head of the United Nations Emergency Force (Indar Jet Rekhi), in which he recounted the details of his meeting in Tel Aviv with the Israeli general (Rabin), he stated that Israel initiated the attack, but pretended otherwise²⁷². At the special session of the General Assembly on June 15, 1967, the representative of Israel stated that it had acted in self-defense in response to the movement of Egyptian forces by land and sea towards the Egyptian-Israeli border²⁷³.

In the first section of chapter I of this research, it has been established that such conduct does not amount to an armed attack that activates the use of the right to self-defence under Article 51 of the Charter. The International Court of Justice had affirmed in the 1986 case "Military and paramilitary activities in and against Nicaragua" that military exercises near the border were not considered an armed attack²⁷⁴.

In the emergency meeting of the Security Council held on the morning of June 5, 1967, the representative of Israel in the meeting claimed another claim other than the blockade to justify the use of military force by his state, which is that Egypt moved columns of armored vehicles towards Israel, and Egyptian artillery shelled from the Gaza Strip several Israeli villages adjacent to the Strip, and we have mentioned at the beginning of the analysis of Israeli statements in this section that in the meetings of the United Nations Security Council countries such as Cyprus rejected Israel's claims that it acted in self-defense; Arguing that it found no evidence of an armed attack or invasion of Israeli

²⁷⁰ Israeli Ministry of Foreign Affairs – "1967 Six-Day War and the Historic Reunification of Jerusalem" – 2013.

²⁷¹ Adapted from John Quigley - "The Six-Day War - 1967" in the use of force in international law - an issue-based approach - Tom Royce and Olivier Courtin, eds. - Oxford University Press 2018 - page 133.

²⁷² Major General Indar Jeet Rekhi The Fatal Mistake in Sinai – Withdrawal of the United Nations Emergency Force – Leading to the Six-Day War in June 1967 – Routledge 1981 – Page 134.

²⁷³ Study of the situation in the Middle East by the General Assembly at the first part of the fifth emergency special session - 17 June - 5 July 1967.

²⁷⁴ Recall the court's statement that military exercises near the border are not considered an armed attack.

territory, Rekhi mentioned in his autobiography that Egypt did not carry out any armed attack on Israel.

When referring to the official Israeli statements and comments, we find that Israel did not invoke its use of force under the pretext of pre-emptive self-defence²⁷⁵, and suppose for argument that it invoked this argument, the "concept of pre-emptive self-defence" is completely illegal, and this has been clarified while talking about the concept of self-defence in Chapter I, as it contradicts Article 51 of the Charter, as the article clearly stated that the use of the right to self-defence requires a prior armed attack.

What Gerson and Dinstein referred to was legally unpalatable, as the former pointed out that after the siege there was no guarantee of a peaceful solution in the event of any escalation of threats, so the decision to war had to be taken²⁷⁶. The second notes that if we look at all the measures taken by Egypt in general, including the withdrawal of the United Nations Emergency Force from the Gaza Strip and Sinai, the presence of Egyptian forces on its border with Israel, and the closure of the Strait of Tiran, We conclude that "Israel was entitled to self-defense as soon as possible."²⁷⁷

Resolutions adopted by the General Assembly later in the war considered the Israeli occupation of the Palestinian territories illegal and in violation of the Charter of the United Nations, the principles of international law and relevant UN²⁷⁸ resolutions. General Assembly resolution 3414 (XXX) ([A/RES/3414 \(XXX\)](#)) of 1975 condemned in its second paragraph "Israel's continued occupation of Arab territories in violation of the Charter of the United Nations, the principles of international law and repeated United Nations resolutions;".

²⁷⁵ Christine D. Gray, *International Law and the Use of Force*, Oxford University Press, 2008, p. 161.

²⁷⁶ Alan Gerson, *Israel, the West Bank and International Law*, Frank Cass, 1978, p. 73.

²⁷⁷ Yoram Dinstein - *War, aggression and self-defense* - Cambridge University Press 2012 - page 192. See Thomas M. Frank, "Who Killed Article 2(4)?" *American Journal of International Law*, vol. 804-1970.

²⁷⁸ The **preamble** of many General Assembly resolutions on the situation in the Middle East states that Israel's occupation of Palestinian and other Arab territories is "**illegal**", and the paragraphs of those resolutions state that the Israeli occupation violates the Charter of the United Nations, the principles of international law and the relevant United Nations resolutions. See [General Assembly resolution 3414 \(XXX\)](#) - A/RES/3414 (XXX) - Al-Sar on December 5, 1975 - on the situation in the Middle East - second paragraph. See [resolution 31/61 \(XXXI\)](#)-A/RES/31/61, of 1 December 1976, second paragraph. See [General Assembly resolution 32/20 \(XXXII\)](#) - A/RES/32/20 - on the situation in the Middle East - of November 11, 1977 - preamble and first paragraph. See [Resolution No. 33/29 \(XXXIII\)](#) - A/RES/33/29 - of 7 December 1978 - preamble and first paragraph. [Resolution 34/70 \(XXXIV\)](#) - A/RES/34/70 - of December 19, 1979 - preamble and first paragraph. See [Resolution 35/207 \(XXXV\)](#)-A/RES/35/207-of December 16, 1980-preamble and first paragraph. See [Resolution No. 36/226A](#) - A/RES/36/226 - of December 17, 1981 - first paragraph.

The preamble to General Assembly resolution 20/32 (XXXII) (A/RES/32/20) of 1977 states that the General Assembly "is gravely concerned that the Arab territories occupied since 1967 have been under illegal Israeli occupation for more than ten years and that, three decades later, the Palestinian people continue to be deprived of the exercise of their inalienable national rights".

We conclude from the above that Israel used military force in the 1967 war in contravention of the law of justification of war, and therefore its resulting occupation of Palestinian territories – the West Bank and Gaza Strip – and other Arab territories is illegal. As we mentioned in the introduction to this chapter, we will examine the legality of the Israeli occupation of Palestinian territories under the law of war in addition to the research under the law of justifications of war, and we have mentioned the reason for this, as for the law of war will be discussed under it in the following section.

2.2 Under International Humanitarian Law

This section will be examined as if the findings of the previous section confirm that Israel used force in the 1967 war lawfully under the War Grounds Law, and that it used it in accordance with its natural right to self-defense. The first chapter of this research showed the illegal occupation under the law of war, and the four principles developed by Michael Lynk by which we can judge the occupation whether it is governed in a manner consistent with international law and international humanitarian law or not.

The four criteria set by Michael Lynk are: first, the occupying power does not have sovereignty over the territory it occupies, second, the occupying power must act in the occupied territory in the best interest of the population under occupation, third, the occupying power is temporary, not permanent, and fourth, the occupying power must act in good faith and not violate the Charter of the United Nations and the principles of international law.

In this section, the legality of the Israeli occupation of the Palestinian territories will be analyzed based on the principles of (Michael Lynk) that we mentioned, and on the UN resolutions, the opinions of specialists and the relevant specialized reports issued by international organizations, in addition to which the focus will be on the advisory opinion of the International Court of Justice issued in 2024 on "the legal effects arising from the policies and practices of the Israeli occupation in the occupied Palestinian territories, including East Jerusalem."

In order to find out whether Israeli policies and practices in the occupied Palestinian territories are compatible with international law and international humanitarian law, policies and practices related to settlements and natural resources, related to Israel's application of its domestic law to the occupied Palestinian territories, and related to the right to self-determination, in addition to that, the dilemma of the long-term occupation that characterizes only the Israeli occupation will be studied, and these issues are considered the most important issues that must be taken into account and analyzed, because after analyzing them, it will become clear to us. The legality of the Israeli occupation, and each issue will be analyzed in its own section, respectively.

1.2.2 Settlement and Natural Resources

Since 1967, Israel has been imposing its occupation on Palestinian territories and making significant and permanent changes to them, without Israel declaring its annexation of these territories, but its policies and practices relating to settlement in the West Bank clearly show its de facto annexation²⁷⁹ and exploit natural resources in the occupied Palestinian territories for the benefit of those settlements.

²⁷⁹ Rainer Hoffmann - "Annexation" Max Planck Encyclopedias of International Law - January 2020.

In the first chapter of this research, it was found that the annexation of the occupied territories, whether de jure or de facto, is contrary to the principles of international law, and the exploitation of the situation for the purpose of annexation exceeds the limits of what is permissible in the right of self-defense, it does not comply with the requirements of necessity and proportionality²⁸⁰, and makes the occupation its continuation illegal.

In this section, Israel's policies and practices regarding settlements built on West Bank land will be analyzed, and the analysis will not include the territory of the Gaza Strip, because "by 2005 Israel had completed the withdrawal of its army and the removal of settlements in the Gaza Strip" under the "disengagement plan" announced by Israel in 2004²⁸¹. In addition to settlements, the analysis will include Israel's policies and practices with regard to natural resources in the OPT, and this will be in the first branch of this section. Branch II will clarify Israel's legal mechanisms for the seizure of Palestinian land.

1.1.2.2 Settlement and Natural Resources

Planning²⁸² and dividing the occupied Palestinian territories to build settlements for various purposes – residential, agricultural or commercial – and allocating them to Israeli citizens only, is a form of exercising sovereignty over the occupied Palestinian territories by successive Israeli governments. The Israeli occupying Power does not implement these settlement plans out of military necessity or in the best interests of the occupied population, as evidenced by the fact that these settlements are intended solely for Israeli citizens.

Israel has seized large areas of Palestinian land in the West Bank, including East Jerusalem, for the construction of 250 settlements, and has transferred 719,450 Israeli Jewish settlers to it²⁸³. In its 2024 Advisory Opinion on Israel's Occupation of Palestinian

²⁸⁰ See Michael Booth –[Expert opinion on prolonged occupation behaviour in the Occupied Palestinian Territory](#) -14 July 2017 -Page 8.

²⁸¹ See International Court of Justice, Advisory Opinion on "[Legal Consequences of Israeli Occupation Policies and Practices in the Occupied Palestinian Territory, including East Jerusalem](#)", 19 July 2024, p. 29, para. 88.

²⁸² Office of the United Nations High Commissioner for Refugees (UNHCR) - "Report of the Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967" - issued on 22 October 2018 - A/73/45717 - paragraph 31.

²⁸³ State of Palestine - Palestinian Central Bureau of Statistics - Number of settlers in Israeli settlements in the West Bank by region - 1986-2021.

Territories, the International Court of Justice stated that these areas are mostly "land that can be described as private property but which Israel has declared as state land" and reminded you that "almost all of this state land has been allocated to Israeli settlements."²⁸⁴

Former UN Secretary-General Ban Ki-moon stated in June 2021 that "Israel has pursued a policy of gradual de facto annexation of the territories it has occupied since 1967, to the point that the prospect of achieving a two-state solution has almost vanished."²⁸⁵ According to the Secretary-General's 2023 report, settlers carry out widespread violence against Palestinians, and the Israeli authorities do not prevent or punish settlers from such acts²⁸⁶. This indicates that the Israeli authorities are not administering the Occupied Palestinian Territory in good faith, nor do they administer the territory in a manner that is in the best interest of the protected population.

The ICJ, in its 2024 Advisory Opinion on Israel's occupation of Palestinian territories, therefore considers that "Israel's systematic failure to prevent or punish settler attacks against Palestinian life or physical integrity, as well as Israel's excessive use of force against Palestinians, is inconsistent with the obligations"²⁸⁷ imposed on it under Article 46 of the Hague Regulations and Article 27(1) of the Fourth Geneva Convention²⁸⁸.

In 1971, the Israeli occupying power issued Military Order No. 418, transferring jurisdiction over planning and zoning from local Palestinian village councils to the military commander²⁸⁹. Based on this and other relevant military orders, the Israeli occupying power systematically prevents Palestinians from obtaining permits to build

²⁸⁴ See Advisory Opinion of the International Court of Justice on ["Legal consequences arising from the policies and practices of the Israeli occupation in the Occupied Palestinian Territory, including East Jerusalem"](#) of 19 July 2024 - page 37 - paragraph 120.

²⁸⁵ The Elders – "Ban Ki-moon: The world should support a new approach to the Israeli-Palestinian conflict" – June 30, 2021. See Omar Dajani, "Seminar on Rethinking Israeli Settlements: "Creeping Israeli Annexation," American Journal of International Law 2017, p. 51. See Valentina Azarova, "Israel's Unlawfully Protracted Occupation: Consequences in an Integrated Legal Framework", European Council on Foreign Relations Policy Brief, June 2017, p. 7.

²⁸⁶ See UN General Assembly - Report of the Secretary-General - Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan - [A/78/554](#) - para. 45-74.

²⁸⁷ See Advisory Opinion of the International Court of Justice on [the Legal Consequences of Israeli Occupation Policies and Practices in the Occupied Palestinian Territory, including East Jerusalem](#), 19 July 2024, p. 47, para. 154.

²⁸⁸ *Ibid.*, paragraph 147.

²⁸⁹ Israeli Military Order No. 418 on the Town, Village and Building Planning Law (Judea and Samaria) 1971.

housing, and demolishes unauthorized structures, demolishing some 9,163 unlicensed structures between January 2009 and January 2023, displacing 13,000 Palestinians²⁹⁰.

In return, the occupying power builds settlements in those lands from that it has seized and displaced its inhabitants, and transfers settlers to these settlements, resulting in Changing demographics in the West Bank²⁹¹. By 1992, as a result of Israel's seizure of large swathes of West Bank land classified as "state land," only 12 percent of the 70,000 hectares remained for development for Palestinians²⁹².

Accordingly, Israel was making major changes with lasting consequences in the occupied Palestinian territories of the West Bank, demonstrating its exercise of sovereignty over those occupied territories²⁹³, which referred to de facto annexation. Military Order No. 418 above and similar military orders violate Article 43 of the Hague Regulations²⁹⁴ because it affects civilian life without military necessity and is exploited not for the benefit of the protected civilian population.

What indicates that Israel exercises sovereignty over the occupied Palestinian territories is that the Israeli government itself designs and implements the settlement project in the West Bank, it is the one who plans, zons and confiscates land, it builds the infrastructure necessary to connect the settlements to each other and to Israel itself, and it is the one who provides water, sanitation and electricity services to the settlements²⁹⁵. And settlement plans are not designed to serve the best interests of the protected occupied Palestinian population, or for reasons of military necessity, but rather colonial plans that reflect Israel's expansionist policy aimed at annexing Palestinian lands.

²⁹⁰ UN Office for the Coordination of Humanitarian Affairs (OCHA) - Distribution of data on demolitions and displacements in the West Bank.

²⁹¹ Population – Statistical Summary of Israel 2019 – No. 70 – Jewish and Other Population by Natural Area – 2018. See UN Office for the Coordination of Humanitarian Affairs (OCHA), "Under Threat: Demolition Orders in Area C of the West Bank." See Claire Parker – "The number of Jewish settlers in the West Bank exceeds half a million," Washington Post – February 2, 2023.

²⁹² UN-Habitat - "Area C Spatial Planning Report for the West Bank of the Palestinian Territory Occupied by Israel by an International Advisory Board" - May 2015 - page 18.

²⁹³ Al-Haq – Develop guidelines to determine whether the legal status of Area C in the oPt constitutes annexed territory under international law – 2020 – page 47.

²⁹⁴ Article 43 of the Hague Regulations stipulates that "if the authority of the legitimate power is effectively transferred to the occupying power, the latter shall, as far as possible, achieve and ensure security and public order, while respecting the laws in force in the country, except in cases of extreme necessity to do so."

²⁹⁵ Fourth United Nations Symposium on the Question of Palestine - "The Inalienable Rights of the Palestinian People" - 31 August - 4 September 1981 Havana.

Since the beginning of the occupation, Israeli political leaders have developed a number of settlement plans and guidelines, which have formed the basis of successive Israeli Governments' decisions on the construction and expansion of settlements since 1967. This is confirmed by the report of the International Independent Mission mandated in 2012 to investigate the legal implications of Israeli settlements, which noted that successive Israeli governments follow a certain approach in their settlement practices that is identical to existing settlement plans, although these Governments do not formally approve them, but they implement them on the ground²⁹⁶.

In 1967, since the beginning of the Israeli occupation of the West Bank, the then Israeli Minister of Defense Yigal Allon formulated a plan aimed at ensuring maximum security and space for Israel with as few Arabs as possible, and this plan was implemented under the Labor Party government, and the settlement of Ma'ale Adumim was built east of Jerusalem between 1975 and 1979²⁹⁷.

The Israeli government established the Joint Ministerial Committee to study the rate of development in Jerusalem in 1973, which decided to establish an external ring of settlements around Jerusalem, and the Jerusalem Municipality built Mishor Adumim²⁹⁸. Israeli political leaders continued to develop plans and provide models for the construction of settlements in carefully defined strategic areas with the aim of fragmenting the Palestinian territory, including the Watchman Plan in 1976, which was informally approved by then-Israeli Prime Minister Rabin²⁹⁹, the Sharon-Watchman Plan in 1977³⁰⁰, and the Drobles Plan of 1977, which is considered the model settlement plan for the Likud government in the eighties³⁰¹.

²⁹⁶ UN Human Rights Council – "Report of the Independent International Fact-Finding Mission to Investigate the Impact of Israeli Settlements on the Civil, Political, Economic, Social and Cultural Rights of the Palestinian People throughout the Occupied Palestinian Territory, including East Jerusalem" – 2012 – para. 23.

²⁹⁷ Eyal Weizmann - *Hollow Land: The Architecture of Occupation in Israel* - Verso 2007 - p. 58.

²⁹⁸ Laila H. Farsakh – *Rethinking the Palestinian State, Self-Determination and Decolonization after Partition* – University of California Press 2021 – pp. 84-85. See "History of Israeli settlement expansion in and around East Jerusalem from 1967 to 1993" – *Jerusalem Story* 6 December 2022.

²⁹⁹ "Israeli Settlement Master Plans 1976-1991" - Palestinian Academic Association for the Study of International Affairs.

³⁰⁰ Eyal Weizmann - *Hollow Land: The Architecture of Occupation in Israel* - Verso 2007 - p. 58.

³⁰¹ United Nations, Question of Palestine – "Settlements/Matityahu Plan without Druplas/Settlements established by Israel in the Illegally Occupied Arab Territories – Letter from the Chairman on behalf of the United Nations Committee on the Exercise of the Inalienable Rights of the Palestinian People" – 9 June 1981.

The Drobles plan aimed to connect existing settlements to each other in a single network, bringing them into full contiguity with the Israeli coastal plain³⁰², and by 1979 there were about 43 existing settlements in the West Bank, to which 10,000 settlers had been transferred³⁰³. In 1981, then-Israeli Defense Minister Ariel Sharon presented a plan to build settlements along the central mountain range and the Green Line, while leaving pockets of densely populated Palestinian centers under Palestinian³⁰⁴ control. Indeed, 10 settlements have been established on those mountain hills and north of Jerusalem³⁰⁵.

Support for the settlement project continued by Israeli officials and government agencies, so the "100,000" plan was issued by the Israeli Ministry of Agriculture in 1983³⁰⁶, and Prime Minister Yitzhak Shamir presented guidelines to the Knesset that matched the "100,000" plan³⁰⁷, which aimed to transfer 100,000 Israeli settlers to live in settlements, with new settlements built until 2010³⁰⁸.

Also, in 1991, the then Israeli Minister of Construction (Sharon) presented the "Seven Stars" plan, which aimed to build new settlement industrial cities³⁰⁹, and in 1996 the then Israeli Prime Minister (Netanyahu) set guidelines for the government on settlements, as it considered that settlement has national importance to defend Israel and reflects the Zionist achievement³¹⁰, and by 1999 50 new outposts had been established³¹¹.

³⁰² "Israeli Settlement Master Plans 1976-1991" - Palestinian Academic Association for the Study of International Affairs. See "History of Israeli settlement expansion in and around East Jerusalem from 1967 to 1993," Jerusalem Story – December 6, 2022.

³⁰³ UN Human Rights Council - "Report of the Independent International Fact-Finding Mission to Investigate the Impact of Israeli Settlements on the Civil, Political, Economic, Social and Cultural Rights of the Palestinian People Throughout the Occupied Palestinian Territory, including East Jerusalem", 2012, p. 27.

³⁰⁴ "Israeli Settlement Master Plans 1976-1991" - Palestinian Academic Association for the Study of International Affairs.

³⁰⁵ Ibid.

³⁰⁶ UN Human Rights Council - "Report of the Independent International Fact-Finding Mission to Investigate the Impact of Israeli Settlements on the Civil, Political, Economic, Social and Cultural Rights of the Palestinian People Throughout the Occupied Palestinian Territory, including East Jerusalem" - 2012 - p. 30.

³⁰⁷ Ibid., p. 31.

³⁰⁸ Ibid., p. 30.

³⁰⁹ "Israeli Settlement Master Plans 1976-1991" - Palestinian Academic Association for the Study of International Affairs.

³¹⁰ UN Human Rights Council - "Report of the Independent International Fact-Finding Mission to Investigate the Impact of Israeli Settlements on the Civil, Political, Economic, Social and Cultural Rights of the Palestinian People throughout the Occupied Palestinian Territory, including East Jerusalem" - 2012 - p. 32.

³¹¹ Ibid. -page 33.

Settlement construction did not stop under Prime Minister Ehud Barak from 1999 to 2001, or under Prime Minister Ariel Sharon in his first and second terms, from 2001 to 2006³¹², and a number of master plans for settlement in Jerusalem were implemented, including the Jerusalem Plan 2000 and the Jerusalem Master Plan 2020, which aimed to change the demographics of the city and strengthen the Jewish Israeli presence in it³¹³. The Jerusalem Masterplan 5800 laid out plans for the establishment of the Greater Jerusalem Metropolis, which includes the areas of Bethlehem, Jericho and Ramallah³¹⁴, and proposed the establishment of an international airport in Jericho,³¹⁵ and the expansion and development of the settlement of Atarot to make it the main industrial center of Israel³¹⁶.

Six months after this year, Israel submitted a total of about 30,000 new housing units proposed in settlements, 16,000 of them in East Jerusalem³¹⁷, and 13,000 settlement units in the West Bank³¹⁸, and the new Israeli government had approved six settlement construction plans, including the construction of two new settlements³¹⁹.

The report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and in Israel, asserted that Israel had transferred land in East Jerusalem to it in order to expand its control and establish Israeli settlements, "more than one third of East Jerusalem has been confiscated for the construction of Israeli settlements, and only 13 per cent of the area it has annexed is currently allocated for Palestinian construction".³²⁰

Based on the above, we note that since the beginning of the occupation in 1967, Israel has been submitting and implementing proposals and plans related to settlements, and the International Court of Justice affirmed this in its 2024 advisory opinion on Israel's

³¹² Ibid. -pp. 35-36.

³¹³ Jerusalem Local Outline 2000 - Report No. 4 Proposed Plan and Master Planning Policies Prepared for Jerusalem Municipality - Section 7.

³¹⁴ Jerusalem Magazine 5800-21-20.

³¹⁵ Jerusalem Magazine 5800-48-49.

³¹⁶ Jerusalem Magazine 5800-26-27.

³¹⁷ Ir Amim – A significant acceleration in Israeli settlement activity since January 2023 along with the denial of Palestinian housing rights - June 15, 2023.

³¹⁸ "Israel Records Approvals for Illegal Settlements: The Rights Package" -Al Jazeera, July 14, 2023.

³¹⁹ Report of the United Nations Security Council - "The Middle East, including the Palestinian question: monthly forecasts for April 2023" - April 2023.

³²⁰ See UN General Assembly - Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel - Document A/77/328 - 14 September 2002 - paragraph 14.

occupation of Palestinian territories that "Israel has been implementing a settlement policy throughout the period of its occupation of the occupied Palestinian territory"³²¹, and the Court noted that "Israel regularly takes retroactive steps to legalize outposts and provides them with the necessary infrastructure for their maintenance."³²² As a result of Israel's construction of infrastructure in settlements, "the population of Israeli settlements is rapidly increasing."³²³

Israel relocates and encourages Israeli Jewish citizens to live in settlements in the West Bank, including East Jerusalem, as confirmed by the International Court of Justice in its 2024 Advisory Opinion on Israel's occupation of Palestinian territories³²⁴. This indicates that the Israeli occupying Power administers the territory of the West Bank in a manner incompatible with the temporary nature of the occupation.

The construction of settlements violates a number of provisions of international humanitarian law governing the conduct of the occupying Power in its administration of occupied territory, including provisions contained in the Hague Regulations of 1907, which protect private property, including the provisions of article 46 and article 52, which specify the cases in which private property may be seized. Article 55 also sets out the use of immovable public property.

In its 2024 advisory opinion on Israel's occupation of Palestinian territories, the International Court of Justice affirmed that Israel's policies and practices regarding the Palestinian territories are inconsistent with these articles³²⁵, as these articles oblige the occupying power to assume "the duty to administer public property for the benefit of the local population, or to meet the needs of the occupying army exceptionally."³²⁶ However, Israel confiscates or manages such property in a manner that "benefits the civilian settler population, to the detriment of the local Palestinian population".³²⁷

³²¹ See Advisory Opinion of the International Court of Justice on "[Legal Consequences of Israeli Occupation Policies and Practices in the Occupied Palestinian Territory, including East Jerusalem](#)" of 19 July 2024, p. 35, para. 113.

³²² *Ibid.*, paragraph 112.

³²³ *Ibid.*, paragraph 117.

³²⁴ *Ibid.*, paragraph 115-116.

³²⁵ See Advisory Opinion of the International Court of Justice on "[Legal Consequences of Israeli Occupation Policies and Practices in the Occupied Palestinian Territory, including East Jerusalem](#)" of 19 July 2024, p. 38, para. 122.

³²⁶ *Ibid.*

³²⁷ *Ibid.*

Area C of the fully Israeli-controlled West Bank is rich in natural resources, and Israel exploits these natural resources, including water, minerals and other natural resources, for the benefit of its population, including settlers, to the detriment or exclusion of the local Palestinian population from their right to benefit from these resources³²⁸, as "86 percent of the Jordan Valley and the mineral-rich Dead Sea are practically under the jurisdiction of the regional councils of Israeli settlements, and the settlements extract minerals and cultivate fertile land at the expense of the Palestinians."³²⁹

This is contrary to the customary principle enshrined in article 55 of the Hague Regulations, namely that the occupying Power is only the administrator of the natural resources of the occupied territory and therefore has an ongoing duty to ensure that the local population has access to an adequate supply of foodstuffs, including water, and that the use of natural resources in the occupied territories must be sustainable³³⁰. In the interest of the protected population.

The UN has issued several reports confirming that Israel prioritizes water supplies to settlements, and that Israel imposes restrictions on Palestinian construction and maintenance of water facilities, leaving Palestinian communities suffering from prolonged and frequent water cuts.³³¹ Therefore, in its 2024 Advisory Opinion on Israel's occupation of Palestinian territories, the International Court of Justice held that "Israel's use of natural resources in the Occupied Palestinian Territory is inconsistent with its obligations under international law."³³²

The construction of the Israeli wall on the occupied Palestinian territory is an integral part of Israel's settlement policy, so the Court considered in its last advisory opinion of 2024 that "the conclusion reached in its advisory opinion regarding the wall regarding the confiscation or seizure of land for the purposes of the construction of the wall also applies to the seizure of land for all purposes that support the continued implementation of Israel's settlement policy. This includes land used for the establishment of Israeli settlements, as well as areas of 'seam zones' (areas between the wall and the

³²⁸ Ibid., paragraph 126.

³²⁹ Ibid., paragraph 131.

³³⁰ Ibid., paragraph 124.

³³¹ Ibid., paragraph 128.

³³² Ibid., paragraph 133.

1949 Green Line), special security zones near settlements, and closed military firing zones.³³³

The construction of settlements violates Article 49 of the Fourth Geneva Convention, and the International Court of Justice noted in its 2024 Advisory Opinion on Israel's occupation of Palestinian territories that the prohibition contained in the sixth paragraph of Article 49 does not cease whether the prohibition "leads to the displacement of the local population or not"³³⁴, and the Court has affirmed that "the transfer of the Israeli civilian population to the West Bank and East Jerusalem has led to the displacement of Palestinians residing there."³³⁵

Several UN resolutions on settlements have been issued, including Security Council Resolution 446 of 1979, which affirmed that "Israel's policy and practices in establishing settlements in the Palestinian and other Arab territories occupied since 1967 have no legal validity and constitute a serious obstacle to a comprehensive, just and lasting settlement in the Middle East."³³⁶

Resolution 2334 was passed in 2016 which affirmed that "Israel's establishment of settlements in the Palestinian territory occupied since 1967, including East Jerusalem, has no legal validity and constitutes a flagrant violation under international law and a major obstacle to the achievement of the two-state solution,"³³⁷ and the International Court of Justice concluded that "the establishment of Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, constitutes a violation of international law."³³⁸

In 2019, the ICC Prosecutor announced an investigation into the situation in Palestine, concluding that "there is a reasonable basis to believe that war crimes have been or continue to be committed in the West Bank, including East Jerusalem, and the Gaza Strip."³³⁹

³³³ Ibid., paragraph 123.

³³⁴ Ibid., paragraph 118.

³³⁵ Ibid.

³³⁶ United Nations Security Council Resolution 446.

³³⁷ United Nations Security Council Resolution 2334-2016 - paragraph 1.

³³⁸ See Advisory Opinion of the International Court of Justice on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (9 July 2004), para. 120.

³³⁹ International Criminal Court - Office of the Prosecutor - Situation in Palestine - "Summary of Preliminary Examination Results -2020, paragraph 1.

In its 2024 Advisory Opinion on Israel's Occupation of Palestinian Territories, the International Court of Justice concluded that "Israel's policies and practices amount to annexing large parts of the OPT. The Court considers that the pursuit of sovereignty over occupied territory, as evidenced by the policies and practices adopted by Israel in East Jerusalem and the West Bank, is contrary to the prohibition of the use of force in international relations and the natural principle of non-acquisition of territory by force."³⁴⁰

We conclude from the above that the policies and practices of the Israeli occupying power regarding settlements and natural resources in the occupied Palestinian territory are illegal, they contravention of the Guiding Principles of the occupying Power established by Michael Lynk, violate the relevant legal rules contained in the Hague Regulations of 1907 and the Fourth Geneva Convention of 1948, and violate the relevant resolutions of the General Assembly and the Security Council, moreover, the International Court of Justice affirmed in its 2024 Advisory Opinion on Israel's occupation of territories Palestinian on the illegality of these policies and practices.

We will show how the Israeli occupying Power is seizing Palestinian land in the presence of the relevant principles and provisions of international law, In the next branch.

1.1.2.2 Israel's legal mechanisms for land grabbing

Since Israel's occupation of Palestinian territory in 1967, it has been working to seize land with the aim of building settlements on it and ensuring their future expansion, and it has done so using a complex bureaucratic legal mechanism, namely declaring land and registering it as "state land." In addition to using other legal mechanisms to seize land, such as seizing land under the pretext of using it for military purposes, or under the pretext that it is abandoned property, or confiscating land for public needs.

³⁴⁰ See Advisory Opinion of the International Court of Justice on "[Legal Consequences of Israeli Occupation Policies and Practices in the Occupied Palestinian Territory, including East Jerusalem](#)" of 19 July 2024, p. 53, para. 179.

In addition, Israel has helped its Jewish citizens buy land on the free market in order to build settlements on it³⁴¹. Each of these methods was based on a different legal basis. Israel's High Court of Justice has played a major role in cooperating with the Israeli government in using these methods and creating the illusion of legitimacy.

Before starting to explain these mechanisms, Israel has allocated the land it confiscates solely for the purpose of building and expanding settlements, preventing Palestinians from benefiting from them, this in itself is illegal and prohibited in international law, as we have previously explained, it constitutes a violation of the principle of prohibition of discrimination and apartheid, even if these lands are seized in legal and just ways in accordance with Jordanian or international law. In this section, I will talk about the legal bases on which each method of appropriation of occupied Palestinian territory used by Israel rests.

First: The confiscation of land under the pretext of using it for military purposes.

International humanitarian law obliges the occupying power to preserve the property of the local population in the occupied territory, which must be protected as much as possible and not confiscated, based on Article 46 of the Hague Convention of 1907³⁴² and Article 53 of the Fourth Geneva Convention of 1949³⁴³. However, it can be concluded from the interpretation of the Hague Convention and the Fourth Geneva Convention that the occupying Power can temporarily acquire land and property privately owned by the population of the occupied territory in cases of necessary and urgent military needs³⁴⁴.

³⁴¹ Land Seizure Israeli settlement policy in the West Bank – B'Tselem – Chapter III – Mechanisms for land grabbing – page 47.

³⁴² Article 46 of the Hague Regulations of 1907 stated that "the honour and rights of the family, the life of persons and private property, ... Private property may not be confiscated."

³⁴³ Article 53 of the Fourth Geneva Convention of 1949 states that "the Occupying Power shall not destroy any immovable or movable private property belonging to individuals or groups, the State or public authorities, or social or cooperative organizations, unless such destruction is absolutely necessary by military operations."

³⁴⁴ See Articles 53, 55 and 57 of Section III of the Fourth Geneva Convention, and see Articles 43, 46 and 56 of Section III of the Hague Convention of 1907. See Yoram Denstein, [International Law of Warlike Occupation](#), Cambridge University Press, 2009.

On this legal basis, Israeli military commanders issued dozens of military orders during 1968 and 1979 to seize territory on the pretext that it served this purpose. During that period, some 47,000 dunums of private land were seized, most of which were settled.

The affected Palestinian residents petitioned the High Court of Justice, claiming that the seizure of their land for the purpose of establishing settlements was illegal under international law, and the court rejected all of these petitions and accepted the argument of the state – Israel – that such seizure is legal on the grounds that the settlements perform necessary defensive and military functions³⁴⁵.

This is evidence that the High Court of Justice, as we have pointed out in the introduction to this section, has created the illusion of legitimacy, as many of the seized lands do not provide any defensive, military and necessary functions, on the one hand, and on the other hand, the seizure of private land must be temporary, but the extensive settlement infrastructure carried out by the Israeli occupation authority confirms the permanence of those settlements.

The policy of confiscating privately owned land for settlements ceased after the High Court of Justice decision in the Elon Moreh settlement case in 1979, which ordered the military to dismantle the settlement and return the land to its owners³⁴⁶. This policy was interrupted not out of a sense of justice and the applicability of international laws, but because of the use of more effective legal mechanisms³⁴⁷.

Since this case, military orders to seize privately owned land for the purpose of building and expanding settlements have not been used until after 1994, after the signing of the Oslo Accords between Israel and the Palestine Liberation Organization³⁴⁸. Military orders aimed at seizing privately owned Palestinian land, but not for the establishment of

³⁴⁵ B'Tselem, [Land Grab, Israel's Settlement Policy in the West Bank](#), Chapter III, Land Acquisition Mechanisms, p. 48.

³⁴⁶ In this case, several residents of the village of Rujib, southeast of Nablus, petitioned the High Court of Justice asking the court to annul a military order issued by the Israeli military commander in the area to confiscate about 5,000 dunams in order to build a settlement named after it (Elon Moreh). See Israeli High Court of Justice decision [No. 390/79 - Dweikat et al. v. Government of Israel et al.](#) on October 22, 1979.

³⁴⁷ B'Tselem, [Land Appropriation, Israeli Settlement Policy in the West Bank](#), Chapter III, Land Acquisition Mechanisms, p. 50.

³⁴⁸ *Ibid.* See United Nations General Assembly — Report of the Secretary-General — **Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan** — [A/78/554](#), para. 20.

settlements but for the construction of bypass roads through Area C³⁴⁹, which are intended to facilitate the movement of Israeli civilians between settlements and between settlements and areas within the Green Line, have been returned.

Some of the affected Palestinians petitioned the High Court of Justice against these military orders, arguing that the roads were not for military purposes, but the court rejected the petition. At the end of 2000, many military orders were issued to seize private land to build new bypass routes³⁵⁰.

Second: The seizure of land under the pretext that it is state land.

As a result of the numerous petitions submitted to the Israeli High Court of Justice by the Palestinian residents affected by the seizure of their land under military orders, in addition to the possibility that the court will thwart the establishment of settlements on those lands, as was achieved in the Alon Moreh case, Israel had to find a new legal mechanism for the seizure of land and the establishment of settlements on it, and indeed a new method was found, which is the seizure of land under the pretext that it is state³⁵¹ land. Through the manipulative use of the Ottoman Land Law of 1858³⁵², about 40% of the West Bank was declared state land, and about 90% of settlements were established on that land³⁵³.

The legal basis on which Israel relies from international law to carry out this action is articles 43 and 55 of the Hague Regulations of 1907, where article 43 requires the occupying Power to respect the laws applicable in the occupied territories, and the Ottoman law of the territories whose basic rules had been adopted by the legislation of the British Mandate, and therefore by Jordanian legislation, and therefore the Ottoman Territory Law continued to apply to the Palestinian territories occupied by Israel since 1967. Article 55 of the Hague Regulations allows the occupying Power to administer and

³⁴⁹ Ibid. See United Nations General Assembly — Report of the Secretary-General — **Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan** — [A/78/554](#), para. 20.

³⁵⁰ See ARIJ reports on the Palestinian Observatory of Israeli Settlement Activities (PICA) website www.poica.org

³⁵¹ See UN General Assembly - Report of the Secretary-General - **Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan** - [A/78/554](#), paragraph 36.

³⁵² This law continued to be applied until 1970, when the Israeli Knesset replaced it with a different law, the Land Law 5729-1969.

³⁵³ Blea Albeck, *Lands in Judea and Samaria*, p. 5.

profit from the property of the occupying Power, while preserving the value and integrity of such property.

On the basis of these two articles of his Hague District, Israel claimed before the international community that the establishment of settlements was not illegal, and was managed to reap profits that contributed to the preservation of Jordanian government property. As a result of this strong legal basis, the High Court of Justice rejected petitions filed by Palestinians against the Israeli occupying Power's declaration of a large part of the West Bank as State land³⁵⁴, and confirmed the legality of the mechanisms used³⁵⁵.

The declaration of land in the West Bank as state land was based on Military Order on Government Property (Judea and Samaria) No. 59, 5727-1967, which gave the military commander in the area the authority to seize and administer the property of the "enemy state" at his discretion³⁵⁶. This order was issued shortly after the beginning of the occupation of the West Bank and was used until 1979, with the aim of controlling territory registered in the name of the Jordanian government³⁵⁷.

Initial examinations revealed that there are a total of 527,000 dunums of West Bank land that could be considered state land. Further examination of Turkish and British ownership certificates during the first five years of occupation revealed that an additional 160,000 dunams were eligible for "registered state land" status. Since 1979, the custodian of government property (himself the custodian of abandoned property, which we will talk about shortly) has considered all of these dunams, totaling 687,000 dunams, to be "state land." , constituting about 13% of the total area of the West Bank³⁵⁸. Until 1977, Labour governments used some of these lands to establish settlements within the boundaries set out in the Allon Plan and to which we had referred earlier in this demand. During the years 1980-1984, about 800,000 dunams were declared and registered as state land³⁵⁹.

³⁵⁴ See, for example, the UN General Assembly, Secretary-General's report, **Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan (A/78/554)**, para. 13.

³⁵⁵ See B'Tselem, [Under the guise of legality, Israel's declaration of state land in the West Bank](#), February 2012.

³⁵⁶ Military Order on Government Property (Judea and Samaria) (No. 59), 5727-1967, in the Planning, Building and Land Laws, pp. 520-523.

³⁵⁷ Meron Benvenisti and Shlomo Khayat, Atlas of the West Bank and Gaza, p. 60.

³⁵⁸ Ibid., p. 61.

³⁵⁹ Ibid., p. 105.

Through the use of this mechanism and based on the Ottoman Land Law, the Israeli occupation authority was able to declare hundreds of thousands of dunums in the West Bank as "state land", perhaps because of the reluctance of many residents of the Palestinian people during the period of the Ottoman rule to register their lands in the title deed (land registry office) under the Ottoman Land Law, as this law required all citizens of the state to register their land in the title deed, and the reason is the reluctance of many of the population about registering their land is the desire to maintain a system of collective property (commons), the desire to evade tax responsibility, and an attempt to avoid conscription into the Turkish army³⁶⁰.

Third: The seizure of land under the pretext that it is abandoned property.

Abandoned property is that whose owner left the West Bank before, during, or after the 1967 war, and real estate is considered abandoned property if its owner or owner is unknown. The trustee (custodian) has the right to acquire and manage such property as he deems appropriate. He does so on behalf of the IDF commander in the area³⁶¹. Under another military order on the matter, the term "abandoned property" is defined to include property owned by a person residing in a hostile country, or by a company controlled by residents of a hostile country³⁶².

The trustee, on the basis of the relevant military orders, is responsible for the protection of the abandoned property until the owner returns, and disposes of the property on behalf of the owners who have left the West Bank and left it.³⁶³ As a general rule, however, Israel has prevented the return of displaced people to the West Bank, so the trustee has not returned the property to its owners. Except in a few cases, when Palestinians returned home under "family unification" permits and claimed their property from the guardian, the guardian returned their property to them in cases where they were proven to be entitled to it, but at nominal value and without tying or interest³⁶⁴.

³⁶⁰ Kenneth W. Stein - The Question of Land in Palestine 1917-1939 - page 21.

³⁶¹ Order on Abandoned Property (Private Property) (Judea and Samaria) (No. 58), 5727-1967, in the Planning, Building and Land Laws, pp. 515-519 -Article 8.

³⁶² Order on Abandoned Property (Private Property) (Additional Provisions) (Judea and Samaria) (No. 150), 5727-1967, in the Planning, Building and Land Laws, pp. 534-535.

³⁶³ Ibid., Articles 7 and 8.

³⁶⁴ State Comptroller - Annual Report 37 - page 1189.

During the first years of Israel's occupation of West Bank land, the Civil Administration registered some 430,000 dunums of land and about 11,000 structures as abandoned property³⁶⁵, which were later declared state land because the majority of this land was not cultivated, and the guardian leased this land to absentee relatives or to resettlement bodies to establish settlements on it³⁶⁶.

Fourth: The seizure of land under the pretext of public benefit.

One of the methods used by "Israel" to seize Palestinian land in the West Bank is its confiscation of land under the pretext of public benefit under the provisions of Jordanian law, (Land Law - Acquisition for Public Needs No. 2 of 1953),³⁶⁷ according to this law, the public authority responsible for the confiscation of private land must publish its intention in the Official Gazette, and if the owner of the land does not submit an appeal against the decision of the Commission within fifteen days, the Ministerial Council discusses the decision of the Commission, and studies what If the purpose stated in the Authority's decision is already in the public interest, the Ministerial Council decides whether to purchase the land or acquire the rights of use for a specified period. The decision must be approved by the king (here the king is the king of Jordan), and the decision shall be published in the Official Gazette. The Land Registry Office is then responsible for sending copies of the decision to the landowners, and according to the law the Authority must enter into negotiations with the owners on the level of compensation, and the notification and negotiation phases can be omitted in urgent cases subject to the approval of the Council of Ministers, based on Article 12 of the Law.

Israel has amended this law twice by military orders in order to conform to its needs³⁶⁸. In 1969, the first amendment took place, transferring the powers of the Council of Ministers and the King to the "delegated authority" on behalf of the military commander in the West Bank, who later became the deputy head of the Civil Administration³⁶⁹. The legal authority responsible for hearing appeals against confiscations was changed instead of the local court, as provided for in Jordanian law, to

³⁶⁵ Ibid.

³⁶⁶ Benvenisti - Dictionary of Judea and Samaria - page 52.

³⁶⁷ Land Law – Expropriation for Public Needs, Law No. 2 of 1953, in Planning, Building and Land Laws, pp. 439-446.

³⁶⁸ Land (Acquisition for Public Needs) Ordinance (Nos. 321 and 949), 5729-1969 and 5743-1981, in the Planning, Building and Land Acts, pp. 545-547.

³⁶⁹ Zimmer, State Lands in Judea and Samaria, p. 33.

the Military Appeals Commission. Possession and management of confiscated land was transferred to the custodian of government and abandoned property in the West Bank³⁷⁰.

In addition, the first amendment eliminated the legal rule that decisions must be published in the Official Gazette and handed over to the landowner, but 12 years after the first amendment, in 1981, the second amendment was introduced, which obligated the "authorized authority" to publish its decisions in the advertising package, and obligated it to inform the landowner personally or through the mukhtar of the village in which he resides. The second amendment was the result of a petition filed by Palestinian residents with Israel's High Court of Justice, who claimed they had not They learn of the confiscation decision until after the tractors have started working on the land³⁷¹.

Jordanian law allows the competent authority to seize privately owned land in one case, which is when it is in the public interest, and therefore this law has not been widely used by the Israeli occupying power to confiscate Palestinian land in the West Bank in order to establish settlements on it, and perhaps the most prominent case in which the Israeli occupation authority used this law was regarding the settlement (Ma'ale Adumim), which was established in 1975 on an area of about 30,000 dunums confiscated from Palestinians³⁷².

However, the Israeli occupying Power has used this law extensively to seize Palestinian land in the West Bank for the purpose of building an extensive network of bypass roads primarily serving settlements, some of which are reserved only for settlers, and the High Court of Justice has upheld these confiscations, arguing that these roads serve the entire local population, including Palestinians³⁷³.

³⁷⁰ B'Tselem, [Land Grab, Israel's Settlement Policy in the West Bank](#), Chapter III, Mechanisms for Land Acquisition, p. 60.

³⁷¹ HCJ 202/81, Tabib et al. v. Minister of Defense, Piskei Din 36(2) 622 (hereafter: Tabib).

³⁷² Paragraph 3 of the State's response in the High Court of Justice 3125/98 - Abd al-Aziz Muhammad Ayyad and others against the commander of the IDF forces in Judea and Samaria (hereinafter: Ma'ale Adumim).

³⁷³ For example, see HCJ 393/82, Jami'ayat Iskan Al-Mu'almun v. Commander of IDF Forces, Piskei Din 37(4) 785, and HCJ 6592/94, Municipality of Hebron et al. v. Minister of Defense et al., Piskei Din 50(2) 617.

2.2.2 Application of Israeli Domestic Law and Apartheid

This section will analyze Israeli practices and policies regarding Israel's extension of its domestic law to the occupied Palestinian territories, and on its practices related to segregation and racial discrimination towards Palestinians, each of which will be analyzed in its own section.

1.2.2.2 Application of Israeli domestic law

The application of the domestic law of the Occupying Power to the territory it occupies is prohibited in international law, as it refers to the intention of the occupying Power to annex those territories, as the Occupying Power is required to exercise its regulatory authority as an occupying Power in the occupied territory in a manner consistent with the rule contained in Article 43 of the Hague Regulations and Article 64 of the Fourth Geneva Convention³⁷⁴. We have referred to this in our talk about the principle of non-sovereignty of the occupying power over the land it occupies in the second section of the first chapter of this research, and in this section will find out whether the Israeli occupation authority applies its local laws on the occupied Palestinian territories.

Israel applies a set of its domestic laws directly or in the form of military orders to the Occupied Palestinian Territory, which is evidence of its intention to annex, and Israel has considered any area of the "Land of Israel", which is the entire territory of Mandatory Palestine, to be subject to its jurisdiction, laws and administration³⁷⁵. This was made clear by the Independent International Commission of Inquiry in its 2022 report "On the Occupied Palestinian Territory, including East Jerusalem, and Israel"³⁷⁶.

³⁷⁴ See Advisory Opinion of the International Court of Justice on "[Legal Consequences of Israeli Occupation Policies and Practices in the Occupied Palestinian Territory, including East Jerusalem](#)" of 19 July 2024, p. 43, para. 141.

³⁷⁵ Law and Administration Ordinance -5708-1948-Article 11(b). "The Kumay-Meron telegram reveals the reasons for the Israeli position on the applicability of the Fourth Geneva Convention" —Akevot, March 20, 1968. See John Quigley, "Jerusalem: The Illegality of Israeli Encroachment," Yearbook of Palestine International Law 1996-1997, 30, National Front, note 49.

³⁷⁶ See "Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel" - [UN doc. A/77/328](#) -14 September 2022 -Paragraph 46.

Israel has largely replaced its military law in the OPT at the beginning of the occupation in 1976 with its own domestic law, so settlers in the West Bank enjoy "the rights and privileges of Israeli citizenship, as well as the protection of Israeli domestic laws and social benefits."³⁷⁷ "Settler regional and local councils now assume effective jurisdiction over settlements in the West Bank."³⁷⁸

Israel applies its currency to occupied Palestine under Military Order No. 76 of 1967³⁷⁹, and directly applies its Law on the Administrative Court No. 5760-2000, which gave the Court jurisdiction over planning and building cases in the West Bank³⁸⁰. Israel has been implementing a number of emergency regulations renewable every five years since 1967, allowing Israeli tax and health insurance law to apply to settlers³⁸¹, and bringing settlers under Israeli criminal jurisdiction.³⁸² The Emergency Regulations (Judea and Samaria – Jurisdiction over Crimes and Legal Aid Jurisdiction of 2007) give Israeli courts jurisdiction to hear cases involving settlers as a result of their conduct in the West Bank³⁸³.

Israel negotiates directly with Israeli and international companies operating in the West Bank leases and licenses for the exploitation of Palestinian natural resources³⁸⁴. In 2018, the Knesset adopted a resolution that would facilitate the accreditation of universities established in settlements under Israel's Higher Education Law³⁸⁵, and the

³⁷⁷ See Advisory Opinion of the International Court of Justice on "[Legal Consequences of Israeli Occupation Policies and Practices in the Occupied Palestinian Territory, including East Jerusalem](#)", 19 July 2024, p. 42, para. 136.

³⁷⁸ Race reference - paragraph 137.

³⁷⁹ Order on the Determination of Israeli Currency as Legal Tender (Judea and Samaria) No. 76-5727-1967. See Eyal Benveniste, *International Law of Occupation*, Oxford University Press 2012, p. 235.

³⁸⁰ Nascheitz Brands Amir – "Administrative Law: The jurisdiction of the Administrative Tribunal extends to a variety of additional matters" Dictionary of 4 March 2016.

³⁸¹ Times of Israel staff – "Months after coalition fall, Knesset adopts settler law" – Times of Israel – January 10, 2023. Neuai Spiegel – "Israeli Knesset extends emergency orders in West Bank for another five years," Haaretz – January 24, 2023.

³⁸² Code of Criminal Procedure (Powers of Execution – Arrests) – 1996. Code of Criminal Procedure (detained on suspicion of security crimes) (temporary order), 2006. The Israeli High Court of Justice ruled that Israel's Basic Law: Human Dignity and Freedom applies personally to Israeli settlers. High Court of Justice, 1661/05 Gaza Shore Regional Council and others v. Israeli Knesset et al. 59(2) PD 2005 (481) - paragraph 80.

³⁸³ Law on the Amendment and Extension of the Emergency Regulations (Judea and Samaria) – Jurisdiction over Crimes and Legal Aid – of 2007 – Article 2(a) and (c). "Bill Granting Illegal Settlers Full Rights as Citizens Passes First Reading in Israel" Middle East Monitor – January 10, 2023.

³⁸⁴ See Human Rights Watch, *Occupation Company: How Settlement Business Contributes to Israel's Violations of Palestinian Rights*, 2016.

³⁸⁵ "Creeping annexation of Israel: Knesset votes to extend Israeli law to academic institutions in the West Bank – Haaretz, February 12, 2018.

Knesset classified settlements as areas of national priority³⁸⁶. At the beginning of 2023, the Israeli government's finance minister acquired the competence of the military commander's authority over civil administration and parts of the powers of the Coordination of Government Activities in the Territories (COGAT). This indicates Israel's clear intention to extend its sovereignty and annex the occupied Palestinian territories³⁸⁷.

As for Israel's application of its domestic law to the East Jerusalem area, Israel forcibly seized in 1967 the Palestinian lands in East Jerusalem, and immediately after occupying these lands, it expanded the boundaries of the Jerusalem municipality to accommodate the entire city and additional parts of the West Bank, under its civil administration³⁸⁸, and what indicates Israel's intention at the beginning of the occupation to annex and integrate East Jerusalem with Israel is for example, minister of Justice Yaakov Samson Shapira's speech in the Knesset on June 27, 1967 when he introduced a bill that later became the "Jerusalem Law", in which he said:

"... The law, jurisdiction and administration of the State shall apply to all parts of the Land of Israel that are de facto under the control of the State,... In addition to the IDF's control of these territories, open sovereign action by Israel is also needed to apply Israeli law. That is why the government saw fit to submit the bill I am now submitting to the Knesset."³⁸⁹ The draft law and the Minister of Justice's speech were issued shortly after the end of the war.

The international community was alerted to the situation in Jerusalem, and on 4 July 1967 the General Assembly passed Resolution 2253, which called on "Israel to rescind all measures it has already taken and to refrain immediately from any action that would change the status of Jerusalem."³⁹⁰ On July 14, 1967, about a week later, it passed

³⁸⁶ Adalah – The Israeli government adds 20 Jewish towns to the list of "national priority areas," including 9 settlements in the occupied West Bank. Arab cities in Israel excluded -August 14, 2013.

³⁸⁷ Emmanuel Fabian – "Handing over 'civil liability' in the West Bank to Smotrich after meeting with the head of the Coordination of Government Activities in the Territories (COGAT)" – The Times of Israel – January 12, 2023.

³⁸⁸ Israeli Ministry of Foreign Affairs - Municipalities Law - Amendment No. 6 (5727-1967) - June 27, 1967.

³⁸⁹ Devery of the Knesset -Parliamentary Records -Volume 49 -June 27, 1967 -Column 2420 quoted in Judea Z. Bloom "Rethinking the Status of Judea and Samaria: A Response to the Eyal Benvensti". Eser. L. Reef -Vol. 51-2018 -Page 165, 167.

³⁹⁰UN General Assembly Resolution [2253 - A/RES/2253 \(ES-V\) - 1967 - paragraph 2.](#)

another resolution on Friday expressing "regret for Israel's failure to implement General Assembly Resolution 2253."³⁹¹

In September 1967, a report by the Secretary-General of the United Nations indicated that the West Jerusalem Municipality began its work in East Jerusalem the day after the cessation of hostilities, but began its work in accordance with Israeli law on June 29 and before that it acted as an agent of the military government³⁹², and the Secretary-General concluded in his report that "Israel was taking all necessary steps to place under its sovereignty parts of the city that were not under Israeli control before June 1967."³⁹³

Jerusalem, both western and eastern, or what is known as the full and united Jerusalem, became the capital of Israel in 1980 under the "Basic Law: Jerusalem as the Capital of Israel 5740-1980" adopted by the Knesset this year, and Israel became directly and by law exercising its sovereignty over all the territory in Jerusalem, violating the principle of the prohibition of the acquisition of land by force.

Therefore, the Security Council adopted Resolution 478 in the same year, in 1980, and affirmed this principle, and also affirmed that all "measures and procedures The legislative and administrative measures taken by Israel, the occupying Power, that have altered or are intended to change, the character and status of the Holy City of Jerusalem, in particular the recent 'Basic Law' on Jerusalem, are null and void and must be rescinded immediately."³⁹⁴ In 2018, another Basic Law, "Israel is the nation-state of the Jewish people," was passed, stating that "a full and united Jerusalem is the capital of Israel."

In its 2024 Advisory Opinion on Israel's occupation of Palestinian territories, the International Court of Justice affirmed that Israel applies its domestic law comprehensively in East Jerusalem, and confiscates land in East Jerusalem through the application of the Absentee Property Law of 1950, which allows for the confiscation of

³⁹¹ UN General Assembly Resolution 2254 - [A/RES/2254 \(ES-V\)](#) - 1967 - paragraph 1.

³⁹² [Report of the Secretary-General submitted under General Assembly resolution 2254 \(ES-V\) on Jerusalem-S_8146](#) of 12 September 1967, paragraph 28.

³⁹³ *Ibid.*, paragraph 33.

³⁹⁴ United Nations Security Council Resolution 478 S/[RES/478 \(1980\)](#) of 1980 Preamble, paragraph 3.

property whose owner was outside the area after November 27, 1947³⁹⁵. "Israel treats East Jerusalem as its national territory."³⁹⁶

The International Court of Justice has affirmed that Israel's application of its domestic law in the West Bank and East Jerusalem is not "justified under any of the grounds set out in the second paragraph of Article 64 of the Fourth Geneva Convention". In this regard, the Court recalls that Israel's transfer of its civilian population to the West Bank and East Jerusalem is contrary to the Fourth Geneva Convention ... Therefore, it cannot be invoked as a basis for regulation in these areas."³⁹⁷

The international community has continued to deny the Israeli actions and practices in East Jerusalem aimed at changing the status of the city, and no country has recognized Jerusalem as the capital of the State of Israel, and Jerusalem has not been recognized by any state that disobeys Israel, but in 2017 the United States of America recognized Jerusalem as the capital of Israel, and moved its embassy from Tel Aviv to Jerusalem, and this behavior was condemned by the international community, as the General Assembly issued its resolution 19/10 on December 21, 2017 He called on all countries to refrain from establishing diplomatic missions in the city of Al-Quds Al-Sharif pursuant to Council Resolution 478³⁹⁸.

It is clear from the foregoing that Israel applies all its domestic laws in East Jerusalem, which is contrary to the legal principle that the occupying Power does not enjoy sovereignty over the occupied territory, Israel applies its domestic law in many Domains in Israeli settlements and in West Bank territories classified (C), This shows that Israel is acting in a manner incompatible with the temporary nature of the occupation, administering the territory in no good faith and in a manner that is not in the best interest of the protected population.

³⁹⁵ See Advisory Opinion of the International Court of Justice on "[Legal Consequences of Israeli Occupation Policies and Practices in the Occupied Palestinian Territory, including East Jerusalem](#)" of 19 July 2024, p. 38, para. 121.

³⁹⁶ Ibid., paragraph 138.

³⁹⁷ Ibid., paragraph 139

³⁹⁸UN General Assembly Resolution 10th Emergency Special Session 19/10 A/RES/ES-10/19 on the Status of Jerusalem of 21 December 2017, paragraph 1.

2.2.2.2 Apartheid

In this section, we will examine whether the Israeli occupying Power, through its administration of the Occupied Palestinian Territory, practices a system of apartheid and discrimination. If that proves to be the case, it shows that Israel is not administering the Occupied Palestinian Territory in good faith, and in a manner that is not in the best interest of the protected Palestinian population.

During our statement of the principle of "good faith", one of the basic principles that regulate the behavior of the occupying power, we mentioned that the occupying power does not imagine that it administers the occupied territories in good faith and violates the peremptory rule in international law "the prohibition of racial discrimination and segregation", the General Assembly has issued resolution No. 3068 (XXVIII) in 1973, according to which it declared the International Convention on the Prevention and Punishment of the Crime of Apartheid. Entered into force in 1976, the Convention sets out in Article 2 the inhuman acts to which the "crime of apartheid" applies.

Among these acts is what is stated in paragraph (c), which stipulates that "any measures, legislative or otherwise, shall be taken which are intended to prevent a racial group or groups from participating in the political, social, economic and cultural life of the country, and deliberately create conditions that prevent the full development of such a group or groups, in particular by depriving members of a racial group or groups of fundamental human freedoms and rights, including ... The right to leave and return to one's homeland, the right to hold a nationality, the right to freedom of movement and residence, the right to freedom of opinion and expression, ...".³⁹⁹

"However, not all differentiation of treatment constitutes discrimination. Accordingly, if the Court affirms the existence of differential treatment, it must, at a second stage, determine whether this differentiation of treatment is nevertheless justified, in that it is reasonable and objective and serves a legitimate public aim" this is what the International Court of Justice

³⁹⁹ Article 2 (c) of the **International Convention on the Prevention and Punishment of the Crime of Apartheid**, [General Assembly Resolution 3068 \(XXVIII\)](#) - adopted on 30 November 1973 - A/RES/3068 (XXVIII).

decided in its 2024 advisory opinion on Israel's occupation of Palestinian territories⁴⁰⁰.

If we look at the founding laws of the State of Israel, we will find that they provide the legal framework for Jewish control over the Palestinian people, and to deprive this group the latter of participation in political life, as the Israeli Basic Law after its amendment in 2018 stipulates that "the State of Israel is the nation-state of the Jewish people in which their natural, cultural, religious and historical right to self-determination is realized. The realization of the right to national self-determination in the State of Israel is limited to the Jewish people."⁴⁰¹

The State of Israel is not a state of all its citizens, according to this law, but only a state of the Jewish people, and Prime Minister Netanyahu publicly stated this⁴⁰². Prime Minister Olmert had proposed that "the formula for the criteria for a unilateral solution is: maximizing the number of Jews; reducing the number of Palestinians,"⁴⁰³ and Yitzhak Rabin said that "the red line for Arabs is 20 percent of the population, and it should not be crossed... I want to preserve the Jewish character of the State of Israel."⁴⁰⁴

Successive Israeli governments have sought to engineer and maintain the Jewish majority, and to reduce and deport Palestinians. Israel initially refused to implement General Assembly Resolution 194, according to which Palestinian refugees have the right as soon as possible to return to their homes from which they were expelled in 1948, and to compensate those who decide not to return, while Israel passed the Israeli Law of Return in 1950, which gave the right to "every Jew to come to this country" and considered it "sacred."⁴⁰⁵, and grants Israeli citizenship "to every Jew who has expressed a desire to settle in Israel."⁴⁰⁶

⁴⁰⁰ See Advisory Opinion of the International Court of Justice on "[Legal Consequences of Israeli Occupation Policies and Practices in the Occupied Palestinian Territory, including East Jerusalem](#)" of 19 July 2024, p. 56, para. 191.

⁴⁰¹ Basic Law: Israel – Nation-State of the Jewish People (adopted 5778-2018 – Articles 1(b) and 1(c)).

⁴⁰² Jonathan Ofer – "Netanyahu is telling the truth: 'Israel is not a state for all its citizens'" *Mondois* – March 11, 2019.

⁴⁰³ David Landau, "The Maximum Jews, the Minimum Palestinians," *Haaretz*, November 13, 2003.

⁴⁰⁴ Roda Ann Kenana, *The Birth of the Nation: Palestinian Women's Strategies in Israel*, University of California Press, 2002, p. 50.

⁴⁰⁵ Law of Return - 5710-1950 - 5 July 1950 - Articles 1-3.

⁴⁰⁶ *Ibid.*

While Israel applies temporary residency to Palestinians residing in the de jure annexed occupied East Jerusalem, Palestinians must consistently prove that their centre of life is Jerusalem, or else lose their residency⁴⁰⁷, "under Israeli domestic law, all other residents of East Jerusalem, including Palestinians who are not Israeli citizens, are considered foreign nationals residing in the territory of Israel, and their right to reside in East Jerusalem is subject to a valid residence permit."⁴⁰⁸

Israel denies Palestinian residents of the West Bank and Gaza Strip full citizenship and residency rights, and prevents them from family reunification⁴⁰⁹, because of the Citizenship and Entry into Israel (Interim Provisions) Law of 2003, which states: "The Minister of the Interior may not grant citizenship to a resident of the West Bank and Gaza Strip on the basis of the Nationality Law, nor grant him a residence permit in Israel on the basis of the Law on Entry into Israel. Israel, on the basis of security legislation in the region."⁴¹⁰

Legislative amendments introduced since 2008 have granted the Israeli government has broad discretion to revoke the permanent residency status of Palestinians in East Jerusalem, and Palestinian residency permits have been revoked for a range of reasons, including "breach of allegiance" to Israel⁴¹¹.

Such legislation falls within the prohibited legislation contained in article 2(c). In its 2024 advisory opinion on the Israeli occupation of Palestinian territories, the International Court of Justice held that: "Israel's residency permit policy is inconsistent with its obligations under the Committee on the Elimination of Racial Discrimination and the International Covenant on Civil Rights." ⁴¹²The Court considers that the preferential

⁴⁰⁷ Law of Entry into Israel - 5712-1952 - Article 1(b).

⁴⁰⁸ See Advisory Opinion of the International Court of Justice on "[Legal Consequences of Israeli Occupation Policies and Practices in the Occupied Palestinian Territory, including East Jerusalem](#)" of 19 July 2024, p. 56, para. 193.

⁴⁰⁹ Ibid., paragraph 195.

⁴¹⁰ Law on Citizenship and Entry into Israel (Temporary Order) - 5763-2003.

⁴¹¹ Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem - Report of the Secretary-General - [A/78/502](#) - 2 October 2023 - paragraph 59.

⁴¹² See Advisory Opinion of the International Court of Justice on "[Legal Consequences of Israeli Occupation Policies and Practices in the Occupied Palestinian Territory, including East Jerusalem](#)" of 19 July 2024, p. 56, para. 194.

treatment imposed by the Israeli residency permit policy in East Jerusalem is unjustified, as it does not serve a legitimate public objective".⁴¹³

Article 2 (d) states that acts of apartheid include "any measures including legislative measures, designed to divide the population along racial lines by the creation of separate reserves and ghettos for the members of a racial group or groups, ... and the expropriation of landed property belonging to a racial group or groups or to members thereof". Israel has passed legislations aimed at seizing the property of Palestinians in Israel, especially refugees.

Article 4 of the Absentee Property Law No. 5710 of 1950 stipulates that the rights related to the property of absentees of Palestinian refugees and exiles are transferred to the guardian, and the guardian is a head appointed by the Israeli Minister of Finance⁴¹⁴, and this property is transferred immovable from it to a "development body established under the Knesset Law" based on the text of Article 19(a)(1) of the Law.

It promulgated the Land Tenure Law No. 5713 of 1953, which facilitated the transfer of confiscated Palestinian land to various Israeli state institutions, including the Development Authority. Under the Land (Expropriation for Public Purposes) Amendment 10 the Minister of Finance is empowered to confiscate public land, which was used primarily to expropriate Palestinian land in Israel⁴¹⁵.

The aforementioned legislation applies both in Israel and in the occupied territories of East Jerusalem. As for the rest of the occupied Palestinian territories (the West Bank and Gaza Strip), racial discrimination is manifested in a number of practices, for example, article 1 of Israel's Basic Law states that "ownership of the land of Israel cannot be transferred, which is real estate owned by the State, the Development Authority or the Jewish National Fund ... whether by sale or in any other way"⁴¹⁶.

In contrast, the Legal and Administrative Affairs Law of 1970 gives Israeli Jews the right to pursue claims to Palestinian residential property in occupied East Jerusalem, even

⁴¹³ Ibid., paragraph 196

⁴¹⁴ Absentee Property Act (5710-1950), articles 2(a) and 4.

⁴¹⁵ Land (General Purpose Acquisition) Act – Amendment No. 10.

⁴¹⁶ Basic Law: Israel Land 5720 – 1960 – Article 1

though such property is protected from confiscation under Article 46 of the Hague Regulations of 1907⁴¹⁷.

In addition, the military commander issues military orders to seize Palestinian land in the West Bank, whether public as state land or private, in order to build the wall, which human rights organizations call the apartheid wall, and to build settlements, infrastructure and settlement roads⁴¹⁸. where all settlements and a network of roads are allocated to Israeli Jews only, and they are treated like their counterparts in Tel Aviv, they have the same right to access government services, and the right to enter and leave Israel and in most parts of the country. West Bank, and they also receive government incentives to live in settlements⁴¹⁹.

Palestinians in Gaza are detained as a "hostile entity", Palestinians in East Jerusalem are detained as a result of revocable residency status, Palestinians in the rest of the West Bank are detained under the law of occupation, their freedom of movement is severely restricted due to the wall and its administrative system⁴²⁰, checkpoints and roadblocks, Palestinian territory is fragmented by settlements and a network of roads reserved for settlers only.

And Palestinian residents live in pockets of cities and villages, and are besieged. They are isolated by the settlement infrastructure, which has made the areas administered by the Palestinian Authority into Bantustan-style enclaves⁴²¹, transforming the growth and development of the Palestinian population.

⁴¹⁷ UNITED NATIONS – "Amid international inaction, systematic Israeli 'demographic engineering' that thwarts Palestinians' ability to seek justice, spokespersons say to the international conference" – "The East Jerusalem crisis is far from over," says the Under-Secretary-General, warning that threats to the status quo in the holy city could have serious global repercussions" (July 1, 2021).

⁴¹⁸ "Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan: Report of the United Nations High Commissioner for Human Rights" - A/HRC/52/76 - 15 March 2023 - page 7.

⁴¹⁹ "Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967" - Michael Lynk - A/HRC/49/87 - 12 August 2022 - paragraph 39.

⁴²⁰ Israeli Ministry of Foreign Affairs – "Security Cabinet Declares Gaza Hostile Territory" – July 19, 2007. See United Nations Economic and Social Commission for Western Asia (ESCWA), "Israeli Practices Towards the Palestinian People and the Question of Apartheid" - 2017 - United Nations document E/ESCWA/ECRI/2017/1.

⁴²¹ State of Palestine – "It is apartheid, the reality of the Israeli colonial occupation of Palestine" – 9 June 2021. See Al Mezan Center for Human Rights, "The Bantustans of Gaza – Israeli Apartheid in the Gaza Strip", 29 November 2021.

In its 2024 Advisory Opinion on Israel's Occupation of Palestinian Territories, the International Court of Justice holds that Israel cannot "invoke the protection of settlers and settlements, whose presence in the OPT is contrary to international law, as a basis for justifying measures that treat Palestinians differently. Furthermore, the Court considers that measures taken by Israel imposing restrictions on all Palestinians solely on the basis of their Palestinian identity are disproportionate to any legitimate public objective and cannot be justified with regard to security."⁴²²

In considering the issue of proving the apartheid carried out by Israel against the Palestinian people, we must look at the suffering of this entire people, located on both sides of the Green Line, as well as those who were displaced between 1947 and 1949, stripped of their citizenship and stripped of their property⁴²³, as stressed by the United Nations Special Rapporteur (Francesca Albanese), and warned against placing restrictions and limitations that prevent a comprehensive consideration of the experience of the Palestinian people in proving apartheid⁴²⁴.

The State of Palestine has published a report in which it explained that Israel through its discriminatory local laws, deprives 48 Palestinians of their rights, and that through military orders on the Palestinian territories occupied in 1967, it facilitates the discriminatory settler-colonial project in these territories⁴²⁵.

The report of the State of Palestine indicated that Israel's racist policy is practiced on both sides of the most dangerous line. And its prolonged occupation of the Palestinian people, which has enabled it to consolidate its Jewish-Israeli domination over that people, is only one part of a broad apartheid regime involving Palestinians on both sides of the Green Line.⁴²⁶

The long-term Israeli occupation of Palestinian territories and the implementation of military decisions that would subject the protected civilian population to the interests

⁴²² See Advisory Opinion of the International Court of Justice on "[Legal Consequences of Israeli Occupation Policies and Practices in the Occupied Palestinian Territory, including East Jerusalem](#)" of 19 July 2024, p. 59, para. 206.

⁴²³ "Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967" - Francesca Albanese - A/77/356 - 21 September 2022 - paragraph 10 (a).

⁴²⁴ Ibid.

⁴²⁵ State of Palestine – "It is apartheid, the reality of the Israeli colonial occupation of Palestine" – June 2021 – pp. 9-12.

⁴²⁶ Ibid., p. 9.

of the occupying Power can in itself be considered apartheid, and from what we have stated in the preceding paragraphs, we can conclude that Israel is carrying out acts of apartheid in violation of article 2, paragraphs (c) and (d), of the Convention on the Suppression and Punishment of the Crime of Apartheid⁴²⁷.

Israel's occupation of the land of Palestine under an institutionalized system of racial discrimination and the domination of one racist group over another has been classified as apartheid by the United Nations Committee on the Elimination of Racial Discrimination,⁴²⁸ United Nations special rapporteurs,⁴²⁹ and prominent Palestinian, Israeli⁴³⁰ and international⁴³¹ civil society organizations⁴³²; and has been described as such by a growing group of third countries, including Namibia⁴³³ and South Africa⁴³⁴.and the 57 member states of the Organization of Islamic Cooperation (OIC⁴³⁵).

⁴²⁷ The United Nations Committee on the Exercise of the Inalienable Rights of the Palestinian People, and the Irish Center for Human Rights - The Legitimacy of the Israeli Occupation of the Occupied Palestinian Territory, including East Jerusalem, 2023 - page 63.

⁴²⁸ Concluding observations on the combined seventeenth to nineteenth report of Israel - CERD/C/ISR/CO/17-19 - 27 January 2020 - paragraph 23.

⁴²⁹ UNHCR – "Israel's 55-year occupation of Palestinian territories is apartheid – UN human rights expert," March 25, 2022.

⁴³⁰ Al-Haq et al. – Israeli Apartheid: The Tool of Zionist Settler Colonialism – November 29, 2022. See Al-Mizan – Bantustans of Gaza – Israeli Apartheid in the Gaza Strip 29 November 2021. See Addameer and Harvard Human Rights Clinic – Joint Report on Apartheid to the UN Independent Commission of Inquiry on the Occupied Palestinian Territory and Israel – March 3, 2022.

⁴³¹ Yesh Din – The occupation of the West Bank and the crime of apartheid: a legal opinion – July 9, 2020. See B'Tselem, The Jewish Supremacy System from the Jordan River to the Mediterranean: This is Apartheid (apartheid), January 12, 2021.

⁴³² Human Rights Watch – Crossing the Threshold of Death, Israeli Authorities and the Crimes of Apartheid and Persecution – April 27, 2021. See Amnesty International – Israeli Apartheid Against Palestinians: A Look at Decades of Oppression and Domination 2022. See Diakonia, Expert Opinion by Dr. Miles Jackson: Occupation and the Prohibition of Apartheid – 23 March 2021.

⁴³³ Statement by H.E. Ambassador Binda Nanda - 43rd session of the Human Rights Council - Item 9 of the general debate: Racism, racial discrimination, xenophobia and related forms of intolerance, follow-up to and implementation of the Durban Declaration and Programme of Action, including the reports of the Intergovernmental Working Group and the High Commissioner - 16 June 2020.

⁴³⁴ National Statement of South Africa General debate on item 7 during the 43rd session of the Human Rights Council -15-16 June 2020.

⁴³⁵ UN Human Rights Committee - "Israeli practices in the occupied Palestinian territories, the form of apartheid mentioned by the Fourth Committee, with the discussion ongoing" - 12 November 2002.

3.2.2 Right to self-determination

The four legal principles governing the conduct of the occupying Power, which were explained by the researcher in the first chapter, especially the principle of (achieving the best interest of the protected population), oblige the occupying power not to impede the people in the occupied territories from exercising their right to self-determination. In the first chapter, the researcher shows the legality of the use of military force pursuant to the right of States and peoples to self-determination.

And the International Court of Justice in its advisory opinion on the wall issued in 2004 had affirmed "the existence of the right of the Palestinian people to self-determination"⁴³⁶, and the Court considered in its 2024 advisory opinion on Israel's occupation of Palestinian territories that "Israel, as the occupying power, is obligated not to impede the Palestinian people from exercising their right to self-determination, including its right to an independent and sovereign State over all the occupied Palestinian territory."⁴³⁷

Israel is violating the right of the Palestinian people to self-determination, **first** of all through its long-term occupation of Palestinian territories, which has been going on for some 58 years., **and secondly**, through its policies and practices relating to the administration of the occupied Palestinian territories.

1.3.2.2 Right to internal self-determination

With regard to the prolonged Israeli occupation of the Palestinian territories, the continuation of the occupation for more than half a century demonstrates Israel's intention to annex these territories de facto, as the United Kingdom House of Lords saw in the *Soffracht* case, where it considered that the occupied territories were de facto annexed

⁴³⁶ See [Advisory Opinion of the International Court of Justice on the Legal Consequences of Israel's Construction of the Wall](#) of 9 July 2004 (A/ES-10/273), para. 118.

⁴³⁷ See International Court of Justice advisory opinion on "[Legal Consequences of Israeli Occupation Policies and Practices in the Occupied Palestinian Territory, including East Jerusalem](#)" of 19 July 2024, p. 66, para. 237.

when effective control over them was of a permanent nature sufficient to show an intention to retain them⁴³⁸.

On the other hand, the Israeli Supreme Court recognizes that the authority of the military commander is temporary, and that the belligerent occupation is temporary in nature, and considers that permanent arrangements are not the authority of the military commander⁴³⁹, but at the same time this court has ignored for many decades since the beginning of this occupation in 1967 the application of Article 49 of the Fourth Geneva Convention, which prohibits the occupying power from transferring its civilian citizens to the occupied territory.

As a result, Israeli settlement continues and expands day by day, leading to the displacement of Palestinians and the seizure of their land, with dire and lasting consequences⁴⁴⁰ and consequences, undermining the Palestinians' right to self-determination and statehood. Israeli Supreme Court Judge Meir Shamgar had proposed in 1982 that military land administration could "from a legal point of view continue indefinitely."⁴⁴¹

The concept that belligerent occupation is "temporary" differs from the concept of "indefinitely", because the latter allows the occupying Power to exercise its powers over the occupied territories indefinitely, which makes the occupied territory de facto annexed to the occupying power, and the people under occupation are unable to determine their own destiny, which is rejected by international law. The researcher referred to this when talking about the principle of temporary occupation in the first chapter.

Almost 20 years ago, in 2004, the International Court of Justice issued an advisory opinion on Israel's construction of the wall, holding that "the construction of the wall and

⁴³⁸ Since 1967, Israel has applied its currency to occupied Palestine under the Military Order on the Determination of the Israeli Currency as Legal Tender (Judea and Samaria) No. 76-5727-1967.

⁴³⁹ High Court of Justice case 2056/04 Beit Surik Village Council v. Government of Israel et al. - June 30, 2004 - paragraph 28.

⁴⁴⁰ See, for example, HCJ case 10356/02 -Haas v. IDF Commander in the West Bank -Mekabila Cave case -March 4, 2004 -This case was joined with High Court of Justice case 1890/03 -Hebron Municipality v. IDF Commander in Judea and Samaria. See High Court of Justice case 1890/03 Bethlehem Municipality v. State of Israel - Rachel's Tomb Case - 3 February 2005. See High Court of Justice case 2056/04 Beit Surik Village Council v. Government of Israel et al. - 30 June 2004. See HCJ case 7857/04 – Marabie et al. v. Prime Minister of Israel et al. – 15 September 2005.

⁴⁴¹ Meir Shamgar – "Legal Concepts and Problems of the Israeli Military Government – The Initial Phase" in "Military Governance in the Israeli-Administered Territories 1967-1980: Legal Aspects" – Meir Shamgar, editor, Hebrew University of Law, pp. 14, 43.

the associated regime bring about a fait accompli where it may become permanent, in which case it would be a de facto annexation".⁴⁴² Jordan has pointed out in its written argument in the court that Israel is carrying out creeping and indirect confiscation of private property⁴⁴³.

The Court has asked Israel to remove the wall and compensate the affected population, which Israel has not done since, on the contrary, the construction of the wall and its reinforcement with defences such as the placement of barbed wire over it, the placement of watchtowers and others have continued to be built, and this indicates that Israel is seeking to bring the occupied territories, especially those annexed by the wall, under its eternal control, which means depriving the Palestinians of their right to self-determination and the establishment of their own State.

If the Israeli occupation resulted from the use of force pursuant to the right of self-defense, this continued right to self-defense should have officially ended as a result of Israel's signing of the peace agreements with Egypt in 1979 and with Jordan in 1994, under these agreements, hostilities between Israel on the one hand and Egypt and Jordan on the other ceased.

In addition, the Framework for Peace in the Middle East agreed at Camp David on September 17, 1978 is enshrined in the preamble to United Nations Security Council Resolutions 242 and 338 in all their parts, which included matters relating to the Palestinian territories, such as the establishment of full self-government for the population of the West Bank and Gaza Strip, and the withdrawal of the Israeli military government and its civilian administration.

Resolution 242 called on Israel to withdraw all its armed forces from the territories it occupied in the 1967 Six-Day War and called for an end to hostilities, yet 57 years after the adoption of Security Council Resolution 242, 45 years after the peace agreement between Israel and Egypt, and 40 years after the peace agreement between Israel and Jordan, Israel's military occupation of the Palestinian territories has continued since that time, despite the alleged original threat that drove Israel to The use of force in self-defense

⁴⁴² See Advisory Opinion of the International Court of Justice on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (9 July 2004), p. 121.

⁴⁴³ Ibid. - Jordan - Written statement submitted by the Hashemite Kingdom of Jordan - 30 January 2004 - pages 79 to 80 - paragraph 106(5).

is over! this indicates that the prolonged Israeli occupation of the Palestinian territories is aimed at passing settlements and related matters to make the Palestinians' right to self-determination impossible.

The reports of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel have described⁴⁴⁴ the situation of Israeli occupation of the Palestinian territories as permanent⁴⁴⁵. In its written pleadings on the advisory opinion of the International Court of Justice on the wall, the State of South Africa rejected prolonged occupation in the name of self-defence on the basis of precedents of necessity and proportionality⁴⁴⁶. In the case "Armed Activities on Congolese Territory", the Congo's separate reply stated that the duration of the Ugandan occupation of its territory showed that the means used by Uganda to occupy it were disproportionate⁴⁴⁷.

The prolonged and indefinite domination of the Israeli occupation over the Palestinian territories, particularly Area C, is only a cover for further practices in East Jerusalem, relating to settlements and the wall, and the application of more of its domestic laws to the occupied territories.

As for the conduct of the Israeli occupying Power related to its administration of the occupied Palestinian territories, Israel, during its long-term occupation of the Palestinian territories, has fragmented the Palestinian land, dispersed the Palestinian administrative rule of these territories, displaced Palestinians and replaced them with Israeli Jewish citizens, through the establishment of settlements, linking these settlements to each other and linking them to Israel, building the wall, and other practices. All of it deprives the Palestinians of the right to self-determination and statehood.

⁴⁴⁴ The Commission was established by the UN Human Rights Council on 27 May 2021 by resolution A/HRC/RES/S-30/1 to investigate all alleged violations and abuses of international human rights law that preceded 13 April 2021. For more details [click here](#).

⁴⁴⁵ "Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel" – A/77/328 – 14 September 2022 – paragraphs 51, 75. See "Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel" – A/HRC/50/21 – 9 May 2022 – para. 69.

⁴⁴⁶ See Advisory Opinion of the International Court of Justice on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory issued on 9 July 2004 - Written Statement submitted by the Government of the Republic of South Africa - paragraph 37.

⁴⁴⁷ International Court of Justice - Case concerning Armed Activities on the Territory of the Congo - Democratic Republic of the Congo v. Uganda - December 19, 2005 On the merits - Written procedures - Response of the Democratic Republic of the Congo - 29 May 2002 - pp. 240-242 - paragraph 172(3).

The International Court of Justice affirmed in its 2024 advisory opinion on Israel's occupation of Palestinian territories that the settlement policy, and "Israel's annexation of large parts of the occupied Palestinian territory, violates the integrity of the occupied Palestinian territory" and this leads to a violation of the right of the Palestinian people to self-determination, considering that territorial integrity is an essential element of the right to self-determination⁴⁴⁸.

The Prosecutor of the Pre-Trial Chamber of the International Criminal Court has stated that "Israel's imposition of certain illegal measures, including the expansion of settlements and the construction of the Wall and its associated regime in the West Bank, including East Jerusalem" has "severely weakened" the exercise of the Palestinian people's right to self-determination⁴⁴⁹.

And UN Security Council Resolution 2334 affirmed that settlements are a major obstacle to achieving a two-state ⁴⁵⁰solution.. With regard to the wall, the International Court of Justice had affirmed in its advisory opinion on the wall that the wall built by Israel that deviated from the Green Line "severely impedes the exercise by the Palestinian people of their right to self-determination",⁴⁵¹ and the United Nations Human Rights Council had considered that the wall made "the two-state solution virtually impossible to implement".⁴⁵²

Israel has divided the Palestinian areas into an archipelago of separate islands, these islands surround the so-called Area C according to the Palestinian-Israeli agreement (Oslo), which constitutes 61 percent of the area of the West Bank, and is under full Israeli control civilly and militarily. Israel perpetuates this fragmentation through numerous practices, including the construction of the wall, settlements, bypass roads that connect settlements to each other and to the Israeli transportation system, placing roadblocks,

⁴⁴⁸ See Advisory Opinion of the International Court of Justice on [the Legal Consequences of Israeli Occupation Policies and Practices in the Occupied Palestinian Territory, including East Jerusalem](#), 19 July 2024, p. 66, para. 238.

⁴⁴⁹ ICC - Prosecution request under Article 19(3) to rule on the jurisdiction of the Regional Court in Palestine - No. 22 - ICC-01/18 - January 2022 - paragraph 9.

⁴⁵⁰ United Nations Security Council Resolution 2334-2016 - paragraph 1.

⁴⁵¹ See Advisory Opinion of the International Court of Justice on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (9 July 2004), para. 122.

⁴⁵² United Nations Human Rights Council Resolution 37/36-2018 - Preamble.

dividing areas into exclusive zones, restricted zones, and restricted military zones⁴⁵³, This restricts Palestinians' physical and administrative access to various areas in the West Bank.

This has led to the seizure of more than 100,000 hectares of private and public Palestinian land, and the demolition of more than 50,000 Palestinian homes since 1967⁴⁵⁴, "according to various UN reports, settlers often subject Palestinians in the occupied Palestinian territory to widespread violence, which is not prevented or punished by the Israeli authorities⁴⁵⁵", and this leads to the displacement of protected populations; "because it contributes to the creation and maintenance of a coercive environment against Palestinians⁴⁵⁶", thus hindering the exercise of the Palestinian people. for his right to self-determination⁴⁵⁷.

Israel has sought to displace protected populations to radically change the demographics of occupied Palestine, especially in East Jerusalem, and does so directly, such as home demolitions, residency revocations, deportations, and indirectly as coercive measures forcing them to move⁴⁵⁸, since 2009 the demolition of 9,509 in the West Bank has displaced 13,739 Palestinians. Under the Jerusalem Local Plan Summary No. 2000 of 2004, Israel sought to have the demographics of Jerusalem by 2020 at 70 per cent for Jews and 30 per cent for Arabs.

So, Israel revoked the residency permits of 14,643 Palestinians and forced them to leave Jerusalem⁴⁵⁹. On the other hand, Israel has transferred 719,450 Israeli Jewish settlers⁴⁶⁰ to the West Bank, including East Jerusalem, and at the same time Israel refuses the return of refugees, who today number about 7 million refugees, including 450,000

⁴⁵³ UN General Assembly - Situation of human rights in the Palestinian territory occupied since 1967 - A/71/557 - 19 October 2016 - Paragraph 41.

⁴⁵⁴ Amnesty International – Israeli occupation: 50 years of dispossession.

⁴⁵⁵ See Advisory Opinion of the International Court of Justice on "[Legal Consequences of Israeli Occupation Policies and Practices in the Occupied Palestinian Territory, including East Jerusalem](#)" of 19 July 2024, p. 46, para. 150.

⁴⁵⁶ Ibid., paragraph 154.

⁴⁵⁷ Ibid., paragraph 241.

⁴⁵⁸ Division for Palestinian Rights of the United Nations, Bulletin of Action by the United Nations System and Intergovernmental Organizations Related to the Question of Palestine - October 2022 - Volume XLV - Bulletin No. 10.

⁴⁵⁹ B'Tselem – Statistics on residency revocation in East Jerusalem – April 19, 2023.

⁴⁶⁰ 388 State of Palestine - Palestinian Central Bureau of Statistics - Number of settlers in Israeli settlements in the West Bank by region - 1986-2021.

Palestinians who sought refuge during the Six-Day War in 1967⁴⁶¹, so Israel issued a set of laws for this, such as the 1952 Entry into Israel Law, the 1950 Law of Return, in addition to the 2022 entry procedures to restrict the entry of foreigners, including family reunification⁴⁶².

The displacement of protected populations violates the first paragraph of article 49 of the Fourth Geneva Convention, the latter of which prohibits the occupying Power "from all forcible transfers of protected persons, including transfers within occupied territory"⁴⁶³. There are two situations in which the occupying Power may carry out an evacuation, namely "if the security of the population or for imperative military reasons so requires", and if one of these conditions is met and the evacuation occurs, the occupying Power must return the transferred population to their homes as soon as hostilities cease in the area concerned⁴⁶⁴.

In its 2024 Advisory Opinion on Israel's Occupation of Palestinian Territory, the International Court of Justice considers that the prohibition contained in the first paragraph of Article 49 includes forced displacement carried out by the use of physical force as well as displacement through the creation of conditions in which protected persons have no choice but to leave⁴⁶⁵.

Through its policies and practices, which include the aforementioned "forced evictions, large-scale house demolitions and restrictions on residence and movement" and other actions that are not of a temporary nature, the Israeli occupying power leaves Palestinians in Area C with no choice but to leave their area of residence, as confirmed by the International Court of Justice in its 2024 Advisory Opinion⁴⁶⁶. "These policies and

⁴⁶¹ State of Palestine "It is Apartheid: The Reality of Israel's Colonial Occupation of Palestine" – 18 June 2021.

⁴⁶² Entry into Israel Law No. 1952-5712. Law of Return 5710 (1950). Procedures for the entry and residence of foreigners in Judea and Samaria -2022.

⁴⁶³ See Advisory Opinion of the International Court of Justice on "[Legal Consequences of Israeli Occupation Policies and Practices in the Occupied Palestinian Territory, including East Jerusalem](#)" of 19 July 2024, p. 44, para. 145.

⁴⁶⁴ Fourth Geneva Convention 1949 -Article 49.

⁴⁶⁵ See Advisory Opinion of the International Court of Justice on "[Legal Consequences of Israeli Occupation Policies and Practices in the Occupied Palestinian Territory, including East Jerusalem](#)" of 19 July 2024, p. 44, para. 145.

⁴⁶⁶ *Ibid.*, paragraph 147.

practices undermine the safety of the Palestinian people in the Occupied Palestinian Territory, greatly impeding the exercise of their right to self-determination."⁴⁶⁷

Israel seeks to erase Palestinian identity, and in addition to changing the demographics of occupied Palestine, it also prohibits the display of Palestinian symbols, for example, Military Order 101 states that Palestinians in the occupied territory may not "carry, wave, display or install political flags or symbols without the permission of the military commander."⁴⁶⁸

Israel is changing the names of Palestinian villages and roads to Hebrew⁴⁶⁹, and has enacted the Budget Foundations Law (Amendment No. 40), which gave the Minister of Finance the power to reduce public funding for institutions that do not commemorate "Israel's Independence Day or the day on which the state was established as a day of mourning" or for institutions that reject "the existence of Israel as a Jewish and democratic state"⁴⁷⁰, this aims to cut off funding for Palestinian institutions operating in Israel and occupied Jerusalem⁴⁷¹, this negatively affects its services, and may lead them to closure.

And the repeated Israeli attacks on Al-Aqsa Mosque, facilitating the entry of settlers into its courtyards⁴⁷², and deliberately restricting Easter celebrations in the Church of the Holy Sepulchre⁴⁷³, confirm Israel's goal of erasing the Palestinian and Christian presence and identity in Jerusalem, and Preventing Palestinians from exercising their right to self-determination.

Israel also interferes with the Palestinian democratic process and makes it difficult to achieve it, in addition to the fact that the West Bank is fragmented and separated by many checkpoints, which makes it difficult for Palestinians to have physical and

⁴⁶⁷ Ibid., paragraph 239

⁴⁶⁸ Israeli Military Order No. 101 - Order Concerning the Prohibition of Incitement and Hostile Propaganda - August 27, 1967. "Israeli bill to ban the flag of Palestine" -Al-Arabiya channel -May 20, 2020.

⁴⁶⁹ The light of his interests - decolonization of history and the narrative of the follower, and the restoration of memory - Zad Publishing 2012.

⁴⁷⁰ Budget Foundations Law - Amendment No. 40 -2011 -5771.

⁴⁷¹ The United Nations Committee on the Exercise of the Inalienable Rights of the Palestinian People, and the Irish Center for Human Rights - [The Legitimacy of the Israeli Occupation of the Occupied Palestinian Territory, including East Jerusalem](#), 2023 - page 59.

⁴⁷² United Nations-Israel: UN expert condemns brutal attacks on Palestinians at Al-Aqsa Mosque6 - April 2023.

⁴⁷³ United Nations -"Israel-Palestine: UN envoy calls for greater efforts to achieve peace amid escalating violence -April 25, 2023. UN Security Council -"The status quo of the holy sites in Jerusalem must be preserved--The Special Coordinator for the Middle East tells the Security Council, while speakers express concern about the recent violent clashes" -SC/14869 -25 April 2021.

administrative access to various areas, Palestinian parliamentarians elected to the Legislative Council are denied entry to East Jerusalem, and those who reside in Jerusalem are subject to the penalty of revoking Jerusalem residency for "breaching allegiance to Israel" under the Law on Entry into Israel⁴⁷⁴. This is contrary to article 45 of the Hague Regulations of 1907 and article 68 (3) of the Fourth Geneva Convention of 1949, which prohibits the occupying power from compelling an occupied population to take an oath of allegiance⁴⁷⁵.

Israel has closed the PLO headquarters in Jerusalem, arrested Palestinian parliamentarians, and military assault on PLC buildings and Palestinian cultural property, has closed and looted the archives of Orient House in Jerusalem, as confirmed ⁴⁷⁶by the UN Commission of Inquiry in 2022, it reported that Israel continues to systematically control the Palestinian democratic process, arresting elected political representatives and members of the government, and in 2009 launched military attacks on Legislative Council Buildings in Gaza⁴⁷⁷.

The Commission concluded that political and economic integration between the West Bank and Gaza is difficult because of the cumulative impact of these Israeli policies and actions⁴⁷⁸. continuation Israel's systematic suppression of the civil and political rights of the Palestinian people in occupied Palestine, including the suppression of demonstrations by lethal means⁴⁷⁹, and mass arrests and raids⁴⁸⁰, and the system of arbitrary administrative detention⁴⁸¹, and the designation of Palestinian human rights

⁴⁷⁴ High Court of Justice -7803/06-Khald Abu Arafa et al. v. Minister of Interior -2002 Since then, this ruling has been used to revoke the residency of renowned human rights defender Saleh Hammouri. UNHCR – "UN Human Rights Spokesperson – Jeremy Lawrence commenting on the deportation of Saleh Hammouri from the oPt" – 19 December 2022.

⁴⁷⁵ Knesset – "Knesset passes legislation allowing the Minister of Interior to revoke permanent residency due to his involvement in terrorism" – March 7, 2018.

⁴⁷⁶ Budget Foundations Law - Amendment No. 40 -2011-5771.

⁴⁷⁷ "Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel" - 9 May 2022 - A/HRC/50/21 - paragraph 47.

⁴⁷⁸ Ibid.

⁴⁷⁹ "Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel" - 9 May 2022 - A/HRC/50/21]

⁴⁸⁰ United Nations Human Rights Council - "Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan - Report of the United Nations High Commissioner for Human Rights" - A/HRC/49/85 - February 2012. Paragraph 30.

⁴⁸¹ United Nations – "Special Rapporteurs demand accountability for Khader Adnan's death and mass arbitrary detention of Palestinians" – 3 May 2023. "We cannot separate Israel's prison policies from the colonial nature of its occupation, which aims to control and subjugate all Palestinians in the territories that Israel wants to control," the UN experts said. "The systematic practice of administrative detention amounts to the war crime of deliberately denying protected persons a fair and lawful trial."

organizations as "terrorist" organizations⁴⁸², prevent the Palestinian people from mobilizing politically to exercise their right to self-determination collectively.

Israel grants licenses and leases for the exploitation of Palestinian natural resources such as quarries, Dead Sea minerals, gas and water resources, which violate the provisions of Articles 47 and 55 of the Hague Regulations of 1907 and Article 33 of the Fourth Geneva Convention of 1949⁴⁸³, These riches belong to the Palestinian people alone. And the wall built by Israel along the Gaza Strip border has deprived Palestinians in the Strip of freedom of movement, and since 2007 the Strip has been under a military blockade on land, sea and air, resulting in a huge economic loss in the Strip amounting to about \$ 16.7 billion between 2007 and 2018, pushing the population into a difficult living situation⁴⁸⁴.

Israel completely separates the Gaza Strip from the West Bank, annexed East Jerusalem by law, separated it from the rest of the West Bank with the concrete wall, and divided other areas of the West Bank into islands and separated them from each other by barriers and settlements. This deprives Palestinians of their right to self-determination.

The UN fact-finding mission confirmed in 2013: "It is clear that the right of the Palestinian people to self-determination, including the right to determine how self-determination is carried out, the right to a population and territorial presence in the Occupied Palestinian Territory, and the right to permanent sovereignty over natural resources, is clearly being violated by Israel through the establishment and continued expansion of settlements"⁴⁸⁵.

The right to "exercise permanent sovereignty over natural resources", "the right of the people to freely determine their political status and pursue their economic, social and cultural development" are among the four main elements of the right to self-

⁴⁸² UN – "UN experts condemn Israeli repression of Palestinian human rights organizations" – 24 August 2022.

⁴⁸³ Economic and Social Commission for Western Asia, Palestine under occupation (3), Identification and Analysis of Israeli Policies and Practices and their Economic Implications in the Occupied Palestinian Territory 2022 (7).

⁴⁸⁴ "UN report finds Gaza suffered \$16.7 billion loss due to blockade and occupation" UN News – November 25, 2020.

⁴⁸⁵ UN Human Rights Council - "Independent International Fact-Finding Mission to Investigate the Impact of Israeli Settlements on the Civil, Political, Economic, Social and Cultural Rights of the Palestinian People throughout the Occupied Palestinian Territory, including East Jerusalem" - A/HRC/22/63 - 7 February 2013 - Para. 38.

determination⁴⁸⁶, and the International Court of Justice concluded in its 2024 advisory opinion on Israel's occupation of Palestinian territories that Israel violated these two rights.

And therefore, Israel has impeded the exercise by the Palestinian people of their right to self-determination. It compromised Palestinian rights, including the right to liberty, personal security and freedom of movement, and made the West Bank and East Jerusalem, particularly the Gaza Strip, dependent on Israel for the provision of basic goods and services⁴⁸⁷.

What we have talked about is the right of the Palestinian people to internal self-determination, which is violated by the Israeli occupation through its various practices that we have outlined. We will now show how the Israeli occupation violates the right to external self-determination of Palestinians.

2.3.2.2 Right to external self-determination

Palestine entered into a Class A mandate, like Syria, Lebanon and Iraq, "to provide advice and administrative assistance by the Mandatory Power until such time as it is able to stand on its own"⁴⁸⁸ under Article 22 of the Charter of the League of Nations, and the International Court of Justice, in its advisory opinion on the wall, affirmed that at the end of the First World War Palestine was subject to a class A mandate by Great Britain pursuant to Article 22, paragraph 4, of the League of Nations Charter⁴⁸⁹.

In this advisory opinion, the Court, based on its previous advisory opinion on "South-West Africa", stated that the mandates were established as a "sacred trust in the neck of civilization" and based on two principles: the principle of non-annexation and the principle of the welfare and development of peoples who are not yet able to administer

⁴⁸⁶ See Advisory Opinion of the International Court of Justice on [the Legal Consequences of the Israeli Occupation Policies and Practices in the Occupied Palestinian Territory, including East Jerusalem](#), 19 July 2024, p. 67, para. 240-241.

⁴⁸⁷ Ibid.

⁴⁸⁸ Charter of the League of Nations - Article 22.

⁴⁸⁹ See Advisory Opinion of the International Court of Justice on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (OPT), issued on 9 July 2004, para. 70.

themselves, and that the primary objective of the sacred trust is the self-determination and independence of the people concerned⁴⁹⁰.

And because the land of Palestine was under a previous mandate, this **first** invalidates Israel's arguments that Palestine before 1967 was a common land, and this is what Judge (Al-Khasawneh) stated in the Court's advisory opinion on the wall⁴⁹¹, since the land of Palestine is still protected as a "sacred trust", this is totally contrary to Israel's argument that the sovereign is missing in Palestine, Israel relied on this false argument to justify its non-implementation of the Geneva Conventions due to the "Lost Yield" referred to by the Israeli Attorney General (Meir Shamgar)⁴⁹².

Secondly, the international community still bears obligations towards the Palestinian people as they belong to a former mandated territory, as it bears a sacred trust that obliges it not to recognize any unilateral change in the status of the territory⁴⁹³, as Judge Koroma confirmed in the same advisory opinion on the wall.

And thirdly, the League of Nations imposed a single restriction on the sovereignty of the Palestinian people, which is the trusteeship entrusted to the Mandatory Power. Therefore, when this trusteeship and mandate ends, Palestine must become independent from that date, since its provisional independence as a nation has been legally recognized by the League Charter⁴⁹⁴. This is based on the opinion of Judge Elaraby in the Court's advisory opinion on the wall⁴⁹⁵.

If we're back to the text of Article 22 of the Charter of the League, we find that it stipulated in its fourth paragraph the following: "Some societies formerly belonging to the Turkish Empire have reached a stage of development where their existence can be temporarily recognized as independent states..."

⁴⁹⁰ See Advisory Opinion of the International Court of Justice on the Legal Implications for States of the continued presence of South Africa in Namibia (South West Africa notwithstanding Security Council resolution 276 of 21 June 1971, paras. See Advisory Opinion of the International Court of Justice on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory of 9 July 2004, para. 88.

⁴⁹¹ Ibid., Judge Al-Khasawneh's Independent Advisory Opinion, p. 237.

⁴⁹² Shamgar, M. - "Respect for International Law in Administered Areas" - Israel Human Rights Yearbook - Volume 1 -1971 - pp. 262-77.

⁴⁹³ See Advisory Opinion of the International Court of Justice on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (OPT), issued on 9 July 2004, para. 7.

⁴⁹⁴ Ibid. - The independent opinion of the Arab judge - 249.

⁴⁹⁵ Ibid.

After the Great Britain ended its mandate on the Palestinian territory, the latter was not subject to the international administration of the United Nations Trusteeship Council, although General Assembly Resolution 181 of 1947, which provided for the partition of Mandatory Palestine into two States, an Arab State and a Jewish State, with the City of Jerusalem remaining under international trusteeship, mandated the Trusteeship Council to assume the responsibilities of the administering Power on behalf of the United Nations in the City of Jerusalem as a separate entity⁴⁹⁶.

That prevented the Council from doing so was Israel's extension of its control since 1948 over the western part of the city in addition to other territories supposedly belonging to the Palestinian State, as its borders were demarcated in resolution 181, and in addition, since 1967, Israel has extended its control over the entire territory of Mandatory Palestine through its occupation of the West Bank and the Gaza Strip. On the basis of the foregoing, there is no doubt that Israel is violating the right of the Palestinian people to external self-determination.

The UN Human Rights Council recently passed Resolution 49/28 in 2022 on the right of the Palestinian people to self-determination, and reminded the international community of the two General Assembly resolutions, Resolution 181 and Resolution 194 on the return of Palestinian refugees, "which affirm and define the inalienable rights of the Palestinian people, in particular their right to self-determination."⁴⁹⁷ This is recognition and affirmation that the Palestinian people have the right to self-determination in the territory outside the 1967 borders, whose borders were demarcated by Resolution 181, and this is consistent with the principle of "current tenure" and international practice, as the borders of the new State may differ from the borders of the colony, the former⁴⁹⁸ replacing the latter.

We return to what we mentioned before, which was referred to by the former Israeli Attorney General (Meir Shamgar) that the Geneva Conventions do not apply because of the "lost return", where (Shamgar) pointed out that the Jordanian and Egyptian authorities, which were previously the rulers of occupied Palestine, did not enjoy

⁴⁹⁶ United Nations General Assembly Resolution 181 of 1948 - Part III.

⁴⁹⁷ United Nations Human Rights Council Resolution 49/28 -11 April 2022 -Right of the Palestinian people to self-determination -A/HRC/RES/49/28 -Preamble.

⁴⁹⁸ International Court of Justice - "Border Dispute Case (Burkina Faso/Republic of Mali)-1986-p. 554-Independent opinion of Judge Louchet-p. 653.

legitimate sovereignty over the land, and therefore the rules of belligerent occupation aimed at protecting the rights of the sovereign cannot be applied⁴⁹⁹, and this position was firmly rejected, and the Court confirmed in its advisory opinion on the wall that the Geneva Conventions Applicable to the Occupied Palestinian Territory⁵⁰⁰.

Yehuda Blum argues that his thesis on the "Lost Yield" should be changed as a result of the agreements between the PLO and Israel, especially after the Oslo Accords in 1993⁵⁰¹. In its advisory opinion on "South-West Africa", the International Court of Justice rejected the idea of "restoring mandated territories to colonial status"⁵⁰² because this would mean "the effective replacement of the mandate regime by annexation, which is highly unlikely in 1920".⁵⁰³

Palestine is among the cases "relating to the self-determination of peoples under colonial or alien domination" that have not yet been resolved, as confirmed by the United Nations Special Rapporteur (Hector Gross Espiel) in a 1980 report prepared for the Subcommission on Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights. There are many General Assembly resolutions affirming that the Palestinian people have the right to an independent and sovereign state⁵⁰⁴. Among these resolutions, but not limited to Resolution 3236 of 1974, this resolution affirmed that

⁴⁹⁹ Yehuda Blum, "The Lost Return: Reflections on the Status of Judea and Samaria," *Journal of Israeli Law*, 1968-279.

⁵⁰⁰ See Advisory Opinion of the International Court of Justice on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (9 July 2004), para. 101.

⁵⁰¹ Yehuda Z. Blum, "Rethinking the Status of Judea and Samaria: A Response to Eyal Benvenisti" -*Isr. L. REV* -Vol. 51-2018-pp. 165, 168.

⁵⁰² See Advisory Opinion on the Legal Implications for States of South Africa's continued presence in Namibia (South West Africa despite Security Council Resolution 276 of 21 June 1971, p. 21).

⁵⁰³ *Ibid.*

⁵⁰⁴ United Nations General Assembly resolution 2535 (XXIV) (1969), section B; United Nations General Assembly resolution 3236 (XXIX) (1974); United Nations General Assembly resolution 3376 (1975), para. 2 (a); United Nations General Assembly resolution 43/177 (1988), para. 2; United Nations General Assembly resolution 55/87 (2000), para. 1; United Nations General Assembly resolution 58/163 (2003); United Nations General Assembly resolution 58/292 (2004); United Nations General Assembly resolution 66/17 (2011), paragraph 21 (b); United Nations General Assembly resolution 67/19 (2012), paragraph 1; United Nations General Assembly resolution 70/15 (2015), paragraph 21 (b); United Nations General Assembly resolution 70/141 (2015), paragraph 1; United Nations General Assembly resolution 71/23 (2016), paragraph 22; United Nations General Assembly resolution 71/95 (2016); United Nations General Assembly resolution 72/14 (2017), paragraph 24; United Nations General Assembly resolution 72/160 (2017), paragraph 1; United Nations General Assembly resolution 73/19 (2018), paragraph 22; United Nations General Assembly resolution 73/96 (2018); United Nations General Assembly resolution 73/158 (2018), paragraph 1; United Nations General Assembly resolution 77/208 (2022), paragraph 1; United Nations General Assembly resolution 77/22 (2022), paragraph 8.

the Palestinian people have the right to self-determination without external interference, and the right to national independence and sovereignty.

Resolution 32/20, adopted in 1977, a decade after the '67 war, affirmed that the Palestinian people had been deprived of the exercise of their inalienable national rights for three decades, was a recognition of the continued right of Palestinians to external self-determination since 1948⁵⁰⁵.

And an affirmation of their right to self-determination on their land occupied since 1967. And Human Rights Council Resolution 34/29 passed in 2017 "reaffirms the inalienable, lasting and unconditional right of the Palestinian people to self-determination, including their right to live in freedom, justice and dignity and the right to establish their own independent State of Palestine"⁵⁰⁶.

The General Assembly established a committee to address the question of self-determination of the Palestinians by its resolution 3376 of 1975 called "the Committee on the Exercise of the Inalienable Rights of the Palestinian People", paragraph 4 of the resolution stated that the General Assembly "recommends an implementation programme intended to enable the Palestinian people to exercise their recognized rights"⁵⁰⁷. "Inalienable, including the right to self-determination without external interference and the right to national independence and sovereignty; and to return to their homes and belongings from which they were expelled."⁵⁰⁸

Israel's retreat from its agreement with the PLO on transferring the administration of the occupied territory to full Palestinian control within five years is another evidence of Israel's violation of the Palestinians' right to self-determination, despite the fact that Palestine has been recognized in the United Nations as a non-member observer state of the United Nations and as an independent state, since 1948 Israel has denied the Palestinians, including seven million refugees and exiles in the diaspora, their right to self-determination.

⁵⁰⁵ United Nations General Assembly resolution 32/20 (1977) - Preamble.

⁵⁰⁶ UN Human Rights Council 29/34 The right of the Palestinian people to self-determination – 24 March 2017.

⁵⁰⁷ United Nations General Assembly - Resolution 3376 (XXX) - [A/RES/3376 \(XXX\)](#) - on the question of Palestine.

⁵⁰⁸ *Ibid.*, paragraph 2.

Since its establishment, Israel has extended its control over the territory that under Resolution 181 belongs to the Palestinian state, and since then it has refrained from implementing General Assembly Resolution 194 on the return of refugees to their homes, and has even extended its control through its 1967 military occupation of the West Bank and Gaza Strip, which annexed its territory either de jure or de facto, all of which is illegal and a violation of the sacred trust⁵⁰⁹.

When considering the question of the right of the Palestinian people to self-determination, attention should be paid to the fact that Palestine is of a special nature, it is continuous mandate area, the successive use of force in various forms has prevented the realization of the right to self-determination⁵¹⁰.

2.2.3.3 Palestine and South-West Africa (formerly Namibia)

The Palestinian case is very similar to the issue of South-West Africa in the matter of the mandate, as South-West Africa was a German colony, and under the Treaty of Versailles its administration was transferred to South Africa under the supervision of the Council of the League of Nations⁵¹¹, but the administration of South Africa was incompatible with its obligations towards Namibia as a Mandate territory, and therefore a number of fatwas were issued on the legal relationship of the administration of South-West Africa under the supervision of the United Nations⁵¹².

The General Assembly passed a resolution on the non-reporting and facilitation of United Nations country visits by South Africa⁵¹³, and in 1966 the General Assembly passed its resolution 2145, by which it formally terminated the Mandate for South-West

⁵⁰⁹ The United Nations Committee on the Exercise of the Inalienable Rights of the Palestinian People, and the Irish Center for Human Rights - [The Legitimacy of the Israeli Occupation of the Occupied Palestinian Territory, including East Jerusalem](#), 2023 - page 66.

⁵¹⁰ Ibid., p. 67.

⁵¹¹ Julio Foandez - "Namibia: The Importance of International Law" - Third World Quarterly - Vol. 8(2) - 1986 -pp. 540, 541.

⁵¹² International Court of Justice, Voting Procedures on Questions of Reports and Petitions on the South-West African Region, Advisory Opinion, 7 June 1955, p. 66;

⁵¹³ United Nations General Assembly Resolution 1142 (XII) – 1957.

Africa and considered it a territory enjoying international status until its full independence was recognized⁵¹⁴.

South Africa did not withdraw from the territory of Namibia, so the Security Council passed Resolution 264 in 1969 calling on South Africa to "immediately withdraw its administration from the territory"⁵¹⁵, considering South Africa's presence in Namibia in the aftermath of the Mandate as a "continuous occupation", illegal and contrary to the principles of the Charter⁵¹⁶.

In 1971, the International Court of Justice issued an advisory opinion on the continued presence of South Africa in Namibia (South-West Africa) despite Security Council Resolution 276. It considered that the former had unjustly occupied the latter's territory since the United Nations had revoked the Mandate on Namibia⁵¹⁷.

The Court considered that "the termination of the Mandate and the declaration of illegality of South Africa's presence in Namibia are valid for all States" Members and non-members of the United Nations, and committed them to "obligations erga omnes to refrain from providing any support or any form of assistance to South Africa in connection with its occupation of Namibia"⁵¹⁸.

In particular, "it is obliged not to recognize any right of South Africa to continue to administer the Mandate"⁵¹⁹, and the Court obliged them "to refrain from entering into treaty relations with South Africa in all cases where the South African Government alleges to be acting on behalf of or in matters relating to Namibia"⁵²⁰, and Judge Padilla Nervo held that "since the continued presence of the South African authorities in Namibia

⁵¹⁴ United Nations General Assembly Resolution 2145 (XXI) Question of South-West Africa - October 27, 1966 - paragraph 1. See also United Nations Security Council Resolution 246-1968-Southwest Africa.

⁵¹⁵ United Nations Security Council Resolution 264-1969, paragraph 3.

⁵¹⁶ United Nations Security Council Resolution 264 The situation in Namibia (20 March 1969) - paragraph 2. See United Nations Security Council Resolution 276-30 January 1970. See also A/RES/2403 (XXIII), 16 December 1968.

⁵¹⁷ See Advisory Opinion of the International Court of Justice on the Legal Implications for States of the continued presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 of 21 June 1971, paragraph 118.

⁵¹⁸ *Ibid.*, paragraph 119.

⁵¹⁹ *Ibid.*, independent opinion of Judge Petró, p. 134.

⁵²⁰ *Ibid.*, p. 55.

is illegal, all measures taken by them in the name of that Territory, or in relation to that Territory, after the cessation of the Mandate, are illegal and void."⁵²¹ .

In its 1950 advisory opinion on the international status of South-West Africa, the Court affirmed two principles that we had already mentioned, namely the principle of non-annexation, and the principle that the Mandate is a "sacred cultural trust", ⁵²²since "the Mandate was established for the benefit of the inhabitants of the territory and humanity in general, as an international institution with an international purpose", ⁵²³ and in this opinion the Court recognized that there had previously been a "strong tendency to annex the territories of former enemy colonies", but after the adoption of Article 22 of the Charter of the League this became unacceptable⁵²⁴.

In its 1970 advisory opinion on the continued presence of South-West Africa in Namibia despite Security Council Resolution 276, the Court noted that the Charter of the United Nations extended the concept of "sacred trust" to apply to "all territories whose peoples have not yet attained full measure of self-government" and thus those territories under the "colonial regime" that retained the right to self-determination⁵²⁵.. The Court said that "these developments leave no doubt that the ultimate objective of the sacred trust referred to in Article 22, paragraph 1, of the Charter of the League of Nations was 'self-determination ... the peoples concerned.'⁵²⁶

Based on the foregoing, and in particular the conclusion of the International Court of Justice that the ultimate goal of the "sacred trust" was the self-determination of the mandated peoples, this means that the "Holy Trust" shall remain in existence until the

⁵²¹ Ibid., independent opinion of Judge de Castro, p. 187.

⁵²²See Advisory Opinion of the International Court of Justice, International Status of South-West Africa, 1950, p. 131. . See the advisory opinion of the International Court of Justice on the Legal Consequences for States of South Africa's continued presence in Namibia (South-West Africa) despite UN Security Council Resolution 276 of 19670, the independent opinion of Judge Padilla Nervo: "Sacred fidelity is not only a moral idea, but also of a legal character and legal significance; it is in fact a legal principle" (p. 31).

⁵²³ See Advisory Opinion of the International Court of Justice, International Status of South-West Africa, 1950, p. 132.

⁵²⁴ See Advisory Opinion of the International Court of Justice on the Legal Implications for States of the continued presence of South Africa in Namibia (South West Africa notwithstanding Security Council Resolution 276 of 21 June 1971, pp. 16 and 42).

⁵²⁵ Ibid., p. 31.

⁵²⁶ Ibid., p. 31, paragraphs 52-53.

people concerned attain their full independence⁵²⁷, and the decision of the League of Nations of 16 April 1946 regulating the dissolution of the League of Nations had affirmed in article 80 the continued administration of the Mandated territories in accordance with the obligations of the Mandate⁵²⁸.

In an advisory opinion of the International Court of Justice on South Africa's continued presence in Namibia, Judge de Castro stated that the objective of Article 80 was "to avoid any change in the rights of the peoples under the Mandate, directly or indirectly, in any way".⁵²⁹ The League can "remove a territory from the status of a Mandate territory only by recognizing that the conditions specified there no longer exist in the territory", as Judge Padilla Nervo said in the same opinion⁵³⁰.

"Sacred Trust" is not tied to the existence of the League, which means that the obligations relating to administration as a "sacred trust" and to ensure that the Secretariat is performed in accordance with the objectives for which it was established, including guaranteeing the rights of the population, remain in existence and cannot be terminated by the dissolution of the League⁵³¹, and therefore Namibia remains an international responsibility, "not subject to the sovereignty of any State, and has been placed under the authority and comprehensive protection of the international community represented by the United Nations since 1946".⁵³²

The analogy between the cases of Palestine and Namibia is that they were Mandatory Territories and became occupied areas after the end of the Mandate, with a distinction being made between the occupation of Palestine and Namibia, the former being subjected to belligerent occupation in the context of an international armed conflict,

⁵²⁷ The United Nations Committee on the Exercise of the Inalienable Rights of the Palestinian People, and the Irish Center for Human Rights - The Legitimacy of the Israeli Occupation of the Occupied Palestinian Territory, including East Jerusalem, 2023 - page 40.

⁵²⁸ See Advisory Opinion of the International Court of Justice on the Legal Implications for States of the continued presence of South Africa in Namibia (South-West Africa) despite Security Council resolution 276 (1970) of 21 June 1971 – Separate opinion of Judge Padilla Nervo – p. 109.

⁵²⁹ *Ibid.*, independent opinion of Judge de Castro, p. 187.

⁵³⁰ Wright - Mandate under the League of Nations (1930) pp. 440-441 cited in the Advisory Opinion of the International Court of Justice - Legal implications for States of the continued presence of South Africa in Namibia (South-West Africa) despite Security Council resolution 276 (1970) - of 21 June 1971 - separate opinion of Judge Padilla Nervo - page 108.

⁵³¹ *Ibid.*, page 109 (in italics in the original document).

⁵³² Advisory opinion of the International Court of Justice - Legal implications for States of the continued presence of South Africa in Namibia (South-West Africa) despite Security Council resolution 276 (1970) - of 21 June 1971 - separate opinion of Judge Dillard - p. 163.

and the latter being occupied by South Africa after its continued presence in the territory of the latter after the end of the Mandate.

And its presence has since become illegal, depriving the Namibian people of the exercise of their right to external self-determination and violating the sacred trust. The sacred trust remains. The achievement of its objectives does not stop at the occupation of the region, but an occupation that violates the right to external self-determination, including the establishment of an independent State, is illegitimate, and this right remains a sacred trust and an international responsibility⁵³³.

4.2.2 Long-Term Israeli Occupation

We mentioned in the second section of chapter I that one of the basic rules governing the conduct of occupation is contained in the Hague Convention of 1907 concerning the Laws and Customs of War on Land and the Fourth Geneva Convention of 1949 relative to the Protection of Civilian Persons in Time of War. The Hague Convention has the advantage of forming part of the rules of customary international law, as they are not merely the provisions of a convention, and therefore the occupying power, even if it is not a party to it, is obliged to apply its provisions⁵³⁴.

These conventions have traditionally sought to protect the fundamental rights and interests of the civilian population under the occupying Power through legal norms that place restrictions on the occupying Power, while at the same time granting it some powers regarding its governmental powers, which it may and sometimes must exercise in lieu of the State whose sovereignty has been abandoned.

The law of occupation sought to strike a balance between two central axes, namely military necessity and the needs of the civilian population⁵³⁵, and often the occupier did

⁵³³ The United Nations Committee on the Exercise of the Inalienable Rights of the Palestinian People, and the Irish Center for Human Rights - [The Legality of the Israeli Occupation of the Occupied Palestinian Territory, including East Jerusalem](#), 2023 - page 41.

⁵³⁴ See [Advisory Opinion of the International Court of Justice on the Legal Consequences of Israel's Construction of the Wall](#) of 9 July 2004 (A/ES-10/273), para. 89, which states that "With regard to international humanitarian law, the Court notes first that Israel is not a party to the Hague Convention IV of 1907, ... The Court considers that the provisions of the Hague Rules have become part of customary law, which is recognized in the first instance of all participants in proceedings before the Court. ...".

⁵³⁵ See the judgment of the Supreme Court of Israel - [Teachers' Housing Association v. IDF Commander in Judea and Samaria](#) - 82/393 - Judgment of 28 December 1983 - paragraph 12.

not exercise his administrative powers as required, so the local population under occupation was not adequately protected⁵³⁶. Regardless of the extent to which the occupation adheres to its administrative powers under international law, the occupation has only temporary administrative powers, as it does not have sovereignty over and control over the territories it occupied⁵³⁷.

We have already clarified this in our talk about the principle of temporary occupation, and it turns out that "the law of occupation is based on the temporary nature of the occupation, but it does not set time limits that would change the legal status of the occupation."⁵³⁸ It can last for a long period of time and this is known as prolonged occupation⁵³⁹.

When considering the issue of long-term occupation, we find that this issue is not mentioned in the conventions of international humanitarian law, as the authors of these instruments did not imagine that the occupation could continue for decades⁵⁴⁰, so we find that the wording of the Fourth Geneva Conventions and the Hague Conventions of 1907 envisaged that the occupation would be only for a short period.

In addition, the Hague Convention did not address methods of how to end the occupation⁵⁴¹, so when Israel disengaged from Gaza in September 2005, there was considerable debate that Gaza remained occupied⁵⁴². In its advisory opinion on the wall

⁵³⁶ See Yuval Shani, [Forty Years After 1967, Reassessing the Role and Limits of Legal Discourse on Occupation in the Israeli-Palestinian Context](#), International Law Forum, Faculty of Law at the Hebrew University of Jerusalem, p. 6.

⁵³⁷ See Advisory Opinion of the International Court of Justice on the Legal Consequences of the Israeli Occupation Policies and Practices in the Occupied Palestinian Territory, including East Jerusalem, 19 July 2024, p. 33, para. 105.

⁵³⁸ See Advisory Opinion of the International Court of Justice on [the Legal Consequences of Israeli Occupation Policies and Practices in the Occupied Palestinian Territory, including East Jerusalem](#), 19 July 2024, p. 34, para. 109.

⁵³⁹ See Meir Shamgar, [Legal Concepts and Problems of Israeli Military Government: The Initial Phase, in Military Governance in the Israeli-Administered Territories, 1967-1980: Legal Aspects](#), Hebrew University, Harry Institute for Legislative Research and Comparative Law, Jerusalem, 1982, p. 43.

⁵⁴⁰ See Omar Ben Naftali - [Lost Time Research - Reconsideration of Article 6 of the Fourth Geneva Convention in the Light of the Legal Consequences of the Construction of a Wall in Occupied Palestine - Opinion of the Region](#) - October 24, 2004 - Review of the Law of Israel - 211-215 and 218. See Doris Abel Graber - [The Evolution of the Law of War Occupation 1863-1914: A Historical Survey](#) - Columbia University Press, New York, 1949 -pp. 290-291; -See the ruling of the Supreme Court of Israel-[Teachers' Housing Association v. IDF Commander in Judea and Samaria](#) – 82/393 – Judgment of 28 December 1983 – paragraph 22.

⁵⁴¹ ⁵⁴¹ See Ian Scobie, [International Law and the Prolonged Occupation of Palestine](#), University of London, Faculty of Law, 20 May 2015, p. 4.

⁵⁴² See Ian Scooby, [International Law and the Prolonged Occupation of Palestine](#), University of London, Law School, 20 May 2015, p. 6.

in 2004, the International Court of Justice affirmed the applicability of the Fourth Geneva Convention to the territory of the occupied West Bank⁵⁴³, and did not address its applicability to the Gaza Strip.

Arguing that the construction of the wall did not affect the Gaza⁵⁴⁴ Strip.. But the Court's 2024 Advisory Opinion on "Legal Implications of Israel's Policies and Practices in the Palestinian Territories..." He stressed that the Gaza Strip, the West Bank and East Jerusalem are a single territorial unit⁵⁴⁵.

The Israeli High Court of Justice recognized that occupation was "temporary in nature" but held that occupation could be long-term⁵⁴⁶. Therefore, the question arises here by researchers about how long does it take for the occupation to end its occupation? In this section, we will show the problems related to the issue of long-term occupation, and how to address them with the help of United Nations bodies and international legal scholars, especially the advisory opinion of the International Court of Justice on the legal consequences arising from Israel's long-term occupation of Palestinian territories⁵⁴⁷.

When considering the definition of occupation, we find that article 42 of the Hague Convention of 1907 defines occupation as follows: "Territory shall be considered occupied when it is already placed under the authority of the hostile army. The ICTY defined it as "occupation defined as a transitional period following the invasion and preceding the cessation of hostilities agreement".⁵⁴⁸

⁵⁴³ See Advisory Opinion of the International Court of Justice on the Legal Consequences of Israel's Construction of the Wall of 9 July 2004 (A/ES-10/273), paras. 90-101, the latter stating that "... The Court considers that the Convention applies to the Palestinian territories that were located east of the Green Line prior to the conflict, and which Israel occupied during that conflict, as there is no need to examine the precise prior status of those territories."

⁵⁴⁴ See Advisory Opinion of the International Court of Justice on "[Legal Consequences of Israeli Occupation Policies and Practices in the Occupied Palestinian Territory, including East Jerusalem](#)" of 19 July 2024, p. 27, para. 78.

⁵⁴⁵ Ibid., page 31, paragraph 98.

⁵⁴⁶ See the judgment of the Supreme Court of Israel, [Teachers' Housing Association v. IDF Commander in Judea and Samaria](#), 82/393, judgment of 28 December 1983, para. 23.

⁵⁴⁷ In December 2022, the General Assembly adopted [Resolution 77/247](#) (A/RES/77/247) – paragraph 18 – whereby the resolution requests, in accordance with Article 96 of the Charter, that the Court, pursuant to Article 65 of its Statute, give an advisory opinion on two questions, including what are the legal consequences arising from Israel's long-term occupation of the Palestinian territory occupied in 1967? States, including Palestine and Israel, have submitted [their written statements on this issue](#) . -See the official website of the Court via the attached link. The Court's advisory opinion was issued on 19 July 2024.

⁵⁴⁸ International Criminal Tribunal for the Former Yugoslavia, Prosecutor v. Mladen Naletilić and Vinko Martinović, Case No . IT-98-34-T, Judgement (Trial Chamber), 31 March 2003, paragraph 214.

In these definitions, no time frame for belligerent occupation is mentioned, yet it is only temporary, but long-term occupation is more or less incompatible with this temporary character because it amounts to actual annexation⁵⁴⁹. As the occupation is of a temporary nature, this requires the occupying Power to preserve as much as possible the territories it occupies, and it should refrain from introducing any permanent changes to these territories, which is referred to by scholars as the principle of conservatism. We have clarified this principle in our discussion of the principle of non-sovereignty of the occupying power in the second section of chapter I.

Indeed, the concept of long-term occupation refers to the "Israeli" occupation of the Palestinian territories occupied in 1967⁵⁵⁰, both in the context of the United Nations and in international jurisprudence. This concept was first used vis-à-vis the Palestinian territories by the Security Council in 1980 in Resolution 471⁵⁵¹, 13 years after the occupation.

It is worth noting that Israel, through the Israeli High Court of Justice, recognized this situation. Rather, its decisions constituted a preliminary material by international law scholars in their analyses of this concept⁵⁵², prior to the issuance of the advisory opinion of the International Court of Justice in 2024 on "the legal consequences arising from Israel's policies and practices in the Occupied Palestinian Territory, including East Jerusalem", in which the Court clarified the issue of prolonged occupation in section IV of its advisory opinion.

Prior to the issuance of this advisory opinion, it was worrying to researchers, as this court also seeks to create results that are incompatible with the principles of international law, since the long-term occupation is a new development that was not expected in international law, the short-term occupation regimes do not adapt adequately to this development⁵⁵³, this has led the Israeli High Court of Justice to repeatedly claim that the

⁵⁴⁹ See Phaios Kotrolis – "[Application of International Humanitarian Law and International Human Rights Law in Situations of Prolonged Occupation: A Matter of Time Only?](#)" – International Review of the Red Cross – Vol. 94 – No. 885 – Spring 2012 – p. 167.

⁵⁵⁰ See Tristan Ferraro, "[Application of the Law of Occupation in Local Courts: Issues and Opportunities](#)," Journal of Israeli Law, Vol. 41, Nos. 1-2, November 1, 2008, p. 338.

⁵⁵¹ See [Security Council Resolution 471](#) of 5 June 1980, paragraph 6. See [Security Council Resolution 476](#) of 30 June 1980, para.

⁵⁵² See Vaïos Kotrolis – "[Application of International Humanitarian Law and International Human Rights Law in Prolonged Occupation: A Matter of Time Only?](#)" – International Review of the Red Cross – Vol. 94 – No. 885 – Spring 2012 – p. 171.

⁵⁵³ See documentation 2 on the previous page.

occupying power can use measures that are not allowed during the short-term occupation⁵⁵⁴.

The Court has sought to legitimize an inherently illegal situation on the grounds that the occupation is protracted in order to exceed some of the limits granted to the occupying power under international humanitarian law, and the Israeli government argues that the long-term occupation makes the occupying Power less committed to the legal regime of occupation and nothing more⁵⁵⁵. However, the International Court of Justice has stressed that the passage of time does not extend the limited and enumerated powers granted by international humanitarian law to the occupying Power, nor does the passage of time relieve the occupying Power of some of the obligations imposed on it⁵⁵⁶.

In the case of *Armed Activities on the Territory of the Congo (Congo v. Uganda)*, the International Court of Justice did not use the term "prolonged occupation", although the Ugandan occupation lasted for almost five years⁵⁵⁷. Therefore, Adam Roberts says that there is no need to define the term "long-term occupation" because there is no point in that, and the long-term occupation will be the one that lasts at least 5 years⁵⁵⁸.

And Vaios Cotrolis agrees that there is no need to define this term, arguing that it is only a descriptive term, and says that any effort to define this term may lead to the establishment of a new category of occupation that does not correspond to the existing legal system⁵⁵⁹, while Ben-Naftali goes further. He says that a long-term occupation is an illegal occupation⁵⁶⁰, supported by Richard Falk, who argues that the legal term of the

⁵⁵⁴ Israeli Supreme Court – Legally registered cooperative in Judea and Samaria against IDF Commander in Judea and Samaria 1984, 307-308. *Dawadin et al. v. Russian Federation Commander of IDF Forces in the West Bank*, 1985, 333-334. See *Jerusalem Economic Corporation Ltd. v. Commander of IDF Forces in Judea and Samaria*, 2000.

⁵⁵⁵ See the report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in the Palestinian territories (E/CN.4/2002/32).

⁵⁵⁶ See Advisory Opinion of the International Court of Justice on "Legal Consequences of Israeli Occupation Policies and Practices in the Occupied Palestinian Territory, including East Jerusalem" of 19 July 2024, p. 34, para. 108.

⁵⁵⁷ See Decision of the International Court of Justice in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)* of 27 June 1986.

⁵⁵⁸ See Adam Roberts, "[Protracted Military Occupation: Territories Occupied by Israel since 1967](#)," *American Journal of International Law*, vol. 84, No. 1, 1990, p. 47.

⁵⁵⁹ See Phaios Kotrolis – "[Application of International Humanitarian Law and International Human Rights Law in Prolonged Occupation: A Matter of Time Only?](#)" – *International Review of the Red Cross* – Vol. 94 – No. 885 – Spring 2012 – p. 170.

⁵⁶⁰ Orna Ben-Naftali, Eyal M. Gross and Kieren Michaeli - "[Illegal Occupation: Framing the Occupied Palestinian Territory](#)" - *Berkeley Journal of International Law* - 2005 - p. 213.

occupation regime is a maximum of five years, and that any occupation beyond this point is illegal, and therefore it can be said that it is a crime against humanity⁵⁶¹.

As mentioned before, the occupying Power's administration of the occupied territory is regulated by international humanitarian law (the law of war), including the Hague Regulations and the Fourth Geneva Convention, for the Hague Regulations, the International Court of Justice affirmed in its 2024 advisory opinion on the Legal Consequences Arising from the Policies and Practices of the Israeli Occupation..." However, "there is no time limit for the application of the obligations of the Occupying Power⁵⁶² under which", which the Court had affirmed in the Democratic Republic of the Congo v. Uganda⁵⁶³.

In the Fourth Geneva Convention, article 6, third paragraph, stipulates that the application of the Convention to the occupied territories ceases after one year of the general closure of military operations, with the exception of 43 of the Convention's 159 articles⁵⁶⁴, which the International Court of Justice affirmed in its advisory opinion on the wall in paragraph 125⁵⁶⁵.

However, some scholars argue that the Court was not interpreted accurately and fully consistent with Article 6, paragraph 3, as it focused on military operations leading to occupation, while Article 6 stipulated that the application of the Convention ceases

⁵⁶¹ See Richard Falk, "[Some Legal Reflections on Israel's Protracted Occupation of Gaza and the West Bank](#)", Journal of Refugee Studies, Vol. 2, No. 1, 1 January 1989, p. 15.

⁵⁶² See Advisory Opinion of the International Court of Justice on "[Legal consequences arising from the policies and practices of the Israeli occupation in the Occupied Palestinian Territory, including East Jerusalem](#)" of 19 July 2024 - page 34 - paragraph 107.

⁵⁶³ See Judgment of the International Court of Justice on Armed Activities in the Territory of the Congo (Democratic Republic of the Congo v. Uganda) - Judgment of 19 December 2005 - paragraphs 167, 178-179, 254 - The Court confirmed that Uganda had violated international humanitarian law (including the Hague Rules) until 2 June 2003, the date on which Ugandan military forces had definitively withdrawn from the territory of the Democratic Republic of the Congo.

⁵⁶⁴ **Article 6** of the Fourth Geneva Convention states that "this Convention shall apply at the beginning of any conflict or occupation referred to in Article 2. The application of this Convention in the territory of any Party to the conflict shall cease to apply generally upon the cessation of hostilities. The application of this Convention in occupied territory shall cease to apply generally one year after the cessation of hostilities, however, the Occupying Power shall be bound by the provisions of the following articles of this Convention: 1 to 12, 27, 29 to 34, 47, 49, 51, 52, 53, 59 and 61 to 77 and 143, for the duration of the occupation as long as that State exercises governmental functions in the occupied territory."

⁵⁶⁵ See Advisory Opinion of the International Court of Justice on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory of 2004, 136 at 185, para. 125.

after one year of the general closure of military operations in the occupied territories, and not only at the general closure of military operations that resulted in the occupation⁵⁶⁶.

Many scholars of international law have also criticized the Court's interpretation, arguing that this interpretation limits the responsibilities of the occupying powers towards civilians, especially in cases of prolonged occupation, as it poses a danger to the civilian population insofar as it reduces the scope of protection enjoyed by the population under the Convention⁵⁶⁷, as it does not meet the purposes of international humanitarian law⁵⁶⁸.

In section III of the Convention on the Provisions of the Occupied Territories, which consists of 32 articles, 9 of them cease to apply, including article 50⁵⁶⁹, which obliges the occupying Power to ensure the proper functioning of all institutions focused on the care and education of children, and article 55⁵⁷⁰, which requires ensuring the delivery of food and medical supplies to the population.

The problem is further complicated in situations of protracted occupation⁵⁷¹. In the final record of the 1949 Geneva Diplomatic Conference and the Piqueté commentary, delegations, as evidenced by their dealings with article 6, assumed that occupation was always short, and in addition, they expected that the responsibilities excluded in article 6 would be transferred to local authorities after one year, as part of a process leading to an end to the occupation⁵⁷².

⁵⁶⁶ See Ardhi Emsis – "[Critical Reflections on Aspects of International Humanitarian Law in the Advisory Opinion on the Wall of the International Court of Justice](#)" – American Journal of International Law – Glory 99 – January 2005 – Research pages 102-118 – Page 106

⁵⁶⁷ Yoram Denstein – "[The International Law of Warfare Occupation](#)" – Cambridge University Press – 2009 – p. 283.

⁵⁶⁸ See [Occupation and Other Forms of Foreign Land Management](#) - ICRC - Expert Meeting - Geneva, Switzerland - March 2012 - page 77.

⁵⁶⁹ **Article 50** of the Fourth Geneva Convention of 1949 states: "The Occupying Power shall, with the assistance of national and local authorities, ensure the proper operation of facilities for the care and education of children ... If local institutions are incapacitated, the occupying power must take measures to secure the maintenance and education of the children..."

⁵⁷⁰ **Article 55** of the Fourth Geneva Convention of 1949 states that "it is the duty of the occupying Power to provide, to the maximum of its means, the provision of food and medical supplies to the population and, in particular, to import the necessary food, medical and other supplies if the resources of the occupied territory are insufficient..."

⁵⁷¹ See Micheline Dick and Issam Khalil – [Protracted Occupation in International Humanitarian Law](#) – Birzeit University, Faculty of Law and Public Administration, Constitutional Law Unit – 2020 – p. 10.

⁵⁷² See Final Record of the 1949 Geneva Diplomatic Conference, paragraphs 623-625. See Leslie Green, [The Contemporary Law of Armed Conflict](#), Manchester University Press, 2nd edition, 2000, p. 258. I could not verify the information and see Vaios Kotrolis – "[Application of international humanitarian law and international human rights law in situations of prolonged occupation: only a matter of time?](#)" – International Review of the Red Cross – Vol. 94 – Issue 885 – Spring 2012 – Page 175.

The Fourth Geneva Convention therefore later addressed this problem in Article 3(b)⁵⁷³ of Additional Protocol I to the Geneva Conventions in 1977, which calls for the application of the rules of international humanitarian law until the end of the occupation. However, the problem is that the provisions of this Protocol and this article are not binding on all States, their provisions are not customary, in addition to that, 25 States have not ratified the Protocol.

But there is sufficient evidence to show that the overwhelming majority of States, including non-ratifying countries on this protocol support the provision of article 3 (b) thereof. First, the travaux préparatoires of this article confirm the desire of all States to repeal article 6, paragraph 3, since article 3 of the Protocol was adopted by consensus of all⁵⁷⁴ parties, including States not parties to the Protocol⁵⁷⁵, and their non-accession was due to their disagreement with other controversial provisions⁵⁷⁶.

Secondly, resolutions had been adopted by the General Assembly after adopting the advisory opinion of the International Court of Justice on the wall, the preamble of which stated that Israel must comply fully with the provisions of the Fourth Geneva Convention, and 19 out of 24 States that had not ratified the Protocol had voted.⁵⁷⁷ Even the Israeli Supreme Court itself did not invoke article 6, paragraph 3, to limit the scope of application of the Convention⁵⁷⁸.

It has therefore been concluded from this practice that article 3 (b) of the Protocol is of a customary nature⁵⁷⁹, and in any case we can conclude from the foregoing that the Fourth Geneva Convention in its entirety remains applicable to the occupied territories

⁵⁷³ **Paragraph 3 (b)** of Additional Protocol I to the Geneva Conventions of 1977 provides that (b) the application of the Conventions and this Protocol in the territory of the Parties to the conflict shall cease upon the general cessation of military operations and, in the case of occupied territories, at the end of occupation..."

⁵⁷⁴ See [Occupation and Other Forms of Foreign Land Administration](#), ICRC, Meeting of Experts, Geneva, Switzerland, March 2012, pp. 77-78.

⁵⁷⁵ See Draft Additional Protocol I, Official Records of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, Geneva (1974-1977), Berne, Federal Political Administration (Vol. I, Part III, 1978), p. 4.

⁵⁷⁶ There should be a reference here.

⁵⁷⁷ See Phaios Kotrolis – "[Application of International Humanitarian Law and International Human Rights Law in Prolonged Occupation: A Matter of Time Only?](#)" – International Review of the Red Cross – Vol. 94 – No. 885 – Spring 2012 – p. 175.

⁵⁷⁸ See Israeli Supreme Court, Aghuri v. IDF Commander, 7019/2002, September 3, 2002, citing Article 78.

⁵⁷⁹ Regarding the customary status of most provisions of Protocol I – see Christopher Greenwood – "Establishment of customary law for the Additional Protocols of 1977" – in Humanitarian Law of Armed Conflict – Leiden – 1991 – 93 – 144.

until the end of the occupation, no matter how long it lasts. This is confirmed by the 2024 advisory opinion of the International Court of Justice on "the legal consequences arising from the policies and practices of the Israeli occupation in the Occupied Palestinian Territory, including East Jerusalem".⁵⁸⁰

The Court emphasized that article 6, paragraph 3, of the Fourth Geneva Convention was not "intended to relieve States of their obligations under this Convention in cases of prolonged occupation".⁵⁸¹ The Court based this on the travaux préparatoires of the Fourth Geneva Convention, as those who drafted the Convention believed that the local authorities in the occupied territories would resume their governmental functions within a year after the end of military operations."⁵⁸²

Article 6, paragraph 3, was drafted on this basis, because it would not be necessary for the occupying Power to continue to exercise these functions, so if the local authorities did not resume their governmental functions, the obligations imposed on the occupying Power under international humanitarian law would remain in force notwithstanding article 6, paragraph 3⁵⁸³.

The biggest problem in the issue of long-term occupation revolves around the principle of conservatism, and this principle is considered the "heart of the law of occupation" as this principle prevents the occupying power from making any permanent transformations or changes, whether legal or material, on the occupied territories⁵⁸⁴, however, experts in international humanitarian law believe that the application of this principle in the case of long-term occupation would restrict the occupying power. This will negatively affect the interest of the civilian population under occupation and freeze its development⁵⁸⁵.

⁵⁸⁰ See Advisory Opinion of the International Court of Justice on "Legal Consequences of Israeli Occupation Policies and Practices in the Occupied Palestinian Territory, including East Jerusalem" of 19 July 2024, p. 34, para. 107.

⁵⁸¹ Ibid., paragraph 107.

⁵⁸² Ibid.

⁵⁸³ Ibid.

⁵⁸⁴ See Vaïos Kotrolis – "[Application of international humanitarian and human rights law in situations of prolonged occupation: only a matter of time?](#)" – International Review of the Red Cross – Volume 94 – Issue 885 – Spring 2012 – Page 167

⁵⁸⁵ Ibid. race, page 74. I do not understand what is meant by the phrase of the previous footnote number such and such, which Issam Khalil used so much in his research. And the documentation below I didn't even understand it so I could access it.]

The principles of international humanitarian law were designed to conform to short-term occupation, and therefore experts at a meeting of the International Committee of the Red Cross (ICRC) on occupation and other forms of foreign administration of occupation came to the conclusion that prolonged occupation required a reinterpretation of the rules of international humanitarian law⁵⁸⁶.

The Israeli High Court of Justice was the first court to issue decisions concerning a civilian population under long-term occupation⁵⁸⁷. But international law scholars view the court's decisions with concern and mistrust as it tries to develop a new legal order in which long-term occupation is used as a legal justification for non-compliance with international humanitarian law⁵⁸⁸.

The Israeli High Court of Justice used the concept of long-term occupation to reinterpret Article 55 of the Hague Regulations in the Yesh Din case⁵⁸⁹ in order to justify its activities with regard to the exploitation of quarries in the Occupied Palestinian Territory, according to Article 55, the occupying power is only considered a director and a beneficiary of public buildings, forests and agricultural real estate belonging to the civilian population under occupation.

But the Court has expanded the powers of the occupying Power provided for in Article 55 on the pretext of allowing this authority to take the necessary measures to preserve development "to secure the changing needs of the population of the area by the occupying power".

The Court had based its claim on the fact that the "Israeli" occupation is different from the traditional occupations regulated by the current occupation law, so the traditional occupation laws must be amended in order to conform to the long-term Israeli occupation situation, as the length of the occupation places a burden and obligation on the occupation authorities in their administration of the occupied territories.

⁵⁸⁶ ICRC (2012) – supra note 56, p. 80.

⁵⁸⁷ See Vincent Brainard, [Editorial: The Occupation](#), *International Review of the Red Cross*, Vol. 94, No. 885, Spring 2012, p. 9.

⁵⁸⁸ See Micheline Dick and Issam Khalil – [Protracted Occupation in International Humanitarian Law](#) – Birzeit University, Faculty of Law and Public Administration, Constitutional Law Unit – 2020 – p. 14.

⁵⁸⁹ See Israel's Supreme Court, *Yesh Din, Volunteers for Human Rights v. IDF Commander in the West Bank and others*, December 2164, 2011, p. 26.

This decision is problematic, as the Court expanded the interpretation of Article 55 by granting powers to the occupying Power to administer the occupied territories, and adopted a dynamic and changing perspective of those obligations and variables placed on the occupying authorities, and the Court used the term "residents of the area", which is an unclear term, is it meant Palestinians or settlers, or both? The principle of conservation must therefore remain a cornerstone of international humanitarian law in the event of prolonged occupation, but it can be amended provided that such modification is made in favour of the civilian population under occupation.

3. Responsibility of Israel and The International Community Under International Law

After the researcher showed that Israel's continued presence in the occupied Palestinian territories is illegal, he moves to clarify the responsibility placed on Israel, third countries and the United Nations to end the Israeli occupation under international law, and before he knows Israel's responsibility towards ending its occupation, it is necessary to know Israel's position on the rules of international law from which this responsibility emerged, so the researcher divided this chapter into two parts, in the first section will show Israel's position on the rules of law, and in the second section will show the responsibilities placed On Israel, third countries and the United Nations.

1.3 Israel's Attitude Towards the Rules of Law

In our discussion of the principle of good faith in chapter I, one of the guiding principles of the occupying Power, we stated that the occupying Power must comply with the principles of public international law, including international humanitarian law and human rights law, as well as comply with the resolutions and directives issued by the United Nations, or other official bodies related to the occupation⁵⁹⁰, in addition to its obligation to be a temporary authority that does not enjoy sovereignty over the occupied territory, and exercises its powers granted to it in the best interest. For protected populations, and for purposes of military necessity.

Since 1967, the United Nations Security Council has adopted more than 40 resolutions relating to Israel's occupation of Palestinian territories⁵⁹¹, and with regard to settlements⁵⁹², and Israel's annexation of East Jerusalem and its ongoing practices aimed at changing the demographic composition and physical character of the city⁵⁹³. The

⁵⁹⁰ See the report of Michael Lynk, Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, issued on 23 October 2017, [A/72/556](#), para. 58.

⁵⁹¹ The Council affirmed with specific reference to the Israeli occupation that the acquisition of territory by war or force is unacceptable, see UN Security Council Resolution 242, UN Security Council Resolution 2234, and UN Security Council Resolution 497; UN Security Council Resolution 478; UN Security Council Resolution 476; UN Security Council Resolution 298; UN Security Council Resolution 267; and UN Security Council Resolution 252.

⁵⁹² See UN Security Council Resolution 2334. UN Security Council Resolution 465 and UN Security Council Resolution 452. and UN Security Council Resolution 446.

⁵⁹³ See UN Security Council Resolution 2334; UN Security Council Resolution 476; and UN Security Council Resolution 478.

Council has repeatedly affirmed that the Fourth Geneva Convention applies to the occupied Palestinian territories and called on Israel to abide by it "scrupulously"⁵⁹⁴.

In several resolutions, the Council has expressed its deep regret at the continued refusal of the Israeli occupying Power to comply with its resolutions and the relevant General Assembly resolutions⁵⁹⁵, for example, when Security Council Resolution 2334 was issued condemning the settlement enterprise and Israel's failure to implement the Fourth Geneva Convention, Prime Minister Netanyahu strongly criticized the resolution and made it clear that Israel would not submit to it⁵⁹⁶. The United Nations Special Coordinator for the Middle East Peace Process had informed the Security Council that Israel was not complying with the resolution and, on the contrary, that its settlement activity had increased at a high rate⁵⁹⁷.

Through its practices, Israel violates many of the main principles of international humanitarian law and human rights law, it builds settlements that the Council has described as illegal, and we have explained in previous investigations how Israel violates the right of Palestinians to movement, through a complex system of administrative, bureaucratic and physical restrictions that affect almost every aspect of the daily lives of Palestinians.

Arbitrarily arrests Palestinians, violates the prohibition of racial segregation and discrimination, and violates through its various practices. The right of Palestinians to self-determination. We conclude from the foregoing that Israel has not fulfilled its obligations as a Member State of the United Nations, but has repeatedly challenged the international community's supervisory authority over the occupation. As the occupying Power, it has deliberately violated many of the key principles governing the occupying Power⁵⁹⁸.

Israel argues several arguments about its failure to implement some IHL conventions, such as the four Geneva Conventions, politically, since 1967, when

⁵⁹⁴ UN Security Council Resolution 2334; UN Security Council Resolution 478; UN Security Council Resolution 476; UN Security Council Resolution 471; UN Security Council Resolution 465; UN Security Council Resolution 452; UN Security Council Resolution 446.

⁵⁹⁵ See UN Security Council Resolution 478, UNSCR 476, and Resolution 446.

⁵⁹⁶ See [the official website of Al Jazeera in English via the link attached to this text](#).

⁵⁹⁷ See [the report of Nickolay Mladenov, Special Coordinator for the Middle East Peace Process, briefing to the Security Council on the situation in the Middle East](#), report on Security Council resolution 2334 (2016), issued on 25 September 2017. The report can be accessed through the link attached to the text.

⁵⁹⁸ See the report of Michael Lynk, Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, issued on 23 October 2017, [A/72/556](#), para. 62.

addressing the international community, Israel has described the West Bank as "disputed territory" rather than occupied territory, and the Israeli Foreign Ministry says that "from a legal perspective, it is better to consider the West Bank as territory for which there are competing claims and which should be resolved in the peace process negotiations - and the Israeli and Palestinian sides have already adhered to this principle."⁵⁹⁹.

Former Prime Minister Ariel Sharon described Israeli control of the West Bank and Gaza Strip as an "occupation" in a 2003 statement, but publicly backed down, saying instead that he should have described Israeli control as "control of disputed territories." A secret cable sent by Israeli legal counsel Theodore Meron to the Israeli ambassador at the time, Yitzhak Rabin, recommended that Israel avoid describing itself as an occupying power ⁶⁰⁰and not recognize the applicability of the Geneva Convention, because, according to Ramon, "this highlights serious issues, and it should leave all options related to borders open."⁶⁰¹

A 2012 committee chaired by retired Supreme Court Justice Edmund Levy examined, among other things, the legal status of Israel's presence in the West Bank, and was commissioned by Prime Minister Benjamin Netanyahu and then-Minister of Justice Professor Yaakov Nieman, and concluded that laws relating to "occupation as reflected in relevant international conventions, do not apply to the historical and legal circumstances of Israel's presence in Judea and Samaria."⁶⁰²

The study confirmed that the legal basis for Israel's sovereignty over the entire land of historic Palestine derives from the Mandate over Palestine, and therefore General Assembly Resolution 181, which stipulated partition, and Jordan's subsequent occupation of the West Bank territories, did not have the legal basis for bypassing the mandate⁶⁰³.

The Committee considers that the concept of "occupation" and its accompanying obligations, as reflected in the conventions of international humanitarian law, applies to the occupation of the territory of a sovereign State for a short period, until the conflict

⁵⁹⁹ Ministry of Foreign Affairs, Israeli Settlements and International Law - 30 November 25015

⁶⁰⁰ Valentina Azarova, "Israel's Unlawfully Protracted Occupation: Consequences in an Integrated Legal Framework" European Council on Foreign Relations - June 2017

⁶⁰¹ "The Kumay-Meron telegram reveals the reasons for the Israeli position on the applicability of the Fourth Geneva Convention" (Akyuft, March 20, 1968).

⁶⁰² Report of the Committee for the Inspection of the Construction Situation in Judea and Samaria, Levy Report, June 2012, page 83.

⁶⁰³ *Ibid.*, paragraph 8.

between the parties is ended and the territory returns to the legitimate sovereign or any other arrangement agreed upon. For anyone to predict when or whether it will end⁶⁰⁴.

The committee argues that the area was not under any sovereignty when it was seized from the State of Jordan, which "has not been legally and definitively asserted its sovereignty over the territory, and has since abandoned its claim to sovereignty, while Israel claims sovereign right over the area."⁶⁰⁵

However, the Israeli High Court of Justice considers Israel's control and administration of the Palestinian territories to be a belligerent occupation, and the legal arguments submitted by successive Israeli governments since 1967 to the Court supported this position that their control is in the context of a belligerent occupation⁶⁰⁶. Its legal arguments before the court are in contrast to its political arguments that address the world: the High Court of Justice, in the case of "Gaza Regional Council v. Israeli Knesset" of 9 June 2005, examined the positions of successive Israeli governments on the issue of belligerent occupation.

The court said "According to the legal view of all Israeli governments that have submitted it to this Court – a view that has always been accepted by the Supreme Court – these areas are controlled by Israel through belligerent occupation. The legal regime applicable there shall be determined in accordance with the rules of public international law, in particular those relating to belligerent occupation."⁶⁰⁷The court recognized that Israel's control and administration of the Gaza Strip was by military rule.

In a 2008 ruling, after Israel withdrew its military forces from the Gaza Strip and evacuated and dismantled settlements there⁶⁰⁸, under the Gaza Disengagement Law, the court said: "Since September 2005, Israel has no longer had effective control over what happens in the Gaza Strip. The military rule that was applied in the past in this area has

⁶⁰⁴ Ibid., paragraph 5.

⁶⁰⁵ Report of the Committee for the Inspection of the Construction Situation in Judea and Samaria - Levy Report - June 2012 - page 5.

⁶⁰⁶ David Kretzmer - Yael Ronen - Occupation of Justice and the Supreme Court in Israel and the Occupied Territories - OUP 2021 - page 64.

⁶⁰⁷ High Court of Justice 1661/05 - Gaza Coast Regional Council v. Knesset Israel - 9 June 2005 - paragraph 3.

⁶⁰⁸ Orna Ben-Naftali, Michael Sfard, Hadi Viterbo - ABCs of the Occupied Palestinian Territory, Legal Dictionary of Israeli Control over the Occupied Palestinian Territory - CUP 2018 - page 64.

ended by a decision of the government, and Israeli soldiers are no longer stationed in the area permanently, nor are they responsible for what happens there."⁶⁰⁹

This text has legal and political consequences, which have caused some problems, as it has emerged that the debate has emerged as to whether the Gaza Strip is still an occupied territory or not. In any case, in March 2023, the Knesset voted to repeal the 2005 Disengagement Law, and by repealing this law, Israel removed domestic legal obstacles to the entry of the army and the construction of settlements in the Gaza Strip, leaving it to the military commander to decide when to proceed with settlement construction and the entry of the army⁶¹⁰.

Although the Israeli High Court of Justice recognizes that the territories of the West Bank and the Gaza Strip are occupied territory, it refuses to apply the provisions of the Geneva Conventions of 1949, except for martial law, despite its accession to them, and therefore petitioners may not invoke the Fourth Geneva Convention before the Court⁶¹¹. Article 2(2) of the Convention provides that the Convention "applies ... in all cases of partial or total occupation of the territory of a High Contracting Party, even if such occupation does not encounter armed resistance."⁶¹² Israel argues that the West Bank and Gaza Strip do not meet the "territory of the High Contracting Party" clause in the Geneva Conventions for the purpose of their application.

According to former Israeli Attorney General Meir Shamgar, the Fourth Geneva Convention of 1949 does not apply to Israeli occupation because of "lost sovereignty", according to Shamgar, "the idea of restricting the powers of military government in its entirety is based on the assumption that a sovereign was removed, that he was a legitimate sovereign, ... -Therefore- do not applicable in my opinion on these territories [meaning the Palestinian territories] and decided to act de facto in accordance with the humanitarian

⁶⁰⁹ High Court of Justice 9132/07 - Jabbar Bassiouni Ahmed v. Prime Minister et al. - 27 January 2008 - paragraph 12.

⁶¹⁰ The United Nations Committee on the Exercise of the Inalienable Rights of the Palestinian People, and the Irish Center for Human Rights - [The Legitimacy of the Israeli Occupation of the Occupied Palestinian Territory, including East Jerusalem](#), 2023 - page 26.

There is no documentation, so use M3-8 or any other appropriate documentation.

⁶¹¹ HCJ 606/78 Ayoub et al. v. United States Secretary of Defense et al. -33(2) PD pp. 113, 120–2; 127–8. See Yoram Denstein, *International Law of Warlike Occupation*, CUP 2019, p. 31, para. 89.

⁶¹² Fourth Geneva Convention of 1949 - Article 2(2).

provisions of the Convention."⁶¹³. This argument has been completely refuted in the advisory opinion of the International Court of Justice on the wall⁶¹⁴, and we will explain this after explaining all the relevant Israeli arguments.

The argument that Palestinian territories previously had no legitimate sovereignty to reject the applicability of the Fourth Geneva Convention is used by Israel among other arguments to justify its claim that it is legally establishing settlements in the West Bank⁶¹⁵, with the Israeli Foreign Ministry arguing that Article 49(6) "in no way prohibits the movement of individuals into territories that were not under the legitimate sovereignty of any state and which are not subject to private property."⁶¹⁶

The Ministry asserts that the Supreme Court of Israel is considering property claims in a process "designed to ensure that no communities are illegally established on private land",⁶¹⁷ and refers to the published opinion of Professor Eugène Rostow that "the right of Jews to settle in the area is in every way equivalent to the right of the local population to live there"⁶¹⁸.

And the Ministry claims that "the case of Jews who voluntarily established homes and communities in their old homeland, along with Palestinian communities, does not simply corresponds to the type of forcible transfer of population contained in Article 49(6)"⁶¹⁹ and rejects the notion that settlements constitute serious violations of the Geneva Conventions, arguing that the provision on grave breaches derives from the Additional Protocols, to which Israel is not a party.

In addition to the previous argument concerning settlements, Israel argues that the legality of its settlement construction derives from the text of Article 6 of the Mandate for Palestine, which states that "the administration of Palestine shall, while ensuring that the rights and status of other categories of population are not harmed, facilitate the immigration of Jews in appropriate conditions and, in cooperation with the Jewish

⁶¹³ Shamgar, M. – "Respect for International Law in Administered Territories" – First Israeli Human Rights Yearbook – 1971 – 262 – 77.

⁶¹⁴ See Advisory Opinion of the International Court of Justice on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (OPT), issued on 9 July 2004, paras. 89-101.

⁶¹⁵ Israeli Ministry of Foreign Affairs, Settlements and International Law November 30, 2015.

⁶¹⁶ Ibid. 187

⁶¹⁷ Ibid. 189

⁶¹⁸ Ibid. 188

⁶¹⁹ Ibid. 186

Agency referred to in Article IV, shall encourage the mobilization of Jews in princely lands and favorable lands not required for public purposes."⁶²⁰.

As for the continuation of the Mandate on the land of Palestine, the Israeli Ministry of Foreign Affairs refers in this regard to the opinion of Professor Eugène Rostow, who argues that Palestine did not end the Mandate either "in 1947 when the British government resigned from the Mandate, or in 1948 when the British withdrew. ... A credit never ends when a trustee dies, resigns, embezzles the trust property, or is evicted. The fiduciary authority shall appoint a new trustee, ..." ⁶²¹.

In this regard, the Ministry emphasizes that some Jewish settlements existed throughout the centuries of Ottoman rule, such as in Hebron, and there are settlements established under the administration of the British Mandate, such as the settlement of Nabi Ya'qub located in northern Jerusalem, the settlement of Gush Etzion in southern Bethlehem, and communities north of the Dead Sea⁶²².

Israel makes another argument for the settlements, namely that the agreements concluded between the Israeli sides and the Palestine Liberation Organization do not contain any clause prohibiting the construction of settlements in Palestine, and refers to the 1995 Israeli-Palestinian Interim Agreement, which stipulates that "the Palestinian Authority has no jurisdiction or control over settlements or Israelis, and that settlements are subject to exclusive Israeli jurisdiction until the conclusion of the permanent status agreement."⁶²³

As mentioned above, Israel relies on the argument of the continued application of the Mandate to Palestine, and the text of Article 6 of the Mandate, which allowed the Mandatory Power to facilitate the immigration and living of Jews in the Palestinian territories, to justify its policies and practices related to settlement and others, but ignores the text of Article 5 of this instrument, which states that "the Mandatory shall be responsible for ensuring that no part of the territory of Palestine is ceded to the

⁶²⁰ League of Nations, Mandate for Palestine - Article 6.

⁶²¹ Eugene Rostow - "Correspondence" AJIL - Volume 84 (1990) - pages 717, 718-719.

⁶²² Israeli Ministry of Foreign Affairs, Settlements and International Law November 30, 2015.

⁶²³ Ibid. 190

Government of a foreign State, nor is it leased to that Government or placed at its disposal in any way. Other."⁶²⁴.

This article refutes Israeli arguments in justifying the annexation of East Jerusalem, and its practices and policies aimed at annexing the occupied Palestinian territories, and furthermore, Israel ignores that Palestine is classified as a first-class mandate, meaning that its provisional independence has been recognized under Article 22(4) of the Charter of the League of Nations⁶²⁵.

In the conclusions of Eugène Rostow, the former US Undersecretary of State for Political Affairs, whose views were adopted and adopted by the US State Department, as mentioned above, the latter ignored Rogain's view that "Jewish settlements in the West Bank violate Article 49(6) of the Fourth Geneva Convention of 1949, which deals with the protection of civilian persons in time of war."⁶²⁶

It is clear from our analysis of Israeli practices in the occupied Palestinian territories that Israel administers the area in the context of a long-term and indefinite occupation, and carries out permanent practices in the area, thus exceeding the powers granted to the occupying power under international humanitarian law. Although the Israeli Supreme Court recognizes that the occupation of Palestinian land is temporary in nature⁶²⁷, it arbitrarily refuses to apply the Geneva Conventions⁶²⁸, except for martial law⁶²⁹.

⁶²⁴ League of Nations - Mandate for Palestine - Article 5.

⁶²⁵ The Charter of the League of Nations - Article 22(4) urged that "certain societies formerly belonging to the Turkish Empire have reached a stage of development where their existence may be provisionally recognized as independent states subject to the provision of advice and administrative assistance by the mandatory until such time as they are able to stand on their own. ..."

⁶²⁶ Eugene Rostow - "Correspondence" AJIL - Volume 84 (1990) - pages 717-719.

⁶²⁷ "This Court has repeatedly affirmed that the authority of the military commander is temporary in nature, because belligerent occupation is temporary in nature, as permanent arrangements are not the business of the military commander" See High Court of Justice 2056/04 - Beit Surik Village Council v. Government of Israel - Commander of IDF Forces in the West Bank - 30 June 2004 - paragraph 28.

⁶²⁸ See Advisory Opinion of the International Court of Justice on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (9 July 2004), para. 89. See Supreme Court of Justice 606/78, Suleiman Tawfiq Ayoub et al. v. Minister of Defence et al. - 15 March 1979. See Supreme Court of Justice 610/78 -Ayoub et al. Minister of Defense et al. See also HCJ 390/79 -Izzat Muhammad Mustafa Dweikat et al. v. Government of Israel et al. (Elon Moreh case) - 22 October 1979.

⁶²⁹ ; See HCJ 337/71 - Christian Society of the Holy Places v. Minister of Defense (1972) - an English summary of the decision is available in court decisions, Christian Society of the Holy Places v. Minister of Defense, 2 Israeli Yearbook for Human Rights (1972) 354, para. 582). "Life does not stand idly by, and no administration, whether one occupation or another, can carry out its duties towards the population if it refrains from legislating and adapting the legal situation to the requirements of the modern era."

It is increasingly adapting the application of the Hague Regulations of 1907 to the protracted nature of Israel's occupation of Palestinian territories, making it easier for the Israeli occupying power to carry out practices of a permanent nature, constructing road infrastructure connecting settlements to Israel⁶³⁰, integrating electricity infrastructure⁶³¹, and granting equal rights to Israeli citizens and settlers illegally relocated to the West Bank⁶³², and agreeing to harmonize the value-added tax rate in the occupied territory with what is equivalent in Israel⁶³³.

In addition to many of the practices we have previously demonstrated, which are usually only the monopoly of the legitimate sovereign, and are completely prohibited under the Fourth Geneva Convention⁶³⁴, but its refusal to implement the Convention allowed the Israeli occupying power to carry out these practices in violation of international humanitarian law.

The question may arise whether Israel is actually bound to apply the provisions of the Fourth Geneva Convention or not to the occupied Palestinian territories, and this question was answered in detail in the advisory opinion of the International Court of Justice on the wall in 2004, not only that, but the Court clarified several other matters related to this issue, such as Israel's application of human rights conventions.

The Court affirmed the obligation to apply the provisions of the Hague Regulations of 1907 because they formed part of customary law⁶³⁵, and even if Israel was not a party

⁶³⁰ HCJ 393/82 – Housing Associations et al., v. High Court of Justice 393/82, IDF Commander in Judea and Samaria et al. – 12 December 1983 – p. 13, para. 12.

⁶³¹ "Jerusalem District Electricity Company Ltd. v. Jerusalem District Electricity Company v. Minister of Energy and Infrastructure and Commander of Judea and Samaria" -11 Israeli Yearbook on Human Rights 354 (1981) 357. See Scobie – "Prolonged occupation and Article 6(3) of the Fourth Geneva Convention: Why the International Tribunal erred substantively and procedurally" – Igitalk (European Journal of International Law website) – 16 June 2016.

⁶³² High Court of Justice 256/72 -Jerusalem District Electricity Company Ltd. v. Minister of Defense et al. -27(1) PD 124, 138. Israel's High Court of Justice concluded that supplying electricity to the newly constructed settlements fulfilled "the government's obligation to care for the economic well-being of the residents of the area."

⁶³³ High Court of Justice 69/81 -Abu Eita et al. v. Commander of Judea and Samaria et al. (VAT case) - 37(2) PD 197-310 . English translation in 13 Yearbook of Israel for Human Rights 348-1983.

⁶³⁴ See Fourth Geneva Convention of 1949 – Articles 33 and 49.

⁶³⁵ See Advisory Opinion of the International Court of Justice on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (OPT), issued on 9 July 2004, para. 89. "89. With regard to international humanitarian law, the Court first notes that Israel is not a party to the Hague Convention IV of 1907 to which the Hague Regulations are annexed. ... The Court considers that the provisions of the Hague Rules have become part of customary law, which is in fact recognized by all those involved in the proceedings before the Court."

to the Convention, it was obliged to apply its provisions⁶³⁶. With regard to the Fourth Geneva Convention of 1949, the Court stated that Israel was a party to it after it ratified it in July 1951⁶³⁷, and stated Israel's position rejecting the applicability of the Fourth Geneva Convention not applicable to the occupied Palestinian territories⁶³⁸.

Israel justified its position before the Court on the grounds that "the sovereignty of the territory is not recognized before it is annexed to Jordan and Egypt ... it is not the territory of a High Contracting Party as required by the Convention",⁶³⁹ as Israel considers that under article 2, paragraph 2, common to the four Geneva Conventions of 1949,⁶⁴⁰ "the Convention applies only in the case of occupation of territories under the sovereignty of a High Contracting Party involved in an armed conflict".⁶⁴¹

The Court noted that Israel's position was contrary to the vast majority of the other participants in the proceedings⁶⁴². The Court responded to Israel's position that the Fourth Geneva Convention must be interpreted in good faith "as expressed in Article 31 of the 1969 Vienna Convention on the Law of Treaties⁶⁴³," and that reference should be made to "the intention of the drafters of the Fourth Geneva Convention, namely, to protect civilians who find themselves in any way in the hands of an occupying power."⁶⁴⁴

The Court therefore affirmed that "when they added this paragraph to the Convention, the authors of the second paragraph of article 2 did not intend to restrict the

⁶³⁶ Ibid.

⁶³⁷ Ibid., paragraph 91.

⁶³⁸ Ibid., paragraph 90.

⁶³⁹ Ibid.

⁶⁴⁰ Article 2 common to the four Geneva Conventions provides that "In addition to the provisions applicable in time of peace, this Convention shall apply in the event of declared war or any other armed clash between two or more High Contracting Parties, even if one of them does not recognize the state of war.

The Convention shall also apply in all cases of partial or total occupation of the territory of a High Contracting Party, even if such occupation encounters no armed resistance. ..."

⁶⁴¹ See Advisory Opinion of the International Court of Justice on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (9 July 2004), para. 93.

⁶⁴² Ibid., paragraphs 90 and 93. Paragraph 90 reads: "90-... With regard to the Fourth Geneva Convention, different views were expressed on the part of the participants in these proceedings. Israel, unlike the vast majority of other participants, challenges the de jure applicability of the Convention to the Occupied Palestinian Territory.

⁶⁴³ See Advisory Opinion of the International Court of Justice on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (OPT), issued on 9 July 2004, para. 94.

⁶⁴⁴ Ibid., paragraph 95.

scope of application of the Convention, but rather to merely seek to provide for situations of occupation without combat".⁶⁴⁵

After the Court indicated the intention of the drafters of the Convention, specifically Article 2 thereof, and after mentioning the UN resolutions issued by the General Assembly and the Security Council affirming the applicability of the Fourth Geneva Convention to the occupied Palestinian territories, the Court affirmed that "the Convention applies to the Palestinian territories."⁶⁴⁶

With regard to human rights conventions, the Court affirmed that Israel is bound to apply the provisions of the International Covenant on Civil and Political Rights in the Occupied Palestinian Territory⁶⁴⁷, as well as the provisions of the International Covenant on Economic, Social and Cultural Rights⁶⁴⁸. Similarly, the 1989 Convention on the Rights of the Child applies to the Occupied Palestinian Territory⁶⁴⁹.

2.3 Responsibility of Israel

After analysing the behavior of the Israeli occupying Power in Chapter II, we found that Israel's violations of international law are countless, including violations of the rules of international humanitarian law and human rights, and it should be noted that many of its violations, such as the apartheid regime and the violation of the right to self-

⁶⁴⁵ Same former meadow -paragraph 95.

⁶⁴⁶ Ibid., paragraph 101

⁶⁴⁷ Paragraph 111 of the Court's Advisory Opinion on the Wall stated that "111. Finally, the Court considers that the International Covenant on Civil and Political Rights applies with respect to acts carried out by a State in the exercise of its jurisdiction outside its territory."

⁶⁴⁸ Paragraph 112 of the Court's Advisory Opinion stated that "... Notes that for more than 27 years the territories occupied by Israel have been under its territorial jurisdiction as the occupying Power. In exercising the powers vested in it on this basis, Israel is bound by the provisions of the International Covenant on Economic, Social and Cultural Rights."

⁶⁴⁹ Ibid., paragraph 113, where it reads: "With regard to a Convention on the Rights of the Child of 20 November 1989, that instrument contains article 2, which states that "States Parties shall respect the rights set forth in ... the Convention and guarantees it to every child under its jurisdiction..." Consequently, this Convention applies to the Occupied Palestinian Territory.

determination as a "sacred trust", have been ongoing since 1948⁶⁵⁰. Israel therefore has obligations in return for these violations⁶⁵¹.

First, there is an obligation to desist and not to repeat⁶⁵², and an obligation to make reparation for all loss resulting from its violations⁶⁵³, and reparation shall be by way of restitution, compensation and satisfaction⁶⁵⁴. In this requirement, we will set out these obligations based on the "articles on the responsibility of states for internationally wrongful acts" and on the decisions of international and, in similar cases, international and international tribunals.

At the outset, we would like to point out that Israel's appropriate reparation and an end to its violations of international law in the occupied Palestinian territories is an application of a principle of international law⁶⁵⁵, and this has been confirmed by the International Court of Justice on a number of occasions, including its 2024 advisory opinion on "the legal consequences arising from the policies and practices of the Israeli occupation..."⁶⁵⁶. "Reparation must erase all the effects of this wrongful act and restore the situation that would have prevailed had this act not been committed," the Permanent

⁶⁵⁰ See Advisory Opinion of the International Court of Justice on "[Legal Consequences of Israeli Occupation Policies and Practices in the Occupied Palestinian Territory, including East Jerusalem](#)" of 19 July 2024, p. 73, para. 267.

⁶⁵¹ See Advisory Opinion of the International Court of Justice on "[Legal Consequences of Israeli Occupation Policies and Practices in the Occupied Palestinian Territory, including East Jerusalem](#)" of 19 July 2024, p. 73, para. 267.

⁶⁵² Articles "[Responsibility of States for internationally wrongful acts](#)" - submitted by the International Law Commission to the General Assembly at the 56th session - 2001 - [A/RES/56/83](#) - Article 30 "Cessation and non-repetition".

⁶⁵³ Ibid. - Article 31 "Reparation".

⁶⁵⁴ Ibid. - Article 34 "Forms of reparation".

⁶⁵⁵ Permanent Court of International Justice - Chorzów Factory Case (Jurisdiction) - Reports of the [Permanent Court of International Justice](#) - Series A - No. 9 - [Judgment of July 26, 1927](#) - pp. 4 and 21 - The text states that "it is a principle of international law that the breach of an obligation entails an obligation to make reparation appropriately". See the Permanent Court of International Justice -Chorzow Factory Case (merits) -PCJ Reports -Series A -No. 17 -[Judgment dated September 13, 1928](#) -pp. 4-29 - where the text states: "The Court notes that it is a principle of international law, and indeed a general concept of law, that any breach of an obligation entails an obligation of reparation."

⁶⁵⁶ See Advisory Opinion of the International Court of Justice on "[Legal Consequences of Israeli Occupation Policies and Practices in the Occupied Palestinian Territory, including East Jerusalem](#)" of 19 July 2024, p. 73, para. 267.

Court of International Justice and the⁶⁵⁷ International Court of Justice emphasized in their 2024 advisory opinion on the question of Palestine⁶⁵⁸.

Before considering the issue of appropriate forms of reparation for Israel's internationally wrongful acts, Israel is required to "cease the unlawful act if it continues",⁶⁵⁹ Israel must stop new settlement activities, and it must repeal discriminatory legislation and measures against the Palestinian people in the occupied Palestinian territories, as well as legislation and measures that maintain Israel's illegal status, as affirmed by the International Court of Justice in its 2024 advisory opinion on the Palestinian⁶⁶⁰ issue. We have outlined these violations in chapter II.

Cessation of action is always possible and always required⁶⁶¹, and therefore cessation is not subject to analysis of proportionality, and this is what distinguishes cessation of restitution as a form of reparation, the two are often confused⁶⁶². Israel's violation of its obligations under international law does not affect the continuation of its duty to fulfil those obligations⁶⁶³. In its 2024 advisory opinion on the Palestinian issue, the International Court of Justice affirmed that Israel remains "obliged to comply with its obligation to respect the right of the Palestinian people to self-determination and their obligations under international humanitarian law." and international human rights law."⁶⁶⁴

⁶⁵⁷ Race Reference - Series A - No. 17 - Judgment dated September 13, 1928 - Page 47

⁶⁵⁸ See Advisory Opinion of the International Court of Justice on [the Legal Consequences of Israeli Occupation Policies and Practices in the Occupied Palestinian Territory, including East Jerusalem](#), 19 July 2024, p. 73, para. 269.

⁶⁵⁹ Articles "[Responsibility of States for internationally wrongful acts](#)" - submitted by the International Law Commission to the General Assembly at its 56th session - 2001 - [A/RES/56/83](#) - Article 30(a) "A State responsible for the internationally wrongful act has an obligation to: (a) cease the act, if it is continuing."

⁶⁶⁰ See Advisory Opinion of the International Court of Justice on [the Legal Consequences of Israeli Occupation Policies and Practices in the Occupied Palestinian Territory, including East Jerusalem](#), 19 July 2024, p. 73, para. 268.

⁶⁶¹ Oliver Curtin - "The Obligation to Stop" in James Crawford Alan Pellet and Simon Olson (eds.), *International Liability Law*, [Oxford University Press 2010](#), pp. 548-549.

⁶⁶² See International Law Commission *Yearbook 2001* - A/CN.4/SER. E/2001/Add.1 (Part 2) - Vol. II - Part II - Report of the International Law Commission to the General Assembly on the work of its fifty-third session - Chapter IV. - E.2 - Commentary to Article 30 - Paragraph 7 - Page 115.

⁶⁶³ Articles "[Responsibility of States for internationally wrongful acts](#)" - submitted by the International Law Commission to the General Assembly at its fifty-sixth session - 2001 - [A/RES/56/83](#) - Article 29 "Continuing duty to perform" "The legal consequences of an internationally wrongful act under this Part shall not affect the continuing duty of the responsible State to perform the obligation breached"

⁶⁶⁴ See Advisory Opinion of the International Court of Justice on [the Legal Consequences of Israeli Occupation Policies and Practices in the Occupied Palestinian Territory, including East Jerusalem](#), 19 July 2024, p. 74, para. 272.

In addition to Israel's obligation to desist from the wrongful act, Israel is also required to "provide appropriate assurances and guarantees of non-repetition, if circumstances so require"⁶⁶⁵ on the basis of article 30, paragraph (b), of the articles on responsibility of States for internationally wrongful acts.⁶⁶⁶

This argument means that, not all cases is the State responsible for the internationally wrongful act have to give "assurances to the injured State of non-repetition, or take measures to ensure that the wrongful act is not repeated, ... except when special circumstances justify it" This was confirmed by the International Court of Justice in the Jurisdictional Immunities case⁶⁶⁷. There are factors associated with the violation that are considered to assess assurances and guarantees, it must be considered whether there is a real possibility of a repeat violation, the nature of the violation, whether or not it violates a peremptory norm of international law, the gravity of the violation⁶⁶⁸, and Israel has not complied with the obligations contained in the advisory opinion of the International Court of Justice on the wall⁶⁶⁹, the International Court of Justice assumes that once States have established that their conduct violates international law, they will act in good faith.

As for reparation for Israel for its unlawful acts, it is through restitution, compensation and/or satisfaction⁶⁷⁰, and reparation can be made using one of them or by combining them, and each method has its own conditions and conditions⁶⁷¹.⁶⁷²

⁶⁶⁵ Ibid., Article 30 (b).

⁶⁶⁶ See International Law Commission [Yearbook 2001](#) - A/CN.4/SER. S/2001/Add.1 (Part 2) - Vol. II - Part II - Report of the International Law Commission to the General Assembly on the work of its fifty-third session - Chapter IV.E.2 - Commentary on Article 30 - Paragraph 13 - Page 117.

⁶⁶⁷ International Court of Justice -State Immunities from Jurisdiction (Germany v. Italy: Greece Intervention) - [I.C.J. Reports 2012-2013](#) -p. 99 -para. 138. See also ICJ -Judgment in the case concerning the Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: intervention of Equatorial Guinea) -[I.C.J. Reports 2002-2003](#) -p. 303-para. 318.

⁶⁶⁸ Sandrine Barbier - "Assurances and Guarantees of Non-Repetition" in James Crawford, Alain Pellet, and Simon Olson (eds.), *Law of International Responsibility*, Oxford University Press 2010, pp. 557-558.

⁶⁶⁹ **International Court of Justice** - [Advisory opinion on the Legal Consequences of the Construction of the Wall](#) - issued on 9 July 2004 - A/ES-10/273 - paragraph 136.

⁶⁷⁰ See Advisory Opinion of the International Court of Justice on [the Legal Consequences of Israeli Occupation Policies and Practices in the Occupied Palestinian Territory, including East Jerusalem](#), 19 July 2024, p. 73, para. 269.

⁶⁷¹ Articles "[Responsibility of States for internationally wrongful acts](#)" - submitted by the International Law Commission to the General Assembly at its 56th session - 2001 - [A/RES/56/83](#) - Article 34 "Forms of reparation"

⁶⁷² See International Law Commission [Yearbook 2001](#) - A/CN.4/SER. E/2001/Add.1 (Part 2) - Vol. II - Part II - Report of the International Law Commission to the General Assembly on the work of its fifty-third session - Chapter IV.

With regard to Israel's obligation to make reparation by restitution, which requires it to "restore the situation to what existed before the internationally wrongful act was committed",⁶⁷³ the restitution obligation requires Israel to return illegally seized property⁶⁷⁴, including land, assets and cultural property, including archives and documents, that Israel has seized from any natural or legal person since the beginning of its occupation in 1967⁶⁷⁵.

Israel is also required to dismantle the wall it has built in the occupied Palestinian territories, to evacuate all settlers from the settlements it has established, and to allow all Palestinians who have been displaced to return to their places of origin, as confirmed by the International Court of Justice in its 2024 Advisory Opinion on the Palestinian issue⁶⁷⁶. Israel is required to repeal the legal instrument under which East Jerusalem was annexed to Israel⁶⁷⁷ and to release Palestinian prisoners illegally held by it⁶⁷⁸.

In addition to the above, which Israel's obligation to respond requires, forms of response may include an immediate cessation of hostilities⁶⁷⁹, the dismantling of the administrative system⁶⁸⁰, including the repeal of legislative measures contrary to international law⁶⁸¹, an immediate halt to the transfer of Israeli Jewish citizens to settlements in the West Bank, as well as a cessation of the displacement of protected

⁶⁷³ Articles "[Responsibility of States for internationally wrongful acts](#)" - submitted by the International Law Commission to the General Assembly at its fifty-sixth session - 2001 - [A/RES/56/83](#) - Article 35 "Restitution"

⁶⁷⁴ International Court of Justice - Temple of Preah Vihear Case (Cambodia v. Thailand) (On the merits) - I.C.J. Reports 1962 - p. 6.

⁶⁷⁵ See Advisory Opinion of the International Court of Justice on "[Legal Consequences of Israeli Occupation Policies and Practices in the Occupied Palestinian Territory, including East Jerusalem](#)" of 19 July 2024, p. 74, para. 270.

⁶⁷⁶ Ibid.

⁶⁷⁷ See International Court of Justice - Arrest warrant of 11 April 2000 - (Democratic Republic of the Congo v. Belgium) - I.C.J. Reports 2002 - p. 3.

⁶⁷⁸ International Court of Justice - United States Diplomatic and Consular Personnel in Tehran - International Court of Justice Reports 1980 - p. 3.

⁶⁷⁹ See **Security Council** resolution 1177 of 1998, [S/RES/1177 \(1998\)](#), paragraph 1, "which states that the Security Council "condemns the use of force and demands that the parties immediately cease hostilities and cease the continued use of force."

⁶⁸⁰ See **International Court of Justice** - Advisory opinion [on the legal consequences of the continued presence of South Africa in Namibia despite Security Council resolution 276 \(1970\)](#) - of 21 June 1971 - Summaries of the judgments, advisory opinions and orders of the International Court of Justice 1948-1991 - paragraph 118

⁶⁸¹ See **General Assembly** resolution 2270 (XXII) [A/RES/2270 \(XXII\)](#) on the question of Portuguese-administered Territories, paragraph 6 (e).

populations⁶⁸², and an immediate, unconditional and complete withdrawal from the Occupied Palestinian Territory⁶⁸³.

We note here that restitution is closely linked to cessation, but the former differs from the latter in that it requires "the restoration of the situation that existed before the internationally wrongful act was committed⁶⁸⁴", in the sense that restitution "leads to the erasure of all effects arising from this wrongful act and the restoration of the situation that would have prevailed had the act not been committed".⁶⁸⁵

The International Court of Justice has ruled that the response is inappropriate in the Bosnian genocide case⁶⁸⁶, as well as when it comes to homes that Israel has demolished over decades, or the restitution of property that it has irreparably altered.⁶⁸⁷, restitution should be made only to correct, as far as possible, the effects of the wrongful act⁶⁸⁸.

Article 35 of the articles on responsibility of States for internationally wrongful acts mentioned two conditions when applying the obligation to restitution, the first being that restitution must be "materially impossible",⁶⁸⁹ and the second "not entailing a burden that is wholly disproportionate to the benefit derived in lieu of compensation".⁶⁹⁰ Therefore, the International Court of Justice, in its advisory opinion on the wall, noted that it may not be materially possible for Israel to return "land, orchards, olive trees and other immovable property seized from any natural or legal person. For the purpose of

⁶⁸² Ibid., paragraph 5.

⁶⁸³ See **International Court of Justice** - Advisory opinion on the Legal Consequences of the Separation of the Chagos Archipelago from Mauritius - issued on February 25, 1965 - Reports of the Court 2019-2020 - Chapter V.B - Paragraph 178 See **International Court of Justice** - Advisory opinion [on the legal implications of the continued presence of South Africa in Namibia despite Security Council resolution 276 \(1970\)](#)- of June 21, 1971 - Summaries of the judgments, advisory opinions and orders of the International Court of Justice 1948-1991 - paragraph 118.

⁶⁸⁴ See [Yearbook of the International Law Commission 2001](#) - A/CN.4/SER. E/2001/Add.1 (Part 2) - Vol. II - Part II - Report of the International Law Commission to the General Assembly on the work of its fifty-third session - Chapter IV.E.2 Paragraph 77 - Page 124 - Comment No. 1.

⁶⁸⁵ Permanent Court of International Justice - Chorzów Factory Case (on the merits) - Reports of the [Permanent Court of International Justice](#) - Series A - No. 17 - [Judgment of 26 July 1927](#) - page 47.

⁶⁸⁶ See the judgment of the International Court of Justice - [on the application of the Convention on the Prevention and Punishment of the Crime of Genocide \(Bosnia and Herzegovina v. Serbia and Montenegro\)](#) - Judgment of 26 February 2007 - p. 193, paragraph 460.

⁶⁸⁷ James Crawford - State Responsibility: General Part (Cambridge University Press 2014) -513.

⁶⁸⁸ See the Judgment of the International Court of Justice on [the Gabcikovo-Nagymaros Project \(Hungary v. Slovakia\)](#) of 25 September 1997, p. 77, paras. 149-150.

⁶⁸⁹ Articles "[Responsibility of States for internationally wrongful acts](#)" - submitted by the International Law Commission to the General Assembly at the 56th session - 2001 - [A/RES/56/83](#) - Article 35 "Reply" paragraph (a).

⁶⁹⁰ Ibid., paragraph (b).

building the wall in the Occupied Palestinian Territory.⁶⁹¹"But if a response is not possible, it is certain, and should, compensate for these losses⁶⁹².

Article 36(1) of the Articles on Responsibility of States for Internationally Wrongful Acts stipulates that "the State responsible for an internationally wrongful act has an obligation to compensate for the damage resulting from such act if such damage is not remedied by restitution",⁶⁹³ and this has been affirmed by the International Court of Justice on a number of⁶⁹⁴ occasions, including its 2024 advisory opinion on the occupation of Israel for the Palestinian territories⁶⁹⁵.

Reparation is resorted to when compensation is of greater benefit to the injured Palestinians and at the same time the burden of compensation on the wrongdoing Israel is lower than restitution⁶⁹⁶, bearing in mind that each form of compensation includes a pro rata clause, which aims to ensure that reparation is not used as a punitive tool⁶⁹⁷, and this undermines Palestinians in determining the form of compensation.

Palestinians can claim compensation from the Israeli occupying Power for damage caused to the Palestinian National Authority or to natural or legal persons⁶⁹⁸, including

⁶⁹¹ See **International Court of Justice** Advisory [Opinion on the Legal Consequences of the Construction of the Wall of 9 July 2004 A/ES-10/273](#), para. 153.

⁶⁹² United Nations - United Nations Conference on Trade and Development (**UNCTAD**) - Economic Costs of the Israeli Occupation on the Palestinian People: Their Human Right to Development: Legal Dimensions - 14 March 2018 - [UNCTAD/GDS/APP/2017/2](#).

⁶⁹³ Articles "[Responsibility of States for internationally wrongful acts](#)" - submitted by the International Law Commission to the General Assembly at the 56th session - 2001 - [A/RES/56/83](#) - Article 36(a) "Compensation".

⁶⁹⁴ See the judgment of the International Court of Justice [on the Gabcikovo-Nagymaros Project \(Hungary v. Slovakia\)](#), dated 25 September 1997, p. 77, para. 152, where the paragraph reads: "Hungary is entitled to compensation for damage suffered as a result of the diversion of the Danube River..." Here, the court resorted to the option of compensation because restitution was not available.

⁶⁹⁵ See Advisory Opinion of the International Court of Justice on [the Legal Consequences of Israeli Occupation Policies and Practices in the Occupied Palestinian Territory, including East Jerusalem](#), 19 July 2024, p. 74, para. 271.

⁶⁹⁶ Articles "[Responsibility of States for internationally wrongful acts](#)" - submitted by the International Law Commission to the General Assembly at the fifty-sixth session - 2001 - [A/RES/56/83](#) - Article 35 "Reply". See [Yearbook of the International Law Commission 2001 - A/CN.4/SER. S/2001/Add.1 \(Part 2\) - Vol. II - Part II - Report of the International Law Commission to the General Assembly on the work of its fifty-third session - Chapter IV](#).

⁶⁹⁷ *Ibid.* - Comments Nos. 5 and No. 7.

⁶⁹⁸ See the judgment of the International Court of Justice on [the Gabcikovo-Nagymaros Project \(Hungary v. Slovakia\)](#) of 25 September 1997, p. 77, para. 152. See Advisory Opinion of the International Court of Justice on [the Legal Consequences of Israeli Occupation Policies and Practices in the Occupied Palestinian Territory, including East Jerusalem](#), 19 July 2024, p. 74, para. 271.

loss of profits⁶⁹⁹, and Palestinians may claim interest on any principal amount payable by Israel in order to secure full reparation⁷⁰⁰. Palestinians have the right to claim compensation from Israel for material and moral damage, as the International Court of Justice has on several occasions authorized compensation for material and moral⁷⁰¹ damage., note that article 36 (2) limits compensation only to damage that is "financially assessable".⁷⁰²

In its 2024 Advisory Opinion on Israel's Occupation of Palestinian Territories, the International Court of Justice affirmed that "Israel is obliged to provide full compensation for damage caused by its internationally wrongful acts to all natural or legal persons concerned."⁷⁰³

Palestinians are entitled to claim compensation for damages suffered by the conduct of a third party if it is proved to be caused by the failure of the Israeli occupying Power to fulfil its obligations as an occupying Power, and there is a case law at the International Court of Justice that confirms this⁷⁰⁴.

On the basis of precedent at the International Court of Justice in a similar case, Israel is obliged to make reparation by compensating for damage resulting from its unlawful use of force, its violation of sovereignty and territorial integrity, its occupation of Palestinian territory, its violation of international human rights and humanitarian law, its plunder, its plundering and its exploitation of natural resources in the Occupied Palestinian Territory⁷⁰⁵, and for damage to individuals, communities and property⁷⁰⁶,

⁶⁹⁹ Articles "[Responsibility of States for internationally wrongful acts](#)" - submitted by the International Law Commission to the General Assembly at the 56th session - 2001 - [A/RES/56/83](#) - Article 36 (2) "Compensation".

⁷⁰⁰ Article 38 (1)

⁷⁰¹ See the judgment of the International Court of Justice on [Armed Activities on the Territory of Congo \(Republic of Jonggo v. Uganda\) \(Reparations Award\)](#) of 9 February 2022, para. 93.

⁷⁰² Articles "[Responsibility of States for internationally wrongful acts](#)" - submitted by the International Law Commission to the General Assembly at its 56th session - 2001 - [A/RES/56/83](#) - Article 36(2) "Compensation".

⁷⁰³ See Advisory Opinion of the International Court of Justice on [the Legal Consequences of Israeli Occupation Policies and Practices in the Occupied Palestinian Territory, including East Jerusalem](#), 19 July 2024, p. 73, para. 269.

⁷⁰⁴ See the judgment of the International Court of Justice on [Armed Activities on the Territory of Congo \(Republic of Jonggo v. Uganda\) \(Reparations Award\)](#) of 9 February 2022, para. 95.

⁷⁰⁵ *Ibid.*, paragraph 69.

⁷⁰⁶ *Ibid.*, paragraph 405. See Security Council resolution [674 S/RES/674 \(1990\)](#) of 29 October 1990 on the situation between Iraq and Kuwait, paragraph 8: "Iraq recalls its responsibility under international law for any loss, damage or injury arising in respect of Kuwait and other States, their nationals and corporations as a result of Iraq's unlawful invasion and occupation of Kuwait;".

where compensation is at least equal to the value of the lost goods.⁷⁰⁷ Israel is also required to compensate for its violations of peremptory norms of international law⁷⁰⁸.

In the case of Palestine, it may be necessary to establish an impartial arbitration committee to consider collective claims for damage caused by the Israeli occupying Power, such as the arbitration commission provided for in the peace treaty between Ethiopia and Eritrea⁷⁰⁹.⁷¹⁰ In 2016, the General Assembly established a register for this purpose⁷¹¹. In July 2020, the number of claims in this register reached 36,023⁷¹², which may be useful to the Court if it is requested to consider the damage caused by the Israeli occupying authority to the Palestinian territories⁷¹³.

It is also possible to benefit from the studies carried out by the United Nations Conference on Trade and Development (UNCTAD) on "the economic costs of the Israeli occupation on the Palestinian people", one study specialized in the economic effects resulting from the closure, restrictions and repeated hostilities in the Gaza Strip⁷¹⁴, and another study specialized in showing financial leakage and losses as a result of the Israeli

⁷⁰⁷ Mixed Greek-German Arbitral Tribunal *Evgenodis v. German State* - 5 Reports of International Law - 20 December 1929 (Case No. 296; *Meron, Vassi, Goix, Portugal v. Germany*, 5 Reports of International Law (1930-1929) Case No. 92; United Nations Security Council Resolution 545 (1983), para. 4; United Nations Security Council Resolution 546 (1984), paragraphs 6–7 Reaffirmed Angola's right to compensation for damage to life and property caused by South Africa's continued aggression and occupation.

⁷⁰⁸ See the judgment of the International Court of Justice - [on armed activities on the territory of the Congo \(Republic of Congo v. Uganda\) \(reparations award\)](#) - issued on 9 February 2022 - Declaration of ad litem judge Verhon - page 359 - paragraph 5.

⁷⁰⁹ For example, the peace treaty signed between Ethiopia and Eritrea on 12 December 2000, which provided for the establishment of an impartial arbitration claims commission.

⁷¹⁰ The United Nations Committee on the Exercise of the Inalienable Rights of the Palestinian People, and the Irish Center for Human Rights - [The Legitimacy of the Israeli Occupation of the Occupied Palestinian Territory, including East Jerusalem](#), 2023 - page 59.

⁷¹¹ United Nations Conference on Trade and Development, "Report on UNCTAD assistance to the Palestinian people: developments in the economy of the occupied Palestinian territory", TD/B/63/3 (28 September 2016), para. 46.

⁷¹² UN A/ES-10/839, Letter from the Secretary-General to the President of the General Assembly (24 July 2020), para. 5; United Nations Conference on Trade and Development, "Report on the United Nations Conference on Trade and Development Assistance to the Palestinian People: Developments in the Economy of the Occupied Palestinian Territory", TD/B/63/3 (28 September 2016), para. 46. The records indexed by the Register of Damage highlight the size of the appropriations: "52,870 claim forms and more than 300,000 supporting documents were collected in 233 Palestinian communities, with a population of 946,285."

⁷¹³ *Ibid.*

⁷¹⁴ United Nations - United Nations Conference on Trade and Development (UNCTAD) - Economic Costs of the Israeli Occupation on the Palestinian People: The Begging of Gaza Under Siege - 15 December 2020 - [UNCTAD/GDS/APP/2020/1](#).

occupation and its impact on the Palestinian ⁷¹⁵economy and employment. A study focused on the economic costs to the Palestinian people as a result of Israel's exploitation of Palestinian natural resources⁷¹⁶.

It should be noted that the latter affirms that the Palestinians have the right to claim oil and gas reserves in historic Palestine, not only in the territories occupied in 1967, because Resolution 181 of the General Assembly in 1947 allocates to the Palestinians 42.88% of the oil and gas reserves in historic Palestine⁷¹⁷. A study also examined the economic effects of the restrictions imposed by the Israeli occupation on Palestinians in Area C⁷¹⁸. UNCTAD also conducted a study published at the beginning of 2024 on the economic impact of the destruction in the Gaza Strip due to the war⁷¹⁹, and there is no doubt that its initial assessment provided by this study has multiplied exponentially due to the continuation of the war for more than 8 months after the publication of this study.

Since 2000, the Economic and Social Commission for Western Asia (ESCWA) of the United Nations Economic and Social Council (ECOSOC) ⁷²⁰has submitted annually a report to the Secretary-General on "The economic and social repercussions of the Israeli occupation on the living conditions of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, and of the Arab population in the occupied Syrian Golan",⁷²¹ mandated by the Economic and Social Council and the General Assembly⁷²².


⁷¹⁵ United Nations - United Nations Conference on Trade and Development (UNCTAD) - Economic Costs of the Israeli Occupation on the Palestinian People: Cumulative Financial Costs - 29 November 2019 - [UNCTAD/GDS/APP/2019/2](#).

⁷¹⁶ United Nations - United Nations Conference on Trade and Development (UNCTAD) - Economic Costs of the Israeli Occupation on the Palestinian People: Unrealized Oil and Natural Gas Potential - 22 August 2019 - [UNCTAD/GDS/APP/2019/1](#).


⁷¹⁷ Race Reference - Page 20, 38.

⁷¹⁸ United Nations - United Nations Conference on Trade and Development (UNCTAD) - Economic Costs of the Israeli Occupation on the Palestinian People: The Cost of Restrictions in Area C from above - 13 December 2022 - [UNCTAD/GDS/APP/2022/1](#).

⁷¹⁹ United Nations - United Nations Conference on Trade and Development (UNCTAD) - Preliminary assessment of the economic impact of the devastation in Gaza and prospects for economic recovery - 31 January 2024 - [UNCTAD/OSG/INF/2024/1](#).

⁷²⁰ See the official website of the Economic and Social Commission for Western Asia via the link in this code  by clicking on it with Ctrl.

⁷²¹ United Nations Economic and Social Council - Economic and Social Commission for Western Asia (ESCWA) - Report "[Economic and social repercussions of the Israeli occupation on the living conditions of the Palestinian people in the occupied Palestinian territory, including East Jerusalem, and of the Arab population in the occupied Syrian Golan](#)" - The Committee presented its last report on 30 June 2023 - A/78/127 - E/2023/95.

⁷²² See the "Economic and Social Commission for Western Asia" (ESCWA) - the official website - via the link attached in this code  by clicking on it with Ctrl.

In 2014, the World Bank conducted a study on the impact of Israeli restrictions on economic activity in Area C of the West Bank⁷²³, and the study included Area C only for several reasons, including that the area constitutes 61% of the area of the West Bank, and it is a contiguous area, unlike Area A and B, and because it is an area rich in natural resources, Palestinians and Palestinian companies are prohibited from investing these resources⁷²⁴.

These studies published by neutrals, UNCTAD, ESCWA and the World Bank, as well as the Register established by the General Assembly to record and document "damage resulting from the construction of the separation wall in the West Bank", could serve as a reference for the International Court of Justice or any international arbitral tribunal if it were requested to assess the damage caused to Palestinians as a result of Israel's occupation of the West Bank and Gaza⁷²⁵ Strip. Because it highlights in detail and documenting the magnitude of the economic losses resulting from the Israeli occupation, Israel bears international responsibility for "full reparation for the loss caused by the injury" caused by its illegal occupation, including "full and appropriate" monetary compensation⁷²⁶.

As for the final form of reparation for Israel's internationally wrongful acts, which is satisfaction⁷²⁷, such a form of reparation would be required of Israel if restitution or compensation was inadequate⁷²⁸, and compensation would be used in the case of "moral or legal damage directly inflicted on the State, in particular in the case of injury to persons associated with international responsibilities".⁷²⁹

⁷²³ Cali, Massimiliano; Nasiruddin, Nour; Nexic, Orhan [Area C and the Future of the Palestinian Economy \(English\)](#) - A World Bank Study in Washington, D.C.: World Bank Group July 17, 2017.

⁷²⁴ Ibid. - Abstract.

⁷²⁵ UN A/ES-10/839, Letter from the Secretary-General to the President of the General Assembly (24 July 2020), para. 5; United Nations Conference on Trade and Development, "Report on the United Nations Conference on Trade and Development Assistance to the Palestinian People: Developments in the Economy of the Occupied Palestinian Territory", TD/B/63/3 (28 September 2016), para. 46. The records indexed by the Register of Damage highlight the size of the appropriations: "52,870 claim forms and more than 300,000 supporting documents were collected in 233 Palestinian communities, with a population of 946,285."

⁷²⁶ Articles on Responsibility for Internationally Wrongful Acts (2001), Article 31; In South Africa's occupation of Angola, the United Nations Security Council called for the need for full and adequate compensation, United Nations Security Council Resolution 546 (1984), paras. 7-8.

⁷²⁷ Articles "[Responsibility of States for internationally wrongful acts](#)" - submitted by the International Law Commission to the General Assembly at the 56th session - 2001 - [A/RES/56/83](#) - Article 37.

⁷²⁸ Ibid., Article 37(1).

⁷²⁹ Rainbow Warrior International Arbitral Awards Reports 1990 - pp. 215, 272, 273.

A just satisfaction may be "recognition of the violation, expression of regret, formal apology, or any other appropriate method", ⁷³⁰and therefore we can consider satisfaction as a form of reparation to be inappropriate in the context of Israel's illegal occupation of Palestinian territories, given the nature and gravity of Israeli violations, including violations of the Geneva Conventions. Any international judicial body, including the International Court of Justice, must focus when considering the question of reparation for Israel for Its internationally unlawful actions to respond and compensate the Palestinian people. In the *Military Activities in Congolese Territory* case, the International Court of Justice had refused to use satisfaction in the form of ordering Uganda to conduct criminal investigations into those responsible for grave breaches of the Geneva Conventions, arguing that such investigations were already required of Uganda under its obligations⁷³¹.

⁷³⁰ Ibid., Article 37(2).

⁷³¹ International Court of Justice, case concerning *Armed Activities in the Territory of the Congo (Democratic Republic of the Congo v. Uganda)* (Judgment) (Judgment), I.C.J. Reports 168 (19 December 2005), para. 390.

3.3 Responsibility of Third States and The United Nations

In this request, we will clarify the responsibility of the United Nations and third States to end this illegal occupation, based on international resolutions adopted by the General Assembly, the Security Council and the International Court of Justice on the responsibility of third States in similar⁷³² occupations, as well as on the International Law Commission articles on the responsibility of States for internationally wrongful acts⁷³³.

Based on the obligations of third States that may arise from the relevant international conventions, including the Geneva Conventions, specifically their common article I, which stipulates that "the High Contracting Parties undertake to respect and ensure respect for this Convention in all circumstances".⁷³⁴ Proceeding from the emphasis of the International Court of Justice that the nature of certain internationally wrongful acts may have an interest on the part of third States and the international community in general in putting an end to such wrongful conduct⁷³⁵.

3.3.1 Responsibility of Third States

Third-state responsibility and obligations to end Israel's illegal occupation vary from political, diplomatic, economic, and military. One of those obligations on third States is not to recognize the legitimacy of the Israeli occupation of the Palestinian territories occupied since 1967⁷³⁶ and not to provide aid or assistance in maintaining the

⁷³² In its commentary on article 41 of the articles on responsibility of states for internationally wrongful acts (2001), the International Law Commission noted that Security Council resolutions, for example, "prohibit any aid or assistance in maintaining the illegal apartheid regime in South Africa or Portuguese colonial rule ... These decisions reflect a general notion applicable to all cases arising from serious breaches within the meaning of article 40." See [Yearbook of the International Law Commission 2001 - A/CN.4/SER.E/2001/Add.1 \(Part 2\) - Vol. II - Part II - Report of the International Law Commission to the General Assembly on the work of its fifty-third session - Chapter IV](#).

⁷³³ Articles on "[Responsibility of States for internationally wrongful acts](#)" submitted by the International Law Commission to the General Assembly at the 56-2001 session - [A/RES/56/83](#).

⁷³⁴ The four Geneva Conventions -Article 1.

⁷³⁵ International Court of Justice - Barcelona Traction, Lighting and Power Limited case (Belgium v. Spain) (phase II of judgement) - Judgment of 5 February 1970 - p. 3 (5 February 1970), p. 32, para. 33.

⁷³⁶ Article 41(2) of the articles on "[Responsibility of States for internationally wrongful acts](#)" submitted by the International Law Commission to the General Assembly at the fifty-sixth session of 2001 - [A/RES/56/83](#) - provides that "no State shall recognize the legality of a situation resulting from a serious breach within the meaning of Article 40, nor shall it render any aid or assistance for the maintenance of that situation".

In General Assembly resolution 62/243 of 25 April 2008 on the situation in the occupied territory of Azerbaijan ([A/RES/62/243](#)), paragraph 5 of the General Assembly stated that "5. Reaffirms that no State

status of this occupation⁷³⁷. This has been confirmed by UN resolutions on several similar occasions.⁷³⁸, including the 2024 Advisory Opinion of the International Court of Justice on Israel's occupation of Palestinian territories, the Court affirmed that "all States are obliged not to recognize as lawful the situation arising from Israel's unlawful presence in the OPT. They are also obliged not to provide aid or assistance in maintaining that situation."⁷³⁹

Third States have an obligation not to enter into any treaty relations whatsoever with the Israeli occupying power that relate to the Palestinian territories or in which the Israeli occupying Power claims to be acting on behalf of the Palestinians⁷⁴⁰, because the establishment of such relations "may imply the recognition that the existence of the Israeli

shall recognize the legitimacy of the situation resulting from the occupation of the territory of the Republic of Azerbaijan and shall not provide any aid or assistance for the maintenance of that status;"

The Security Council **called on** third States not to recognize any regime established by Iraq in occupied Kuwait. See Security Council resolutions 661 (1990) ([S/RES/661 \(1990\)](#)) and 226 (1990) ([S/RES/662 \(1990\)](#)) concerning the situation between Iraq and Kuwait. In Resolution 661, paragraph 9 (a) states that the Security Council "calls upon all States: ... (b) Not to recognize any system established by the occupying Power;". In paragraphs 3 and 4 of the resolution, the Council called on all States to refrain from a series of acts as sanctions against the State of Iraq, so as not to provide aid and assistance to it. In resolution 662, paragraph 2 stated that the Security Council "2. Calls upon all States, international organizations and specialized agencies not to recognize such annexation and to refrain from taking any action or undertaking any transactions that may be interpreted as indirect recognition of annexation;". See **Security Council** resolution 541 (1983) [S/RES/541 \(1983\) concerning Cyprus](#), para. 7. This non-recognition has been described as the "principle of non-recognition of invasion" (see Argentina, Civil Court of the Capital, [Militich v. General Construction Company Ltd.](#), **International Law Reports**, University of Cambridge, Vol. 12, July 7, 1943, Case No. 163.

See [Advisory Opinion on the Legal Consequences of the Construction of the Wall](#) , 9 July 2004, A/ES-10/273, para. 159, which states that "159 Given the nature and importance of the rights and obligations concerned, the Court considers that all States are under an obligation not to recognize the illegal situation resulting from the construction of a wall in the Occupied Palestinian Territory, including in and around East Jerusalem. All are also obliged not to aid or assist in maintaining the resulting situation."

See **International Court of Justice** - Advisory opinion [on the legal implications of the continued presence of South Africa in Namibia despite Security Council resolution 276 \(1970\)](#) - issued on 21 June 1971 - Summaries of the judgments, advisory opinions and orders of the International Court of Justice 1948-1991 - paragraph (paragraphs 117-127 and 133 of the advisory opinion) - page 104 - where paragraph 119 states: "States Members of the United Nations are obliged to recognize illegality." South Africa's continued presence in Namibia and the nullity thereof, and by refraining from providing any support or assistance whatsoever to South Africa in connection with its occupation of Namibia."

⁷³⁷ Ibid.

⁷³⁸ Ibid.

⁷³⁹ See Advisory Opinion of the International Court of Justice on "[Legal Consequences of Israeli Occupation Policies and Practices in the Occupied Palestinian Territory, including East Jerusalem](#)" of 19 July 2024, p. 76, para. 279.

⁷⁴⁰ See **International Court of Justice** - Advisory opinion [on the legal implications of the continued presence of South Africa in Namibia despite Security Council resolution 276 \(1970\)](#) - of 21 June 1971 - Summaries of the judgments, advisory opinions and orders of the International Court of Justice 1948-1991 - paragraphs (117-127 and 133 of the advisory opinion) - page 104 - where paragraph 122 reads "Member States are obliged to refrain from entering into treaty relations with South Africa in all cases where the South African Government suggests that it is acting on behalf of or in relation to Namibia." +688

occupying Power is "legitimate"⁷⁴¹ and would entrench the Israeli occupying power on the Palestinian territories. The International Court of Justice has affirmed this on several occasions.⁷⁴², the most important of which is its 2024 advisory opinion on Israel's occupation of Palestinian territories⁷⁴³.

These relations include the import of any products and goods from the Israeli occupying Power⁷⁴⁴, and third States must refrain from placing any commercial, industrial or public facilities at the disposal of the Israeli occupying Power⁷⁴⁵. This includes preventing the provision of any support whatsoever to banks, financial institutions and companies that finance or contribute to the settlement enterprise in the West Bank, or in other violations of international law against protected Palestinians.

In its 2024 advisory opinion on Israel's occupation of Palestinian territories, the International Court of Justice affirmed that UN member states are obliged to "refrain from engaging in economic or commercial transactions with Israel in respect of the Occupied Palestinian Territory or parts thereof that may entrench their unlawful presence in the territory."⁷⁴⁶ The Court also affirmed that a distinction must be made in States' dealings with Israel between the territories of Israel and the Occupied Palestinian Territories⁷⁴⁷.

In addition, third States must refrain from sending and establishing diplomatic, consular or special missions with Israel in the occupied Palestinian territories ⁷⁴⁸and, if

⁷⁴¹ Ibid.

⁷⁴² Ibid.

⁷⁴³ See Advisory Opinion of the International Court of Justice on "[Legal Consequences of Israeli Occupation Policies and Practices in the Occupied Palestinian Territory, including East Jerusalem](#)" of 19 July 2024, p. 76, para. 278, which states that Member States are obliged "to refrain from treaty relations with Israel in all cases where it claims to act on behalf of the Occupied Palestinian Territory or part thereof in matters relating to the Occupied Palestinian Territory or part of its territory".

⁷⁴⁴ See **Security Council** Resolution 661 of 1990 S/RES/661 (1990) concerning the situation between Iraq and Kuwait (para. 3 (a), which states that the Security Council "3. Decides that all States shall prevent: (a) The import of any goods and products originating in Iraq or Kuwait ... (c) Any sale or supply by its nationals or from its territory or using vessels flying its flag of any goods or products, ... to any person or entity in Iraq or Kuwait, ..."

⁷⁴⁵ Ibid., **paragraph 4**, which stated that the Security Council "4. Decides that all States shall refrain from providing any funds or any other financial or economic resources to the Government of Iraq or to any commercial or industrial projects or to any utility projects in Iraq or Kuwait ..."

⁷⁴⁶ See Advisory Opinion of the International Court of Justice on [the Legal Consequences of Israeli Occupation Policies and Practices in the Occupied Palestinian Territory, including East Jerusalem](#), 19 July 2024, p. 76, para. 278.

⁷⁴⁷ Ibid.

⁷⁴⁸ See **International Court of Justice** - Advisory opinion [on the legal implications of the continued presence of South Africa in Namibia despite Security Council resolution 276 \(1970\)](#) - of 21 June 1971 - Summaries of the judgments, advisory opinions and orders of the International Court of Justice 1948-1991 - paragraphs (117-127 and 133 of the advisory opinion) - page 105 - where paragraph 123 states: "Member

they have missions and agents in these territories, they must withdraw them from there⁷⁴⁹. This was confirmed by the International Court of Justice in its 2024 Advisory Opinion on Israel's occupation of Palestinian territories⁷⁵⁰, and one indication that the third state does not recognize the Israeli occupation is its permanent obligation to recognize the inalienable rights of return of displaced persons and exiles. of the population under⁷⁵¹ occupation.

One of the obligations of third countries to end the Israeli occupation, which falls within the military aspect, is to impose a complete arms embargo on Israel⁷⁵², so that weapons are not imported from them and are not exported to them. Refrain from providing any military assistance to Israel, including military exercises, and provide Israel with materials for the manufacture of weapons and ammunition⁷⁵³.

States are obliged to refrain from sending diplomatic or special missions to South Africa includes in its jurisdiction the territory of Namibia. by refraining from sending consular agents to Namibia and by withdrawing such agents there;"

⁷⁴⁹ Ibid.

⁷⁵⁰ See Advisory Opinion of the International Court of Justice on [the Legal Consequences of Israeli Occupation Policies and Practices in the Occupied Palestinian Territory, including East Jerusalem](#), 19 July 2024, p. 76, para. 278.

⁷⁵¹General Assembly **Resolution** 62/243 - [A/RES/62/243](#) - On the situation in the occupied territory of Azerbaijan - adopted on April 25, 2008 - paragraph 3 of which states that the General Assembly "reaffirms the inalienable right of the population expelled from the occupied territories of the Republic of Azerbaijan to return to their homes, stresses the need to create conditions conducive to such return, ...". See **UN General Assembly Resolution** 75/192 ([A/RES/75/192](#)) on the human rights situation in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine of 16 December 2020.

⁷⁵²See United Nations **Security Council Resolution** 546 ([S/RES/546 \(1984\)](#)) on Angola, South Africa of 6 January 1984, paragraph 4, which states that the Security Council "calls upon all States to implement fully the arms embargo imposed on South Africa in Security Council resolution 418 (1977)".

⁷⁵³ See **Security Council Resolution** 662 (1990) [S/RES/662 \(1990\)](#) concerning the situation between Iraq and Kuwait (para. 3 (c), which states that the Security Council "3. Decides that all States shall prevent: ... (c) Any sale or supply by its nationals or from its territory or using vessels flying its flag of any goods or products, including arms or other military equipment, ... to any person or body in Iraq or Kuwait, ...".

See General Assembly resolution 2270 (XXII) [A/RES/2270 \(XXII\)](#) on the question of territories under Portuguese administration, paragraph 8 (a)-(c), which states that "8. Reiterates to all States, ... (a) To instruct immediately to provide the Government of Portugal with any assistance encouraging it to continue its repression of the African peoples in the Territories under its control, including the training of Portuguese military personnel... (c) To cease the sale or transfer of equipment and materials for the manufacture or maintenance of arms and ammunition to the Government of Portugal;"

Third ⁷⁵⁴states can act through pressure measures to end this illegal occupation⁷⁵⁵, and third states can provide Palestinians in the West Bank and Gaza with "all necessary assistance to be able to defend themselves against escalating military attacks"⁷⁵⁶ by the Israeli occupying power "as well as against its continued occupation"⁷⁵⁷ of their territory.

"All States, while respecting the Charter of the United Nations and international law, must also work to remove any obstacle, resulting from the construction of the wall, to the exercise by the Palestinian people of their right to self-determination. Furthermore, all States parties to the Geneva Convention relative to the Protection of Civilian Persons in Time of War are bound by ... to ensure Israel's compliance with international humanitarian law as contained in that Convention", and this was confirmed by the International Court of Justice in its advisory opinion on the wall⁷⁵⁸, as well as by the Court in its 2024 advisory opinion on Israel's occupation of Palestinian territories, but in its recent advisory opinion the Court called on States "to ensure that any impediment resulting from Israel's illegal presence in the Occupied Palestinian Territory"⁷⁵⁹ and not only resulting from the wall is brought to an end.

They should cooperate with each other to help gather information to ascertain the losses incurred by the occupied Palestinian territories as a result of the continued Israeli occupation⁷⁶⁰, and third States could coordinate with each other through the formation of an international body comprising members of the United Nations and representatives of

⁷⁵⁴ Articles "[Responsibility of States for internationally wrongful acts](#)" - submitted by the International Law Commission to the General Assembly at the 56th session - 2001 - [A/RES/56/83](#) - Article 41 "Certain consequences of a serious breach of an obligation under this chapter" - paragraph (1) - which provides that "States shall cooperate to bring to an end, by lawful means, any serious breach within the meaning of article 40".

⁷⁵⁵ See **International Court of Justice** - [Advisory Opinion on the Legal Consequences of the Continued Presence of South Africa in Namibia Notwithstanding Security Council Resolution 276 \(1970\)](#) - of 21 June 1971 - Summaries of International Court of Justice Judgments, Advisory Opinions and Orders 1948-1991 - Paragraph 117. See *ibid.*, separate opinion of Judge Petřín.

⁷⁵⁶ United Nations **Security Council** Resolution [546 \(S/RES/546 \(1984\)\)](#) on Angola, South Africa of 6 January 1984, paragraph 6.

⁷⁵⁷ *Ibid.*

⁷⁵⁸ **International Court of Justice** - [Advisory opinion on the Legal Consequences of the Construction of the Wall](#) - issued on 9 July 2004 - [A/ES-10/273](#) - paragraph 159.

⁷⁵⁹ See Advisory Opinion of the International Court of Justice on "[Legal Consequences of Israeli Occupation Policies and Practices in the Occupied Palestinian Territory, including East Jerusalem](#)" of 19 July 2024, p. 76, para. 279.

⁷⁶⁰ See Security Council resolution [674 \(S/RES/674 \(1990\)\)](#) of 29 October 1990 concerning the situation between Iraq and Kuwait, paragraph 9, which states that "9. Invites States to collect relevant information concerning their claims and those of their nationals and companies for reparation or financial compensation to Iraq with a view to making such arrangements as may be established in accordance with international law."

regional organizations to assess countermeasures related to ending the Israeli occupation of the Palestinian territories⁷⁶¹.

In this regard, the International Court of Justice referred to this in its 2024 Advisory Opinion on Israel's occupation of Palestinian territories, where the Court held that all states should cooperate with the organs of the United Nations – the General Assembly, the Security Council – to develop and work to implement the required modalities "to ensure the end of the illegal Israeli presence in the Occupied Palestinian Territory and the full realization of the right of the Palestinian people to self-determination."⁷⁶² Among other things, the Court relied on the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations⁷⁶³.

⁷⁶¹ UN Member States, representatives of NATO, the European Union, the Council of Europe and the Organization for Democracy and Economic Development have formed an international platform to assess countermeasures in order to "achieve the goal of ending the occupation of Crimea", which recommended the use of "appropriate mechanisms of the United Nations, the Council of Europe, the Organization for Security and Cooperation in Europe and other international and regional organizations to address issues related to temporary occupation", including the establishment of focal points for Crimea in the relevant ministries of foreign affairs, and "recognition the role of national parliaments in addressing the temporary occupation of Crimea and encouraging coordination of activities related to Crimea among national parliaments as well as within inter-parliamentary assemblies." The Platform also intended to "invite international and national NGOs, think tanks and the expert community to contribute to the activities of the Network". [S/2021/908 - A/76/503](#) - Letter dated 29 October 2021 from the Permanent Representative of Ukraine to the United Nations addressed to the Secretary-General (2 November 2021).

⁷⁶² See Advisory Opinion of the International Court of Justice on "[Legal Consequences of Israeli Occupation Policies and Practices in the Occupied Palestinian Territory, including East Jerusalem](#)" of 19 July 2024, p. 74, para. 275.

⁷⁶³ See [General Assembly resolution 2625 \(XXV\)](#), adopted on 24 October 1970, entitled Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, Principle V, "The principle of equal rights and self-determination of peoples", which states that "Every State has the duty, jointly or severally, to realize the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter, and to assist the United Nations in carrying out the responsibilities entrusted to it by the Charter with regard to the application of this principle, ..."

2.3.3 Responsibility of The United Nations

As for the United Nations, it bears the primary responsibility for ending the Israeli occupation of the Palestinian territories, and its responsibility remains "until the issue is resolved in all its aspects in accordance with international law and relevant resolutions",⁷⁶⁴ and the International Court of Justice in its advisory opinion on the wall had affirmed that "the United Nations, in particular the General Assembly and the Security Council", should "consider the additional measures necessary to put an end to the illegal situation resulting from the construction of the wall and its associated regime".⁷⁶⁵

The Court reaffirmed this but "to put an end to the illegal Israeli presence in the Occupied Palestinian Territory, and not just the situation resulting from the wall, in its 2024 advisory opinion on Israel's occupation of Palestinian territories"⁷⁶⁶. In this advisory opinion, the Court affirmed that international organizations, including the United Nations, are required to "commit not to recognize the situation arising from Israel's unlawful presence in the Occupied Palestinian Territory"⁷⁶⁷ and that the United Nations is required to "distinguish in their dealings with Israel between the territories of Israel and the Occupied Palestinian Territory".⁷⁶⁸

The United Nations Security Council could establish a "subcommittee of the Council to study, in consultation with the Secretary-General, ways and means by which the relevant resolutions of the Council could be implemented, ... to implement effectively in accordance with the appropriate provisions of the Charter, in the light of the Israeli occupying Power's blatant refusal to withdraw from the occupied Palestinian territories"⁷⁶⁹.

⁷⁶⁴See United Nations General Assembly Resolution 23/71 (A/RES/71/23) (30 November 2016) on the peaceful settlement of the question of Palestine (preamble).

⁷⁶⁵ **International Court of Justice - Advisory opinion on the Legal Consequences of the Construction of the Wall** - issued on 9 July 2004 - A/ES-10/273 - paragraph 160.

⁷⁶⁶ See Advisory Opinion of the International Court of Justice on "**Legal Consequences of Israeli Occupation Policies and Practices in the Occupied Palestinian Territory, including East Jerusalem**" of 19 July 2024, p. 77, para. 281.

⁷⁶⁷ Ibid., paragraph 280.

⁷⁶⁸ Ibid.

⁷⁶⁹ See Security Council resolution **276 of 1970 (S/RES/276 (1970))** on the situation in Namibia, paragraph 6. See **Security Council** resolution 661 (1990) S/RES/661 (1990) on the situation between Iraq and Kuwait, paragraph 6 (b).

On the basis of similar previous occasions, the International Court of Justice could bring to the attention of the General Assembly the question of the resettlement of returning Palestinian refugees and displaced persons in Palestine, and the Assembly would call for the cooperation of all States in that regard^{770 771}.

The Court could make recommendations to guide United Nations organs on their role in ending the Israeli occupation of Palestinian territories⁷⁷². The General Assembly and the Security Council could request the Israeli occupying Power to withdraw its military forces, end the occupation⁷⁷³, within a specified period of time⁷⁷⁴, and apply the principle of self-determination⁷⁷⁵, in accordance with the provisions of the Charter.

⁷⁷⁰ See International Court of Justice - Advisory opinion on the Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965 - Reports 2019-2020 - Chapter V.B - Para. 282(b), 292.

⁷⁷¹ Statement by the President of the Republic of Azerbaijan, the Prime Minister of the Republic of Armenia and the President of the Russian Federation (10 November 2020), paragraph 7; [Mandate of the Co-Chairs of the Nagorny Karabakh Conference under the auspices of the Organization for Security and Cooperation in Europe \("Minsk Conference"\)](#) (Vienna, 23 March 1995).

⁷⁷² See **International Court of Justice** - Advisory Opinion on the Legal Implications of the Continued Presence of South Africa in Namibia Notwithstanding Security Council Resolution 276 (1970) - of 21 June 1971 - Summaries of International Court of Justice Judgments, Advisory Opinions and Orders 1948-1991.

⁷⁷³ See Security Council resolution 660 (S/RES/660 (1990)) on the situation between Iraq and Kuwait, paragraph 2, which states that "2. Demands that Iraq withdraw all its forces immediately and unconditionally..." See Security Council resolution 661 (S/RES/661 (1990)) 1990 on the same situation paras. 1. See also United Nations Security Council resolution 822 (1993), which called for the withdrawal of all occupying forces from Kilbadjar district and other occupied areas. **Security Council Resolution 853 (1993)** - paragraph 3 - where the United Nations Security Council noted with concern Armenia's seizure of the Agdam district and again called for the withdrawal of the occupying forces from the province. Resolution 874 (1993) - October 1993 paragraph 5 - where the United Nations Security Council called for the immediate implementation of the "timetable modified" of the CSCE Minsk Group, and the withdrawal of troops from the occupied territories.

See United Nations General Assembly Resolution 37/253-A/RES/37/253-1983-on the question of Cyprus, paragraphs 7 and 8, where paragraph 8 states that the Assembly "8. Demands the immediate withdrawal of all occupying forces from the Republic of Cyprus". See Resolution No. 22/34 - A/RES/34/22 - 14 November 1989 - on the situation in Kampuchea - paragraph 7.

See "Report of the Working Group on the Universal Periodic Review" - A/HRC/15/9 - 6 July 2010 - paragraph 32. in July 1993. The **Parliamentary Assembly of the Council of Europe** called for the "withdrawal of occupying forces" from Azerbaijan, recommendation 1690 (2005), the conflict over the Nagorny Karabakh region addressed at the OSCE Minsk Conference.

⁷⁷⁴ See General Assembly resolution 73/295 (A/RES/73/295) (22 May 2019) on the advisory opinion of the International Court of Justice on the Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, paragraph 3, which states that the General Assembly "demands that the United Kingdom of Great Britain and Northern Ireland withdraw its colonial administration from the Chagos Archipelago unconditionally within a period not exceeding six months from the date of adoption of this resolution, enabling Mauritius to complete the decolonization of its territory as expeditiously as possible."

⁷⁷⁵ See General Assembly resolution 2270 (XXII) A/RES/2270 (XXII) on the question of territories under Portuguese administration, paragraph 7, in which the General Assembly states that "7. Urges the Government of Portugal to apply without delay the principle of self-determination to the peoples of the territories under its control, ..."

An end to the Israeli occupation must be done in a manner consistent with the right of the Palestinian people to self-determination⁷⁷⁶. Questions relating to the completion of the process of ending the occupation fell within the purview of the General Assembly, and all States had erga omnes obligations to cooperate in the entry into force of such arrangements.⁷⁷⁷

I consider it appropriate to mention a set of General Assembly resolutions relating to the situation of Palestine, such as Resolution 194 following the 1948 war, which decided that "refugees wishing to return to their homes and live in peace with their neighbours must be allowed to return as soon as possible, and compensation must be paid for the property of those who decide not to return to their homes as well as for all loss, loss or damage to property so that the thing returns to its origin in accordance with the principles of international law and justice. Such loss, loss or damage shall be compensated by the responsible governments or authorities."⁷⁷⁸

The Assembly passed resolution 67/19, by which Palestine had been granted the status of a "non-member observer State of the United Nations" and reaffirmed, inter alia: the right of the Palestinian people to self-determination, the establishment of their own independent State, Israel must withdraw from the territories it has occupied since 1967, the status of the Palestinian territories occupied since that year remains that of military occupation, and Israel must cease all settlement activities in those occupied territories, including: East Jerusalem, and that the Fourth Geneva Convention relative to the Protection of Civilian Persons applies to those territories, covering the issue of prisoners, and resolving the refugee problem in accordance with Resolution 194⁷⁷⁹. The Assembly

⁷⁷⁶ International Court of Justice, Legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965 (Advisory Opinion) I.C.J. Reports 2019, p. 25 (25 February 2019) Paragraph 178

⁷⁷⁷ **International Court of Justice**, Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965 (Advisory Opinion) I.C.J. Reports 2019, p. 25 (25 February 2019), paras. 179-180. "It is the duty of every State, jointly or severally, to promote the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter, and to assist the United Nations in discharging the responsibilities entrusted to it by the Charter with regard to the implementation of this principle." See United Nations General Assembly resolution 2625 (XXV) (24 October 1970) Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations.

⁷⁷⁸ General Assembly - [Resolution 194 - A/RES/194\(III\)](#) - 11 December 1948 - On Palestine - United Nations Progress Report - Mediator - Paragraph 11.

⁷⁷⁹ General Assembly - [Resolution 67/19 - A/RES/67/19](#) - on the status of Palestine in the United Nations - 28 November 2012.

adopted several resolutions calling on Israel to end its occupation of the Palestinian territories⁷⁸⁰.

The Security Council also issued many resolutions in this regard⁷⁸¹, including Resolution No. 242, which was issued by the Security Council on November 22, 1967, after the 1967 war between Israel and neighboring Arab countries, which resulted in Israel's occupation of the areas of the West Bank, including East Jerusalem, the Gaza Strip, Sinai and the Golan Heights. One party with the sovereignty, territorial integrity and political independence of the other party. He called on Israel to withdraw all its military forces from the territory of the "territories" it occupied in the conflict⁷⁸². This resolution was issued under Chapter VI of the Charter, not VII, in the sense that this resolution is a recommendation and does not warrant punishment for failure to implement it. Since the adoption of this resolution, it has been the basis of all regional and international negotiations and efforts aimed at settling the Arab-Israeli conflict, and the resolutions that follow it from United Nations organs have mentioned it and based on it.

The Council issued Resolution 252 on the city of East Jerusalem on May 21, 1968, a year after Israel's occupation of the city, and this resolution strongly condemned all measures taken by the occupation authorities to change the status of the city, and stressed that all those legislative and administrative measures, in addition to the confiscation of land and property, are null and illegal, and called for the need to cancel these procedures and actions, and to refrain from any actions or actions that would change the status of the city of Jerusalem in the future. The following year On July 3, 1969, Resolution No. 267 was issued and reaffirmed the provisions of this decision⁷⁸³.

⁷⁸⁰United Nations General Assembly **Resolution** A/RES/36/147E -16 December 1981. Resolution A/RES/36/226A -17 December 1981. -Resolution A/RES/37/123F -20 December 1982. Resolution A/RES/38/180D -19 December 1983. Resolution A/RES/39/146A -14 December 1984. Resolution A/RES/40/168A -16 December 1985. Resolution A/RES/RES/ 41/162A -4 December 1986. Resolution A/RES/42/209B -11 December 1987. Resolution A/RES/43/54A -6 December 1988. Resolution A/RES/44/40A -4 December 1989. Resolution A/RES/45/83A -13 December 1990. Resolution A/RES/46/82A -16 December 1991.

⁷⁸¹ **United Nations Security Council Resolution** 267-1969, which "condemns in the strongest terms all measures taken to change the status of the City of Jerusalem" and "affirms that all legislative and administrative measures and actions taken by Israel aimed at changing the status of Jerusalem, including the confiscation of land and property thereon, are null and void and cannot change this status." **and UN Security Council** Resolution 2334-2016, paragraph 9.

⁷⁸² **Security Council - Resolution 242 - S/RES/242 (1967)** - 22 November 1967 - concerning the Middle East.

⁷⁸³ **Security Council - Resolution 252 - S/RES/252 (1968)** - May 21, 1968 - on the Middle East.

Resolution 465 of 1980, which affirmed that all actions and actions taken by Israel to change the physical features, demographics and institutional structure of the Palestinian and other Arab territories occupied in 1967, including East Jerusalem, have no legal validity and that such actions constitute a violation of the Geneva Conventions. The resolution called for the dismantling of existing settlements, and for immediate refraining from planning and building them in the occupied territories, including East Jerusalem, and called on all States not to provide any assistance to the settlements⁷⁸⁴.

A few months after the adoption of Resolution 465, Resolution 476 was issued to reaffirm what was stated in the previous resolution, especially with regard to the city of Jerusalem, and called for the need to end the prolonged occupation of Arab territories occupied by Israel since 1967⁷⁸⁵. Two months after the last resolution, Resolution 478 was issued, which decided not to recognize the Basic Law issued by the occupation and any law aimed at changing the status of the city of Jerusalem, and called on States to withdraw their diplomatic missions established in the city of East Jerusalem⁷⁸⁶. It is noteworthy that the Security Council began to adopt its resolutions on settlements 12 years after the Israeli occupation in 1967, passing five resolutions within two years. The first resolution No. "446" was issued in 1979⁷⁸⁷.

None of the previous resolutions relating to ending the occupation and all related practices, including settlements, have been implemented, for with regard to General Assembly resolutions, Israel views them as not legally binding on them, and with regard to Security Council resolutions, no resolution has been adopted under the provisions of Chapter VII of the Charter. Therefore, one of the recommendations that I make in this research and related to this issue is the need for the Council to adopt resolutions under Chapter VII of the Charter to put an end to Israel's illegal presence in the occupied Palestinian territories.

⁷⁸⁴ **Security Council - Resolution 465 - S/RES/465 (1980)** - March 1, 1980 - on the territories occupied by Israel.

⁷⁸⁵United Nations Security Council **Resolution 476-S/RES/476 (1980)**-Concerning the Territories Occupied by Israel--20 August 1980.

⁷⁸⁶Security Council resolution **478 (S/RES/478 (1980)** 1980, paragraphs 1-3, states that the Security Council "3. Decides that all legislative and administrative measures and actions taken by Israel, the occupying Power, which have altered or are intended to alter the character and status of the City of Al-Quds Al-Sharif, in particular the recent Basic Law on Jerusalem, are null and void and must be rescinded immediately."

⁷⁸⁷ **Security Council - Resolution 446 - S/RES/446 (1979)** - March 22, 1969 - concerning the territories occupied by Israel.

Findings and Recommendations

1. The use of military force is lawful under the Law on the Grounds of War in four cases: self-defense, self-determination, use by the Security Council, and gross violations of human rights.
2. Occupation is unlawful under the Law on the Grounds of War if it arises as a result of the use of military force in other than the four previous cases.
 1. International humanitarian law regulates the conduct of the occupying power, and there are four basic principles emanating from the rules of this law that govern this authority: non-sovereignty, temporary occupation, the best interest of the protected population, and good faith.
 2. The Israeli occupation arose as a result of the unlawful use of military force, and is illegal in its origin under the Law on the Grounds of War.
 3. The policies and practices of the Israeli occupying power in its administration of the Occupied Palestinian Territory are contrary to the principles of international humanitarian law.
 4. The prolonged occupation does not make the occupying Power less bound by the legal regime of occupation, nor does it extend the limited and limited powers granted to it by international humanitarian law to the occupying Power, nor does the passage of time relieve the occupying Power of some of the obligations imposed on it.
 5. The presence of the State of Israel in the Occupied Palestinian Territory violates the Law of the Grounds of War and international humanitarian law.
 6. Israel is obligated to end its illegal occupation of the Occupied Palestinian Territory as soon as possible and to make reparation for all losses resulting from its violations.
 7. Third states and the UN are obligated not to recognize Israel's illegal occupation in the OPT, and are obligated to develop an implementation plan to end it.

Recommendations:

- The General Assembly, under the provisions of Articles 108 and 109 of the Charter, must amend the Charter with regard to the veto, so the researcher believes that an amendment should be made not to grant permanent members this right in cases related to gross violations of human rights, that is, when activating the principle of the "responsibility to protect" (R2P), in this case each member of the Council must have one vote without discrimination in rights.
- The second recommendation is that this thesis did not address the role and responsibility of the International Criminal Court for ending the Israeli occupation, so I recommend researchers to write on this subject.
- Finally, all Palestinian factions must unite under the umbrella of the Palestine Liberation Organization (PLO) as the sole legitimate representative of the Palestinian people, and agree on the tools of struggle in the struggle against this occupation.

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تأثير طول أمد الاحتلال الإسرائيلي على فاعلية انطباق اتفاقيتي لاهاي وجنيف الرابعة في الأراضي الفلسطينية المحتلة.

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ملخص

هدفت هذه الأطروحة إلى تحديد الإطار القانوني الناظم لحالة الاحتلال، وبيان مدى قانونية الاحتلال الإسرائيلي للأراضي الفلسطينية بموجب قانون مسوغات الحرب، وبموجب القانون الدولي الإنساني، وهدفت إلى توضيح الصفة التي امتاز بها هذا الاحتلال عن غيره من الاحتلالات في العالم، وهي أنه طويل الأمد، وكذلك هدفت الرسالة إلى معرفة المسؤولية الملقاة على عاتق إسرائيل والدول الثالثة والأمم المتحدة تجاه إنهاء هذا الاحتلال.

ولقد استخدم الباحث المنهج الوصفي التحليلي، واستعان الباحث بالتقارير ذات العلاقة بالأوضاع في الأراضي الفلسطينية المحتلة التي نشرتها الأمم المتحدة، والمؤسسات الدولية، وكذلك مؤسسات المجتمع المدني المستقلة سواء في فلسطين، أو في إسرائيل. وكذلك بآراء الخبراء في القانون الدولي، واستند الباحث في النتائج التي توصل إليها على قواعد القانون الدولي، بما فيها لوائح لاهاي لعام 1907، وقواعد اتفاقية جنيف الرابعة لعام 1948، وكذلك على القرارات الأممية، بما فيها الصادرة عن محكمة العدل الدولية، بما فيها رأيها الاستشاري الصادر عام 2024 المتعلق بفلسطين.

وخلصت الرسالة إلى أن الاحتلال الإسرائيلي نشأ عن استخدام غير مشروع للقوة العسكرية بموجب قانون مسوغات الحرب، فلم تكن إسرائيل في حالة دفاع عن النفس في حرب عام 1967، بل هي من بدأت العدوان على مصر، ورغم هذه النتيجة التي توصل إليها الباحث إلا أنه فرض وسلم جدلاً أن الاحتلال الإسرائيلي نشأ عن استخدام مشروع للقوة، وانتقل إلى تحليل سياساته وممارساته في الأراضي الفلسطينية المحتلة، وخلص الباحث إلى أن استمرار الاحتلال الإسرائيلي غير قانوني بموجب القانون الدولي الإنساني. ووضح الباحث في الفصل الأخير المسؤولية الملقاة على عاتق إسرائيل والدول الثالثة والأمم المتحدة عن إنهاء الاحتلال الإسرائيلي.

الكلمات المفتاحية: الاحتلال الإسرائيلي، الأراضي الفلسطينية المحتلة، الاحتلال طويل الأمد، قانون مسوغات الحرب، القانون الدولي الإنساني.