



Arab American University
Faculty of Graduate Studies

**Pillage of Natural Resources in Cases of Military Occupation:
Israeli Colonial Occupation Case Study.**

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

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Thesis Approval

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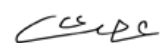
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Declaration

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

I dedicate this achievement

To my dear parents, who have left our world but remain in my heart and mind as an inspiration and constant support.

To My brothers and sisters, who were my permanent backing, gave me all the support and encouragement I needed.

To the innocent lives lost in Gaza due to the aggression. To all those who have suffered from violence and destruction, as well as to those who endure injustice and displacement.

Wala'a Qasem Ahmad Odeh

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Abstract

This study delved into the critical issue of the responsibility of occupying forces in the exploitation of natural resources within occupied territories, with a particular focus on the Israeli occupation of Palestinian territories. The research identified a significant problem, the difficulty of determining the extent to which the Israeli Occupying State bears international legal responsibility for plundering the occupied Palestinian territory's natural resources under international law. This is due to several reasons, including the vagueness of some of the legal texts on the protection of the natural resources of the occupied territories and the existence of gaps and contradictions in others. In addition, there are some difficulties in the process of establishing international responsibility itself. This allows the occupying forces to pillage and exploit resources in a way that prioritizes their interests over the rights and well-being of the local population.

The study carefully examined how the Israeli authorities have strategically manipulated these legal gaps, using them as a pretext to justify their pillage, exploitation and attrition of the natural resources in the occupied Palestinian Territories. Furthermore, the study highlighted the broader implications of this exploitation, not just as a legal issue but also as a humanitarian one, this attrition has had severe consequences, depriving the Palestinian people of their inherent right to sovereignty over their natural resources. As a result, economic, social and environmental conditions have deteriorated, undermining prospects for sustainable development in the occupied Palestinian territories.

In conclusion, the study underscored the imperative need to address these legal challenges within the framework of international law and called for a coordinated international effort to strengthen the legal safeguards for natural resources in conflict zones. Furthermore, the study emphasized the necessity of developing more robust international legal mechanisms to ensure greater protection for natural resources in occupied territories. This includes not only amending existing treaties but also establishing new frameworks that can effectively hold occupying forces accountable. Additionally, it is essential to guarantee the enforcement of the rights of the local population in the occupied territories, ensuring that their natural resources are exclusively allocated for their lawful benefit and preserved, rather than exploited by external forces.

Keywords: Pillage, Natural Resources, Military Occupation, International Law, Israeli occupation forces.

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Introduction:

The pillage of natural resources in occupied territories is a pressing issue that intersects international law, human rights, and geopolitical conflicts. Military occupations often lead to the systematic exploitation of a territory's natural wealth by the occupying power, despite the clear prohibitions outlined in international treaties. The protection of natural resources under occupation is enshrined in various international legal frameworks, including The Hague Regulations of 1907 and the Fourth Geneva Convention of 1949. However, the enforcement of these provisions remains a significant challenge due to legal ambiguities, political considerations, and the absence of effective accountability mechanisms.

The Israeli occupation of the Palestinian territories represents a case where natural resource exploitation has been widely documented. Reports from international organizations indicate that Israel has engaged in the extraction of water, minerals, and agricultural land in a manner that contravenes international legal norms. This systematic exploitation raises fundamental questions about the effectiveness of international law in preventing resource pillage and holding occupying states accountable. The legal gaps and contradictions in international treaties often allow occupying powers to manipulate legal provisions to justify continued exploitation, highlighting the urgent need for stronger enforcement mechanisms.

This study aims to examine the issue of resource exploitation in occupied territories through the lens of international law, with a particular focus on the Israeli occupation of

Palestine. It explores the legal principles governing the protection of natural resources, identifies the legal loopholes that enable violations, and assesses the mechanisms available to hold occupying states accountable. By addressing these critical issues, the research seeks to contribute to the broader discourse on international responsibility and propose recommendations for strengthening legal frameworks to prevent and penalize resource pillage in military occupations.

Research Problem:

The pillage of natural resources in occupied territories presents a critical challenge to the international legal system. Although International law, especially International Humanitarian Law, prohibits the unlawful exploitation of natural resources by an occupying power, the enforcement mechanisms remain weak, and legal ambiguities persist. The Israeli occupation of Palestinian territories is an example of a case where natural resources are systematically exploited, that the population of the occupied territories is deprived of the exercise of their right to sovereignty over their natural resources naturally, leading to real crises in the lack of natural resources and negatively affecting their economic and social rights. The impact of this deprivation extends to all aspects of their daily lives and their development future, which poses a major challenge to achieving sustainable development in these lands. Raising questions about the extent of Israel's legal responsibility and the effectiveness of international legal frameworks in addressing such violations.

Research questions:

To gain a comprehensive understanding of the study's topic, the following research inquiries need to be addressed:

The study presents the following main question:

To what extent does Israel bear international legal responsibility for the pillage of natural resources in the occupied Palestinian territories under international law?

The study presents the following sub-questions:

1. *What are the legal frameworks governing military occupation and the protection of natural resources under international law?*
2. *What are the gaps and contradictions in the provisions of international treaties on the protection of natural resources in the occupied territories impede the determination of the occupation's responsibility for the exploitation of natural resources in the occupied territories on the one hand, and how do the Israeli occupation authorities interpret these texts and use them to legitimize their exploitation of the occupied Palestinian Territories' natural resources on the other hand?*
3. *How are the Israeli occupying forces violating the norms of international law, exploiting the natural resources of the occupied Palestinian Territories for their benefit on the one hand, and preventing the Palestinian population from accessing and benefiting from them on the other hand?*

Importance of Research:

The academic importance of answering research questions stems mainly from:

1. Promotion of legal understanding. Research provides an in-depth analysis of international legal texts and helps to identify gaps and contradictions in the texts of international treaties on the protection of natural resources in the occupied territories used by the occupying power to justify the exploitation of natural resources, , and evade international responsibility. With the aim of improving these legal texts, enhancing greater protection of natural resources, and facilitating the process of proving international responsibility.
2. In addition, the research contributes to the enrichment of academic literature on international humanitarian law and human rights with regard to the protection of natural resources in the territories under occupation. With the aim of opening the way for further future studies.

As for **The practical importance** of research in the Palestinian context is:

1. Raising international awareness: Research provides documented and accurate information about the Israeli occupation authorities' exploitation of the natural resources of the occupied Palestinian Territories. With a view to establishing the Israeli occupying forces' responsibility for this, raising international awareness on this

issue, and calling on the international community to act and take the necessary measures.

2. Support for human rights: Research helps to highlight the violations to which the Palestinian people are subjected as a result of the exploitation of their natural resources and the denial of their sovereign rights. To help strengthen the protection of human rights and the pursuit of justice.

Limitations:

- 1- Legal Limitations: To answer questions and find a solution to the problem of research, on the one hand, a series of international legal frameworks relating to the protection of natural resources in the occupied territories, including customary norms, the Hague Conventions of 1907, the Fourth Geneva Convention of 1949, the International Bill of Human Rights, the Charter of the United Nations, resolutions of the Security Council and the General Assembly of the occupied nations, and decisions and opinions of International Courts, the International Court of Justice and the International Criminal Court will be examined. On the other hand, military and administrative practices, policies and orders issued by the Israeli authorities and applied to the natural resources of the Palestinian Territories Occupied since 1967, will be examined.

- 2- **Objective Limitations:** This study attempts to fill the gap in knowledge surrounding the occupying power's responsibility for its practices and exploitation of natural resources in the occupied territories without addressing the responsibility of individuals or private entities such as companies.

Determinants:

Pillage: the wrongful appropriation of property or resources by military forces or individuals during armed conflicts, whether through the use of force or other illicit means.

Occupied Palestinian Territories: refers to the territory that Israel has occupied since the six-day war of 1967, which consists of two geographically separate areas, the West Bank, including East Jerusalem, and the Gaza Strip.

Israeli Military Administration: Responsible for the implementation of the Israeli Government's policy in the West Bank. It follows the coordinator of the Government's activities in the areas, which constitutes a unit of the Israeli Ministry of Defence.

Oslo Conventions: a set of understandings between the Government of Israel and the PLO, comprising the Declaration of Principles on Transitional Self-Government Arrangements signed in Washington in 1993 and the Oslo II Agreement signed in Taba in 1995.

Areas according to the Oslo conventions:

Area (A) is about 18% of the West Bank area, which is under the full civilian and security control of the Palestinian National Authority. Area (B) is approximately 22% of West Bank territory, which is under the Palestinian National Authority's civilian control and Israel's security control. Area (C) covers approximately 60% of the West Bank, which is under Israel's total control.

Literature Review:

- 1- "State Responsibility for International Humanitarian Law Violations by Private Actors in Occupied Territories and the Exploitation of Natural Resources." By Longobardo, (2016): 251-274.¹

This study addresses the legal responsibility of States for violations of international humanitarian law committed by private actors in the occupied territories, with particular emphasis on the exploitation of natural resources. It also reviews the legal frameworks and responsibilities of the occupying Powers in accordance with international law, including the occupation laws provided for in The Hague Conventions of 1907 and the Geneva Conventions of 1949. Longobardo discusses how States are held responsible for actions by individuals

¹ M. Longobardo, *'State Responsibility for International Humanitarian Law Violations by Private Actors in Occupied Territories and the Exploitation of Natural Resources,'* Netherlands International Law Review, 63 (2016), 251-274.

or private companies in the occupied territories, especially when it comes to exploiting natural resources for economic gain.

The final conclusion of the study is that the occupying Powers bear considerable legal responsibility for the actions of private actors in the territories they occupy, and that there is an urgent need for strict and effective application of international laws to prevent the illegal exploitation of the territories' natural resources.

- 2- “Self-Determination, Occupation and the Authority to Exploit Natural Resources: Trajectories from Four European Judgments on Western Sahara.” By Wrangle, Pål. *Israel Law Review* 52.1 (2019): 3–29. Web.²

The study reviews legal provisions relevant to the question of Western Sahara and how international humanitarian and human rights law is applied in this context. It focuses on how these provisions affect the legal principles of occupying peoples' right to self-determination and the power to exploit their natural resources.

The final conclusion of the study is that there is a disparity in how international laws are applied in situations of occupation, with European provisions emphasizing the need to respect the rights of occupied peoples to self-determination and sovereignty over their natural resources. The study also explains that the exploitation of natural resources in the occupied territories must

² P, Wrangle, *'Self-Determination, Occupation and the Authority to Exploit Natural Resources: Trajectories from Four European Judgments on Western Sahara,'* *Israel Law Review*, 52.1 (2019), 3–29, Web.

be done in a way that is in the interest of the local population and in conformity with international human rights standards.

- 3- "Natural resources under occupation: the status of Palestinian water under international law." By Abouali, Gamal. *Pace Int'l L. Rev.* 10 (1998): 411.³

The study addresses the legal frameworks governing water use in the occupied territories, including the Geneva Conventions and the rules of international humanitarian law. The study reviews how Israel exploits water resources, including drilling wells and diverting water trails for Israeli settlements, which adversely affects the availability of water to the Palestinian population.

The final conclusion of the study is that Israel's exploitation of Palestinian water resources constitutes a violation of international laws aimed at protecting the rights of the population under occupation.

- 4- "Palestine: A History of the Land and Its People" By Raja Shehadeh, I.B. Tauris, 2009:⁴

This article reviews the history of Palestine from ancient to modern times, focusing on the political and social changes experienced by the region. The writer discusses major historical events that have shaped Palestine's current reality, including colonial influences, political conflicts, and demographic changes. The article highlights the Israeli-Palestinian conflict and important historical details

³ G. Abouali, '*Natural resources under occupation: the status of Palestinian water under international law,*' *Pace International Law Review*, 10 (1998), 411.

⁴ R. Shehadeh, *Palestine: A History of the Land and Its People* (I.B. Tauris, 2009).

that are the backdrop to the ongoing conflict. The article is a refined reference that provides a comprehensive look at Palestine's history and developments.

- 5- "The Statehood of Palestine: International Law in the Middle East Conflict" By John Quigley, Cambridge University Press, 2010:⁵

The book addresses the question of Palestine's legal status in international law, with a focus on the rights of Palestinians to self-determination, international recognition of Palestine as a State, and details of the legal and diplomatic conflict over the question of the Palestinian State. The author discusses how Palestine is treated as a sovereign state in various international legal frameworks despite its lack of full membership in the United Nations. This book came to the conclusion that Palestine possesses many elements that qualify it for recognition as a State in international law, but that the complex political and diplomatic situation hampers the achievement of this full recognition.

While these studies are of great importance in highlighting the legal and political aspects of responsibility for the exploitation of natural resources in the occupied territories and people's self-determination rights, they have not adequately addressed the legal gaps and contradictions used by the occupying forces to justify the exploitation of natural resources in the occupied Palestinian territories. Nor has there been a detailed focus on the impact of these gaps on the Palestinian population's daily lives in the current circumstances, especially in the light of persistent attacks and economic and social pressures.

⁵ J. Quigley, *The Statehood of Palestine: International Law in the Middle East Conflict* (Cambridge University Press, 2010).

My study will seek to bridge this gap through a thorough and comprehensive analysis of the legal gaps in the texts of international treaties and a review of how these gaps are exploited by the Israeli occupation to achieve its economic interests at the expense of the Palestinian population's rights. By bridging these gaps, efforts will be strengthened to hold the Israeli occupying power fully responsible for its illegal exploitation of the occupied territories' natural resources, thereby ensuring justice and the protection of Palestinian rights in accordance with international law.

Research Methodology:

The researcher will rely on the descriptive approach of collecting and documenting the texts of relevant international treaties, such as The Hague Conventions, the Geneva Conventions, the International Bill of Human Rights and the Charter of the United Nations, to compile international case law on the protection of natural resources in the occupied territories. Also practical data and documented Israeli policies, legislation and practices affecting the exploitation of natural resources in the Palestinian territories occupied since 1967, and their impact on the Palestinian population will be collected.

In addition to the analytical approach in the process of examining and analysing gaps and contradictions in the texts of international treaties relating to the protection of natural resources in the occupied territories. Interpretation of how these texts were used by the Israeli occupation authorities to justify their exploitation of natural resources. Analysis of practical

practices also examined how Israel's policies and legislation on the exploitation of natural resources in the Occupied Palestinian Territories were implemented and assessed the impact of such policies on the sovereign rights of the Palestinian population over their natural resources verify the extent of the Israeli occupation forces responsibility.

Research Plan:

The researcher addresses the subject of this study in all its aspects to be as familiar as possible with its subject and divide it into several chapters and researchers .Initially, the researcher reviewed the introduction including the research problem, questions, importance, limitations, determinants, as well as previous studies written in this field, what distinguished this study from other previous studies and what academic value it added. Finally the research methodology and plan.

The researcher then proceeded to the First Chapter and addressed the legal theoretical framework for the protection of natural resources under international law, analysing the international conventions governing the protection of the natural resources of the occupied Palestinian territories. The researcher therefore divided this chapter into two main sections: the first section, relating to The Military occupation under international law, explaining the definition of military occupation and what the occupied territories are, and reviewing the organization of international law for military occupation. The second section concerns

natural resources under international law, explaining what natural resources and protection international natural resources law has provided in particular in the occupied territories..

The Second Chapter deals with Case Study: The Occupied Palestinian Territories, which is divided into two main sections, the first section relating to the Historical and Legal Framework of the Occupied Palestinian Territories. The second section is dealing with Natural Resources in the Occupied Palestinian Territories, explaining Israel's legal manipulation and military policies in the exploitation of natural resources in the Occupied Palestinian Territories.

The Third Chapter presents international responsibility for the plundering of natural resources. In its first section, the researcher reviewed international responsibility for the plundering of natural resources under international law, explaining what international responsibility was, and what challenges the specialists faced during the process of determining international responsibility for wrongful acts. In addition, to the Commission's draft on international responsibility for wrongful acts. The second section was devoted to a profound review of the Israeli occupying Power's responsibility for plundering the natural resources of the occupied Palestinian territories.

Finally, the researcher conclude his study in the fourth chapter with the conclusion, conclusions, recommendations, sources and references.

Chapter One: Natural Resources in the Occupied Territories under International Law (Theoretical and legal framework):

Natural resources in the occupied territories are among the most important issues protected by international law because of their vital importance to the peoples under occupation. According to international law, protecting these resources is an essential part of protecting human rights and ensuring the well-being of the local population. Before addressing how international law protects these resources, it is first necessary to understand the concept of occupation in international law.

1- The Military Occupation Under International Law:

The phenomenon of military occupation is an ancient one, spanning several centuries throughout human history. Its origins can be traced to ancient times when empires and kingdoms vied for regional expansion and control over other territories. The 19th and 20th centuries marked the zenith of European colonialism⁶ in Africa, Asia⁷, and the Americas⁸, resulting in the military occupation and colonization of vast

⁶ J. R. Lehning, *European colonialism since 1700*. (Cambridge University Press, 2013, p 210–251.

⁷ Ibid, p 161–210.

⁸ R. Aldrich and A. Stucki, *The Colonial World: A History of European Empires, 1780s to the Present* (Bloomsbury Publishing, 2022)

swathes of land⁹. Despite developments in international law and the global rejection of military occupation, it still exists and poses a major challenge to global peace and stability in modern times. This section therefore addresses the definition of military occupation and reviews its essential elements, as well as the analysis of international treaties governing the occupation's laws.

1.1. **Definition of Military Occupation:**

Military occupation is a deeply rooted concept in international law, governed by a network of conventions; it was primarily addressed in The Geneva Conventions, adopted in 1864, subsequently updated and expanded in Geneva Conventions 1949. Specifically, the Fourth Geneva Convention (1949), which deals with the protection of civilians and their rights during armed conflict, or military occupation. Additionally, the Additional Protocol I (1977), which relates to the protection of victims of international armed conflicts.¹⁰ In addition to The Hague Conventions, especially The Second Hague Convention of 1899 on the Laws and Customs of War on Land, which established rules for the treatment of the wounded and sick in armed conflicts on land and the protection of persons

⁹ G. L. Mosse, "Two World Wars and the Myth of the War Experience". *Journal of Contemporary History*, 1986, 21(4), 491-513.

¹⁰ International Committee of the Red Cross, *Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949*. Also see, International Committee of the Red Cross, *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977*.

and property'. As well as, The Fourth Hague Convention of 1907 on the Laws and Customs of War on Land, which contained additional rules for the protection of persons and property in armed conflicts on land, and were based on the laws established in the 1899 Convention.¹¹ These conventions are the cornerstone of international humanitarian law, as they complement some of them and are fundamental to modern international humanitarian law. At a time when the Geneva Conventions protect civilians and their rights in the occupied territories, the Hague Conventions define the conduct of occupying forces during war.

Initially, **article 42 of the Hague Convention of 1907**¹² explained what the occupied territories are and stated that "territory is considered occupied when it is actually placed under the authority of the hostile army; the occupation extends only to the territory where such authority has been established and can be exercised." Then, the text of **Common Article 2 of the Fourth Geneva Conventions of 1949**¹³ completed and clarified the forms of occupation within the scope of its talk about the application of the Convention. As it stated: "The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no

¹¹ International Committee of the Red Cross, *Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, The Hague, 29 July 1899*. Also see International Committee of the Red Cross, *Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, The Hague, 18 October 1907*.

¹² Ibid, *The Hague, 18 October 1907*, article 42.

¹³ Ibid *Geneva Convention (IV), 12 August 1949*, article 2.

armed resistance." Thus, it is concluded that **the concept of military occupation** means a military takeover of the territory of another state in whole or in part without the legitimate consent of the internationally recognized government in that territory.

Thus, the elements of military occupation are, **first**, effective control and military presence, meaning the presence and geographical deployment of military forces in the occupied area, in cities, villages or strategic points. This presence is linked to the control of the State's three main legislative, executive and judicial authorities, and all local administrative structures and institutions, through the imposition of new policies and laws in the occupied area. In addition to controlling vital resources such as water, energy and other natural resources and the state's economic assets. Finally, basic public services are provided to citizens, such as the "sale and purchase of real estate", which are usually compatible with the interests of the occupying forces. **Second**, the absence of legal consent "such as agreement or express consent" to the presence and control of military forces on the ground on the one hand. On the other hand, the international community's lack of consent or recognition of the legitimacy of the occupation.

1.2. **Military Occupation and Occupied territories Under International Law:**

The issue of the occupied territories is one of the most complex and controversial in international law. This issue reflects the international community's challenges in dealing with military occupation and its legal and

humanitarian consequences. This section focuses on analysing the status of the occupied territories under international law, reviewing the international laws and conventions governing these situations, and determining the extent of the occupying Powers' compliance with these laws.

1.2.1. **International Conventions, and Customary Law:**

International conventions and international custom are among the most prominent sources of international law to be referred to when conflicts or legal problems arise between States.¹⁴ International conventions play a crucial role in regulating international relations and defining States parties' legal obligations. Defined as an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation¹⁵.

As for International custom consists of a set of unwritten rules formed by repetitive and generally accepted practices as binding law.

¹⁴ United Nations, *Statute of the International Court of Justice*, Article 38.

¹⁵ United Nations, *Vienna Convention on the Law of Treaties*, 27 January 1980, Article 2(a).

It reflects the principles and practices adopted by States in their mutual relations and gains legal strength from its broad recognition by the international community. According to Article 38 of the Statute of the International Court of Justice, International custom consists of three main elements. **First, general and consistent practice**, it means the repeated and consistent conduct of States on a particular issue. This practice is so widespread and sustainable over a reasonable period, to be considered part of international custom. **Second, acceptable practice**, in the sense of acceptance of practice by States either by express declaration or by consensual conduct with practice or way of long silence or failure to protest against it. **Third, “Opinio Juris”**, that is, such persistent, consistent and acceptable conduct must be accompanied by States' firm belief that it is a binding rule of law and that it is regarded as part of international law. No conduct on the part of States can be said to be customary law without belief in obligation even if such conduct occurs in a consistent manner, because practices are constantly changing, which in turn makes the international system unstable and unsafe.¹⁶

Throughout history, customary international law has had a significant impact on the development of international treaties, since customary international law contains customary concepts and

¹⁶ Malcolm N. Shaw, *International law*. (Cambridge university press, 8th edition 2017), p54.

principles that define the norms of conduct acceptable to sovereign States, which in turn has affected the substance of international conventions and thus become an integral part of them. Both have become to work together to ensure the comprehensive and effective application of international legal principles, while customary law provides flexibility and reflects the international community's changing practices, international conventions offer clarity and consistency in rules that are collectively agreed upon. This complementarity of sources enhances the international legal system's ability to meet emerging challenges and maintain international order and peace. Thus, build a balanced international legal system that guarantees justice, stability and cooperation among States, while respecting national sovereignty and human rights. The most prominent of these conventions, based on customary grounds, is the Fourth Hague Convention on the Laws and Customs of War on Land and its Regulations of 1899 and 1907, as well as the Geneva Conventions of 1949. In the light of this interdependence, international custom and international conventions will be addressed together in this part.

A. Hague Conventions of 1899 and 1907:

Both conventions obliged the occupying Power to take all necessary measures to maintain public order and safety, as well as

to respect the country's laws unless there was an urgent need to amend them.¹⁷ Both conventions also emphasized the preservation of civilians' lives in the occupied territories, providing them with basic necessities such as food and medical care. Respect for the family's honour and rights. Also respect beliefs and religious practices. They also emphasized the prohibition of violence against them, bombardment, unjustified attack, or indiscriminate destruction. They obliged the enemy army to protect private property and prohibited its pillaging or seizure by attack.¹⁸ In addition, these conventions emphasize the protection of cultural property, institutions dedicated to worship, philanthropy and education, artistic and scientific cultural institutions, and historical monuments and temples. They are prohibited from damaging or confiscating them, even if they are owned by the State.¹⁹

¹⁷ Ibid, *The Hague, 29 July 1899*. Article 43. See also, ibid, *The Hague, 18 October 1907*, article 43.

¹⁸ International Committee of the Red Cross. Convention (II) with Respect to the Laws and Customs of War on Ibid, *The Hague, 29 July 1899*. Article 25,28,46,47. See also ibid *The Hague, 18 October 1907*, article 25,28,46,47.

¹⁹ ibid. *The Hague, 29 July 1899*. article 56. Also see ibid *The Hague, 18 October 1907*, article 56.

B. The Fourth Geneva Convention of 1949:

Initially, the Convention affirmed the protection of civilian personnel present in the area where the conflict occurred or under occupying power. It called for their treatment with humanity and prohibited attacks on their lives, physical integrity and personal dignity, whether murder, mutilation, cruel treatment, torture or hostage-taking.²⁰ Also prohibited collective punishment, intimidation or reprisals.²¹ With regard to the basic requirements of the civilian population, the Convention obliged the occupying Power to provide essential supplies, including livelihoods, health care and housing, also emphasized ensuring access to all vital services, in addition, the provision of humanitarian assistance and medical care to non-combatants, enable and ensure unhindered distribution to individuals in need of assistance.²² Furthermore,

²⁰ Ibid, Geneva Convention, August 12, 1949, Article 4 which states that. "Persons protected by the Convention are those who at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of persons a Party to the conflict or Occupying Power of which they are not nationals.". Article 27 which states that. "Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs...."

²¹ Ibid, Article 33 "No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited. Pillage is prohibited. Reprisals against protected persons and their property are prohibited."

²² Ibid, Article 55 "To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring the food and medical supplies of the population;....", Article 59 "If the whole or part of the population

civilians detained without sentencing are explicitly prohibited from being tried or sentenced without prior trial by a legally constituted tribunal, and call for all fundamental judicial safeguards to be provided.²³ Finally, the Convention also emphasized the protection of cultural property, historical monuments, and the prevention of their confiscation, control or destruction.²⁴

1.2.2. **International Bill of Human Rights:**

The International Bill of Human Rights, “which consisting of three core documents of **the Universal Declaration of Human Rights 1948, the International Covenant on Civil and Political Rights (ICCPR) 1966 and the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966,**” are among

of an occupied territory is inadequately supplied, the Occupying Power shall agree to relief schemes on behalf of the said population, and shall facilitate them by all the means at its disposal...”

²³Ibid, Article 3/1/d “the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.”

²⁴ ibid, Article 53 .“Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or co-operative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations.”

the most important international legal instruments for the promotion and protection of human rights worldwide.

First of all, The International Bill of Human Rights affirmed everyone's freedom and equal dignity and rights. That is, every human being has the right to enjoy all the fundamental human rights and freedoms enumerated in international law, without discrimination on the basis of colour, sex, language, religion, political opinion, or the political, legal or international status of the country or territory to which the person belongs, whether independent, trusteeship, non-self-governing or subject to any other restriction on the person's sovereignty.²⁵

One of the most important fundamental right that has been affirmed is the right to life, liberty and security of person, this right focuses on living without fear from violence, torture or cruel, inhuman or degrading treatment, arbitrary killing or extrajudicial execution. It also includes the freedom of movement, choice of residence, freedom of expression, freedom of thought and religion, and freedom of peaceful assembly.²⁶ In addition, the International Law affirmed peoples' right to self-determination without external interference. This includes the people's freedom to choose their own political system and

²⁵ United Nations, *Universal Declaration of Human Rights*, 10 Dec. 1948, Article 1 and 2.

²⁶ *Ibid*, Article 3, 5, 9, 18 and 19. Also see, United Nations, *International Covenant on Civil and Political Rights*, 16 Dec. 1966, Article 7 and 10.

form their own government and to choose the form of government and the political system in which they wish to live. To choose complete independence as a sovereign State, to join another State or to establish autonomy within a larger State. It is also extends to the right to pursue economic, social and cultural development without external interference or restrictions. Develop and implement development plans that guarantee the well-being of its members and preserve its own culture and identity.²⁷

1.2.3. **General Principles (United Nations Charter):**

General principles of law are one of the fundamental sources of international law and play an important role in the direction of legal decisions and the resolution of international disputes. When talking about the principles of international law, the Charter of the United Nations 1945 must be the first point from which we start, because it is not only an international convention, but also defines the aims and principles of the United Nations Organization.

Although the Charter does not contain specific provisions that explicitly address the occupied territories, it refers to concepts and

²⁷ Ibid, International Covenant on Civil and Political Rights, 16 Dec. 1966, Article 1. Also see United Nations, *International Covenant on Economic, Social and Cultural Rights*, 16 Dec. 1966, Article 1

principles that may be relevant to conflicts relating to occupation and national sovereignty. At the outset, The Charter provides for respect for the principle of national sovereignty and territorial integrity of Member States and prohibits States from interfering in other Member States' internal affairs. It also prohibits the use or threat of force against the territorial integrity or political independence of any other state²⁸. To achieve one of the first and most important purposes of the United Nations, namely the maintenance of international peace and security, the Charter encourages the peaceful resolution of international conflicts without the use of force.²⁹ The Charter also recognizes the right of all peoples to self-determination, including in several respects. First, peoples' right to political self-determination through the formation of their Governments and the choice of their political system, the ability to declare independence and establish a new State, and the control and management of their territories and natural resources in accordance with their interests without interference from other States. Secondly, peoples' right to economic self-determination through their freedom to determine their economic pattern and to choose development policies commensurate with their needs and priorities. Finally, peoples' right to social and cultural self-

²⁸ Ibid, United Nations Charter, 1945, Article 2

²⁹ Ibid, Article 1, Chapter 6.

determination is through the preservation and expression of their cultural, linguistic and religious heritage and identity without persecution or discrimination.³⁰ In its preamble, the Charter also affirms the promotion of human rights and fundamental freedoms for all without distinction as to sex, language or religion.

1.2.4. **Case law:**

The case law of international courts is an important source and a key reference in the development and interpretation of international law. These precedents reflect the decisions and judgements of tribunals such as the International Court of Justice (ICJ) and the International Criminal Court (ICC) and contribute to the establishment of binding legal principles and the interpretation of international treaties and norms. These provisions not only provide solutions to disputes between states, but also serve as a legal reference in future cases, helping to unify and develop international law over time. Reliance on case law enhances the stability of the international legal system and ensures consistency in the application of legal norms across different cases and circumstances.

³⁰Ibid, United Nations Charter, 1945, Article 1(2).

Namibia's case is one of the most prominent before the International Court of Justice, representing an important turning point in international law. It played a pivotal role in promoting the principle of the prohibition of occupation in all its forms and emphasized individuals' right to liberty and self-determination. This issue was essential in developing and clarifying the concept of the prohibition of occupation and affirming international obligations towards the protection of the rights of peoples under occupation.

Initially, Namibia experienced a sequence of historical occurrences and multiple periods of occupation. First, it was subjected to German occupation in 1884, then, following the British victory over German forces in World War I in 1915, Namibia came under British occupation. Following the conclusion of World War I, Namibia underwent a period of governance known as the South African Mandate, followed by the establishment of South African occupation in 1946. This marked the official transformation of Namibia into a South African occupation³¹. This series of events illustrates the change of Namibia's sovereignty, transitioning from one occupation to

³¹ Reginald Herbold Green, "History of Namibia," *Encyclopedia Britannica*, 5 February 2024, Available online at: <https://www.britannica.com/topic/history-of-Namibia>, accessed 23 April 2024.

another, leading to widespread repression, severe human rights violations, and the prolonged exploitation of the country's resources³².

In response to a request from the United Nations General Assembly, the ICJ addressed the legal status of South West Africa (now Namibia) under South African administration³³. The Court concluded that South Africa's continued presence in Namibia was illegal under international law and that South Africa was under an obligation to withdraw its administration from the territory. The opinion affirmed the principle that colonial rule was incompatible with the UN Charter and the right to self-determination of peoples. This opinion contributed significantly to the diplomatic and legal pressure on South Africa to end its control over Namibia, which eventually led to Namibia's independence in 1990³⁴.

By reference to the concept and nature of the occupation, it is clear that the occupation is grossly contrary to the rules of international law. With its control over territories not belonging to the occupying power and restrictions on the rights of the local population, the occupation was manifestly contrary to the norms and

³² "Namibia Genocide: The Day Germany Killed 75,000 Herero and Nama People," *Al Jazeera News Website* (8 February 2024). Available online at: <https://aja.ws/cuy30g>

³³ International Court of Justice, *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Request for Advisory Opinion (including the dossier of documents transmitted to the Court pursuant to article 65, paragraph 2 of the Statute)*. Available online at: <https://www.icj-cij.org/sites/default/files/case-related/53/9361.pdf>

³⁴ *ibid*

principles imposed by international humanitarian and human rights law, as well as general principles of international law. Moreover, general principles of international law, such as respect for national sovereignty and people's right to self-determination, are particularly prominent in the context of occupation, where occupation runs counter to these fundamental principles. Based on these flagrant violations, the international community must take immediate and effective action to halt these violations, achieve justice, and ensure the restoration of the stability and rights of the affected states and peoples. Addressing these issues requires concerted international efforts through political, diplomatic, and legal pressure to ensure respect for international laws and standards.

2- **Natural Resources Under International Law:**

Natural resources are an essential part of nations' natural wealth, as they play a significant role in economic, social and environmental growth and prosperity, maintaining stability, development and achieving overall balance in nations. Due to their limited availability, natural resources are usually the compelling cause of inter-State arms conflicts, or of a State's occupation of territory or part of the territory of another State and exploitation of its natural resources.³⁵ Reports issued by UNEP since 1993, in

³⁵ Wafa Dridi, "The Impact of Armed Conflict on Natural Resources," *Journal of Research and Studies*, University of Batna – Algeria, vol. 19, no. 02 (2022) p 22.

particular the March 2009 report entitled "From conflict to peace building: the role of natural and environmental resources", also indicated that at least 18 violent conflicts since 1990 had been caused by the exploitation of natural resources.³⁶ In this section, we will begin by defining natural resources and clarifying their different types, and then review how international law regulates the protection of these resources in the occupied territories.

1.1. Definition of Natural Resources:

The term "natural resources" has met with wide debate in international law. While important, there is no specific text of an international convention that defines natural resources comprehensively and internationally agreed. However, descriptive definitions of natural resources can be found in many international conventions dealing with the environment and seas. For example, **The Convention on Biological Diversity (CBD)**³⁷ includes definitions of descriptions of natural resources such as biological resources, genes and genetic resources in article 2 of the Convention³⁸.

³⁶ Richard A. Matthew, Oli Brown, and David Jensen, *From Conflict to Peacebuilding: The Role of Natural Resources and the Environment*, no. 1 (UNEP/Earthprint, 2009) p. 8. Available online at: https://reliefweb.int/report/world/conflict-peacebuilding-role-natural-resources-and-environment-0?gad_source=1&gclid=Cj0KCQjww5u2BhDeARIsALBuLnPO8C8RhHqVxN9tPIMLGZI6_uZyOS-yY7UktFup4ZdstlkL8roMe7gaApJ-EALw_wcB

³⁷ United Nations, *Convention on Biological Diversity*, 5 June 1992. *One of the main tools for the conservation of biodiversity worldwide.

³⁸ Ibid, *The Convention on Biological Diversity*, article 2 states: "Biological diversity" means the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species

Similarly, with regard to **The United Nations Convention on the Law of the Sea (UNCLOS)**, it did not clarify what was meant by natural resources and merely divided them into living and non-living natural resources.³⁹

One of the first few international texts that attempted to define Natural Resources is **The African Convention on the Conservation of Nature and Natural Resources in 1968**. It in its Article 5, which states: "Natural Resources means renewable resources, tangible and non tangible, including soil, water, flora and fauna and non renewable resources." However, it did not give a convincing definition of natural resources because they were not based on a specific criterion and instead relied on a definition that enumerated those resources and limited them to renewable natural resources only. It noted that "Whenever the text of the Convention refers to non renewable resources this will be specified⁴⁰".

In addition, **The 1972 United Nations Conference on the Human Environment, (Stockholm Conference)**⁴¹ followed the same logic as the African Agreement, that is, it did not provide a comprehensive definition of natural resources and presented a list of natural resources that must be protected. In its second principle, it called for the conservation of natural resources, including air, water,

and of ecosystems. "Biological resources" includes genetic resources, organisms or parts thereof, populations, or any other biotic component of ecosystems with actual or potential use or value for humanity."

³⁹ United Nations, *Convention on the Law of the Sea*, Montego Bay, 10 December 1982, Articles 56, 61, 62.

⁴⁰ African Union, *African Convention on the Conservation of Nature and Natural Resources*, on 15 September 1968, Article 5.

⁴¹ (Stockholm Conference) held in Stockholm, provided international regulation for the protection of biodiversity.

land, plants, and animals, particularly representative specimens of natural ecosystems, for the benefit of present and future generations.⁴²

Article 1 of the **Protocol against the Illegal Exploitation of Natural Resources** provides the most appropriate and comprehensive definition of the term "natural resources" in the opinion of the researcher. Which states that: "Natural Resources: substances provided by nature that are useful to human beings and have an economic value, found in any of the States of the Great Lakes Region. The major types of natural resources include minerals, flora and fauna, fishery products and water;"⁴³

Therefore, Natural resources include a variety of elements and materials that are available in the natural environment and can be used by humans to meet their needs. Natural resources are generally divided into two main types.⁴⁴ **Renewable natural resources**, which means resources that can be naturally replenished over time and can be replaced, such as freshwater, which is an essential resource for humans, plant and animal life, includes freshwater flowing into rivers and lakes, and groundwater. Also air, which is the gas necessary for breathing and the life of organisms on Earth, consists mainly of nitrogen, oxygen and other gases. Renewable

⁴² Lawrence Sharon, *The Convention on Biological Diversity and its Protocol on Biosafety*, University of Geneva, United Nations Audiovisual Library of International Law, 2012, p. 2, Available online at: https://legal.un.org/avl/pdf/ha/cpbcbd/cpbcbd_a.pdf

⁴³ International Conference on the Great Lakes Region, *Protocol Against the Illegal Exploitation of Natural Resources*, on 30 November 2006, Article 1, p4.

⁴⁴ "Natural Resources – Definition, Types, and Examples," *Geeks for Geeks*, 6 February 2024, Available online at: <https://www.geeksforgeeks.org/natural-resources-definition-types-and-examples/>

energy, which includes solar, air, hydropower and geothermal energy, relies on natural sources that can be continuously renewable. Lastly, biological resources include plants and animals that provide food, fibre, medicines and other materials essential to humans. In addition to the **Non-renewable natural resources**, which means resources that cannot be renewed if consumed and cannot be restored or even replaced, such as precious metals such as gold and silver, fossil fuels such as coal and petroleum.

1.2. Protection of Natural Resources in the Occupied Territories under International Law:

International law regulates the use of natural resources such as surface and groundwater, gas tanks, minerals and others through a variety of conventions and treaties aimed at regulating the exploitation and protection of such resources, and defines States' obligations to natural resources.

For example, **The United Nations Convention on the Law of the Sea (UNCLOS) 1982.**⁴⁵ Which is a cornerstone of maritime international law, providing a comprehensive framework for regulating the use of oceans and their resources, clarifying the limits of territorial waters, exclusive economic zones, and continental shelves, provides protection of the marine environment and biodiversity, and

⁴⁵ Ibid, Convention on the Law of the Sea, 1982.

explains the mechanisms for settling disputes between countries regarding natural resources.

As well as **the Convention on Biological Diversity (CBD) 1992**⁴⁶, which regulates the use of natural resources, including oil and gas. It aims to preserve biodiversity and promote global awareness of its importance.

Further **Convention on the Law of the Non-Navigational Uses of International Watercourses 1997**⁴⁷, which is the main legal framework for regulating the use of water resources among States, with a focus on promoting cooperation in the management and protection of shared watercourses and ensuring their sustainable use.

In addition to **The Convention on the Protection and Use of Transboundary Watercourses and International Lakes 1992**⁴⁸, (Helsinki, Finland) that represents an important legal framework for strengthening international cooperation in the protection and management of shared water resources through the promotion of sustainable use and the prevention of pollution.

As well as, **the 1991 Energy Agreement**⁴⁹, which is an international legal framework for cooperation between countries in the field of energy, including oil, natural gas and electricity. The agreement includes provisions on energy trade,

⁴⁶ Ibid, Convention on Biological Diversity, 1992.

⁴⁷ United Nations, *Convention on the Law of the Non-Navigational Uses of International Watercourses*, 21 May 1997.

⁴⁸ United Nations Economic Commission for Europe, *Convention on the Protection and Use of Transboundary Watercourses and International Lakes*, 17 March 1992.

⁴⁹ Energy Charter Secretariat, *Energy Charter Treaty*, signed on 17 December 1994

investment protection and guarantees, also providing a framework for resolving disputes between member states.

Along with, **The Draft on The Law of Transboundary Aquifers (2008)**, was prepared by the United Nations International Law Commission⁵⁰. This draft sets out the principles and rules governing the exploitation of transboundary groundwaters. Although this project is not a binding convention, it is an important step towards strengthening the principles of international cooperation in the management of shared water resources.

1.2.1. General principles governing natural resources in international law:

All of these previous conventions share a set of fundamental principles that States must adhere to with regard to the management and exploitation of natural resources. These principles seek to strike a balance between States' sovereignty and their right to exploit their resources and obligations towards other States and the international community. These principles are Principle of National control over natural resources, Principle of Joint National Control of natural resources of riparian States, Common access to natural resources,

⁵⁰ International Law Commission, "*Draft Articles on the Law of Transboundary Aquifers*," adopted on 11 December 2008. United Nations, Available online at: https://legal.un.org/ilc/texts/instruments/english/draft_articles/8_5_2008.pdf

International ownership and control of natural resources and Settlement of disputes between States.

A. Principle of National control over natural resources:

The principle of national control over natural resources is one of the most pervasive and important principles regarding natural resources under international law. It is based on the legal and basis that grants States full sovereignty and the absolute right to own, manage and exploit natural resources within their territories. These resources include all natural elements such as water, oil fields, natural gas, minerals, timber, and marine resources. Also the States have the right to enact legislation and regulations governing the use and utilization of these resources to ensure that they make the most of them in favour of national development.⁵¹

⁵¹ Ibid, *Charter of the United Nations*, 1945, Article 2/1 that states: “The Organization is based on the principle of the sovereign equality of all its Members.” See also, ibid, *International Covenant on Economic, Social and Cultural Rights*, 1966, Article 1/2 that states: “All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence”. See also, United Nations, General Assembly, *Resolution 1803 (XVII) on Permanent Sovereignty over Natural Resources*, 14 des 1962, Article 1 which states that: “The right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned”. It also states that: “The exploration, development and disposition of such resources, as well as the import of the foreign capital required for these purposes, should be governed by the national legislation of the State exercising such sovereignty over its resources.” Available online at: [https://undocs.org/en/A/RES/1803\(XVII\)](https://undocs.org/en/A/RES/1803(XVII))

It should be noted that the notion of this principle is not limited solely to resources on or under land within national territory; it has recently been extended to many important resources in the seas adjacent to the national territory⁵². There have always been numerous claims by coastal States to sovereignty over resources for continental shelves and fisheries on the seas along their coasts. To satisfy the desires of those States, the **exclusive economic zone**⁵³ (200-mile fisheries boundaries) have been established by

⁵² Ibid, *United Nations Convention on the Law of the Sea*, 1982, Article 56 (1/a) that states: “Rights, jurisdiction and duties of the coastal State in the exclusive economic zone 1. In the exclusive economic zone, the coastal State has: (a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds”. Also, article 77, that states: “Rights of the coastal State over the continental shelf 1. The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources. 2. The rights referred to in paragraph 1 are exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities without the express consent of the coastal State. 3. The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation.”

⁵³ Ibid, *United Nations Convention on the Law of the Sea*, 1982, Article 56 (1/a) that states: “The exclusive economic zone is an area beyond and adjacent to the territorial sea, subject to the specific legal regime established in this Part, under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this Convention”. Also Article 56 that states: “1. In the exclusive economic zone, the coastal State has: (a) Sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;”. Also Article 57 that states: “The exclusive economic zone shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.” Also, Article 77/1, that states: “Rights of the coastal State over the continental shelf 1. The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources”.

the United States, the Soviet Union, Japan, Canada, and other nations in the oceans⁵⁴. Consequently, the majority of economically significant minerals and vital resources on Earth are situated within the territorial jurisdiction of coastal states.

This principle also leads to an important idea, namely, prevent other States from accessing and benefiting from natural resources without the consent of the sovereign State, such conduct constitutes one of the most serious violations of international law, because it is an attack on a State's sovereignty and has significant negative effects on national sovereignty, the economy and the environment.⁵⁵

Occasionally, developing nations are unable to exploit their natural resources, may seek assistance from other states that possess the capability to do so. For instance, in the event that a state lacks the requisite equipment to extract oil or natural gas, it might be compelled to seek aid from another state that possesses said equipment. This can be accomplished, through the enactment of national laws regulating the exploitation and utilization of the state's natural resources by foreign nations, the conclusion of concession agreements or trade agreements with specific conditions. Provided that this

⁵⁴ Bilder, Richard B. "*International law and natural resources policies.*" *Natural Resources J.* vol. 20, (1980), p 454.

⁵⁵ Ibid, *United Nations Convention on the Law of the Sea*, 1982, Article 77/2, that states: "2. The rights referred to in paragraph 1 are exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities without the express consent of the coastal State".

does not affect the host country's sovereignty over its natural resources⁵⁶. Nevertheless, in practice, the implementation of such conventions or national laws does not safeguard developing nations against exploitation by the major powers; rather, it may be the case that certain major states execute such measures in order to exert control, exploit, or impose restrictions on those developing nations.

Additionally, the provision of donations and assistance from rich States are one way in which other States can legally benefit from a State's natural resources. Recently, many developing countries called on developed countries to provide them with economic assistance.⁵⁷

⁵⁶ Ibid, Article 62/2 that states: "Where the coastal State does not have the capacity to harvest the entire allowable catch, it shall, through agreements or other arrangements, give other States access to the surplus of the allowable catch."

See also *ibid* General Assembly Resolution 1803 (XVII), 1962, "Declares that: 3. In cases where authorization is granted, the capital imported and the earnings on that capital shall be governed by the terms thereof, by the national legislation in force, and by international law. The profits derived must be shared in the proportions freely agreed upon, in each case, between the investors and the recipient State, due care being taken to ensure that there is no impairment, for any reason, of that State's sovereignty over its natural wealth and resources."

⁵⁷ *Ibid*, General Assembly Resolution 1803 (XVII), 1962, "Declares that:2. The exploration, development and disposition of such resources, as well as the import of the foreign capital required for these purposes, should be in conformity with the rules and conditions which the peoples and nations freely consider to be necessary or desirable with regard to the authorization, restriction or prohibition of such activities...."

See also,

United Nations. *Agenda 21: Programme of Action for Sustainable Development*, 3 -14/ June / 1992, Article 33/13 which states: "For developing countries, particularly the least developed countries, ODA is a main source of external funding, and substantial new and additional funding for sustainable development and implementation of Agenda 21 will be required. Developed countries reaffirm their commitments to reach the accepted United Nations target of 0.7 per cent of GNP for ODA and, to the extent that they have not yet achieved that target, agree to augment their aid programmes in order to reach that target as soon as possible

Ultimately, commerce is the last way in which States can access other States' natural resources. through a wide and diverse network of international rules, conventions such as Regional Comprehensive Economic Partnership between the European Union and the Community of Southeast Asian Nations (ASEAN)⁵⁸, and institutions that facilitate and regulate global trade, for example the Organization of the Petroleum Exporting Countries (OPEC).⁵⁹

B. Principle of Joint National Control of natural resources of riparian States:

This principle applies to coastal states that share an international river, lake, or ocean with other states, so that such sharing of water imposes common challenges and responsibilities for the management and use of natural resources in these common areas. These States must therefore take into account the principle of shared national control over natural resources,

and to ensure prompt and effective implementation of Agenda 21". Available online at: <https://sustainabledevelopment.un.org/content/documents/Agenda21.pdf>

⁵⁸ Regional Comprehensive Economic Partnership (RCEP), Available online at: <https://asean.org/our-communities/economic-community/integration-with-global-economy/the-regional-comprehensive-economic-partnership-rcep/>

⁵⁹ The Organization of the Petroleum Exporting Countries (OPEC), an international organization comprising a number of oil exporting countries, was founded on 14 September 1960 in Baghdad, Iraq. It aims to harmonize oil production policies among Member States to stabilize global oil markets and ensure sustainable revenues for Member States. OPEC currently consists of 13 Member States, including Saudi Arabia, the United Arab Emirates, Iran, Iraq, and others. Available online at: https://www.opec.org/opec_web/en/

which is based on the notion that coastal States must cooperate in the management and use of the natural resources they share. This cooperation requires the development of legal and administrative mechanisms to ensure the sustainable and equitable use of these resources. The principle is based on several grounds:

- **Cooperation and consultation:**⁶⁰ This requires States to coordinate and cooperate continuously among themselves and develop policies and procedures for the management of shared resources, exchange information, coordinate policies and conduct consultations to resolve conflicts that may confront them.

⁶⁰ Ibid, *United Nations Convention on the Law of the Sea*, 1982, Article 123 which states: “States bordering an enclosed or semi-enclosed sea should cooperate with each other in the exercise of their rights and in the performance of their duties under this Convention. To this end, they shall endeavour, directly or through an appropriate regional organization...”. See also ibid, *Convention on Biological Diversity*, 1992, Article 5 which states: “Each Contracting Party shall, as far as possible and as appropriate, cooperate with other Contracting Parties, directly or, where appropriate, through competent international organizations, in respect of areas beyond national jurisdiction and on other matters of mutual interest, for the conservation and sustainable use of biological diversity.” See also, ibid, *Convention on the Protection and Use of Transboundary Watercourses and International Lakes*, 1992, Article 2(6) which states: “The Riparian Parties shall cooperate on the basis of equality and reciprocity, in particular through bilateral and multilateral agreements or other arrangements, in order to develop harmonized policies, programmes and strategies covering the relevant catchment areas, or parts thereof, aimed at the prevention, control and reduction of transboundary impact, and aimed at the protection of the environment of transboundary waters or the environment influenced by such waters, including the marine environment.”

- **Equitable distribution of natural resources:**⁶¹ This basis refers to the need to allocate resources in a manner that is sensitive to each State's needs, so as to maximize benefit without prejudice to others. This distribution requires taking into account multiple factors, such as population size, economic need, natural environment and the ability to make effective use of resources.
- **Equitable and reasonable utilization and participation:**⁶² It is therefore incumbent upon riparian States to use resources in a fair and reasonable manner, so that the rights and needs of all parties concerned are taken into account, and avoided any use that leads to conflicts or adversely affects other States.
- **Prevention of damage:**⁶³ This basis refers to the obligation of States to take all necessary and preventive measures and

⁶¹ Ibid, *Convention on Biological Diversity*, 1992, Article 1 which states: “The objectives of this Convention, to be pursued in accordance with its relevant provisions, are the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources....”

⁶² Ibid, *Convention on the Law of the Non-Navigational Uses of International Watercourses*, 1997, Article 5, which states: “Equitable and reasonable utilization and participation: 1. Watercourse States shall in their respective territories utilize an international watercourse in an equitable and reasonable manner.....2. Watercourse States shall participate in the use, development and protection of an international watercourse in an equitable and reasonable manner. Such participation includes both the right to utilize the watercourse and the duty to cooperate in the protection and development thereof, as provided in the present Convention.”

⁶³ Ibid, Article 7, which states: “Obligation not to cause significant harm: 1. Watercourse States shall, in utilizing an international watercourse in their territories, take all appropriate measures to prevent the causing of significant harm to other watercourse States....”

preventive measures to prevent activities that may cause environmental or economic damage to other States and thus damage shared natural resources and render them unusable.

- **Sustainable development:**⁶⁴ This basis refers to the use of natural resources in a way that meets today's needs without compromising the ability of future generations to meet their needs.

C. Common access to natural resources:

At first glance, some believe that this principle runs counter to the principle of a State's sovereignty over its natural resources, but in fact both principles complement each other. At the outset, this principle is based on the premise that natural resources found in areas not under the national jurisdiction of any State, “such as the high seas. Or in the case where resources are inaccessible, or if they are available in small quantities. These

⁶⁴ Ibid, *The Convention on Biological Diversity*, 1993, Article 6, which states: “General Measures for Conservation and Sustainable Use. Each Contracting Party shall, in accordance with its particular conditions and capabilities: (a) Develop national strategies, plans or programmes for the conservation and sustainable use of biological diversity or adapt for this purpose existing strategies, plans or programmes which shall reflect, inter alia, the measures set out in this Convention relevant to the Contracting Party concerned;...”. See also United Nations. *United Nations Framework Convention on Climate Change*, 9 May 1992, Article 3, which states: “PRINCIPLES. In their actions to achieve the objective of the Convention and to implement its provisions, the Parties shall be guided, inter alia, by the following: 1. The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities....”.

resources must therefore be available for the common and equitable exploitation and use of all States, with a view to ensuring their exploitation for the benefit of the international community as a whole and not only for the benefit of certain States, and to avoid any future international dispute.⁶⁵

Throughout history, States have tended to treat high seas as international commons, since the high seas or international waters, which begin after the end of coastal States' exclusive economic zones, 200 nautical miles from the coasts of States, are open to all States.⁶⁶

⁶⁵ United Nations. *Convention on the High Seas*. 29 April 1958, Article 2, which state: “1. Freedom of the high seas is exercised under the conditions laid down by these articles and by the other rules of international law. It comprises, inter alia, both for coastal and non-coastal States: (1) Freedom of navigation; (2) Freedom of fishing; (3) Freedom to lay submarine cables and pipelines; (4) Freedom to fly over the high seas. 2. These freedoms, and others which are recognized by the general principles of international law, shall be exercised by all States with reasonable regard to the interests of other States in their exercise of the freedom of the high seas.” See also, *ibid*, *United Nations Convention on the Law of the Sea*, 1982, Article 87 which states: “Freedom of the high seas, 1. The high seas are open to all States, whether coastal or land-locked. Freedom of the high seas is exercised under the conditions laid down by this Convention and by other rules of international law. It comprises, inter alia, both for coastal and land-locked States: (a) Freedom of navigation; (b) Freedom of overflight;...”. See also, *ibid*, *Convention on the Law of the Non-Navigational Uses of International Watercourses*. 1997, Article 5, which states: “Equitable and reasonable utilization and participation, 1. Watercourse States shall in their respective territories utilize an international watercourse in an equitable and reasonable manner. In particular, an international watercourse shall be used and developed by Watercourse States with a view to attaining optimal and sustainable utilization thereof and benefits therefrom, taking into account the interests of the watercourse States concerned, consistent with adequate protection of the watercourse.”.

⁶⁶ *Ibid*, *Convention on the High Seas*. 1958, Article 1, which states: “Definition of the term high seas. 1. The term (high seas) means all parts of the sea that are not included in the territorial sea or in the internal waters of a State. 2. The high seas being open to all nations, no State may validly purport to subject any part of them to its sovereignty”.

In many conventions, the international legal framework provides free access to these resources in these areas. These include living resources such as fisheries, and non-living resources such as minerals and oil. However, exploitation of these resources requires international cooperation to ensure sustainable management, pollution prevention and overfishing. Apart from these conventions, international organizations such as the International Seabed Authority (ISA) contribute to regulating the use of these natural resources, thus promoting a balance between economic utilization and the protection of the marine environment.⁶⁷

D. International ownership and control of natural resources:

As a result of the previous principle, this principle provides that natural resources in areas not falling within the national jurisdiction of any State (such as the high seas, the deep seabed and outer space) are the common property of the international community as a whole and cannot be the object of sovereignty or ownership by any State alone, but must be managed and exploited for the benefit of all humanity.

In the 1960s, as technology progressed, developing countries became fearful of some technologically advanced industrial countries. seizure and

⁶⁷ International Seabed Authority (ISA), established under the 1982 United Nations Convention on the Law of the Sea (UNCLOS), regulates and manages the exploration and exploitation of deep seabed mineral resources beyond national jurisdiction, known as the "Area." United Nations, Available online at: <https://www.isa.org.jm>.

control of marine resources, in particular the United States. This concern was raised by a series of speeches by Malta's ambassador, Arvid Pardo, at the United Nations in 1967, where it was proposed that deep seabed resources outside the boundaries of national sovereignty be treated as a "common heritage of mankind" under the management of an international authority. Subsequently, General Assembly resolutions and declarations confirmed Pardo's speech, as well as numerous international conventions.⁶⁸

E. Settlement of disputes between States:

The current international system lacks effective means of compulsory compliance with international conventions' obligations. In order to ensure the continuity of such conventions, adequate consultation and other proactive mechanisms are one of the best preventive methods of avoiding conflicts. However, in the event of disagreement after the signing of the Convention, the international system in many conventions calls for a range of mechanisms and procedures aimed at resolving disputes arising from the use or management of shared natural resources, preventing escalation and achieving consensus among the conflicting States to ensure the sustainable and equitable use of resources.

⁶⁸ Ibid, Bilder, "*International law and natural resources policies*", p 462.

- **First**, direct negotiation, a process in which views and proposals are exchanged between the conflicting parties to identify the root causes of the conflict, and to reach a common and mutually acceptable solution. These negotiations could be bilateral or multilateral.
- **Second**, mediation and conciliation: intervention by a neutral third party, whether State or committee, to assist in mediation between the disputing parties.
- **Third**, arbitration: This is done through the disputing parties' recourse to a special arbitral tribunal for the dispute to issue a binding and fair award.⁶⁹
- **Fourth**, litigation in international courts: by bringing the dispute before a competent international court such as the International Court of Justice.⁷⁰
- **Fifth**, recourse to international and regional organizations: which could provide just and equitable solutions to the conflict, whether international or regional.⁷¹

⁶⁹ Ibid, *United Nations Convention on the Law of the Sea*, 1982, Article 283(1), which states: "Obligation to exchange views 1. When a dispute arises between States Parties concerning the interpretation or application of this Convention, the parties to the dispute shall proceed expeditiously to an exchange of views regarding its settlement by negotiation or other peaceful means."

⁷⁰ Ibid, *Charter of the United Nations*. 1945, Article 92, which states: "The International Court of Justice. The International Court of Justice shall be the principal judicial organ of the United Nations."

⁷¹ Ibid, Article 53(1), which states: "The Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority."

1.2.2. Natural resources under International Law in occupied territory:

Indeed, there is no specific international convention dealing with the protection of natural resources in times of armed conflict or military occupation, which confirms a gap in the system of international law. Consequently, recourse is made to conventions of international humanitarian law aimed at regulating armed conflicts, such as the Fourth Geneva Convention of 1949 and the Hague Conventions of 1899 and 1907 on the Laws and Customs of War, which in some of their articles provide safeguards for the natural resources of the occupied territories.

In this section, the researcher will study and analyse these conventions and create legal gaps that may allow the occupying forces to exploit, loot and destroy natural resources, with a view to highlighting possible difficulties in determining the occupying forces' responsibility for natural resource violations.

A. The Hague Conventions on the Laws and Customs of War on Land of 1899 and 1907.

Although these conventions focus primarily on general war norms, they contain some clauses that can be interpreted as aimed at protecting the natural resources of the occupied territories. It should be noted before the beginning that the Hague Convention of 1907 is considered to be more detailed and comprehensive. Thus, the focus of the discussion will be solely on the Hague Convention of 1907.

Initially, article 23/g of the Convention emphasizes that the enemy's property are protected and cannot be destroyed or seized, unless it is deemed necessary for military purposes. Article text:

"In addition to the prohibitions provided by special Conventions, it is especially forbidden (g) To destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war.... "

Furthermore, according to article 46 of the Convention, it is required to protect the integrity of private property in the occupied territory. including privately or individuals owned natural resources. The provision explicitly forbids the capricious confiscation of these resources by the occupying forces, thus safeguarding the rights of the original owners. Article 46 stipulates:

"Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected. Private property cannot be confiscated".

Moreover, in accordance with article 47 of the Convention, it is obligatory to safeguard the inviolability of private property in the occupied territory. Including privately or individually owned natural resources. The Article specifically prohibits the arbitrary seizure of these resources by the

occupying forces, thereby protecting the rights of the original owners.

Article 47 states:

“Pillage is formally forbidden”.

In addition, article 55 of the Convention obliges the occupying Power to administer public property, including natural resources such as forests, plantations and water wells, in accordance with the rules of usufruct. This means that the occupying Power acts as a proxy for such property and must carefully preserve and manage it and prevent its unfair exploitation or destruction. Article 55 states:

"The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct."

1. Legal gaps in The Hague Convention 1097:

First, the concept of military necessity is unclear. When reading the text of Article 23 of the Convention for the first time, it is believed that its primary objective is to protect natural resources from destruction or appropriation. However, it is clear that the text indirectly allows the destruction or seizure of natural resources under the pretext of "military

necessity." The occupying power can exploit this ambiguity to interpret the concept broadly and justify its violations.

Second, Classification of ownership and exclusion of public property from protection: It is clear that the purpose of the text of article 46 is to protect individuals and their private beliefs and property essential for the continuity of their lives. The article prohibited the confiscation of private property and guaranteed individuals' right to enjoy their property. However, the article did not provide for the protection of public property, despite its importance for the survival and continuity of people's lives, especially natural resources such as water wells and oilfields. This allows the occupation authorities to circumvent the text of article 46 by reclassifying property from private to public, thereby exempting it from protection and allowing its exploitation or destruction. This applies particularly to the natural resources owned by individuals, such as oil after extraction, where it is converted into a private property of the individual or the person who extracted it. It is important to notice that the text of article 46 is inconsistent with the text of article 23/g, which does not classify ownership when addressing the protection of property and merely mentions "enemy property" without detail.

Third, failure to clarify the concept of rules of usufruct: As mentioned, article 55 gives the occupying Power the right to act as an agent of natural resources, and it must administer them in accordance with the rules of usufruct. However, the article did not clarify what was

meant by the concept of rules of usufruct, allowing the occupying Power to interpret rules of usufruct in different ways, and to exploit natural resources under the pretext of administration or usufruct.

Fourth, the convention did not provide a precise and clear definition of both "seizure" and "pillage," which has led to certain challenges in interpretation and legal application. Although the convention employed these terms in different contexts, it did not explicitly delineate the distinction between them, leaving room for legal discretion and varying interpretations.

2. Addressing and closing legal gaps:

First, Case law: In the absence of an accurate definition of the concept of "military necessity" and to prevent its interpretation with excessive flexibility, the strict standards established by the International Criminal Court (ICC) and the International Criminal Tribunal for the Former Yugoslavia (ICTY) can be relied upon. These courts clarify cases where destruction is legally justified. According to ICTY's decisions in the Pavle Strugar case⁷², destruction must be justified by clear and

⁷² International Criminal Tribunal for the Former Yugoslavia, *Prosecutor v. Pavle Strugar*, Case No. IT-01-42-T, 31 January 2005. Available online at: www.icty.org/en/case/strugar. This case dealt with the shelling of the Old Town of Dubrovnik, a UNESCO World Heritage site, by Yugoslav forces, where the tribunal examined the concept of military necessity and its justification for the destruction of cultural property.

specific imperatives required by military operations, and each case must be assessed according to the facts and circumstances surrounding it. This means that military forces cannot claim "military necessity" in general to justify any destruction of property, but must demonstrate that destruction was necessary to achieve specific and urgent military objectives. Similarly, the International Criminal Court (ICC) made clear in the Nazarevich case⁷³ that "military necessity" requires that destruction be justified as directed towards specific and urgent military objectives. Destruction must be a clear military necessity and not merely a general justification for any hostilities. The Court further affirmed that all military actions must be proportionate and directed towards legitimate military objectives, and that "military necessity" cannot be used as a pretext for the destruction of civilian property or infrastructure without specific and clear legal justification.

Second, Interpreting the texts of the Articles in good faith and in accordance with the meaning given by the terms and context of the

⁷³ International Criminal Court. *Public redacted version of Judgment on the appeals of Mr Bosco Ntaganda and the Prosecutor against the decision of Trial Chamber VI of 8 July 2019 entitled 'Judgment'*. ICC-01/04-02/06-2666-Red, 30 March 2021. Available online at: <https://www.icc-cpi.int/court-record/icc-01/04-02/06-2666-red> . Ntaganda, case considered by the International Criminal Court (ICC) v. Bosco Ntaganda, former military commander of FNL in the Democratic Republic of the Congo. Ntaganda was charged with war crimes and crimes against humanity between 2002 and 2003 in the Ituri region of the Democratic Republic of the Congo. In this case, the ICC affirmed that military necessity requires that destruction be justified to achieve specific and urgent military objectives, and that all military actions must be proportionate and directed towards legitimate military objectives.

Convention's object and purpose.⁷⁴ An essential goal of the Hague Convention is to safeguard civilians, civilian property, and other vital assets necessary for sustaining their livelihoods. Therefore, legal texts that may contain gaps must be interpreted in line with the Convention's fundamental objective and purpose. It is therefore necessary to strengthen the legal protection of public property in general, paying particular attention to natural resources that are vital assets that directly affect individuals' lives and the environment.

Third, History of Article 55 (Rules of usufruct): The idea of Article 55 was first proposed in article 7 of the 1874 Brussels Conference on the Laws and Customs of War⁷⁵, adopted in The Hague unchanged. Therefore, the Brussels Conference records must be consulted to understand "rules of usufruct".

Initially, the Russian delegation advocated enabling the occupying Power to use property without affirmative duties, and the term "usufruct" was not included. After article 7 was amended to require the occupying power to protect and administer public property capital in accordance with the rules of usufruct, the Russian delegation returned to propose adding "as much as possible" to indicate that the power was not

⁷⁴ Ibid, *Vienna Convention on the Law of Treaties*, 1969, Section 3, Article 31/1.

⁷⁵ The International Committee of the Red Cross with support from the Belgian Red Cross, *Project of an International Declaration concerning the Laws and Customs of War*," Brussels, 27 August 1874. Article 7. Available online at: <https://ihl-databases.icrc.org/en/ihl-treaties/brussels-decl-1874>

absolutely bound, but Denmark, Austria and Hungary opposed this phrase in article 7⁷⁶. The article states:

"The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct."

Two implications can be inferred from article 7's writing date. First, delegates urged the occupation authorities to "protect the capital" of public property and not allow them to depart from the standards of comfort use (deleting a term as much as possible). Second, delegates utilized "usufruct" since it allowed only the use of the other's property, not ownership.⁷⁷

The broad term "rules of usufruct" remained needs more definition. States were divided into two directions by its interpretation of the term. The first trend interpreted the Hague Convention broadly, which did not impose obligations on the occupying Power. The other trend adopted the concept of "rules of usufruct" according to national laws when article 7

⁷⁶ B. M. Clagett and O. Thomas Johnson, "May Israel as a Belligerent Occupant Lawfully Exploit Previously Unexploited Oil Resources of the Gulf of Suez?" *American Journal of International Law* 72.3, (1978), p 565–566.

⁷⁷ Ibid, B. M. Clagett and O. Thomas Johnson, "May Israel as a Belligerent Occupant Lawfully Exploit Previously Unexploited Oil Resources of the Gulf of Suez?" ,1978, p 566.

of Brussels 1784 was approved. Since such a term is impossible to understand without reference to local laws because it does not exist elsewhere. At the same time, this does not mean that all existing utilization rules should be read in local laws at the time, because it is unlikely that negotiators have done so. It should only be based on "policies and general principles".⁷⁸

The concept of usufruct is rooted in the law of ancient Rome; it was defined by The Institutes of Justinian as "*the right of using and taking the fruits of property not one's own, without impairing the substance of that property*"⁷⁹. As such, the beneficiary is not entitled to consume the property that was the subject of the benefit.

The French Civil law, in article 578, guarantees the basic principles of usufruct of Roman law, defining the right of usufruct as "the right to enjoy the things of which another has ownership like the owner himself, but with the responsibility of conserving the substance of it."⁸⁰ Then, in

⁷⁸ Ibid, p 566.

⁷⁹ Justinian I. *The Institutes of Justinian*. Translated by J.B. Moyle, (Oxford: Clarendon Press, 1913), title IV. of usufruct. Available online at: https://www.gutenberg.org/files/5983/5983-h/5983-h.htm#link2H_4_0032

⁸⁰ France, *Code Civil* [Civil Code], 9 February 1804, article 578, original text: "L'usufruit est le droit de jouir des choses dont un autre a la propriété, comme le propriétaire lui-même, mais à la charge d'en conserver la substance." Available online at: https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006070721/LEGISCTA000006136246/#LEGI SCTA000006136246

the nineteenth century, many European courts adopted in their usufruct provisions strikingly similar to French law.⁸¹

In relation to State practices at the time of the Brussels Conference, for example, some States had put forward the possibility for the occupying Power to open new mines or quarries in the occupied areas, and the position of States was very clear. In short, eight out of fifteen States have adopted national civil laws, of which five Belgium, France, Italy, the Netherlands, and Portugal have explicitly prohibited the use of the term "rules of widespread usufruct" and the exploitation and consumption of public property, especially natural resources. They have therefore categorically rejected the occupying Power's opening of new mines that were not previously open before the occupation authorities.⁸²

Fourth, the Difference between Seizure and Pillage in the 1907 Hague Convention:

International law distinguishes between "Seizure" and "Pillage" during armed conflicts. "Seizure", as outlined in Article 23(g) of the 1907 Hague Convention, refers to the confiscation of enemy property, provided that it is strictly necessary for military purposes. It typically applies to public property rather than private property. For instance, an

⁸¹ Ibid, B. M. Clagett and O. Thomas Johnson, "May Israel as a Belligerent Occupant Lawfully Exploit Previously Unexploited Oil Resources of the Gulf of Suez?" ,1978, p 570.

⁸² Ibid, p 572.

occupying army may seize enemy weapons depots or military vehicles for legitimate military purposes, or utilize a military base or food storage facilities belonging to the occupied government, subject to strict legal limitations. In some cases, seizure may be temporary and limited, with the occupying power required to return or compensate for the seized property upon the restoration of peace.⁸³

Conversely, "Pillage", as explicitly prohibited under Article 47 of the Hague Convention, refers to the illicit appropriation of public or private property without any military justification. Black's Law Dictionary defined the Pillage (or plunder) as "the forcible taking of private property by an invading or conquering army from the enemy's subjects"⁸⁴. This concept is often driven by profit or economic exploitation, making it a war crime punishable under international law. Examples of pillage include soldiers or occupying forces looting civilians' private property, extracting and exploiting natural resources from occupied territories for the benefit of the occupying state, or confiscating local residents' assets without military necessity or compensation.

While "Seizure" may be justified under certain circumstances of military necessity, "Pillage" constitutes a grave violation of international humanitarian law, underscoring the fundamental legal and practical distinction between the two terms. Thus, the Seizure of natural resources

⁸³ Ibid, The Hague, 18 October 1907, article 53.

⁸⁴ Black's Law Dictionary, Fifth Edition, West Publishing, St. Paul, Minnesota, 1979, p. 1033.

may be lawful only if it is temporary and strictly necessary for military purposes under Article 23(g). Pillage of natural resources, whether for economic exploitation or any non-military purpose, is absolutely prohibited under Article 47 and constitutes a war crime.

B. Fourth Geneva Convention of 1949:

The Fourth Geneva Convention of 1949 contains provisions aimed at protecting the natural resources of the occupied territories and preventing their destruction or exploitation as resources necessary for the civilian population's survival. Initially, Article 53 of the Fourth Geneva Convention affirms the protection of public and private property, including natural resources such as agricultural land, water, and gas fields. Also, it prohibits the destruction of such property unless it is part of military operations necessary to achieve genuine legitimate military objectives, and it prohibits destruction in the absence of a necessary cause. The article states:

“Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations.”

This article raises questions about the protection of public and private property, given its different nature from the rest of the Convention, which has wide application. It prohibits the destruction of movable and immovable property, regardless of the owner's individual, collective, or state-owned property. For a variety of reasons, including the significant overlap between private civilian property and public state property essential for the continuity of civilian life, this article initially designed to protect only private property, but later expanded to include public property essential to civilians' lives. New types of joint ownership between individuals and the state have emerged. Additionally, the state may own property, which it then transfers to private entities. Ultimately, the Hague Rules extend Article 23(g) and aim to bridge the legal void in Article 46 of the Hague Convention. Note that this article adopts the same approach as Article 33, paragraph 2, of the Convention, which prohibits pillaging in a general and absolute manner without any discrimination against the owner.⁸⁵

Article 147 further affirms that mass destruction and unlawful seizure of property without military necessity constitute a grave violation of international humanitarian law and are war crimes requiring the prosecution and punishment of perpetrators. This article plays a crucial role in identifying and clarifying serious crimes, providing a legal framework for holding

⁸⁵ A. Clapham et al., *The 1949 Geneva Conventions* (Oxford University Press Academic UK, 2015), p. 1517.

Available from: VitalSource Bookshelf. Available online at:
<https://bookshelf.vitalsource.com/books/9780191003530>

perpetrators accountable, and ensuring the protection of people and property in times of armed conflict. Article:

“Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.”

If the resources of the occupied territories are insufficient, Article 55 of the Convention mandates the occupying power to import the necessary food and medical supplies for the local population. The article mandates the occupying power to work in partnership with local authorities to distribute essential supplies proportionate to local needs to all populations in need. The article also forbids the occupying power from seizing food, supplies, or medical duties in the occupied territories, with the exception of the needs of the occupying forces and administration members. Article 55 states:

“To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring the food and medical supplies of the population; it should, in particular, bring in the necessary foodstuffs, medical stores and other articles if the resources of the occupied territory are inadequate. The Occupying Power may not requisition foodstuffs, articles or medical supplies available in the occupied territory, except for use by the occupation forces and administration personnel, and then only if the requirements of the civilian population have been taken into account.....”

1. Ambiguity of terms in both Articles 53 and 147::

There may be no discrepancy between these two Articles 53 and Article 147 of the Fourth Geneva Convention directly, but careful analysis reveals potential interpretative problems.

First, Military necessity: In theory, article 53 allows for the destruction of property in instances of extreme military necessity, whereas paragraph 147 refers to this exception without delineating the precise scope or specifics. In practice, the text of Article 53 provides greater flexibility for the occupying power to justify destruction under the pretext of military necessity, leaving it to determine the extent of military necessity. Consequently, the occupying power can use Article 53 to justify widespread destruction, in direct opposition to Article 147, which contradicts the spirit of the Convention and positions the occupying power as both judge and adversary.⁸⁶

Second, Lack of a clear definition of scope: Article 147 addresses the issue of property destruction and seizure, stating that such acts must be "extensive" to qualify as a serious breach. However, the article does not provide a precise definition of what

⁸⁶ Ibid, p 1547.

constitutes a "broad scope," leaving wide scope for interpretations and allowing for the possibility of justifying potentially unacceptable acts.

2. Addressing and closing legal gaps:

First, the appropriation and destruction of property is a grave breach under the Fourth Geneva Convention. To qualify as "grave breaches," the destruction and appropriation of property must be widespread. However, the question remains: when are these actions considered "widespread"?

The ICTY "Blaškić" case⁸⁷ is a notable example of this concept. The case established that the assessment of property destruction as a crime depends on the specific facts of each case and its overall context. In other words, it is not necessary for the act to be virtually extensive; it could be a single act, such as the destruction of a hospital, that is sufficient to classify it as a crime.

However, subsequent jurisprudence suggests that property destruction must occur on a large scale to qualify as

⁸⁷ *Prosecutor v. Tihomir Blaskić* (Trial Judgement), IT-95-14-T, International Criminal Tribunal for the former Yugoslavia (ICTY), 3 March 2000, Available online at: <https://www.refworld.org/jurisprudence/caselaw/icty/2000/en/19490> [accessed 22 July 2024]. Also see *Ibid*, Trial Chamber, Decision of 3 March 2000; available on <https://casebook.icrc.org/case-study/icty-prosecutor-v-blaskic#216305>

"widespread". According to one commentator, the destruction of property is "widespread" if it affects objects essential to the survival of civilians, such as food, agriculture, drinking water, irrigation, and supplies,⁸⁸ as stated in Article 54 of Additional Protocol I.⁸⁹

Second: Military necessity, The Convention states that a widespread destruction and appropriation of property only qualifies as a grave breach if military necessity does not justify the actions. This implies that there is potential to exploit this justification for large-scale destruction and appropriation. As mentioned earlier, we can rely on the standards of the International Criminal Court (ICC) and the International Criminal Tribunal for the Former Yugoslavia (ICTY) to prevent flexible interpretations of the concept of "military necessity." According to these criteria, destruction must be justified by clear and specific military imperatives; each case shall be assessed based on its own circumstances; and the destruction shall be

⁸⁸ Ibid, A. Clapham et al., *The 1949 Geneva Conventions* (2015), p 1549.

⁸⁹ Ibid, Convention (IV) relative to the Protection of Civilian Persons in Time of War, 1949. Article 54/2, which states: "It is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works, for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse Party, whatever the motive, whether in order to starve out civilians, to cause them to move away, or for any other motive."

solely for the achievement of specific and urgent military objectives. "Military necessity" cannot serve as a pretext for the destruction of civilian property without clear legal justification, and military actions must be proportionate and targeted at legitimate objectives.

C. Peoples' right to self-determination and the principle of permanent sovereignty over natural resources:

The right of peoples to self-determination is a fundamental principle of international law, one of the earliest customary principles observed by states and subsequently incorporated into many international instruments. This principle is based on the empowerment of peoples under colonial or foreign domination to freely achieve their independence and self-determination. Decisions about the distribution and use of natural resources have a direct impact on people and their futures⁹⁰.

⁹⁰ H. Rahman Ghanes, and H. Si Moussa "A Study on the Practical Mechanisms and Solutions for Activating the Principle of Self-Determination for the Sahrawi People – Reality and Prospects," *Journal of Legal and Social Sciences*, Ziane Achour University, Djelfa, vol. 9, p. 393. Available at: <https://www.asjp.cerist.dz/en/article/64452>.

The first Chapter of the United Nations Charter, in **Article 1, paragraph 1**,⁹¹ respects people's right to self-determination and considers it one of the organization's objectives.

Article 55⁹² also strengthens understanding and cooperation among states, ensuring that peoples can freely determine their own destiny and determine their own political, economic, and social system without external interference.

Similarly, **Article 1**⁹³ of the **International Covenants on Civil and Political Rights, as well as on Economic, Social, and Cultural Rights**, affirms people's right to self-determination independently and voluntarily, free from external interference, and considers it the cornerstone of social justice and lasting peace among nations. In a similar vein, the **International Court of Justice**, in its 1995 advisory decision on the occupation of East

⁹¹ Ibid, United Nations Charter, 1945, Article 1/2. Which states: "respect for peoples' right to self-determination and is regarded as one of the purposes of the United Nations. The article stipulates: "To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;"

⁹² Ibid, Article 55, which states: "With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:..."

⁹³ Ibid, *International Covenant on Economic, Social and Cultural Rights*, 1966, Article 1, which states: "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.". Also see, Ibid, *International Covenant on Civil and Political Rights*, 1966, Article 1, which states: "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."

Timor⁹⁴, affirmed that the occupation was illegal and that East Timor reserved its right to self-determination. Accordingly, East Timor held a referendum in 1999 organized by the United Nations, where the majority of the population expressed a desire for independence.

In fact, the philosophy of the right to self-determination and its connection to a state's sovereignty over its territory and natural resources is, somewhat intricate, because it is a branch of origin.⁹⁵ State's sovereignty over its territory stems from the principle of self-determination, but in order for a state to enjoy sovereignty over its territory, a state must have an independent political entity that is governed by an internationally recognized central government and sovereignty over a specific geographical area (territory)⁹⁶. In a similar vein, the notion of sovereignty pertaining to natural resources and wealth is inextricably linked to sovereignty concerning territory, According to the fact that natural resources are part of the State's land and wealth.⁹⁷

⁹⁴ *International Court of Justice, Advisory opinions and orders case concerning East Timor (PORTUGAL v. AUSTRALIA)*, 30 June 1995, Available at: <https://www.icj-cij.org/sites/default/files/case-related/84/084-19950630-JUD-01-00-EN.pdf>

⁹⁵ S. N. Al-Agha, "Protection of Natural Resources under the Provisions of International Law: The Case of Palestine," *Arab American University Journal of Research*, 2017, vol. 3, no. 1, p. 42.

⁹⁶ A. Al-Lemon, *Al Wajez Fi Alnudom Alsisasiah W Mabade' Al Qanon Aldostory* (The Concise Guide to Political Systems and Principles of Constitutional Law). The University of Jordan - Faculty of Law, Wael Publishing House, 2nd edition, 2016, pp. 24-35, 36-38.

⁹⁷ *Ibid*, S. N. Al-Agha, "Protection of Natural Resources under the Provisions of International Law: The Case of Palestine," 2017, p. 42-43.

However, the topic at hand is: What is the nature of a state's sovereignty that allows it to manage its natural resources and wealth? In the event that a state lacks sovereignty, would it be deprived of the right to exercise sovereignty over its territory, thereby denying it access to its natural resources?

In fact, this principle is often misunderstood in the general sense. A new doctrinal trend led by Professor **Franseis H Peng** and others has emerged that state sovereignty should not be seen as an absolute privilege and could be suspended if it fails in its duties and responsibilities to its citizens. To obtain the privileges of sovereignty, states must maintain national peace, security, well-being, and wealth sharing, but if they fail to do so, they must seek or welcome external assistance; otherwise, they will be subject to external reaction and pressure.

For a long time, the major powers have pursued this approach and continue to tend to interfere in the affairs of many third-world states from many entrances, perhaps most notably humanitarian intervention, which ultimately enabled them to invade the sovereign space of several states and control their wealth and natural resources. In some cases, such exploitation may be accompanied by human rights violations and environmental destruction, exacerbating those countries' social and environmental conditions.⁹⁸

⁹⁸ Ibid, p 44.

The gravity of these jurisprudence trends in two key dimensions. The first concerns the extent to which they affect the orientations of major powers, and thus rely on them as a starting point for interference in other states' affairs. Second, the absence of corresponding currents of jurisprudence in arguments and evidence that serve the orientations and aspirations of the target states.

Nevertheless, the text and terminology of this principle are very clear: the requirement of the right to use natural resources is not linked to the existence of the state but clearly regards it as a right of peoples. Reverting to the first formulation of the principle of the right to self-determination, at the 6th meeting of the First Committee of the San Francisco Conference on 15 May 1945. Some states made observations on the mention of the right to self-determination in Chapter I of the Charter.

And submitted to the Committee an amendment proposing the replacement of the words, "*based on respect for the principle of equal rights and self-determination of peoples*" by the words "*to strengthen international order on the basis of respect for the essential rights and equality of the states, and of the peoples*". Those states argued that it was dangerous to place the right of peoples to self-determination as the basis for friendly relations among nations. Arguing that it would open the door to unacceptable interventions. However, this amendment was rejected by a majority of more

than two-thirds, inter alia, because paragraph 2 was intended to declare the equal rights of peoples and, consequently, their right to self-determination.⁹⁹

Accordingly, when the conditions of occupation of a given territory are met, the occupying Power is obliged to comply with the obligations imposed by international law with regard to the exploitation of natural resources. If the occupying state fails to fulfill its obligations (whether by taking action or not taking action), it will be subject to international responsibility.¹⁰⁰

⁹⁹ C. Aureliu. *The right to self-determination: historical and current development on the basis of United Nations instruments.*, United Nations, New York, 1981, p 2. Available online at: https://digitallibrary.un.org/record/25252/files/E_CN.4_Sub.2_404_Rev.1-EN.pdf

¹⁰⁰ Responsibility of States "means that an internationally wrongful act, committed by one State against another, entails certain consequences for its author in the form of new obligations towards the victim". Z. Karl. *Responsibility of states: general principles.* In Encyclopedia of Disputes Installment 10. Elsevier, 1987. P 363. Available online at: <https://www.sciencedirect.com/science/article/pii/B9780444862419500920>

Chapter Two: Case Study: The Occupied Palestinian Territories.

1- Historical and Legal Framework of The Occupied Palestinian Territories:

The occupied Palestinian Territories is an important focus in the study of international conflicts, with its long and complex history linked to a series of political and military events that have shaped its current reality. To fully understand the legal status of these territories, it is necessary to review the historical framework that led to their occupation, as well as to analyse the laws and international treaties governing this situation. This section aims to provide a comprehensive view of the historical and legal framework of the occupied Palestinian territories, focusing on aspects that define the rights of the Palestinian population under occupation and the responsibilities of the occupying Power in accordance with international law.

1.1. Historical overview of the Palestinian Territories (Historical Framework):

"A land without a people for a people without a land" the phrase that prepared for one of the catastrophic humanitarian disasters in history. It began in the late nineteenth century with the adoption of Zionist ideology in Europe, founded in 1897 by Theodore Herzl.¹⁰¹ The Zionist movement focused on encouraging Jewish

¹⁰¹ M. Benny. *Righteous victims: a history of the Zionist-Arab conflict, 1881-1998*. Vintage, 2001. P 35

migration to Palestine and buying land for settlements. If it is not possible to buy, the land has been illegally seized. With the plan's implementation, Jewish migration to Palestine increased, and by 1914 there were some 60,000 Jews residing in Palestine.¹⁰²

In 1917¹⁰³, the British Government announced the Balfour Promise, supporting a "national homeland of the Jewish people" in Palestine. This promise led to increased tensions between Jews and Palestinian Arabs due to escalating conflicts of interest and Jewish immigration. The League of Nations placed Palestine under British mandate in 1920¹⁰⁴ after the First World War, as a result of multiple attempts to resolve the dispute between Jews and Arabs in Palestine under the British Mandate, the UN enacted Resolution 181 on November 29, 1947¹⁰⁵, suggesting the split of Palestine into Jewish and Arab states with Jerusalem under international control. Jews accepted the partition plan, but Arabs refused it. David Ben-Gurion

¹⁰² Ibid, P 38. "Land acquisition was the foundation of Zionism. In 1904, Menachem Ussishkin, a leader of the Hovevei Zion movement, expressed the belief that "Without ownership of the land, Eretz Yisrael will never become Jewish." Zionist terminology commonly referred to the act of purchasing land as "redemption" or, more explicitly, as the "conquest of the land." Ussishkin asserts that there are three methods in the modern world for acquiring land. "By force—that is, by conquest in war, or in other words, by robbing land from its owner; ... by expropriation via governmental authority; or by purchase." Also, he said that the Zionist movement, was limited to the third choice, "until at some point we become rulers".

¹⁰³ *Balfour Declaration*. UK Government, 2 Nov. 1917.

¹⁰⁴ "Mandate for Palestine." UNISPAL (United Nations Information System on the Question of Palestine), League of Nations, 24 July 1922, Available online at https://avalon.law.yale.edu/20th_century/palmanda.asp

¹⁰⁵ *United Nations. General Assembly Resolution 181 (II) – Future Government of Palestine.* United Nations, 29 Nov. 1947, Available online at <https://documents.un.org/doc/resolution/gen/nr0/038/88/pdf/nr003888.pdf?token=WNNegXOB8s5XB8GSu2&fe=true>

declared the State of Israel on May 14, 1948¹⁰⁶, following the declaration of the end of British Mandate on Palestine, sparking the first Arab-Israeli war the next day. Nearby Arab forces including Egypt, Jordan, Syria, Lebanon, and Iraq supported the Palestinians as an attempt to stop the establishment of the Israeli State. The conflict ended in 1949 with Israeli-Arab armistices, but it did not recognize clear borders for the West Bank and Gaza Strip.

Nakba has caused tragic consequences for the Palestinian people, over 800,000 Palestinians were forced to flee their villages and cities to Jordan, Lebanon, Syria, and other parts of Palestine¹⁰⁷. Israel occupied 774 Palestinian villages and cities, demolishing 531 and erasing many communities and local histories. The occupation also committed massacres against Palestinians in a number of villages, such as Deir Yassin¹⁰⁸ and Tantara¹⁰⁹. Studies estimate 15,000 Palestinian deaths during the Nakba¹¹⁰. Using the country's resources and denying Palestinians their rights¹¹¹, the

¹⁰⁶ Ibid, M. Benny. *Righteous victims: a history of the Zionist–Arab conflict, 1881–1998.*, 2001, p 191

¹⁰⁷ *Palestinian News & Info Agency*, "Studies and Reports on Population: Nakba, Ethnic Cleansing, and Demographic Replacement," Available online at: https://info.wafa.ps/ar_page.aspx?id=3267

¹⁰⁸ W .Khalidi, *All That Remains: The Palestinian Villages Occupied and Depopulated by Israel in 1948* (Institute for Palestine Studies, 1992), p. 289. See also *Al Jazeera News Channel*, "The Deir Yassin Massacre," Available online at: <https://aja.me/biruhr>.

¹⁰⁹ Ibid, Khalidi, Walid. "All that remains." *The Palestinian Villages Occupied and Depopulated by Israel in 1948*. 1992, p 193. Also see *Al Jazeera News Channel*, "The Tantura Massacre: A Village Destroyed by Israel, Its Men Wiped Out, and Its Women and Children Displaced," 2024, Available at: <https://aja.ws/uqma07>.

¹¹⁰ Ibid, *Palestinian News & Info Agency*, "Studies and Reports on the History of Palestine: The Nakba: Facts and Figures," Available online at: https://info.wafa.ps/ar_page.aspx?id=5048

¹¹¹ *Palestinian Central Bureau of Statistics*, Fi Thekra Al73 llnakba Yatada'f Adad Alfalastenion Akthar Mn 9 Marat (On the 73rd Anniversary of the Nakba, the Number of Palestinians Has Increased More than 9 Times), 2020, Ramallah, Palestine. Available online at: https://www.pcbs.gov.ps/portals/_pcbs/PressRelease/Press_Ar_10-5-2021-nakba-ar.doc

occupation violated international humanitarian law. Israel controlled 78% of Palestine's historic land after Nakba, whereas the UN's partition plan gave it 55%.¹¹²

One of the most important steps in the Palestinian question was the establishment of the Palestine Liberation Organization (PLO) on May 28, 1964, in Jerusalem¹¹³, following a decision by the Arab summit in Cairo aimed at the liberation of Palestine and the establishment of an independent Palestinian state. Tensions have increased as Palestinian factions carry out aggressive operations against Israeli targets, leading to escalating Israeli military responses. The Six-Day War broke out on 5 June 1967 between Israel and Egypt, Syria, and Jordan, ending with Israel's victory and occupation of the West Bank, including East Jerusalem, the Gaza Strip, the Golan Heights, and the Sinai Peninsula¹¹⁴.

In November 1967, in an attempt to curb the escalation, the Security Council adopted resolution 242¹¹⁵, which called for Israel's withdrawal from the occupied territories and for recognition of the right of all states in the region to live in peace within secure and recognized borders. However, Israel continued to occupy land and build settlements. Subsequently, the Yom Kippur war broke out on October 6, 1973,

¹¹² *Palestinian news & info agency*, Nakbat Falasten: 76 Aman Mn Al Majazer w Al tashred(The Nakba of Palestine: 76 Years of Massacres and Displacement) Available online at: <https://wafa.ps/Pages/Details/95567>

¹¹³ *Interactive Encyclopedia of the Palestinian Question*, "The Reemergence of the Palestinian National Movement", Palestine Liberation Organization (I), , Available online at: <https://www.palquest.org/ar/highlight/285/%D9%85%D9%86%D8%B8%D9%85%D8%A9-%D8%A7%D9%84%D8%AA%D8%AD%D8%B1%D9%8A%D8%B1-%D8%A7%D9%84%D9%81%D9%84%D8%B3%D8%B7%D9%8A%D9%86%D9%8A%D8%A9-i>

¹¹⁴ Ibid, M. Benny. *Righteous victims: a history of the Zionist-Arab conflict, 1881-1998.*, 2001, p 302

¹¹⁵ United Nations. "Security Council Resolution 242 (1967)". available online at: [https://undocs.org/S/RES/242\(1967\)](https://undocs.org/S/RES/242(1967))

when Egypt and Syria launched a surprise attack on Israeli forces in Sinai and the Golan with the aim of restoring occupied territory in 1967. The Security Council reaffirmed resolution 338¹¹⁶ to cease hostilities and promote the implementation of resolution 242.

On 13 November 1974, the United Nations recognized the Palestine Liberation Organization (PLO) as a representative of the Palestinian people, pursuant to Resolution 3237, and granted it "observer status."¹¹⁷ At its Algeria meeting on November 15, 1988, the Palestinian National Council announced the establishment of the State of Palestine¹¹⁸. This declaration was followed by a United Nations General Assembly resolution recognizing the Palestinian State, and the Liberation Organization began using the name "Palestine" in the United Nations instead of "PLO"¹¹⁹. In 1993, the organization was able to sign the Oslo Agreement with Israel¹²⁰, leading to mutual recognition between the parties and the establishment of

¹¹⁶ United Nations, Security Council, "Resolution 338 (1973)", available online at: [https://undocs.org/S/RES/338\(1973\)](https://undocs.org/S/RES/338(1973))

¹¹⁷ United Nations, *General Assembly Resolution 3237 (XXIX)*. Observer Status for the Palestine Liberation Organization., 22 Nov. 1974, Available online at: [https://undocs.org/en/A/RES/3237\(XXIX\)](https://undocs.org/en/A/RES/3237(XXIX))

¹¹⁸ Palestine Liberation Organization, *Interactive Encyclopedia of the Palestinian Question*, "The Reemergence of the Palestinian National Movement," available online at: <https://www.palquest.org/ar/highlight/285/%D9%85%D9%86%D8%B8%D9%85%D8%A9-%D8%A7%D9%84%D8%AA%D8%AD%D8%B1%D9%8A%D8%A8-%D8%A7%D9%84%D9%81%D9%84%D8%B3%D8%B7%D9%8A%D9%86%D9%8A%D8%A9-i>.

¹¹⁹ United Nations, *General Assembly Resolution 43/177. Question of Palestine.* 15 Dec. 1988, Available online at: <https://undocs.org/en/A/RES/43/177>

¹²⁰ Israel–Palestine Liberation Organization, *Declaration of Principles on Interim Self–Government Arrangements*, 13 September 1993, United Nations Peacemaker, available at: <https://peacemaker.un.org/israelopt-osloaccord93>

the Palestinian National Authority in parts of the West Bank and Gaza Strip. The Convention divided the West Bank into three areas: Area A, under Palestinian security and civilian control. Area B under Palestinian civilian control and Israeli security control. Area C, under full Israeli control. At the time, the Gaza Strip was not under full Palestinian control because of Israel's ongoing settlements and military areas.

In 2002, Israel began construction of the separation wall, which runs through parts of the West Bank, isolating many Palestinian villages and cutting off communication between cities and regions. On July 20, 2004, the General Assembly rejected the wall and issued a resolution by 150 votes to 6¹²¹, supporting the advisory opinion of the International Court of Justice demanding that Israel comply with international law and remove the wall¹²², but Israel did not heed the resolution. In 2005, Israel withdrew from the Gaza Strip and removed its settlements there as part of a unilateral withdrawal plan. Nevertheless, it imposed a tight blockade on the Strip from air, sea and land, affecting the movement of people and goods.

On 29 November 2012, the United Nations General Assembly granted Palestine the status of "non-member observer state" through resolution 67/19¹²³. Although

¹²¹ United Nations, *General Assembly "Resolution ES-10/15. Advisory Opinion of the International Court of Justice on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories."* 20 July 2004, Available online at: <https://undocs.org/en/A/RES/ES-10/15>

¹²² International Court of Justice, *Advisory Opinion, "Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories."* 9 July 2004, available at: <https://www.icj-cij.org/public/files/case-related/131/131-20040709-ADV-01-00-EN.pdf> .

¹²³ United Nations, *General Assembly "Resolution 67/19. Status of Palestine in the United Nations."* 29 Nov. 2012, Available online at: <https://undocs.org/en/A/RES/67/19> .

Palestine is not a full member of the United Nations and does not enjoy all the privileges enjoyed by full member states, this recognition is an important step towards formal recognition at the international level. This allowed Palestine to participate in public debates at the United Nations and propose items it deemed appropriate, as well as to join United Nations subsidiary bodies, specialized agencies, intergovernmental organizations, and international treaties.

This membership has also improved Palestine's ability to represent its cases in international forums and bring legal proceedings against Israel in international courts, thereby enhancing its claim to sovereignty and international recognition of its borders¹²⁴. For example, in 2015, Palestine became a member of the International Criminal Court, giving it the right to bring cases against human rights violations and war crimes¹²⁵. To date, more than 135 states have recognized Palestine as a sovereign state, with the most recent being the Republic of Armenia's recognition on June 21, 2024.¹²⁶ Despite all these acknowledgements, the Israeli-Palestinian conflict and the ongoing negotiations on a two-state solution make Palestine's legal status as a state somewhat complex.

¹²⁴ H. Alamari, "The question of the full membership of Palestine in the United Nations and possible alternatives", *International journal of legal and political research*, 2022, Volume 04, Issue 01, p 139–142.

¹²⁵ International Criminal Court. "State of Palestine Becomes 123rd State Party to the Rome Statute", 7 Jan. 2015, available online at: <https://www.icc-cpi.int/news/icc-welcomes-palestine-new-state-party>

¹²⁶ Palestinian Ministry of Foreign Affairs, *official website*, "states that recognized the State of Palestine", Available online at: <https://www.mofa.pna.ps/ps/%D8%A7%D9%84%D8%AF%D9%88%D9%84-%D8%A7%D9%84%D8%AA%D9%8A-%D8%A7%D8%B9%D8%AA%D8%B1%D9%81%D8%AA-%D8%A8%D8%AF%D9%88%D9%84%D8%A9-%D9%81%D9%84%D8%B3%D8%B7%D9%8A%D9%86>

1.2. Analyze The legal status of the Palestinian territories in accordance of international law- Applicable Law (Legal Framework):

Some believe that the legal status of the Palestinian territories does not qualify as "occupied territory", given the legal and political complexities of the territories' legal status. So that no clear border was recognized for the West Bank and Gaza Strip after the 1948 war. Moreover, before 1967, the West Bank was under Jordan's control, but it was not officially part of its internationally recognized territory. Similarly, the Gaza Strip was under Egypt's military occupation without legal sovereignty over it. This means that at the time of Israel's extension of control over these territories in 1967, there was no clear sovereignty over them.

In fact, this legal argument by the Israeli side does not necessarily mean that Palestinian territory is not "occupied" in accordance with international law. On the contrary, the situation in the West Bank and the Gaza Strip remains under the definition of military occupation under the relevant international laws. According to the definition of "occupation" in international humanitarian law, the Fourth Geneva Convention applies to territory under the control of a foreign military force after an armed conflict, regardless of its previous legal status. In other words, international law does not require the existence of pre-legitimate sovereignty to designate an area

as "occupied territory", i.e. the absence of former legitimate sovereignty does not abolish the status of occupation.¹²⁷

Given the previous historical glimpse, it is clear that Israel has controlled the West Bank (and East Jerusalem) since 1967. The division of the West Bank in accordance with the 1993 Oslo Convention into three areas (a, b and c) with a different distribution of administrative and security control between the Palestinian National Authority and Israel confirms Israel's intention to impose control over as much Palestinian territory as possible. This policy makes the Israeli occupation part of a long-term strategy aimed at strengthening control over Palestinian land, hindering any possibility of achieving an independent and geographically continuous Palestinian state.¹²⁸

As for the Gaza Strip, despite the withdrawal of Israeli occupying forces from Gaza in 2005, following its occupation in 1967, Israel continues to control Gaza's air, land and sea borders and imposes a severe blockade on the area. This blockade isolates Gaza from the outside world, ensuring that Israel's occupation continues through indirect control of vital resources and corridors, such as electricity, water

¹²⁷ Especially since this law focuses primarily on the protection of individuals affected by conflict, not on the protection of States' interests. All States must therefore respect and abide by its provisions, seek humanitarian relief without waiting for further development of international law and subject civilians' fate to political and legal realities. The International Committee of the Red Cross (ICRC), "*Online Casebook*" *How does law protect in war?, Israel*, "Applicability of The Fourth Convention To Occupied Territories", available online at: <https://casebook.icrc.org/about>

¹²⁸ International Committee of the Red Cross(ICRC), "*What does the law say about the responsibilities of the Occupying Power in the occupied Palestinian territory?*", available online at: <https://www.icrc.org/en/document/ihl-occupying-power-responsibilities-occupied-palestinian-territories>

and basic materials. Thus, despite the withdrawal of military forces, the situation in the Gaza Strip is part of a long-term occupation, where Israel continues to impose domination over the Palestinian population's daily lives.¹²⁹

Overall, the occupied Palestinian territories under Israeli occupation can be regarded as a long-term occupation through ongoing practices in the West Bank and Gaza Strip, which is contrary to the principles of international law that determine that occupation, if any, must be temporary, and the occupying Power must abide by international laws and immediately end the occupation situation.

Accordingly, the law applicable in both the West Bank and the Gaza Strip (and East Jerusalem) is International Humanitarian Law, specifically The Hague Convention (IV) respecting the Laws and Customs of War on Land and its annex 1907, the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War 1949, and Additional Protocol I 1977 relating to the Protection of Victims of International Armed Conflict. In addition to International Human Rights Law, the International Bill of Human Rights and Core Human Rights Instruments also apply.

This is what the General Assembly made clear in its resolution 62/107¹³⁰, and in the same resolution called upon Israel to accept the application of the Fourth Geneva Convention 1949 to the Arab regions it occupied and to fulfill its obligations under the Convention. Similarly, the Security Council's position in its resolutions

¹²⁹ Ibid.

¹³⁰ United Nations General Assembly, "*Peaceful Settlement of the Question of Palestine*". Resolution 62/107, 17 Dec. 2007. Available online at <https://digitallibrary.un.org/record/616630>.

was clear that the current legal situation in the West Bank was an occupation, particularly in resolution 242 (1967), resolution 338 (1973), and resolution 2334 (2016).¹³¹

2- Natural resources in The Occupied Palestinian Territories:

Palestine is endowed with rich natural resources, including agricultural land, nature reserves, water, natural gas, and other environmental wealth that are vital for sustainable development and the local economy. Despite the legal protection, that international law is supposed to provide for natural resources in the occupied territories; however, these orders not only restricted Palestinians' access to their wealth but also diverted those resources to Israeli interests, thereby depriving Palestinians of their fundamental rights to exploit their national resources.

Israel's recent aggression against the Gaza Strip, which began on October 7, 2023, has escalated the crisis to unprecedented levels, seriously aggravating the humanitarian and environmental situation in the region. This escalation has affected not

¹³¹ United Nations Security Council. *Resolution 2334 (2016)*. 23 Dec. 2016. Available online at: <https://digitallibrary.un.org/record/852095>. *This resolution focuses on condemning the construction of Israeli settlements in the Occupied Palestinian Territory as a violation of international law

only human losses and infrastructure, but also the exploitation of the sector's natural resources in ways that further complicate the crisis.¹³²

This section first addresses Israel's military policies regarding the exploitation of natural resources in the Occupied Palestinian Territories. Second, it also addresses Israel's argument in justifying its policies of exploiting natural resources in the occupied Palestinian territories and clarifying Israel's legal manipulation and exploitation of legal loopholes in The Hague and Geneva Conventions.

2.1. Israel's military policies in the exploitation of natural resources in the Occupied Palestinian:

Israel's military governance structure in the management of Palestinian land in general was founded on two basic military orders.¹³³ Mainly, **The**

¹³² Palestine News & Info Agency, *Alhesar Alma`e.. Haktha Ya`mal Alehtilal Ala Tateesh Alfalastineen (Water Siege: How the Occupation is 'Thirsting' the Palestinians)*," 12 June 2024. Available online at: <https://www.wafa.ps/Pages/Details/97602>

¹³³ A. Asaad and F. Munir, *General Guide to Israel 2020: Israeli Control Over Palestinian and Syrian Territories Occupied Since 1976* (Palestinian Studies Foundation, 9 April 2021), p. 922. Available online At <https://www.palestine-studies.org/sites/default/files/bookspdf/%D8%A7%D9%84%D8%B3%D9%8A%D8%B7%D8%B1%D8%A9%20%D8%A7%D9%84%D8%A5%D8%B3%D8%B1%D8%A7%D8%A6%D9%8A%D9%84%D9%8A%D8%A9%20%D8%B9%D9%84%D9%89%20%D8%A7%D9%84%D8%A3%D8%B1%D8%A7%D8%B6%D9%8A%20%D8%A7%D9%84%D9%81%D9%84%D8%B3%D8%B7%D9%8A%D9%86%D9%8A%D8%A9%20%D9%88%D8%A7%D9%84%D8%B3%D9%88%D8%B1%D9%8A%D8%A9%20%D8%A7%D9%84%D9%85%D8%AD%D8%AA%D9%84%D8%A9%20%D8%B3%D9%86%D8%A9%20%D9%A1%D9%A9%D9%A6%D9%A7.pdf>

¹³³ A. Asaad and F. Munir, *General Guide to Israel 2020: Israeli Control Over Palestinian and Syrian Territories Occupied Since 1976* (Palestinian Studies Foundation, 9 April 2021), p. 922. Available online At <https://www.palestine-studies.org/sites/default/files/bookspdf/%D8%A7%D9%84%D8%B3%D9%8A%D8%B7%D8%B1%D8%A9%20%D8%A7%D9%84%D8%A5%D8%B3%D8%B1%D8%A7%D8%A6%D9%8A%D9%84%D9%8A%D8%A9%20%D8%B9%D9%84%D9%89%20%D8%A7%D9%84%D8%A3%D8%B1%D8%A7%D8%B6%D9%8A%20%D8%A7%D9%84%D9%81%D9%84%D8%B3%D8%B7%D9%8A%D9%86%D9%8A%D8%A9%20%D9%88%D8%A7%D9%84%D8%B3%D9%88%D8%B1%D9%8A%D8%A9%20%D8%A7%D9%84%D9%85%D8%AD%D8%AA%D9%84%D8%A9%20%D8%B3%D9%86%D8%A9%20%D9%A1%D9%A9%D9%A6%D9%A7.pdf>

Military Order No. 1¹³⁴ of June 1967, which declared that Israel had occupied the West Bank and Gaza and assumed administrative control over its territories "in the interest of security and public order".

In addition, **The Military Order No. 2**¹³⁵ on June 7, 1967, this transferred all the powers taken from the previous regimes (Jordanian rule and the Egyptian military administration) to an Israeli military ruler. It also stressed the continued application of previous laws in the West Bank unless they contravened any instructions or orders issued by the commander of the occupying forces, including Ottoman laws that facilitated the implementation of Israeli settlement schemes. Article 3 (a) of this order states that:

"Any power of government, legislation, appointment, or administration with respect to the Region or its inhabitants shall henceforth be vested in me alone and shall be exercised only by me or by a person appointed by me to that end or acting on my behalf."

These two basic resolutions formed the basis for a number of additional military orders dealing with specific topics. Such as,

¹³⁴Command of the IDF forces, *Military Order No. 1*, 1967. Available at The Applied Research Institute – Jerusalem (ARIJ), *40 Years of Israel Occupation 1967–2007*, Chapter two, Status of Palestinian Territories and Palestinian Society under Israeli Occupation. <https://www.arij.org/atlas40/chapter2.2.html>

¹³⁵Command of the IDF forces, *Military Order No. 2*, 1967. Available online at The Applied Research Institute – Jerusalem (ARIJ), *40 Years of Israel Occupation 1967–2007*, Chapter two, Status of Palestinian Territories and Palestinian Society under Israeli Occupation. <https://www.arij.org/atlas40/chapter2.2.html>

2.1.1. Absentee Property:

Under the cover of the Ottoman Absentee Property Act 1950, The Israeli Military Administration issued Military Order No. 58¹³⁶ of 1967 on "Absentee Property"; The Israelis therefore seized the property of Palestinians who left or were expelled from their homes during the 1948 war. These individuals are classified as "absentee" and, under this law, their land and property are transferred to the Israeli State, which they manage through the "guardian of absentee property". This policy led to the widespread confiscation of Palestinian land and its subsequent use to expand settlements or for other purposes serving Israeli interests.

2.1.2. State property:

The Israeli Military Administration issued a series of military orders on "State property". According to these orders, Israel considered large areas of land in the West Bank and Gaza Strip to be "State property." **Military Order No. 59**¹³⁷ of 31 July 1967 defines

¹³⁶ Command of the IDF forces, *Military Order No. 58*, 1967, Available online at: The Applied Research Institute – Jerusalem (ARIJ), *40 Years of Israel Occupation 1967–2007*, Chapter two, Status of Palestinian Territories and Palestinian Society under Israeli Occupation. <https://www.arij.org/atlas40/chapter2.2.html>

¹³⁷ Command of the IDF forces, *Military Order No. 59*, 1967, Available online at: The Applied Research Institute – Jerusalem (ARIJ), *40 Years of Israel Occupation 1967–2007*, Chapter two, Status of Palestinian Territories and Palestinian Society under Israeli Occupation. <https://www.arij.org/atlas40/chapter2.2.html>

"State property" as: "any movable or immovable property, which prior to June 7, 1967, belonged to a hostile state or to any arbitration body connected with a hostile state". It also stipulates that "any land not individually registered or registered as the property of the Islamic Waqf, is subject to the designation as state land."¹³⁸ Subsequently, **The Military Order No. 364**¹³⁹ broadened the scope of "state property" to encompass any property for which the owner cannot provide sufficient evidence, as determined by a military committee, to establish it as his private property.

Lastly, **The Military Order No. 1091**¹⁴⁰ in 1984 established a more precise definition of "state land," In 1984, as follows: "State property is now interpreted as including any property subject to an expropriation order. It is defined as: 1. Property that on the date of occupation or afterwards was registered in the name of an enemy state or any organization or company linked or controlled directly or

¹³⁸ *Guide to Israeli Orders Relating to Land, Housing and the Environment and Mechanisms for Objecting to Them, Policies of Israeli Land Appropriation*, available online at: <https://daleel.lrcj.org/page/24/%D8%A7%D9%84%D8%B3%D9%8A%D8%A7%D8%B3%D8%A7%D8%AA-%D8%A7%D9%84%D8%A5%D8%B3%D8%B1%D8%A7%D8%A6%D9%8A%D9%84%D9%8A%D8%A9-%D9%84%D9%86%D9%87%D8%A8-%D8%A7%D9%84%D8%A3%D8%B1%D8%A7%D8%B6%D9%8A>

¹³⁹ Command of the IDF forces, *Military Order No. 364*, 1967, Available online at: The Applied Research Institute – Jerusalem (ARIJ), *40 Years of Israel Occupation 1967–2007*, Chapter two, Status of Palestinian Territories and Palestinian Society under Israeli Occupation. <https://www.arj.org/atlas40/chapter2.2.html>

¹⁴⁰ Command of the IDF forces, *Military Order No. 1091*, 1984, Available online at: The Applied Research Institute – Jerusalem (ARIJ), *40 Years of Israel Occupation 1967–2007*, Chapter two, Status of Palestinian Territories and Palestinian Society under Israeli Occupation. <https://www.arj.org/atlas40/chapter2.2.html>

indirectly by a hostile state. 2. Land that has been confiscated in the public interest in accordance with legislation or security legislation through or for one of the sectors/ authorities of the Israeli military forces which is not necessarily local. 3. All property which belongs to individuals who have requested that the official authorities administer and manage their properties, and which the official has consented to administer."

2.1.3. “Combat or Fighting Zones” or “Closed Areas”:

The Israeli military administration declared many areas of the West Bank as "Closed Areas" and "Combat or Fighting Zones", allowing the Israeli military to control them by preventing Palestinians from accessing them. This was stated in **Military Order No. 271**¹⁴¹ of 12 August 1968, which was subsequently amended in **Military Order No. 372**¹⁴² of 1970 and added that no compensation will be paid to the owners of those lands that have been ordered to be converted into combat zones for damages that may occur as a result

¹⁴¹ Command of the IDF forces, *Military Order No. 271*, 1968, Available online at: The Applied Research Institute – Jerusalem (ARIJ), *40 Years of Israel Occupation 1967–2007*, Chapter two, Status of Palestinian Territories and Palestinian Society under Israeli Occupation. <https://www.arj.org/atlas40/chapter2.2.html>

¹⁴² Command of the IDF forces, *Military Order No. 372*, 1970, Available online at: The Applied Research Institute – Jerusalem (ARIJ), *40 Years of Israel Occupation 1967–2007*, Chapter two, Status of Palestinian Territories and Palestinian Society under Israeli Occupation. <https://www.arj.org/atlas40/chapter2.2.html>

of military actions. In addition, **Military Order No. 378**¹⁴³ of 20 April 1970, respectively.

2.1.4. Land Expropriation for Public Purposes:

Israel benefited from Jordanian law "Land Expropriation for Public Purposes", which had previously been applied to the West Bank, to legalize confiscation of Palestinian private land. Although this law was usually used to create public infrastructure, such as roads and schools, for the benefit of the Palestinian Arab people, the Israeli authorities used it to confiscate Palestinian land with the aim of expanding settlements or establishing projects that serve only the Israeli population.

This law was rewritten in **Military Order No. 321**¹⁴⁴ of 28 March 1969 on "Land Expropriation for Public Purposes".

2.1.5. “Natural Reserves”:

As part of a broader strategy to control Palestinian land under the cover of environmental conservation and pursuant to Military

¹⁴³ Command of the IDF forces, *Military Order No. 378*, 1970, Available online at: The Applied Research Institute – Jerusalem (ARIJ), *40 Years of Israel Occupation 1967–2007*, Chapter two, Status of Palestinian Territories and Palestinian Society under Israeli Occupation. <https://www.arij.org/atlas40/chapter2.2.html>

¹⁴⁴ Command of the IDF forces, *Military Order No. 321*, 1969, Available online at: The Applied Research Institute – Jerusalem (ARIJ), *40 Years of Israel Occupation 1967–2007*, Chapter two, Status of Palestinian Territories and Palestinian Society under Israeli Occupation. <https://www.arij.org/atlas40/chapter2.2.html>

Order No. 363¹⁴⁵ of 22 December 1969, the Israeli military administration declared many areas of the West Bank as "nature reserves" in and prohibited any agricultural or construction activities by Palestinians. These reserves often serve as a covert tool for Israeli settlement expansion, as the Israeli military typically selects these areas in close proximity to their settlements to establish a protective perimeter.

2.1.6. "Supervision of Construction Works":

Israel imposed strict control over construction and planning in the Occupied Palestinian Territory, including the West Bank and East Jerusalem under **Military Order No. 393**¹⁴⁶ of 14 Jan 1970. A complex permit system has been imposed on Palestinians, preventing them from building new homes or opening water wells without permits, and in very rare cases such permits are granted.

Practical examples of previous military orders on natural resources in the occupied Palestinian territories:

¹⁴⁵ Command of the IDF forces, *Military Order No. 363*, 1969, Available online at: The Applied Research Institute – Jerusalem (ARIJ), *40 Years of Israel Occupation 1967–2007*, Chapter two, Status of Palestinian Territories and Palestinian Society under Israeli Occupation. <https://www.arj.org/atlas40/chapter2.2.html>

¹⁴⁶ Command of the IDF forces, *Military Order No. 393*, 1970, Available online at: The Applied Research Institute – Jerusalem (ARIJ), *40 Years of Israel Occupation 1967–2007*, Chapter two, Status of Palestinian Territories and Palestinian Society under Israeli Occupation. <https://www.arj.org/atlas40/chapter2.2.html>

A. Agricultural land:

The Israeli Military Administration has issued several military orders on agricultural land in the Occupied Palestinian Territory, for example:

- Military Order No. (1586) 2007-5767 on Land (wrongful use of privately owned land):**¹⁴⁷ In the aftermath of this military order, under Article 2 of it, a resolution was issued concerning the village of Jayus in the city of Qalqilya in 25 February 2021, after the landowner extended water lines and planted trees. Article 2(a) deemed the owner to have used his land 'wrongfully' or differently from previous schemes or classifications. Article 2(b) of the Ordinance mandates the application for a permit for such agricultural works, after which the continuation of agricultural business is subject to assessment. If the owner does not apply for the permit, the head of the Military Administration has the right to order the owner to cease the full use of his land and to remove whatever constitutes an unjust use of the land.¹⁴⁸

¹⁴⁷ Command of the IDF forces, *Military Order No. 1586, 2007*, Available at: "*Guide to Israeli Orders Relating to Land, Housing and the Environment and Mechanisms for Objecting to Them*", [https://daleel.lrcj.org/page/61/%D8%A3%D9%85%D8%B1-%D8%A8%D8%B4%D8%A3%D9%86-%D8%A7%D9%84%D8%A3%D8%B1%D8%A7%D8%B6%D9%8A-\(-%D8%A7%D8%B3%D8%AA%D8%B9%D9%85%D8%A7%D9%84-%D8%AC%D8%A7%D8%A6%D8%B1-%D9%84%D8%A3%D8%B1%D8%A7%D8%B6%D9%8A-%D9%85%D9%84%D9%83\):](https://daleel.lrcj.org/page/61/%D8%A3%D9%85%D8%B1-%D8%A8%D8%B4%D8%A3%D9%86-%D8%A7%D9%84%D8%A3%D8%B1%D8%A7%D8%B6%D9%8A-(-%D8%A7%D8%B3%D8%AA%D8%B9%D9%85%D8%A7%D9%84-%D8%AC%D8%A7%D8%A6%D8%B1-%D9%84%D8%A3%D8%B1%D8%A7%D8%B6%D9%8A-%D9%85%D9%84%D9%83):)

¹⁴⁸ *Guide to Israeli Orders Relating to Land, Housing and the Environment and Mechanisms for Objecting to Them*, Available online at: [https://daleel.lrcj.org/page/61/%D8%A3%D9%85%D8%B1-%D8%A8%D8%B4%D8%A3%D9%86-%D8%A7%D9%84%D8%A3%D8%B1%D8%A7%D8%B6%D9%8A-\(-%D8%A7%D8%B3%D8%AA%D8%B9%D9%85%D8%A7%D9%84-](https://daleel.lrcj.org/page/61/%D8%A3%D9%85%D8%B1-%D8%A8%D8%B4%D8%A3%D9%86-%D8%A7%D9%84%D8%A3%D8%B1%D8%A7%D8%B6%D9%8A-(-%D8%A7%D8%B3%D8%AA%D8%B9%D9%85%D8%A7%D9%84-)

- **Military Order No. 17/14/T:** On the allocation of land in the village of Dora of Hebron Governorate for security purposes, absolute possession was accordingly granted to the Land Officer of the Central District Command by the Ministry of Defence Officer. It is worth noting that this military order merely mentioned "security purposes" and did not explain the reasons for the need for security.¹⁴⁹
- **Military Order No. 378 of 1970**¹⁵⁰: Under Article 90 of the Code, any military commander has the right to issue a written order declaring any area or place as a "closed zone," which is classified as "state territory" or "combat zone." Although ownership of these areas remains with indigenous peoples, they are denied their right to use their land, and it is remarkable that they receive no compensation for this. Even if these lands are populated, these

<https://daleel.lrcj.org/page/48/%D8%A3%D9%85%D8%B1-%D8%A8%D9%88%D8%B6%D8%B9-%D8%A7%D9%84%D9%8A%D8%AF-%D8%B9%D9%84%D9%89-%D8%A3%D8%B1%D8%A7%D8%B6%D9%8A-%D8%A3%D9%88-%D8%AA%D9%85%D8%AF%D9%8A%D8%AF-%D8%B3%D8%B1%D9%8A%D8%A7%D9%86-%D8%A3%D9%85%D8%B1-%D8%B3%D8%A7%D8%A8%D9%82-%D8%A8%D9%88%D8%B6%D8%B9-%D8%A7%D9%84%D9%8A%D8%AF-%D8%A3%D9%88-%D8%AA%D8%B9%D8%AF%D9%8A%D9%84-%D8%AD%D8%AF%D9%88%D8%AF>:

¹⁴⁹ Command of the IDF forces, *Military Order No. 17/14/T*, 20 April, 1970, Available at Guide to Israeli Orders Relating to Land, *Housing and the Environment and Mechanisms for Objecting to Them*:

<https://daleel.lrcj.org/page/48/%D8%A3%D9%85%D8%B1-%D8%A8%D9%88%D8%B6%D8%B9-%D8%A7%D9%84%D9%8A%D8%AF-%D8%B9%D9%84%D9%89-%D8%A3%D8%B1%D8%A7%D8%B6%D9%8A-%D8%A3%D9%88-%D8%AA%D9%85%D8%AF%D9%8A%D8%AF-%D8%B3%D8%B1%D9%8A%D8%A7%D9%86-%D8%A3%D9%85%D8%B1-%D8%B3%D8%A7%D8%A8%D9%82-%D8%A8%D9%88%D8%B6%D8%B9-%D8%A7%D9%84%D9%8A%D8%AF-%D8%A3%D9%88-%D8%AA%D8%B9%D8%AF%D9%8A%D9%84-%D8%AD%D8%AF%D9%88%D8%AF>:

¹⁵⁰ Command of the IDF forces, *Military Order No. 378*, 20 April, 1970, Available online at: The Applied Research Institute – Jerusalem (ARIJ), *40 Years of Israel Occupation 1967–2007*, Chapter two, Status of Palestinian Territories and Palestinian Society under Israeli Occupation. <https://www.arij.org/atlas40/chapter2.2.html>

areas are declared closed. As a result, 700 residents of the area south of Mount Hebron were expelled from their homes after the area was declared a "closed military zone" in October and November 1999.

B. Natural Reserves:

Within the framework of the ongoing endeavor to strengthen control, and based on Military Order No. 363. Over the past few years, Israeli occupation authorities have targeted large swathes of the occupied Palestinian territory with a number of military orders, which have affected tens of thousands of dunums under the pretext of nature reserves. Recent examples include¹⁵¹:

- On January 17, 2020, Israeli occupation minister Naftali Bennett announced the establishment of seven new nature reserves in the occupied West Bank, as well as the expansion of 12 more. This announcement was part of an Israeli strategy to strengthen control over areas classified as "C," which are under full Israeli control.

¹⁵¹ Applied Research Institute – Jerusalem (ARIJ), *Monitoring Israeli Colonization Activities in the Palestinian Territories*, "Over an area exceeding 12,000 dunams, the Palestinian Jordan Valley is the target of Israeli actions under the pretext of 'nature reserves'," 28 May 2024, Available online at: https://poica.org/2024/05/%d8%b9%d9%84%d9%89-%d9%85%d8%b3%d8%a7%d8%ad%d8%a9-%d8%aa%d8%b2%d9%8a%d8%af-%d8%b9%d9%86-12000-%d8%af%d9%88%d9%86%d9%85%d8%a7-%d9%85%d9%86%d8%b7%d9%82%d8%a9-%d8%a7%d9%84%d8%a7%d8%ba%d9%88%d8%a7/#_ftnref2

At that time, one of the reserves targeted for expansion was the "Kharouba Reserve," located in the Palestinian neighborhood, namely on the territory of Jericho governorate, where a number of Israeli settlements are mediated by a southern settlement, the western settlement of Mekhora, the northwestern settlement of Hamra, and the eastern settlement of Arjman.

It was not officially announced at the time and remained in planning, with the target land at that time reaching 9,426 dunums. The Israeli occupation army officially declared the area as a "nature reserve" on May 28, 2024, but modified the target area to 12,320 dunums, an increase of 2,894 dunums from the original reserve area.

- On November 12, 2023, the Israeli authorities issued three new military orders aimed at establishing nature reserves in the West Bank, especially in the Palestinian region of Ghawar. These orders included the expansion of the "Einot Tsukim-Ein Fashkha Reserve" to cover an area of 8857.7 dunums of Palestinian land near the Dead Sea, as well as the expansion of the "Qamran Reserve" to 409.8 dunums. On December 29, 2023, Israel announced its acquisition of 84,649 dunums in the Dead Sea's northern and western region, under the pretext of establishing a new nature reserve. These steps come as part of a broader Israeli scheme to separate and increase control over Palestinian areas.

- On 24 March 2024, the occupation authorities published a military order requiring the confiscation of 8159.8 dunums of Palestinian land in Nablus governorate, arguing that it was "state property." The occupation authorities issued three new military orders on 5 March 2024, targeting thousands of dunums in the West Bank. These orders expanded the "Umm Zuqa reserve" to cover 24,924 dunums, the "Fasayil reserve" to cover 13,134 dunums, and the "Qana Lasmar reserve" to cover 7,306 dunums.

C. Water resources:

The occupied Palestinian territory contains multiple water resources of strategic and vital importance to the Palestinian population and the environment.¹⁵² These resources include underground basins such as the Western Basin¹⁵³, the Eastern Basin¹⁵⁴ and the Northeast Basin¹⁵⁵, as well as surface water

¹⁵² *Water of the Middle East and North Africa*, "Country Report on Water Resources in Palestine", 5 June 2023. Available online at: <https://water.fanack.com/palestine/water-resources-in-palestine/>

¹⁵³ Mostly under the West Bank and extending to Israel. The basin contributes to multiple water supply areas, and Palestinians in the West Bank rely heavily on it.

¹⁵⁴ Covers most areas of the West Bank and extends to the Ghawar area, and is a major source of water for Palestinian domestic and agricultural use.

¹⁵⁵ Covers areas in the northern West Bank and provides water to a large number of cities and villages.

sources such as the Jordan River¹⁵⁶ and Gaza Valley.¹⁵⁷ Nevertheless, the Israeli occupation authorities issued several military orders, providing for Israel's absolute freedom of action in Palestinian waters on the one hand and undermining Palestinians' right to exploit their water resources on the other.

The most important of them is **Military Order No. 58**¹⁵⁸ of 19 August 1967, together with **Military Order No. 158**¹⁵⁹ of November 1967, which prohibits the establishment of any new water installations without a permit. The Israeli Water Officer has the right to deny any permit without giving any reasons." Also requires all wells, springs, and water projects to be placed under the direct authority of Israel's military ruler. In addition to **Military Order No.**

¹⁵⁶ It is the West Bank's main source of surface water. The river passes through five countries: Palestine, Israel, Jordan, Syria and Lebanon. It consists of two sections. The top, above Lake Tiberia, flows from the river's headwaters (Hasbani, Panias and two sons). The lower part of the south of the lake flows into the Dead Sea.

¹⁵⁷ It is the only surface water surface in Gaza. It flows from the Negev Mountains and the southern highlands of Hebron in the West Bank. The valley is 105 kilometres long. Only 9 kilometres of this valley is located inside Gaza, from the eastern Gaza armistice line to the Mediterranean Sea.

¹⁵⁸ Command of the IDF forces, *Military Order No. 58*, Aug. 19, 1967. Available online at: <https://www.idf.il/media/toofrewws/%D7%A6%D7%95-%D7%91%D7%93%D7%91%D7%A8-%D7%A0%D7%9B%D7%A1%D7%99%D7%9D-%D7%A0%D7%98%D7%95%D7%A9%D7%99%D7%9D-%D7%A8%D7%9B%D7%95%D7%A9-%D7%94%D7%A4%D7%A8%D7%98-%D7%99%D7%94%D7%95%D7%93%D7%94-%D7%95%D7%94%D7%A9%D7%95%D7%9E%D7%A8%D7%95%D7%9F-%D7%9E%D7%A1-58-%D7%94%D7%AA%D7%A9%D7%9B%D7%96-1967-%D7%9E%D7%A2%D7%95%D7%93%D7%9B%D7%9F-%D7%9C%D7%99%D7%95%D7%9D-02042018.pdf>

¹⁵⁹ Command of the IDF Forces, *Military Order No. 158*, November 1967, cited in Amnesty International, *The Occupation of Water*, 29 November 2017, available online at: <https://www.amnesty.org/ar/latest/campaigns/2017/11/the-occupation-of-water/>

291¹⁶⁰ of 19 December 1967, which stipulated that all water sources in the Palestinian territories had become the state's property. On November 14, 1974, the Israeli military governor issued **Military Order No. 948**¹⁶¹ specifically for the Gaza Strip, requiring Gaza citizens to submit a request for approval of any water-related project.

Thus far, Palestinians continue to suffer the devastating effects of these military orders, which do not take into account the general principles governing the use of shared natural resources, such as common access and equitable distribution. In a recent study by The Applied Research Institute-Jerusalem (ARIJ), he confirmed that between 2019 and June 2024, the occupation authorities issued 86 military orders targeting the water sector in the occupied Palestinian territories. A series of measures have been implemented, including a cap on the amount of water that well owners in the West Bank and Gaza Strip are allowed to pump, not exceeding 100 cubic meters. The drilling of new wells for agricultural purposes is prohibited except with special permits. It also imposed restrictions on the depth of wells, prohibiting the drilling of wells with a depth greater than 120-140 meters. Many Palestinian farmers' wells were also

¹⁶⁰ Command of the IDF Forces in the West Bank Area, *Circulars, Orders and Appointments*, Military Order No. 291, 19 December 1967, p. 591, available online at: <https://www.gov.il/BlobFolder/legalinfo/ordersandappointments166/he/%D7%97%D7%95%D7%91%D7%A8%D7%AA%2016.pdf>.

¹⁶¹ Palestine News & Info Agency, "Military Orders Issued by the Occupation Authorities Regarding Water Since 1967," 2024. Available online at: https://info.wafa.ps/ar_page.aspx?id=8462

confiscated for Israeli settlements, which contain approximately 50 wells in the West Bank and 43 in the Gaza Strip¹⁶².

In addition, Israel deprived Palestinians of their rights to the waters of the Jordan River, changing the river's course while stealing large quantities of Palestinian water by digging numerous wells in settlements. Israel, through the Israeli company Microt, has also sold five million cubic meters of water to the Gaza Strip's population at high prices, worth up to NIS 15-20 million annually.¹⁶³

It is worth mentioning that during Israel's recent aggression against Gaza, Israel used water as a weapon to clamp down on Palestinians. It imposed a blockade on the Gaza Strip, cut off water, bombed networks, and prevented the introduction of fuel to operate desalination plants and wells, resulting in a drop in the per capita water share to between 3 and 15 liters per day. In the West Bank, Microt has reduced the amount of water allocated to Hebron and Bethlehem governorates by up to 35% and the proportion of water allocated to Ramallah Water Service concession areas by more than 50%. Although the company gradually re-pumped water ratios two days after the halt, water access to citizens remains fluctuating, causing a major crisis in these areas, especially during the summer.¹⁶⁴

¹⁶² Ibid.

¹⁶³ Palestine News & Info Agency, "Military Orders Issued by the Occupation Authorities Regarding Water Since 1967," 2024. Available online at: https://info.wafa.ps/ar_page.aspx?id=8462

¹⁶⁴ Ibid.

D. Natural gas fields:

Both the West Bank and the Gaza Strip contain large quantities of natural gas. A 2019 report by the United Nations Conference on Trade and Development (UNCTAD), prepared by geologists and economists specializing in natural resources, stated that the West Bank contained large reservoirs of oil and gas, especially in Area C of the occupied West Bank. In the Gaza Strip, British Gas, which discovered two gas fields off Gaza's shores (including Gaza Marine), estimated Gaza's natural gas reserves at 1.5 trillion cubic feet. Estimates place the total market value of gas in these fields between \$6 billion and \$8 billion. This precious resource can give Palestinians substantial economic autonomy if properly exploited. However, Israel had prevented Palestinians from benefiting from that resource, as it sought through its policies and practices to exploit Palestinian resources to achieve its economic colonial goals.¹⁶⁵

On one hand, the Israeli authorities were able to achieve self-sufficiency in the local market and operate 70% of the electricity using extracted gas. The occupation government has also begun to implement projects to link and export stolen gas to neighboring Arab States in cooperation with the European Union,

¹⁶⁵ M. Al-Adam, "Stolen Gas Deals: How Israel Deprived Palestinians of Their Country's Wealth," *Al Jazeera News Channel*, 1 July 2024. Available online at: <https://www.aljazeera.net/ebusiness/2024/7/1/%D8%A3%D8%AC%D9%86%D8%AF%D8%A9-%D8%A7%D9%84%D8%AA%D9%88%D8%B3%D8%B9-%D8%A7%D9%84%D8%A5%D8%B3%D8%B1%D8%A7%D8%A6%D9%8A%D9%84%D9%8A-%D8%AD%D8%B1%D8%A8-%D8%BA%D8%B2%D8%A9>

and it has set European market access as its target, as well as other investment projects with geopolitical dimensions. As a result, Israel has transitioned from a gas-importing state to an exporting state. Israel has also completed the establishment of a massive infrastructure network spanning the entire territory and territorial waters along Palestine's historic coast. Moreover, Israeli authorities are in talks with US Chevron to establish floating liquefaction stations off the Palestinian beach near major cities.¹⁶⁶

The Israeli occupation authorities, on the other hand, denied the Palestinian Authority access to the gas fields, both on the West Bank's border with the Jordan River and in the territorial waters off Gaza's coast. It also imposed a ban on its development, whether by the Palestinian Authority or international companies, despite the signing of contracts with companies such as British Gas. However, Israel's restrictions have prevented effective gas extraction. In addition, the occupying government ignored the authority's agreement with Shell for exploration and exploration in the maritime area off the coast of Gaza and, for two decades, blocked any efforts to develop the Gaza field "Marine," ultimately resulting in Shell's withdrawal from the project.¹⁶⁷

During Israel's last attack on Gaza on October 7, 2023, there was evidence that Israel's strategic objectives may be linked to control of natural gas resources in the region. In an article published on the US website "Mondoyes," author Tara

¹⁶⁶ Ibid.

¹⁶⁷ Ibid.

Alami explained that Israel's ongoing aggression against the Gaza Strip is inseparable from the natural wealth contained in Gaza's shores, especially natural gas. The Israeli offensive, which had resulted in the massive destruction of buildings and infrastructure and the death and injury of tens of thousands of Palestinians, was aimed at forcing the population to migrate to a population-free Gaza, thereby facilitating Israel's completion of its colonial project based on ethnic expansion¹⁶⁸. On October 29, 2023, when Israel's military offensive against Gaza was at its highest level, the Israeli Ministry of Energy announced the granting of illegal licenses to six Israeli and international companies to explore for natural gas in marine areas considered in accordance with international law and the provisions of the 1982 United Nations Convention on the Law of the Sea as Palestinian areas. Among these global companies were the Italian company Eni S.p.A. and the British company Dana Petroleum.¹⁶⁹

In fact, gas control gives Israel important economic and political pressure, depriving Palestinians of a resource that could have significantly boosted their economy, thus implying their continued reliance on Israel and foreign aid and their lack of sustainable economic development tools. Particularly, gas control is used as a leverage in political negotiations.

¹⁶⁸Ibid, M. Al-Adam, "Stolen Gas Deals: How Israel Deprived Palestinians of Their Country's Wealth" 2024.

¹⁶⁹Al Haq– Defending Human Rights, *Israeli Gas Exploration Licenses in Palestine's Maritime Areas Are Illegal and Violate International Law*, 08 Feb 2024. Available online at: <https://www.alhaq.org/ar/advocacy/22619.html>

2.2. Israel's legal manipulation and exploitation of legal loopholes in the Hague and Geneva Conventions:

Israel has succeeded in manipulating the rules of The Hague and Geneva Conventions and exploiting the legal gaps in those Conventions to achieve their interests and strengthen their control over resources in the occupied Palestinian territories .This section deals with a detailed analysis of how Israel exploits these gaps in order to justify its actions that are contrary to the spirit of international law, thereby evading international responsibility and the continuation of its settlement and occupation policies.

First: Article 55 of the Hague Convention, the rules of usufruct:

In its 1977 legal note to the United States Department of State, Israel affirmed that the term "the rules of usufruct" should not be interpreted through national regulations but rather embrace the broad meaning of the term according to the Hague Convention, which did not contain any explicit obligations of the occupying Power with regard to the management of natural resources in the occupied territories.¹⁷⁰ In

¹⁷⁰ Government of Israel, *Memorandum of Law*, 1977, reprinted in 17 ILM 432 (1978). The Israeli legal memorandum was issued in October 1977 in response to a U.S. State Department memorandum sent in January of the same year, which affirmed that Israel does not have the right under international law to develop undeveloped oil fields in the occupied Egyptian territory. It also noted that Israel's activities in an area of the

particular, The Hague and Geneva Conventions are of a customary, universal and comprehensive nature.

Israel based its argument on the International Court of Justice's view in the South African case, which held that the League of Nations' use of the term "mandate" for South Africa's mandate for South West Africa had a broader meaning than national law.¹⁷¹ This approach was also endorsed by the Permanent Court of International Justice in the Greek and Turkish Population Exchange case, which emphasized that the word "established" should not be interpreted by reference to the municipal legislation of the countries concerned because the agreement interpreted does not contain "any express or implication reference to national legislation for the purpose of determining what persons are to be regarded as 'established.'" The Court also stated that "in regard to this point, the Convention is self-contained," and the parties should therefore rely on "the natural meaning of the words...".¹⁷²

Gulf were subject to privileges granted by Egypt to a subsidiary of Standard Oil of Indiana (AMOCO) and concluded that such privileges were valid "and must be respected" On the other hand, the Israeli memorandum asserted that Amoko's privileges do not impact Israel's military control over the Eastern Gulf, granting it the right to exploit existing petroleum resources. The memorandum discusses many legal issues, including how Israel interpreted the term "the rules of usufruct." Also see Clagett, Brice M., and O. Thomas Johnson, "May Israel as a Belligerent Occupant Lawfully Exploit Previously Unexploited Oil Resources of the Gulf of Suez?," *American Journal of International Law* 72.3, 1978, p 559, 566.

¹⁷¹ International Court of Justice, *International Status of South-West Africa* "South West Africa Cases (Ethiopia v. South Africa; Liberia v. South Africa)," Advisory Opinion of 11 July 1950. Available online at: <https://www.icj-cij.org/case/10/advisory-opinions>

¹⁷²Permanent Court of International Justice, "*Exchange of Greek and Turkish Populations*," Advisory Opinion of 21 February 1925, p 19, 20–22, available online at: https://www.icj-cij.org/sites/default/files/permanent-court-of-international-justice/serie_B/B_10/01_Echange_des_populations_grecques_et_turques_Avis_consultatif.pdf

At first glance, this argument may seem reasonable, but these judicial decisions do not mean that the term "rules of utilization" should be interpreted in article 55 of the Hague Regulations without reference to national law, given the unique circumstances of each case. Some terms can be interpreted without reference to national law, while others can only be understood through national laws because these terms exist nowhere other than domestic law.¹⁷³ Israel must therefore adopt the narrow interpretation of the term "rules of usufruct," which entails strict obligations on the occupying power to preserve the essence of property when used and to prohibit its full seizure or consumption.¹⁷⁴

Second, article 46 of the Hague Convention pertains to the classification of property:

Israel has benefited from Article 46 to justify some of its actions in the occupied Palestinian Territories, particularly with regard to the ownership and exploitation of natural resources. As previously stated, the article did not provide for the protection of the state's public property and resources, thereby giving Israel the opportunity to

¹⁷³ Ibid, B.M. Clagett, and O. Thomas Johnson. "May Israel as a Belligerent Occupant Lawfully Exploit Previously Unexploited Oil Resources of the Gulf of Suez?." 1978, p 566.

¹⁷⁴ As mentioned above, this result has been reached through the negotiation date of Article 55, the records of the Brussels 1874 Conference (particularly Article 7), and the drafters' intentions. These factors confirmed that the interpretation of "the rules of usufruct" should align with the domestic laws that were in effect during the Brussels Conference in 1874.

administer such property in its interests. In addition, Israel has reclassified ownership of the occupied Palestinian Territories' natural resources, transferring them from private to public ownership, in order to exploit and maximize the loophole in Article 46 to the fullest extent¹⁷⁵. In this context, Israel relied on Ottoman laws that were applied in Palestine before the Israeli occupation, specifically the Ottoman Territories Laws of 1858¹⁷⁶ and the Tabu Law of 1861¹⁷⁷, which were based on unfair grounds.

Initially, the Ottoman Land Act of 1815 differed in its classification of property from international law and occupation laws. This law divides ownership into Private Ownership (Mulk), such as water owned by individuals or private bodies, such as water belonging to local water authorities, and Public Ownership (Mubah), such as the untapped water reserve, such as groundwater and the Jordan River). The law also classifies land into several categories: Private Lands (Mulk), State Lands (Emiriye), Endowed Lands(Waqf), Abandoned Lands (Metruke), and Dead Lands (Mawat)¹⁷⁸. It stipulated that the state had the right to confiscate land with private

¹⁷⁵ Palestine News & Info Agency, *Netham Molkayat Alaradi Mn A'm 1984 Hatta A'm 1967 (Land Ownership System from 1948 to 1967)*, available online at: https://info.wafa.ps/ar_page.aspx?id=5163

¹⁷⁶ Ottoman Land Law, 1858, available online at: <https://maqam.najah.edu/legislation/169/>

¹⁷⁷ Ibid Palestine News & Info Agency, *Netham Molkayat Alaradi Mn A'm 1984 Hatta A'm 1967 (Land Ownership System from 1948 to 1967)*.

¹⁷⁸ Ibid, Ottoman Land Law, 1858, Article 1, which states: "Private Lands (Mulk): Areas that are owned and controlled in full ownership. State Lands (Emiriye): Lands that remain under the state's control but may be granted to individuals for use. Waqf (Endowed Lands): Lands designated for religious or charitable purposes, which cannot be sold or inherited. Abandoned Lands (Metruke): Lands that are set aside for public use or left for communal benefit. Dead Lands (Mawat): Uncultivated or unused lands that are not owned by any individual." Available online at: <https://maqam.najah.edu/legislation/169/>

property left unused for a certain period, from which owners had been abandoned or were unable to access it because of political or security conditions, under the pretext of preserving it.¹⁷⁹

Due to the strict conditions imposed by the Ottoman Empire, the Tabu Act of 1861 allowed a limited group of Arabs to register their land in official records. The state has linked land registration to the Ottoman Army's military service requirements and high fees and taxes. Due to the challenging economic conditions, Palestinian peasants, despite possessing long-standing bonds verifying their ownership, have been unable to register their land. As a result, land registration was primarily restricted to feudals and individuals close to Ottoman power.¹⁸⁰

Indeed, the literal interpretation of Article 46 of the Hague Convention cannot be relied upon to evade the protection of natural resources of public ownership. The provisions of the Convention should be interpreted in accordance with its basic objectives, and therefore all that contributes to the protection and survival of civilians is protected by this Convention. Even if this is done, articles 23(g) and 47 of the same Convention prohibit destruction and general seizure of property. In addition, Article 53 of the 1949 Geneva Convention addressed the deficiency in Article 46 of the Hague Convention and added additional protection to the state's public property, including its natural resources.

¹⁷⁹ Ibid, Palestine News & Info Agency, *Netham Molkyat Alaradi Mn A'm 1984 Hatta A'm 1967 (Land Ownership System from 1948 to 1967)*.

¹⁸⁰ Ibid.

Third, Article 23, 46 of The Hague Convention and Article 53 of the Fourth Geneva Convention pertain to military necessity.

The Hague Conventions of 1907 and Geneva Conventions of 1949, while aiming to safeguard natural resources and prohibit the Israeli occupation authorities from damaging or confiscating land and property and exploiting its resources, have, in specific instances, allowed for these prohibited actions under the justification of military necessity. In spite of efforts made by the International Criminal Court (ICC) and the International Criminal Tribunal for the Former Yugoslavia (ICTY) to fill this legal void through their resolutions that establish the boundaries of the principle of military necessity and the obligation to uphold the principle of proportionality, Israel persistently interprets this principle in a partial and unjust manner.¹⁸¹

In April 2002, the Security Cabinet declared during a special session its plan to initiate the construction of a separation wall along the Green Line with the West Bank, citing military and security necessity. Explain that the purpose of the wall was to reduce the infiltration of the perpetrators of the hostilities into Israeli territory and prevent "terrorist" attacks, which would provide more security in the area. The project began implementation in June of that year, after Ariel Sharon assumed the Israeli government presidency.¹⁸² The wall is about 770 kilometers long, and about

¹⁸¹ E. Kontorovich, *Israel and International Law* (Tikvah Open University, 2021), Available online at: https://tikvahfund.org/wp-content/uploads/2021/07/TOU_Israel-and-International-Law_Session-II.pdf

¹⁸² R. Haider, *Ashrat A'wam Ala Jedar Alfasl: Namothag Llseasah Alo'nsoryah Alisraeleyah W loslob Khalq Waqae' Ala Alard Man'an Lea'y Taswiya Mostaqbaliya* (Ten Years of the Separation Wall: A Model of Israeli

406 kilometers of it have been built so far, equivalent to 52.7% of the wall's full route. 322 kilometers are still under construction planning, and 42 kilometers are currently under construction. The wall isolates about 733 square kilometers of land. The eastern wall extends from north to south and is about 200 kilometers long. Through it, the Israeli authorities isolate the Ghawar area, which is the main source of food for the Palestinian people.¹⁸³

As the construction of the wall progressed, it became clear that the wall's security goal was only one of Israel's larger goals, the most important of which was to create new realities on the ground that made any future political settlement between Israel and the Palestinians difficult, if not impossible. This includes the fate of East Jerusalem, the future of the major settlement blocs, and the issue of the border demarcation between Israel and the Palestinian State.¹⁸⁴

A report by the Palestinian News and Info Agency confirmed that the wall in Jerusalem governorate is about 168 kilometers long, 5 kilometers along the Green Line, while the bulk extends deep into West Bank territory. The main goal of building this wall is to isolate many Palestinian villages and homes from their

Racist Policy and a Way to Create Facts on the Ground to Prevent Any Future Settlement), Institute for Palestine Studies, Available online at: https://www.palestine-studies.org/ar/node/1636638#_ftnref1

¹⁸³ Palestine News & Info Agency, *Jedar Alfaseh Alo'nsury: Haqaeq W Arqam (The Separation Wall: Facts and Figures)*. Available online at: https://info.wafa.ps/ar_page.aspx?id=4981

¹⁸⁴ Ibid.

agricultural lands and water sources, as well as to separate Palestinians from their cities and commercial centers.¹⁸⁵

In March 2003, Shaul Mofaz, the Israeli army minister, stated in the British newspaper *The Guardian* that the Israeli government was developing a vision of a Palestinian state divided into seven cantons in major Palestinian cities, closed by the Israeli military and isolated from the rest of the West Bank territory that would become part of Israel.¹⁸⁶

So that the construction of the separation wall under the pretext of military and security necessity lacks a logical basis. If this were the case, what would happen to the settlers residing in the West Bank and Gaza Strip? Are they out of protection? MK Ellie Cohen, a representative of the Likud Bank and Sector Settlements Council, supported this by stating: "The construction of that wall immediately results in operations against settlers." I call this wall a wall of illusion."¹⁸⁷

¹⁸⁵ Ibid Palestine News & Info Agency, *Jedar Alfasel Alo'nsury: Haqaeq W Arqam (The Separation Wall: Facts and Figures)*.

¹⁸⁶ Ibid

¹⁸⁷ Ibid

Chapter Three: International Responsibility for the Plunder of Natural Resources:

The plunder of natural resources is a serious violation of international law, particularly in contexts involving armed conflict, occupation, and illicit exploitation. International responsibility for such acts is governed by a range of legal frameworks, including customary international law, treaty obligations, and judicial precedents. States and non-state actors that engage in the unlawful extraction, appropriation, or destruction of natural resources may be held accountable under various legal mechanisms. This section examines the principles governing international responsibility for resource plundering, outlining the legal obligations of states, and the consequences of violations under international law.

1- International Responsibility for the Plunder of Natural Resources under International Law:

International responsibility is a fundamental principle of international law that holds states accountable for wrongful acts that violate international legal norms. According to the Draft Articles on the Responsibility of States for Internationally Wrongful Acts, a state bears legal responsibility when it commits an act or omission that constitutes a breach of an international obligation and when such an act is attributable to the state under international law. Consequently, the pillage of natural

resources by an occupying power constitutes a violation of several international treaties and conventions that safeguard the sovereign rights of occupied peoples.

2.1. Challenges in Determining International Responsibility for Wrongful Acts:

Determining a state's international responsibility for the pillage of natural resources presents numerous legal and procedural challenges.¹⁸⁸ One of the most significant challenges is the multiplicity of responsible parties. In many cases, responsibility is not limited to the state alone but extends to international organizations, individuals, and private corporations involved in the unlawful exploitation of natural resources. This complexity makes it difficult to identify the primary entity that bears direct legal responsibility.

Additionally, conflicting interests among states pose a major challenge. Some states may support occupation policies or benefit indirectly from the pillage of natural resources, making international efforts to impose accountability on violating states more complicated.

Another challenge lies in the overlap and multiplicity of international legal sources, including treaties, customary international law, and general principles of law. This can lead to varying or even contradictory interpretations of state responsibility. For instance, while the Geneva Conventions and The Hague

¹⁸⁸ H. Rosalyn. *Problems and process: international law and how we use it*. Oxford University Press, 1995.

Regulations explicitly mandate the protection of public and private property in occupied territories, certain actors may attempt to circumvent these obligations through flexible legal interpretations or by exploiting legal loopholes.

A further difficulty for international law experts is proving the direct attribution of wrongful acts to the state, also known as state attribution of wrongful acts. In some instances, the pillage of natural resources is carried out by private companies or settlers, necessitating evidence that these acts were conducted under the direction or with the support of the state—a legally complex endeavor.

Finally, even in cases where international responsibility is established, enforcing sanctions or securing reparations faces significant obstacles. These challenges include political considerations, national sovereignty, the refusal of the accused state to cooperate with international judicial bodies, and the lack of strong enforcement mechanisms within the international community.

International law has addressed the challenges associated with international responsibility through a series of reforms and actions aimed at improving the clarity and application of international responsibility. Through the development of a number of conventions and charters aimed at clarifying legal principles and determining liability more precisely. For example, the International Law Commission's draft articles on states' responsibility for wrongful international

acts (ILC)¹⁸⁹ strengthened the legal framework of responsibility by clarifying the requirements for attribution, wrongful acts, and legal effects. In addition to International courts and other mechanisms, like arbitration committees and independent international bodies, have been established to settle international disputes peacefully and fairly.

2.2. The International Law Commission's Draft on International Responsibility for Wrongful Acts:

The International Law Commission (ILC) has developed a comprehensive framework for state responsibility for internationally wrongful acts, outlining the fundamental principles that establish legal accountability for states that violate international law. This framework consists of key elements that determine the existence of an internationally wrongful act, its attribution to a state, and the legal consequences that follow.

A. The Existence of a Wrongful Act:

According to Article 1 of the ILC's draft, "a state incurs international responsibility when it commits an internationally wrongful act"¹⁹⁰. It is

¹⁸⁹ International Law Commission, "Draft Articles on Responsibility of States for Internationally Wrongful Acts," 2001. Available online at: https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf

¹⁹⁰ Ibid, Article 1. Which states: "Responsibility of a State for its internationally wrongful acts, Every internationally wrongful act of a State entails the international responsibility of that State."

important to emphasize that the characterization of an act as wrongful is determined exclusively by international law, regardless of whether the act is considered lawful under the state's domestic legal system.¹⁹¹

For an act to qualify as internationally wrongful, three essential conditions must be met:

- Existence of an international obligation: The act must violate a specific obligation imposed on the state under an international treaty, customary international law, or a fundamental peremptory norm (*jus cogens*) of international law.¹⁹²
- Breach of the obligation: The state must have failed to fulfill the obligation in question, either through a positive action (e.g., military aggression against another state) or by omission (e.g., failure to protect civilians during armed conflict).¹⁹³

¹⁹¹ Ibid, Article 3. Which states: "Characterization of an act of a State as internationally wrongful The characterization of an act of a State as internationally wrongful is governed by international law, Such characterization is not affected by the characterization of the same act as lawful by internal law."

¹⁹² Ibid," Article 13. Which states: "International obligation in force for a State, An act of a State does not constitute a breach of an international obligation unless the State is bound by the obligation in question at the time the act occurs."

¹⁹³ Ibid, Article 2(b) which states: "Elements of an internationally wrongful act of a State, There is an internationally wrongful act of a State when conduct consisting of an action or omission:... Constitutes a breach of an international obligation of the State.". And Article 12, Which states: "Existence of a breach of an international obligation, There is a breach of an international obligation by a State when an act of that State is not in conformity with what is required of it by that obligation, regardless of its origin or character."

- Legal characterization of the breach: The breach must be recognized as a violation under international law, independent of how the state itself interprets the act under its national legal system.

B. Attribution of Conduct to a State:

For an act to engage state responsibility, it must be attributable to the state under international law. This means that the conduct in question—whether an action or omission—must be carried out by entities acting on behalf of the state.¹⁹⁴ Under international law, attribution applies to:

- Legislative, executive, and judicial organs, which represent the official institutions of the state.
- Individuals or entities exercising governmental authority, even if they are not formal state agents but have been empowered to perform governmental functions.
- Military forces and security agencies, including both official army units and irregular armed groups operating under state control or command.¹⁹⁵

¹⁹⁴ Ibid, Article 4, which states: “Conduct of organs of a State. 1. The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central Government or of a territorial unit of the State. 2. An organ includes any person or entity which has that status in accordance with the internal law of the State.” And Article 12.

¹⁹⁵ Ibid, Article 5, which states: “Conduct of persons or entities exercising elements of governmental authority, The conduct of a person or entity which is not an organ of the State under article 4 but which is empowered by the law of that State to exercise elements of the governmental authority shall be considered an act of the

This principle ensures that states cannot evade responsibility by arguing that wrongful acts were committed by private actors unless they can prove that such acts were carried out independently, without state authorization or support.

C. Serious Violations and Peremptory Norms (Jus Cogens):

The gravity of a wrongful act plays a crucial role in determining the extent of state responsibility. Article 40¹⁹⁶ of the ILC's draft specifically addresses serious breaches of obligations arising from peremptory norms (jus cogens) of general international law. These norms constitute the highest-ranking legal principles, essential for preserving fundamental values such as human rights, the prohibition of genocide, and the laws of armed conflict.

In its advisory opinion on nuclear weapons, the International Court of Justice (ICJ)¹⁹⁷ characterized these norms as "intransgressible," meaning that they are absolute and cannot be derogated from under any circumstances.¹⁹⁸

State under international law, provided the person or entity is acting in that capacity in the particular instance". And Article 12.

¹⁹⁶ Ibid, Article 40, which states: "Application of this chapter, 1. This chapter applies to the international responsibility which is entailed by a serious breach by a State of an obligation arising under a peremptory norm of general international law, 2. A breach of such an obligation is serious if it involves a gross or systematic failure by the responsible State to fulfil the obligation.", And Article 12.

¹⁹⁷ International Court of Justice, *Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons*, 8 July 1996, para79. Available online at: <https://casebook.icrc.org/case-study/icj-nuclear-weapons-advisory-opinion#para79>

¹⁹⁸ Ibid, International Law Commission, "*Draft Articles on Responsibility of States for Internationally Wrongful Acts*," Article 41, which states; "Invocation of responsibility by an injured State, A State is entitled as an injured

Accordingly, states are legally bound to cooperate through legitimate means to bring an end to serious breaches of these fundamental rules. This obligation includes:

- Non-recognition of illegal situations created by serious violations (e.g., the acquisition of territory through force).
- Refraining from providing support or assistance that would sustain the unlawful situation.
- Engaging in collective international measures to restore compliance with international law.

D. Legal Consequences of State Responsibility:

Once a state's responsibility for a wrongful act or serious violation is established, several legal consequences arise. The responsible state is obligated to:

- Immediately cease the wrongful act if it is still ongoing.¹⁹⁹
- Provide assurances and guarantees of non-repetition, ensuring that similar violations do not occur in the future.²⁰⁰

State to invoke the responsibility of another State if the obligation breached is owed to: a. That State individually; or....". and Article 12.

¹⁹⁹ Ibid, Article 30(a), which states: "Cessation and non-repetition, The State responsible for the internationally wrongful act is under an obligation: a. To cease that act, if it is continuing;..."

²⁰⁰ Ibid, Article 30(b). Which states: "... b. To offer appropriate assurances and guarantees of non-repetition, if circumstances so require."

- Make full reparations, which may take different forms²⁰¹, including:
- Restitution: Restoring the situation to what it was before the wrongful act, where possible.²⁰²
- Compensation: Providing financial or material compensation for damages caused.²⁰³
- Satisfaction: Acknowledging wrongdoing and taking corrective measures (e.g., official apologies, policy changes).

Additionally, affected states have the right to take countermeasures against the responsible state; however, these measures must be proportionate to the gravity of the violation and should not constitute acts of retaliation. Instead, they should aim to compel the violating state to fulfill its international obligations. Such countermeasures may include legal actions, such as filing cases before international courts or imposing sanctions through multilateral

²⁰¹ Ibid, Article 31. Which states: "Reparation, 1. The responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act. 2. Injury includes any damage, whether material or moral, caused by the internationally wrongful act of a State.

²⁰² Ibid, Article 36. Which states: "Compensation 1. The State responsible for an internationally wrongful act is under an obligation to compensate for the damage caused thereby, insofar as such damage is not made good by restitution. 2. The compensation shall cover any financially assessable damage including loss of profits insofar as it is established."

²⁰³ Ibid, Article 35. Which states: "Restitution, A State responsible for an internationally wrongful act is under an obligation to make restitution, that is, to re-establish the situation which existed before the wrongful act was committed, provided and to the extent that restitution: a. Is not materially impossible; b. Does not involve a burden out of all proportion to the benefit deriving from restitution instead of compensation."

organizations, ensuring that the response remains within the framework of international law while effectively addressing the wrongful act.²⁰⁴

2- The Responsibility of the Occupying Israeli State for the Plunder of Natural Resources in Occupied Palestinian Territories:

Regarding the responsibility of the occupation authorities for their practices regarding the natural resources in the occupied Palestinian territories, the Israeli side and its allies maintain that Israel bears no legal responsibility towards the occupied territories due to the disputed status of the territory prior to the occupation. They also disagree on the interpretation of international instruments that provide a system of protection for the natural resources of the occupied Palestinian territories. As a result, international laws relating to occupation, such as the Geneva Conventions, are not fully applicable. Some of them also rely on the Oslo and other bilateral agreements between Israel and the Palestinian Authority, which they believe establish special rules governing the relationship between the two parties, thereby relieving Israel of its obligations under international law.

In order to verify the validity of this argument, the precise methodology established by the Commission's draft with regard to wrongful acts must be followed:

²⁰⁴ Ibid, Article 49. Which states: "Object and limits of countermeasures, 1. An injured State may only take countermeasures against a State which is responsible for an internationally wrongful act in order to induce that State to comply with its obligations under part two...."

1. **Internationally wrongful act that constitutes a breach of an international obligation of the State:**

- a. Israel's obligations with regard to the protection of natural resources in the occupied Palestinian territories under international humanitarian law:²⁰⁵

Initially, under international humanitarian law, Israel violates Article 43²⁰⁶ of **The Hague Convention** of 1907 in its duty to take all possible measures to restore and guarantee public order and safety, as well as respect the laws in force in the occupied country. Nor does it fulfill its duty to apply the country's laws in good faith in accordance with its basic objectives, without attempting to achieve special interests and benefits. Furthermore, it contravened the text of the article when it concluded the Oslo Agreement with the Palestine Liberation Organization, taking advantage of the vulnerability of the people under occupation, and placed in clauses contrary to its obligations under domestic (occupied) and international laws in order to achieve its interests. In addition, the long-term exploitation of the natural resources of the occupied territories, as in the case of Israel in the Palestinian territories, cannot be considered merely as "Seizure temporary", but as falling under "**Pillage**", thus constituting a serious violation of international law in

²⁰⁵International Law Commission Report, *A/56/10*, August 2001, Articles on State Responsibility. Available online at: <https://casebook.icrc.org/case-study/international-law-commission-articles-state-responsibility>

²⁰⁶ Ibid, The Hague Convention (IV) 1907, article 43.

accordance with article 23/g of the same Convention.²⁰⁷ The occupation also failed to manage natural resources in a manner that preserved the local population's interests but, on the contrary, exploited them to achieve their interests, thereby contravening Article 55²⁰⁸ of the Convention.

In building Israeli settlements in the West Bank and East Jerusalem, Israel violated Article 49²⁰⁹ of the **Fourth Geneva Convention** of 1949, which prohibits the occupying power from deporting or transferring part of the civilian population from their land to other territories in order to build settlements on their land. In addition to its violation of Article 53²¹⁰ of the same Convention, which prevents the occupying power from destroying public or private property in the occupied territories. In this article, Israel also circumvents the interpretation of military necessity, interpreting it in a biased manner that contradicts the Convention's objective. In accordance with Article 147²¹¹ of the Convention, Israel has committed a "grave crime" for looting public and private state property, including natural resources, in both the West Bank and the Gaza Strip, and for exploiting its own purposes. Moreover, it contravened the text of Article 47 and denied the Palestinians,

²⁰⁷ Ibid, The Hague Convention (IV) 1907, article 23/g.

²⁰⁸ Ibid, article 55.

²⁰⁹ Ibid, Geneva Convention (IV) 1949, article 49.

²¹⁰ Ibid, Geneva Convention (IV) 1949, article 53.

²¹¹ Ibid, article 147.

protected under this Convention, the exercise of their inherent right to exploit their resources.

- b. Israel's obligations with regard to the protection of natural resources in the occupied Palestinian territories under **International Human Rights Law**:

As for the Israeli occupying forces' obligations to the natural resources of the occupied territories in accordance with the principles and provisions of International Human Rights law, Israel violated Article 17²¹² of the Universal Declaration of Human Rights (UDHR), which affirms everyone's right to own property, and prevented the arbitrary deprivation of one's property. This is when it strips Palestinians of their land and prevents them from living in it or doing their agricultural work, turning it into closed military zones or into settlements.

They are also stripped of their own property, such as the seizure of their water wells. Add its violation of Article 1(2)²¹³ of the International Covenant on Economic, Social, and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), which affirms people's right to self-determination and sovereignty over their natural wealth and resources. It was therefore incumbent upon Israel to respect this right and not to exploit

²¹² Ibid, United Nations General Assembly, *Universal Declaration of Human Rights*, 1948, Article 17.

²¹³ Ibid, United Nations General Assembly, *International Covenant on Civil and Political Rights (ICCPR)* 1966, article 1(2), Also see Ibid, *International Covenant on Economic, Social and Cultural Rights (ICESCR)*, 1966, article 1(2).

natural resources for its own benefit at the expense of the indigenous peoples. That's what Israel didn't do.

In a report submitted to the Human Rights Council in Geneva in 2019, United Nations Special Rapporteur Michael Link stressed that Israel's exploitation of the natural resources of the occupied Palestinian Territories was a violation of its legal responsibilities as an occupying power. The report noted that Israel's policies of exploiting resources and depriving Palestinians of control over their daily lives had led to a significant deterioration in water supply and environmental degradation. The situation in Gaza is an example of such violations, with most water sources rendered unaffordable by Israel's excessive extraction, pollution and blockade. The report also expressed concern about Israel's practices in disposing of hazardous wastes and using excessive force against Palestinian protesters, negatively affecting human rights and impeding the self-determination of the Palestinian people.²¹⁴

- c. Violation of one of the **norms of international law** "The right of peoples to self-determination":

Since the right of peoples to exploit their natural resources is an integral part of peoples' right to self-determination and sovereignty over their territories, the denial of the Palestinian people's rights to exploit their natural

²¹⁴ United Nations, *Human Rights Office*, "Israel's exploitation of Palestinian resources is human rights violation," 18 March 2019, Available online at: <https://www.ohchr.org/en/news/2019/03/israels-exploitation-palestinian-resources-human-rights-violation-says-un-expert>

resources constitutes a violation of the principle of the right of peoples to self-determination.²¹⁵

In other words, Israel's control over vast areas of the occupied Palestinian Territories and its control over most of the natural resources in these territories, including water, agricultural land, gas, and others. In addition to imposing restrictions on Palestinians regarding the use of their agricultural land, drilling wells, or exploiting any other natural resources, is a direct violation of their right to self-determination.

The international position was evident in its resolutions on the exploitation of natural resources in the occupied Palestinian territories, as reflected in many resolutions of the Security Council and the General Assembly of the United Nations, which reflected the international community's commitment to protecting the rights of the peoples under occupation, particularly with regard to natural resources. Perhaps the most important of these are Security Council resolutions No. 242 (1967)²¹⁶ and No. 338 (1973)²¹⁷, which emphasize the inadmissibility of the seizure of territory by force and call for Israel's withdrawal from the territories it occupied in 1967, and for the cessation of hostilities. Affirm implicitly that any change in the status quo in the occupied territories is illegal. These resolutions

²¹⁵ Ibid, S. N. Al-Agha, "Protection of Natural Resources under the Provisions of International Law: The Case of Palestine", 2017, p.44

²¹⁶ Ibid, United Nations Security Council Resolution No. 242, 1967

²¹⁷ Ibid, United Nations Security Council Resolution No. 338, 1973.

understand that the exploitation of natural resources in the occupied territories, as part of the occupation's policy, is illegal.

General Assembly resolution 3336 (XXIX) of 1974²¹⁸ also affirmed the Palestinian people's right to self-determination and their right to full sovereignty over their natural resources, including land, water and other resources. In addition, the General Assembly adopted resolution 70/225 of 2015²¹⁹ reaffirming the permanent sovereignty of the Palestinian people in the Occupied Palestinian Territories.

2. Attribution of Conduct to a State:

Initially, the official with powers to issue military orders in the Palestinian territories is the Commander of the Area, a senior IDF. This officer is directly under the Israeli Chief of Staff, who, in turn, is under the Minister of Defence and has broad powers such as civil organization, administration and other economic activities²²⁰. As for the task of implementing these military orders on the ground, the Military Administration of the West Bank (Judea and Samaria)

²¹⁸ United Nations, *General Assembly Resolution No. 3336 (XXIX)*, December 17, 1974. Available online at: <https://documents.un.org/doc/resolution/gen/nr0/739/38/pdf/nr073938.pdf>

²¹⁹ United Nations, *General Assembly Resolution No. 70/225*, 23 December 2015. Available online at: https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_70_1_E.pdf

²²⁰ The Israel Defense Forces (IDF), Official Website, Available online at: <https://www.idf.il/en/>

assumes this task. It is an Israeli body established in 1981. In addition to being the executive arm of the military commander, it is also responsible for managing the Palestinian civilian population in the West Bank and Gaza Strip, such as issuing permits, registering land and other tasks.²²¹

According to article 4 of the International Law Commission's draft on international responsibility for wrongful acts, the conduct of both the Military administration and the commander of the region is an act of the Israeli occupying Power. The article stipulates:

"Conduct of organs of a State: The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central Government or of a territorial unit of the State. An organ includes any person or entity which has that status in accordance with the internal law of the State".

In light of the established principles and rules of international law, it is evident beyond doubt that Israel, as an occupying power, bears legal responsibility for the plunder and exploitation of natural resources in the occupied Palestinian territories. According to the 2001 Draft Articles on the

²²¹ Military Administration in Judea and Samaria, official website, Available online at: <https://www.gov.il/ar/collectors/legalinfo?officeId=a1db8292-6f30-4545-b391-7400a4aec3ea>

Responsibility of States for Internationally Wrongful Acts, the Geneva Conventions, the Hague Regulations of 1907, and international human rights treaties, Israel has systematically violated its legal obligations towards the Palestinian population. These violations include the unlawful pillage and appropriation of resources, the restriction of Palestinian access to them, and their exploitation for the exclusive benefit of the occupation.

International courts and bodies, including the International Court of Justice (ICJ) and the United Nations General Assembly, have consistently affirmed that Israel's exploitation of natural resources in the occupied territories constitutes a violation of international humanitarian law and human rights law. Furthermore, reports issued by the UN Human Rights Council have extensively documented Israel's policies, which have impoverished Palestinians and deprived them of control over their own resources, directly impacting their economic and social development.

Accordingly, Israel is not only obligated to cease these unlawful practices but also to end its occupation immediately and unconditionally, as required under international law and required to provide reparations—whether through halting its illegal exploitation or compensating Palestinians for the harm caused by these policies.

As a legal procedure, the Palestinians can have recourse to the International Criminal Court (ICC), which has jurisdiction over war crimes and crimes against humanity committed in the occupied Palestinian territories. This exploitation can

be considered a war crime under Article 8²²² of the Rome Statute of the International Criminal Court, which provides that unlawful and unjustified destruction of property and looting of occupied cities or towns is a war crime. In particular, The ICC's position on the Palestinian issue became clear after the ICC Prosecutor announced in March 2021 the opening of a formal investigation into Israel's crimes in the occupied Palestinian territories since June 13, 2014.²²³

Palestinians can also turn to the International Court of Justice (ICJ), the principal judicial organ of the United Nations, which has jurisdiction over human rights violations and the exploitation of natural resources in the occupied Palestinian territories. In 2004, the ICJ issued an advisory opinion on Israel's separation wall in the West Bank, affirming that its construction violated international law; the court labeled it a racist barrier that violated Palestinian rights, separated them from their land and livelihoods, and promoted Israeli settlement.²²⁴

Additionally, Palestinians may seek justice in national courts in other states, such as those in Europe, which accept the principle of universal jurisdiction. This allows for the prosecution of Israeli officials accused of seizing

²²² The United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, *Rome Statute of the International Criminal Court*, July 17, 1998, Article 8/4..

²²³ International Criminal Court, *Statement of ICC Prosecutor, Fatou Bensouda, respecting an investigation of the Situation in Palestine*, 3 March 2021. Available online at: <https://www.icc-cpi.int/Pages/item.aspx?name=210303-prosecutor-statement-investigation-palestine>

²²⁴ International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, July 9, 2004. Available online at: <https://www.icj-cij.org/case/131>

Palestinian land, building settlements, and confiscating and exploiting Palestinian resources. This principle has been applied in cases against Israeli officials in countries such as Spain and the United Kingdom. For instance, in 2009, a Spanish judge investigated allegations of war crimes by Israeli officials related to the killing of Hamas leader Salah Shehada and 14 other civilians, including nine children, in Gaza in 2002. Among the Israeli officials implicated were former Israeli Defense Minister Benjamin Ben-Eliezer, former Israeli Army Chief of Staff Moshe Ya'alon, and Israeli Air Force Commander Dan Halots. Although the case was later closed following changes in Spanish law that restricted the application of universal jurisdiction, this step marked significant progress in the issue of criminal responsibility. It demonstrated that international justice is not confined to certain geographical boundaries and that victims can seek justice despite legal and political obstacles. Moreover, it has inspired similar legal efforts in other countries, reinforcing the possibility of holding perpetrators account able at the international level, even when traditional legal avenues are obstructed.²²⁵

Given the international community's reaffirmation of the principle of permanent sovereignty of occupied peoples over their natural resources, the continued Israeli plunder of these resources, without effective international

²²⁵ J. Joyner, "Spain Opens 'Universal Justice' Can of Worms," *The Atlantic Council*, January 31, 2009, available online at: <https://www.atlanticcouncil.org/blogs/new-atlanticist/spain-opens-universal-justice-can-of-worms/> Also, see, B. Harding, "Spanish court investigates 2002 Israeli Gaza attack", *Reuters*, January 29, 2009. Available online at: <https://www.reuters.com/article/world/spanish-court-investigates-2002-israeli-gaza-attack-idUSTRE50S5UF/>

accountability, reflects the failure of the international legal system to enforce its obligations. Therefore, holding Israel accountable remains imperative to uphold the rule of law and ensure justice for the Palestinian people in reclaiming their legitimate rights and full sovereignty over their natural resources.

Chapter Four: Conclusion:

The study concluded that there were significant gaps in international legal texts relating to the protection of natural resources in the occupied territories, allowing the occupying forces, in particular the Israeli occupation, to exploit these gaps to justify their exploitation of the occupied Palestinian territories' natural resources. The study emphasized the need to strengthen legal texts and fill these gaps to ensure greater protection of these resources and justice for the affected population. The study also called on the international community to adopt a stricter attitude towards violations of Israel's occupation by establishing independent international bodies to monitor such violations and impose strict sanctions on violators. In conclusion, the study stressed the importance of developing effective mechanisms to ensure the protection of the natural resources of the occupied territories, guarantee the local population's right to sovereignty over their resources and achieve sustainable development.

Thesis Findings:

- 1- The study indicates that, as currently drafted, international law does not provide the necessary legal protection of natural resources in situations of armed conflict and military occupation. Although international treaties, such as the Hague Treaties of 1907 and the Fourth Geneva Convention of 1949, provide some protection for the natural resources of the occupied territories, they contain clear legal loopholes that allow the occupying forces to exploit these resources in ways that are contrary to the

basic rights of the local population, leading to the deterioration of the population's environmental and economic situation under occupation.

- 2- The study indicates that Israel has exploited and interpreted legal gaps in line with its strategic and economic interests, in particular its misinterpretation of the concept of military necessity in Article 23 of The Hague Convention and Article 53 of the Fourth Geneva Convention 1949, which allowed it to undertake many prohibitions under the pretext of military necessity. In addition to exploiting the text of Article 46 of the Hague Convention, which provided protection for privately owned natural resources and excluded the protection of natural resources of public ownership, in addition to circumventing the text of the said article by reclassifying ownership of natural resources from private to public ownership, thereby removing them from the scope of protection and allowing their exploitation or destruction. The disposition of natural resources beyond the agency's limits under Article 55 of the Hague Convention is also under the pretext of rules of utilization, although the concept of rules of utilization is completely different from that of Israel.
- 3- The study indicates that Israel's exploitation of these legal gaps would allow a wide range of actions by the Israeli occupation authorities in the occupied Palestinian territories towards natural resources to be justified. Such as allowing the confiscation of large areas of Palestinian land under various legal pretexts, such as "state-owned land" or "military land," to build and expand Israeli settlements at the expense of Palestinian villages and towns and to control the surrounding water and agricultural resources.

- 4- The study indicates that Israel's control over the natural resources in the curtailment of Palestinians' rights, denial of access and a significant weakening of their economy. For example, Israel's control over the main water sources in the West Bank in response to the needs of Israeli settlements has significantly reduced the Palestinian share of water. The restriction of Palestinians' access to their agricultural land, especially those near settlements or the separation wall, has also led to the deterioration of Palestinian agriculture and increased the population's dependence on the Israeli economy.
- 5- The study notes that Israel's practices of exploiting natural resources in the occupied Palestinian territories constitute wrongful acts and a clear violation of international law, including The Hague Treaties of 1907 and the Fourth Geneva Convention of 1949. These violations, which include land confiscation, settlement construction, control of water and agricultural resources, and exploitation of natural and other gas, constitute an override of the local population's rights and sovereignty over their natural resources.
- 6- According to international law, such wrongful acts entail Israel's international responsibility, imposing several legal obligations, including the need for Israel to end illegal acts and to cease all activities that violate the rights of Palestinians to exploit their natural resources, including the cessation of illegal settlement expansion and the end of illegal control over water and agricultural resources. Israel must also take all necessary measures to restore the status quo ante of such violations, including returning confiscated land to its Palestinian owners, removing the settlements established on those territories, and ensuring the Palestinians' unhindered access to

their natural resources. In addition, Israel must provide adequate compensation to Palestinians affected by such wrongful acts. This includes compensation for economic losses resulting from land confiscation, deprivation of Palestinian resources, and destruction of the local environment.

Recommendations:

- 1- Strengthen the legal protection of the natural resources of the occupied territories by improving the legal provisions of international law treaties, such as the Hague and Geneva Conventions, to fill the gaps exploited by the occupying authorities. These improvements must include the addition of clear and rigorous provisions defining responsibilities and obligations for the protection of natural resources. New provisions must also be included to guarantee the rights of occupied peoples to access and exploit their natural resources in a sustainable manner, and international cooperation must be strengthened to support those rights and protect them from any illegal exploitation or destruction.
- 2- The international community should develop more effective monitoring and accountability mechanisms to ensure that all parties are committed to protecting these resources. such as the establishment of independent international bodies and commissions with binding legal authority to monitor the exploitation of natural resources in armed conflicts and military occupation. These bodies must be equipped with extensive and comprehensive investigative capabilities, and have access to information and data in affected areas. They should also be supported by a strong

international mandate to impose strict and effective sanctions on states or parties that commit violations in relation to the exploitation of natural resources. In addition, these bodies should work in cooperation with international organizations, such as the United Nations and the International Criminal Court, to ensure that those responsible for violations are held accountable before international law. Sanctions should include economic restrictions, diplomatic sanctions, and legal procedures to ensure that aggressor states are deterred from illegally exploiting natural resources.

- 3- States should take a stricter stance regarding the violation of natural resources in the occupied Palestinian territories, since the illegal exploitation of these resources threatens Palestinian sovereignty and constitutes a flagrant violation of human rights. International tolerance in the face of such violations also encourages their continuation and exacerbates the region's environmental and economic situation. Moreover, the lack of a firm stance reflects the decline in international commitment to protect people's self-determination and the equitable and sustainable exploitation of their natural resources.
- 4- Prosecute Israel and those legally involved in its violations of natural resources in the Occupied Palestinian Territories, using international courts such as the International Court of Justice (ICJ) and the International Criminal Court (ICC), as well as national courts in States that apply universal jurisdiction, such as Spain or Belgium, to increase pressure on Israel to adhere to international laws and achieve justice for the affected Palestinians.

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ملخص

تناولت هذه الدراسة قضية حساسة تتعلق بمسؤولية قوات الاحتلال عن استغلال الموارد الطبيعية داخل الأراضي المحتلة، مع التركيز بشكل خاص على الاحتلال الإسرائيلي للأراضي الفلسطينية. وقد حدد البحث مشكلة هامة وهي صعوبة تحديد مدى تحمل دولة الاحتلال الإسرائيلي للمسؤولية القانونية الدولية عن نهب الموارد الطبيعية للأرض الفلسطينية المحتلة بموجب القانون الدولي. ويرجع ذلك إلى عدة أسباب، منها غموض بعض النصوص القانونية المتعلقة بحماية الموارد الطبيعية للأراضي المحتلة ووجود ثغرات وتناقضات في نصوص أخرى. بالإضافة إلى ذلك، هناك بعض الصعوبات في عملية تحديد المسؤولية الدولية نفسها. وهذا يسمح لقوات الاحتلال بنهب واستغلال الموارد بطريقة تعطي الأولوية لمصالحها على حقوق ورفاهية السكان المحليين.

وقد بحثت الدراسة بعناية كيف تلاعبت السلطات الإسرائيلية بشكل استراتيجي بهذه الثغرات القانونية، واستخدمتها كذريعة لتبرير نهبها واستغلالها واستنزافها للموارد الطبيعية في الأراضي الفلسطينية المحتلة. كما سلطت الدراسة الضوء على الآثار الأوسع لهذا الاستغلال، ليس فقط كقضية قانونية ولكن أيضاً كقضية إنسانية، حيث كان لهذا الاستنزاف عواقب وخيمة، حيث حرم الشعب الفلسطيني من حقه الأصيل في السيادة على موارده الطبيعية. ونتيجة لذلك، تدهورت الظروف الاقتصادية والاجتماعية والبيئية، مما أدى إلى تفويض آفاق التنمية المستدامة في الأراضي الفلسطينية المحتلة.

وفي الختام، أكدت الدراسة على الحاجة الملحة إلى معالجة هذه التحديات القانونية في إطار القانون الدولي، ودعت إلى بذل جهد دولي منسق لتعزيز الضمانات القانونية للموارد الطبيعية في مناطق الصراع. وعلاوة على ذلك، أكدت الدراسة على ضرورة تطوير آليات قانونية دولية أكثر قوة لضمان حماية أكبر للموارد الطبيعية في الأراضي المحتلة. وهذا لا يشمل فقط تعديل المعاهدات القائمة ولكن أيضاً إنشاء أطر جديدة يمكنها محاسبة قوات الاحتلال بشكل فعال. بالإضافة إلى ذلك، من الضروري ضمان إنفاذ حقوق السكان المحليين في الأراضي المحتلة، وضمان تخصيص مواردهم الطبيعية حصرياً لمصلحتهم المشروعة والحفاظ عليها، بدلاً من استغلالها من قبل قوى خارجية.

الكلمات المفتاحية: النهب، الموارد الطبيعية، الاحتلال العسكري، القانون الدولي، قوات الاحتلال الإسرائيلي.