

Arab American University
Faculty of Graduate Studies
Department of Legal Sciences
Master Program in International Law and Diplomacy



**Conditions of Palestinian Detainees after October the
Seventh: Assessing Israel's Violations of the Principles of
International Humanitarian Law**

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Palestine, February/ 2026

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Faculty of Graduate Studies

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Thesis Approval

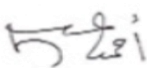
Conditions of Palestinian Detainees after October the Seventh: Assessing Israel's Violations of the Principles of International Humanitarian Law.

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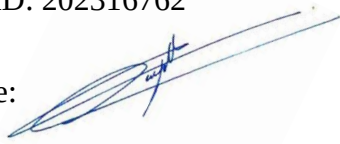
Declaration

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

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Dedication

To the one whose prayers were the secret of my success, to my beloved mother, Kawther, the source of tenderness and Allah's greatest blessing in my life, to you, who instilled in my heart the love of learning and inspired me with patience and perseverance,

To my father, Mahmoud, my first supporter in continuing my education and my companion in all stages of this path, thank you for believing in me and for all your sacrifices, patience and love, without you I would not have reached this moment,

To my dear siblings, Laya, Jana and Omar, comrades and loyal supporters, you are the unshakable support for me at all stages,

To my dearest Aunt, Fadwa, thank you for always being a second mom, always and forever,

To the soul of my dear grandmother, Aysha, who always dreamed of seeing me complete my studies with excellence, you passed away before seeing this moment, but your prayers were a light that illuminated my path,

To Palestine, the bleeding wound and the usurped right,

And to the Palestinian prisoners, symbols of patience and dignity in the face of injustice.

I dedicate this work to you, hoping that knowledge will one day hold the key to freedom and victory.

Lujain Mahmoud Salameh

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قال تعالى: ﴿بَلِّغِ اللَّهَ فَاغْبُدْ وَكُنْ مِنَ الشَّاكِرِينَ﴾

(الزمر: 66)

(Rather, Worship [Only] Allah and be Among the Grateful) Surah Az-Zumar (66)

I thank Allah, glorified and exalted be He, who helped me to reach this point and to complete this thesis.

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Conditions of Palestinian Detainees after October the Seventh: Assessing Israel's Violations of the Principles of International Humanitarian Law

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Abstract

This thesis examines the conditions of Palestinian detainees in Israeli prisons after October the Seventh (2023), focusing on the extent to which Israeli occupation authority violated international humanitarian law and human rights standards. The study addresses the legal status of prisoners, specifically civilians, under the Third and Fourth Geneva Conventions, as well as relevant provisions of the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture (CAT). Using a descriptive and analytical methodology, the research evaluates documented violations such as torture, starvation, medical negligence, solitary confinement and administrative detention. Also, it compares the treatment of Palestinian detainees with that of Iraqi prisoners, highlighting the main similarities and differences between the both cases. The findings indicate systematic violations by Israeli occupation, a persistent denial of legal recognition for Palestinian detainees, and a limited effectiveness of international mechanisms for accountability. The thesis concludes that protecting Palestinian detainees is a legal obligation, not a political choice, and emphasizes the need to activate international accountability measures, reinforce the role of the International Committee of the Red Cross, and ensure that international humanitarian law is applied consistently without selectivity.

Keywords: October the Seventh, Resistance, Civilian Detainees, Ordinary Prisoners, Prisoners of War.

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Introduction

Palestinian detainees have faced hard and inhumane situations by Israeli prisons since the beginning of the occupation on the Palestinian lands. These Israeli violations of international humanitarian law agreements that are concerned with protecting prisoners of war and ordinary prisoners have led to many death cases in the ranks of Palestinian prisoners, in addition to many of them who are now diagnosed with serious diseases and infections that prevent them from completing their lives normally. The approximate total number of Palestinian detainees inside Israeli prisons has reached more than 9250, including (3368) administrative detainees, (350) child prisoners, (49) female prisoners, (150) prisoners from the 1948 Territories, (300) Jerusalemite prisoners and (300) Gaza prisoners.

Respect for the rights of persons deprived of their liberty during armed conflicts and occupation is one of the fundamental pillars of international humanitarian law, as it represents the practical embodiment of the principle of humanity and the protection of human dignity in the most extreme circumstances. The 1949 Geneva Conventions, specifically the Fourth Geneva Convention, and their Additional Protocols have paid particular attention to the situation of civilian detainees by establishing binding rules governing their detention, guaranteeing them minimum standards of humane treatment, and prohibiting torture, ill-treatment, and arbitrary detention.

However, these legal rules are often rendered meaningless in the context of long-term military occupations, where security and political considerations are used to justify serious and systematic violations. The problem is clearly evident in the case of Palestinian prisoners and detainees in Israeli occupation prisons, particularly after October the Seventh (2023), when policies of detention and treatment of detainees witnessed an unprecedented escalation in the level of violations, including torture, starvation, medical negligence, solitary confinement, and the expansion of administrative detention policies, in clear violation of the principles of international humanitarian law and international human rights law.

Based on the illustrated before, this study seeks to analyze the legal framework governing the status of Palestinian prisoners and detainees and to assess the extent to which Israel, as the occupying power, has complied with its obligations under the Geneva

Conventions, the International Covenant on Civil and Political Rights, and the Convention against Torture, with a focus on violations that escalated after October the Seventh. The study also aims to reveal the legal problem represented by the policy of denying the legal status of Palestinian detainees, and to highlight the double standards in the application of international law and the role of the international community and international organizations in confronting or condoning these violations.

Research Problem

International humanitarian law is one of the most important branches of public international law, as it includes a set of rules that aim to alleviate the scourge of war, and includes a set of rules that protect the rights of prisoners of war and how they must be dealt with. However, these rules have become a dead letter in light of the clear and explicit violation of the rights of prisoners by the Israeli occupation prisons against Palestinian prisoners by torture, starvation, and lack of respect for their human dignity, which have been increased by Israeli occupation authorities after October the Seventh.

Research Questions

This research has mainly focused on answering this main question:

What are the manifestations of the Israeli escalation of violating the international humanitarian law principles in protecting Palestinian prisoners' rights after October the Seventh?

Sub-Questions

1. What are the most important principles of international humanitarian law?
2. What are the main Third and Fourth Geneva Conventions principles that should be applied to the prisoners of war?
3. Do international organizations implement their role towards Palestinian prisoners of war?
4. What are the aspects of “double standards” in applying the Geneva Convention towards both Palestinian and Israeli prisoners of war?

Significance of Research

The importance of this academic research lies in providing a legal study that examines the violations Israeli occupation has committed against Palestinian prisoners during the last aggression (from October the Seventh up to now). Also, it presents the absence of international organization's role in protecting Palestinian prisoners of war and ordinary prisoners, which can be considered as a result of the double-standards that are being taken towards both Palestinian and Israeli prisoners of war. Finally, the study aims to emphasize the importance of implementing the main provisions of international humanitarian law concerning prisoners of war and ordinary prisoners on Palestinian detainees to prevent the Israeli occupation authority from violating their rights during and after their imprisonment period.

Literature Review

Numerous researchers and scholars have studied the principles of international humanitarian law and the Geneva Conventions, as they are considered as the most important principles of dealing with war scourges, especially with par prisoners.

1. The Treatment of Prisoners of War in International Conventions: Theory and Practice: *Yahya Zarouali, 2020*

This study addressed the general rules established by international humanitarian law for the protection of prisoners of war, focusing on the Geneva Conventions as the basic legal framework governing the treatment of prisoners during armed conflicts. The researcher outlined the legal basis governing the rights of prisoners of war, in particular the prohibition of torture and ill-treatment and the obligation to provide them with basic humanitarian guarantees. The study also discussed the gap between legal texts and practical application, noting that repeated violations against prisoners often reflect a lack of political will to effectively apply the provisions of international humanitarian law.

2. The Legality of Trying Palestinian Prisoners and Detainees Before Israeli Military Courts from the Perspective of International Law: *Fahd Mahmoud, 2019*

This study focused on analyzing the legal framework for the trial of Palestinian prisoners and detainees before Israeli military courts, in light of the rules of international humanitarian law and human rights law. The researcher concluded that these courts lack the elements of a fair trial, both in terms of independence and impartiality and in terms of procedural guarantees for the accused. The study also showed that subjecting Palestinian civilians to a military judicial system constitutes a violation of the principle of equality before the law and perpetuates a discriminatory legal system based on national identity.

3. Administrative Detention Policy between International Humanitarian Law and Israeli Practices: *Ghassan Khaled, 2017*

This study addressed the administrative detention policy pursued by the Israeli occupation authorities against Palestinians, analyzing it within the framework of international humanitarian law, particularly the Geneva Conventions. The researcher concluded that administrative detention is not used as a temporary exceptional measure, but rather constitutes a systematic policy employed as a tool for security control and collective punishment. The study also confirmed that reliance on secret files and denying detainees the right to defense fundamentally undermines basic rights and reveals the Israeli judicial system's failure to provide effective legal protection to Palestinian detainees.

4. The Role of International Courts in Protecting Palestinian Prisoners and Detainees in Israeli Prisons: *Mohammed Shtayyeh, 2022*

This study focused on assessing the role of international courts in protecting Palestinian prisoners and detainees from violations they face in Israeli prisons. The study showed that the effectiveness of international justice remains limited due to weak enforcement mechanisms and Israel's refusal to comply with the decisions and opinions of international judicial bodies. It also concluded that the shortcomings of international accountability reflect a structural problem in the international legal protection system and highlight the need to activate more effective mechanisms to guarantee the rights of Palestinian prisoners and hold perpetrators of violations accountable.

This research will focus on how the Israeli occupation increased the violation of international humanitarian law principles and the Geneva Conventions after October

the Seventh, analyzing the methods Israeli forces adopt during arresting Palestinians, the harsh conditions Palestinian prisoners face inside the Israeli prisons as a way of punishment for the war in Gaza, and how they are mistreated during their release. Finally, it explains how the Supreme Court of Israel gave the Israeli occupation authority and army to be able to continue their violations against Palestinian prisoners and their rights.

Research Scope

- Legal Framework: this study focuses on the legal conventions and principles of international humanitarian law concerning protecting the prisoners of war and ordinary prisoners at war times and armed conflicts.
- Time Framework: this study is limited to the period of October 7th, 2023 up to current days of preparing this research paper.

Methodology of Research

The preparation of this study is based on the descriptive and analytical approach. This academic paper focuses on analyzing and describing legal framework related to the protection of prisoners, especially Palestinians under Israeli occupation. The research will begin by analyzing the general concepts of prisoners according to international humanitarian law and their classification in armed conflicts. Also, it will address the historical background of the situation of Palestinian prisoners, highlighting the relevant international conventions. The research will rely on analyzing the legal texts contained in the Third and Fourth Geneva Conventions to clarify the basic principles and obligations of belligerent parties towards prisoners.

Moreover, the comparative approach will be used to assess Israeli violations of Palestinian prisoners' rights after the recent Israeli aggression on Gaza, by comparing these violations with the way Palestinian fighters treated Israeli detainees, in addition to comparing these violations with similar violations in the international arena and analyzing them according to international conventions. Furthermore, the role of the international community and human rights organizations in protecting Palestinian prisoners will be examined and the legal penalties and possible measures to hold perpetrators accountable will be explored, with recommendations to strengthen the legal protection of Palestinian prisoners.

Research Plan

This thesis is structured into two main chapters that address the legal framework and practical realities of the Palestinian detainee's issue under Israeli occupation, with particular emphasis on the period following October the Seventh (2023). The study adopts a descriptive and analytical approach in order to examine the legal status of Palestinian detainees and assess the extent of Israel's violations of the principles of international humanitarian law and international human rights law.

Chapter one is divided into two main sections. The first section addresses the legal and historical framework of the Palestinian prisoners' issue, beginning with an examination of the legal definitions of prisoners and detainees under international humanitarian law and the distinction between prisoners of war and civilian detainees. It then provides a historical overview of the Palestinian prisoners' situation under Israeli occupation and analyzes the international legal instruments applicable to their protection, with particular reference to the Geneva Conventions, the International Covenant on Civil and Political Rights, and the Convention against Torture. In the second part of the chapter, the study examines the Israeli position regarding the legal status of Palestinian prisoners, focusing on Israel's policy of non-recognition of civilian detainee's status and the political and security justifications advanced in this regard. It further analyzes the legal consequences of such non-recognition and its implications for both Palestinian detainees and Israel's obligations as an occupying power.

Chapter two is divided into two main sections. The first section focuses on the violations committed against Palestinian detainees after October the Seventh, providing a descriptive account of detention conditions and methods of abuse, including torture, solitary confinement, and medical neglect, as documented in human rights reports. Then section then offers a legal assessment of these practices in light of the Fourth Geneva Convention and other relevant international standards, highlighting Israel's legal responsibility for these violations. The second section of the chapter presents a comparative analysis between the treatment of Palestinian detainees and Iraqi prisoners in Abu Ghraib Prison, examining similarities and differences in the violations committed, as well as the varying political, media, and legal responses at the international level. Also, it evaluates the effectiveness of accountability mechanisms, with particular attention to

the role of the Israeli Supreme Court and the International Criminal Court (ICC) in addressing violations against Palestinian detainees.

Chapter One: The Legal and Political Framework of the Palestinian Prisoners' Issue

1.1 Legal and Historical Concepts of Prisoners and Detainees in International Humanitarian Law.

1.1.1 The Legal Basis and Definitions for the Status of Prisoners and Detainees.

1.1.1.1 The Legal Basis and Definitions for the Status of Prisoners of War and Detainees in International Humanitarian Law.

Legal Basis for the Status of Prisoners of War and Detainees

International humanitarian law is one of the most important branches of public international law, whose rules aim to control the conduct of hostilities by restricting the choice of weapons on the one hand, and protecting victims of armed conflict on the other¹. The legal status of combatants is one of the most important topics in international humanitarian law. The Geneva Conventions of 1949 and the Additional Protocols I and II of 1977 are fundamental pillars for the protection of combatants.

The legal status of prisoners of war and detainees (ordinary prisoners) in armed conflicts is based on an integrated international legal system, represented by the four Geneva conventions of 1949 and two Additional Protocols of 1977, in addition to customary rules and International Human Rights Law. These references are designed to ensure humane treatment of all persons deprived of their liberty and to preserve their human dignity even in the most extreme circumstances.

First: The Four Geneva Conventions of 1949:

The Geneva Conventions represent the original legal basis for the protection of prisoners of war and detainees, as each convention addresses a specific category of persons:

1. The First Geneva Convention: it is concerned with improving the condition of wounded and sick members of the armed forces in the field. It establishes

¹ (Houbeh, 2020, p. 19).

- provisions to ensure their medical care and protection from any attack, and emphasizes respect for the medical personnel and non-targeting them (Article 12).
2. The Second Geneva Convention: it relates to the protection of wounded, sick and shipwrecked members of armed forces at sea, giving them a legal status similar to that of their land-based counterparts, with an emphasis on protection in maritime conflicts (Article 12).
 3. The Third Geneva Convention: this is the most important treaty regarding prisoners of war, as it provides a complete legal organization for them. Article (4) defines a prisoner of war as any person who is captured by the enemy and belongs to specific categories, including members of the armed forces, members of militias and organized volunteer units. The Convention guarantees prisoners humane treatment (Article 13), the prohibition of torture and degrading treatment (Article 17), adequate conditions of detention (Articles 25-32), the right to contact their families (Articles 70-77), and medical care (Articles 29-30). It also provides for the release and repatriation of prisoners without delay at the end of hostilities (Article 118).
 4. The Fourth Geneva Convention: it is dedicated to the protection of civilians in times of war and occupation. It is the legal basis for the status of civilian detainees, as Article (42) permits the arrest of civilians if vital security considerations dictate it, and Article (78) allows the occupying power to impose detention or compulsory residence for compelling security reasons. However, it stressed that this measure must be exceptional and subject to periodic review, while guaranteeing detainees' rights to humane treatment (Article 27), ensuring medical care (Article 91), and prohibiting collective punishments (Article 33).

Second: The 1977 Additional Protocols:

The two Additional Protocols were added to strengthen the protection afforded by the Geneva Conventions:

- Protocol I (relating to international armed conflicts): it expended the definition of a legitimate combatant to include some irregular combatants if they openly take up arms during hostilities and comply with the laws of war (Article 43 and 44). Article (75) emphasizes a set of basic guarantees for all persons deprived of their

liberty, even if they do not qualify as prisoners of war or civilian detainees (ordinary prisoners).

- Protocol II (relating to non-international armed conflicts): for the first time, a contractual framework was established for internal conflicts. Article (5) emphasizes the minimum rights of detainees, including health care, the right to food and water, and the prohibition of torture and outrages on dignity.

Third: Customary Rules of International Humanitarian Law:

In addition to contractual texts, customary rules have played a pivotal role in regulating the status of prisoners of war and ordinary prisoners. The International Committee of the Red Cross (ICRC) study on customary international humanitarian law (2005) proved that many rules of treatment of prisoners of war and ordinary prisoners have acquired a customary character that is binding on all parties to the conflict, even those that have not ratified conventions or protocols. These rules include the obligation to humanely treat all detainees, absolute prohibition of torture and cruel or degrading treatment, fair trial guarantees when charges are brought, and prohibition of enforced disappearance or secret detention.

Fourth: Relationship with International Human Rights Law (IHL):

Although IHL is the *lex specialis* applicable in armed conflict, this does not negate the continued applicability of international human rights law. In its advisory opinion on the separation wall (2004), the International Court of Justice (ICJ) confirmed that the two laws are applied in parallel, with international humanitarian law being considered *lex specialis* (more specialized) in the context of conflicts.

Therefore, prisoners of war and ordinary prisoners enjoy dual protection: first, the international humanitarian law, which defines their rights in armed conflicts. Second, human rights law, which guarantees them non-derogable rights such as the right to life, the prohibition of torture, and non-discrimination.

Moreover, the International Covenant on Civil and Political Rights (1966) emphasizes in Article (4) that even in states of emergency, fundamental rights such as the prohibition of torture may not be infringed, which is consistent with the absolute nature of these rules in international law.

The legal basis for the status of prisoners of war and ordinary prisoners in international humanitarian law is based on an integrated network of rules: The four Geneva Conventions, which established the detailed framework; the Additional Protocols, which enhanced the scope of protection; customary rules, which enshrined the mandatory nature of these provisions; and finally, international human rights law, which guarantees parallel protection even in times of conflict. This complementarity reflects the international community's desire to preserve the dignity of persons deprived of their liberty and limit the discretionary power of states to deal with them, ensuring a minimum level of humanity in the most extreme circumstances.

The Legal Definition of Prisoners of War:

Armed conflicts are as old as humanity itself. They break out between hostile parties in an attempt to impose control over the other party by crippling the enemy's combat capabilities and forcing them to surrender through killing, wounding and capture¹. Due to the long history of wars in the world, which have resulted in millions of prisoners being captured by the warring parties and subjected to severe torture and inhumane treatment that are incompatible with the principles and norms of international law that emerged later, the concept of "prisoner" has become one of the fundamental pillars in regulating the relationship between parties to armed conflicts, in addition to defining the obligations of warring parties towards persons who fall into their hands as a result of acts of war. This concept has received widespread attention in international conventions and agreements, particularly the Geneva Conventions of 1948, especially the Third and Fourth Geneva Conventions. The Third Geneva Convention is considered the primary reference for defining the status of prisoners of war and the guarantees established for them, while the Fourth Geneva Convention defines detainees and specifies the methods of dealing with them, in addition to the guarantees established for them.

Although international instruments have classified prisoners of war and included them among the categories of persons who are victims of armed conflicts and require special protection, a closer look at these agreements reveals that they do not contain any definition of the term "prisoner of war". This may be due to the many situations in which

¹ Al-Nadi, M. (2015). Prisoners of War and International Humanitarian Law: The Case Study of Palestinian Prisoners. *Al-Manara Journal for Legal and Administrative Studies*. P. 262.

a person may find themselves during armed conflict and which establish their legal status as a prisoner of war¹. This is clearly reflected in the text of Article (4) of the Third Geneva Convention of 1949, which does not include a definition, but merely lists the situations that establish a person's status as a prisoner of war.

According to Article (4) of the Third Geneva Convention of 1949, prisoners of war are defined as persons who fall into the hands of the enemy among the members of the armed forces of one of the parties to the conflict, or organized militias or volunteers, provided that they meet the conditions of responsible command, openly bear arms, and respect the laws and customs of war².

If one of the parties to the armed conflict consists of irregular combatants, they are required to publicly commit to the basic rules of armed conflict, and thus they must have distinctive and permanent insignia by which they can be distinguished from civilians and other members of public, in addition to other matters that require them to act in accordance with the laws of war as long as they have declared their possession of weapons and their ability to fight the other armed party. If the above conditions are met, and if they are taken prisoner by the other party during the conflict, they are entitled to the status of "prisoners of war", this includes people who are under occupation that join resistance movements and acts, which guarantees them the agreed and stipulated rights, in addition to the obligation to treat them well and humanely.

Furthermore, modern definitions have been expanded to include other types of persons who may be detained for reasons related to armed conflicts, as it is not necessary for them to be part of the regular armed forces, but rather that they participate in the armed conflict, whether directly or indirectly, in hostile operations. Thus, the definition of prisoner of war has become more comprehensive and broader in order to protect as many people as possible who fall into enemy capture. The First Additional Protocol to the Geneva Conventions (1977), specifically Article (44), sets out relatively flexible conditions for combatants, this take into account the changing nature of contemporary warfare, particularly wars of national liberation, which largely correspond to the nature of the recent Israeli aggression against the Gaza Strip since October the Seventh, as

¹ Ibid, P. 263.

² Article (4) of Third Geneva Convention.

explicitly stated in the second paragraph of Article (44): “ While all combatants are obliged to comply with the rules of international law applicable in armed conflict, violations of these rules shall not deprive a combatant of his right to be a combatant or, if he falls into the power of an adverse Party, of his right to be a prisoner of war, except as provided in paragraph 3 and 4”.¹

International jurisprudence emphasizes that the legal classification of a prisoner’s status does not depend on recognition by the capturing party, but rather on the fulfilment of the objective conditions set out in international humanitarian law. The International Committee of the Red Cross’s commentary on the Third Geneva Convention states that the status of prisoners of war is determined by the objective criteria set out in the Convention, and not by the description or political intentions of the capturing party, as explicitly stated in the commentary: “The existence of a doubt that triggers a determination by a competent tribunal must not depend solely on the subjective belief of the Detaining Power; rather, a Detaining Power must consider each situation in good faith, on a case-by-case basis, with a proper assessment of the facts”.²

Accordingly, the status of “prisoner of war” is granted once the legal conditions specified in the conventions are met, and this entails a set of rights and guarantees imposed by the rules of international humanitarian law, such as protection from torture, the guarantee of humane treatment, the provision of food and medical care, and the prevention of unfair retaliatory trials. In this context, the International Committee of the Red Cross (ICRC) emphasizes that the protection of prisoners is not conditional on the capturing state’s recognition of them as prisoners of war, but is a legal obligation based on the fundamental principles of international humanitarian law, which cannot be overridden under any security or political justification.

It is clear from the above that the description and definition of prisoner of war in international humanitarian law is objective and independent of political classifications, and is primarily intended to ensure the legal and humanitarian protection of persons

¹ Paragraph 2 of Article (44) of First Additional Protocol to Geneva Conventions, available at: [Protocols additional to the Geneva Conventions of 12 August 1949](#).

² The updated ICRC Commentary on the Third Geneva Convention: A new tool to protect prisoners of war in the twenty-first century, p. 12, available at: [The updated ICRC Commentary on the Third Geneva Convention: A new tool to protect prisoners of war in the twenty-first century](#).

detained as a result of armed conflict, in accordance with rules and standards that are binding on all parties to the conflict.

1.1.1.2 The Distinction between Prisoners of War and Ordinary Prisoners

The distinction between prisoners of war and detainees (civilian prisoners or ordinary prisoners) is one of the fundamental pillars of international humanitarian law, as it has legal implications for determining the legal status of each category when they fall into the hands of the other party to the conflict. This includes rights, guarantees and standards of treatment that vary radically from one situation to another, which will be explained in the third part of this subsection.

The Geneva Conventions are among the most important international documents that have paid close attention this distinction. The Third Geneva Convention is devoted to prisoners of war. On the other hand, the Fourth Geneva Convention addresses the situation of detained civilians, including those detained for resistance movements or any acts of resistance in the face of occupation, and security reasons in occupied territories. It should be noted that despite the emphasis on the distinction between prisoners of war and ordinary prisoners, the rights stipulated for both categories emphasize a very important principle, namely immunity and respect for human dignity, in addition to providing the necessary and basic requirements for every prisoner as a (human being). This is because the detention of prisoners is not considered a punishment or an act of revenge, but rather a temporary measure to prevent prisoners from continuing to fight with their army, and must be exempt from any punitive nature¹.

The Third Geneva Convention of 1949 provides a definition of the term “prisoner of war”, specifying the categories that fall under this legal term, as set out in Article (4) of the Convention. These categories include: 1- members of the regular armed forces of the parties to the conflict, 2- members of militias, 3- organized units of volunteers, provided that they meet a number of legal in their conduct, such as openly carrying arms and complying with the rules and customs of war. The category also includes individuals who are captured during combat operations or after surrender.² Recognizing these individuals as prisoners of war is important, as it grants them special protection that

¹ (Houbeh, 2020, p.265).

² Article (4) of Third Geneva Convention.

imposes specific legal obligations on the capturing state that are not subject to interpretation or exception.

Moreover, according to the Third Geneva Convention, prisoners of war are granted a set of legal guarantees and fundamental rights, which form an integral part of international humanitarian law. These rights include: 1- the right to humane treatment¹, 2- the right to adequate food and healthcare², 3-the right to practice religious rites³, 4- the right to communicate with their families through correspondence⁴, 5- the right to enable the International Committee of the Red Cross (ICRC) to visit them and monitor their conditions periodically and independently⁵. The Convention also prohibits the punishment of prisoners solely for their participation in hostilities, as participation is considered a legitimate act in the context of armed conflict and does not itself constitute a crime that they should be punished as by law⁶.

On the other hand, the category of detainees or (civilian prisoners) represents a different legal group in terms of nature and rights, as they are subject to the rules of the Fourth Geneva Convention of 1949, which deals with the protection of civilians in times of war, especially in occupied territories. This category includes individuals who are arrested or detained for security or precautionary reasons by the occupying state or the authorities exercising detention, without being involved in the fighting, and therefore are not considered combatants or prisoners of war, or for civilians who may participate in armed conflicts and may use weapons or other acts that are related to resisting occupation.

The Fourth Geneva Convention allows the occupying power to take measures such as administrative detention or house arrest against the civilians in the event of a real threat to its security, pursuant to Articles (42), (43) and (78) of the Convention. However, these measures are considered exceptional in nature and must be justified by extreme security necessities and subject to periodic review to assess the continuing need for them. The Convention emphasizes that detention cannot become an arbitrary punishment, but must

¹ Article (13) of Third Geneva Convention.

² Articles (15) and (26) of Third Geneva Convention.

³ Chapter 5 of Third Geneva Conventions, Articles (34), (35), (36) and (37).

⁴ Article (70) of Third Geneva Convention.

⁵ Article (126) of Third Geneva Convention.

⁶ Articles (82) and (99) of Third Geneva Convention.

be temporary, taking into account the principles of proportionality and respect for human dignity.

Furthermore, the Fourth Geneva Convention stipulates that detainees must be treated humanely and not subjected to any form of torture or cruel or degrading treatment. It should be noted here that this is consistent with the provisions of Article (5) of the American Convention on Human Rights, specifically paragraph 2, which stipulates that: “No one shall be subjected to torture or to cruel, inhumane, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person”.¹ If criminal charges are brought against them, they must be guaranteed a fair trial, including the right to defense, to appear before a competent and independent court, and to a public hearing, in accordance with the fundamental principles of justice.

When we compare the two categories from a legal perspective, the distinction between them reveals a fundamental difference in the legal status, rights and duties of each party. A prisoner of war is a legitimate combatant who has been deprived of his liberty as a result of his capture during military operations and enjoys a specific legal status under the Third Geneva Convention, in which it grants him special protection. On the contrary, a civilian detainee is an individual who is not participating in the fighting and has been detained for security or preventive reasons, or a civilian under occupation who has at some point participated in resistance movements, in accordance with the provisions of the Fourth Geneva Convention, which places them in a different legal framework.

In terms of the duration of detention, prisoners of war are held until the end of actual hostilities, i.e., until a permanent ceasefire is in place, at which point they are released after the end of the conflict or on the basis of a prisoner exchange agreement. The detention of civilians, on the other hand, is subject to periodic review and must be lifted as soon as the security reasons that originally justified the detention no longer apply. This highlights the difference between prisoners of war, who are treated within the framework

¹ American Convention on Human Rights, Article (5), paragraph 2, available at: [AMERICAN CONVENTION ON HUMAN RIGHTS](#).

of armed conflict, and detainees, who are supposed to remain under civilian protection even under occupation.

The importance of this distinction is not limited to the theoretical or conceptual aspect, but extends to form a practical legal guarantee that defines the responsibilities of the detaining state and contributes to drawing the boundaries of acceptable behavior during armed conflicts or situations of occupation. Therefore, knowing the legal status of a detained individual is the first step toward guaranteeing their rights and holding the detaining authority accountable in the event of abuses or violations.

Based on the mentioned above, it shows the fact that the obligation to distinguish between prisoners of war and detainees is a fundamental principle of proportionality and distinction in international humanitarian law, which requires parties to a conflict to differentiate between combatants and non-combatants, and between military and civilian targets. Failure to comply with this distinction not only leads to violation of legal obligations, but may also constitute grounds for international criminal responsibility in the event of crimes against humanity or war crimes, especially if detention is accompanied by torture or deprivation of fundamental rights.

Ensuring a precise distinction between the two categories is therefore not only a technical legal issue, but also a matter that touches on the very essence of justice and human rights. It forms the basis for understanding the nature of the conflict and provides the foundation for the legal accountability of states or parties that violate their obligations. Without this distinction, treatment becomes subject to political and security considerations, thereby undermining the effectiveness and impartiality of international humanitarian law. A prominent example of the mentioned above, highlighting the importance of this distinction in contemporary conflicts is what we are witnessing in the Palestine, where the Israeli occupation authorities have, in many cases, confused the status of Palestinian prisoners with that of terrorists or security detainees, which has drawn widespread criticism from international organizations such as the International Committee of the Red Cross, Human Rights Watch and the United Nations Human Rights Council. Palestinians, including children and women, are often detained under administrative detention orders without clear charges or fair trials, which is contrary to the essence of the protection provided by the Fourth Geneva Convention.

In conclusion, it can be said that the distinction between “prisoners of war” and “civilian detainees” is a fundamental element in the regulation of armed conflicts and in ensuring legal protection for all individuals affected by them. This distinction must be understood in light of the fundamental principles of international humanitarian law, specifically the principals of humanity, proportionality and military necessity. These principles should be applied without selectivity and without being subjected to political considerations that could undermine the effectiveness of legal protection and prevent violators from being held accountable.

1.1.1.3 Rights and Guarantees for Prisoners of War and Ordinary Prisoners

Respect for human dignity and humane treatment are cornerstones of the legal protection system established by international humanitarian law for prisoners of war and ordinary prisoners. Many international conventions, agreements and resolutions stipulate that prisoners of war and civilian detainees must be treated in a manner that respects their dignity, customs and traditions, and other matters that do not undermine their personal dignity and boundaries. Therefore, torture, whether physical or psychological, as well as the use of humiliating methods that violate human dignity, are among the most serious violations prohibited by international humanitarian law, many of which are classified as grave crimes. Indeed, the systematic or widespread commission of such acts may amount to war crimes that warrant international criminal accountability. The legal protection afforded to prisoners includes an absolute prohibition on any practices aimed at breaking down the psychological or personal integrity of the detained person.

The Third and Fourth Geneva Conventions of 1949 attached great importance to ensuring that prisoners of war and ordinary prisoners are treated in a manner that preserved their humanity, regardless of their status, function or the reasons that led to their capture. Also, other international instruments mention the need to humane treatment and the prohibition of torture and other forms of ill- treatment, such as the Rome Statue of the International Criminal Court (ICJ), Customary International Law (according to the International Committee of the Red Cross), Security Council Resolution 1502 of (2003), Security Council Resolution 1325 of (2000), and United Nations General Assembly Resolution No. 2444 of (1968), which will be explained in this part of the section.

First: The Right to Humane Treatment and Freedom from Humiliation or Torture:

The right to humane treatment is one of the most important enjoyed rights enjoyed by prisoners of war and ordinary prisoners. Article (13) of the Third Geneva Convention clearly stipulates this right, affirming that prisoners of war must be treated humanely at all times. Article (27) of the Fourth Geneva Convention stipulates full respect for the personal dignity and humane treatment of protected civilians at all times, in addition to explicit prohibition of insults, collective punishments and acts of reprisal. The legal text thus prohibits exposing them to any form of physical or psychological violence, humiliation or reprisals. This prohibition goes beyond the traditional framework to establish a principle of customary international law and mandatory rule that may not be violated or restricted even in cases of emergency or large-scale armed conflict.

The practice of torture, whether physical or psychological, or the use of means of abuse or degradation, is considered a serious violation of international humanitarian law and are classified as a war crime, especially if practiced systemically or on a large scale. For further clarification, Article (8) of the Rome Statue of the International Criminal Court provides a clear definition of torture, which stipulates that grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the stipulated acts against persons or property protected under the provisions of the relevant Geneva Convention, including torture or inhuman treatment.¹

On the other hand, Rule (90) of Customary international law (according to the International Committee of the Red Cross) states the definition of inhuman treatment, which provides that: “The term “inhuman treatment” is defined in the Elements of Crimes for the International Criminal Court as the infliction of “severe physical or mental pain or suffering”. The element that distinguishes inhuman treatment from torture is the absence of the requirement that the treatment be inflicted for a specific purpose”.² It also provided that “ In their case-law, human rights bodies apply a definition which is similar to the one used in the Elements of Crimes for the International Criminal Court, stressing the severity of the physical or mental pain or suffering. They have found violations of the prohibition of inhuman treatment in cases of active maltreatment but also in cases of very poor conditions of detention, as well as in cases of solitary confinement. Lack of adequate

¹ Subparagraph (a) of paragraph 2 of Article (8) of the Rome Statue of the International Criminal Court.

² Rule (90) of Customary International Law (according to ICRC), available at: [Customary IHL - Rule 90. Torture and Cruel, Inhuman or Degrading Treatment](#).

food, water or medical treatment for detained persons has also been found to amount to inhuman treatment.”¹ This indicates that inhuman treatment can be reached indirectly such as deliberately starving prisoners in order to extract information from them.

Second: The Right to Food and Healthcare.

Another fundamental right guaranteed by international humanitarian law to prisoners of war and ordinary prisoners is the right to adequate food and appropriate healthcare. For prisoners of war, Article (26) of the Third Geneva Convention obliges the detaining power to provide meals that are sufficient in quantity and quality, taking into account the health, religious and cultural needs of prisoners. Food or deprivation therefore must not be used as a means of pressure or punishment, but rather as a non-negotiable right.

In term of healthcare, Rule (13) of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules) states that “All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climate conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.”² Furthermore, Rule (21) states that: “Every prisoner shall be provided with separate bed and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness.”³ Therefore, healthcare and personal hygiene are essential and indisputable, as they preserve the health of prisoners and prevent them from contracting diseases, and guarantees human dignity from humiliation in order to obtain the most basic rights . This responsibility falls on the occupying state, as it should be noted here that the state may not exercise its powers in a manner that violates the human dignity of any person subject to its jurisdiction. Secondly, the content of the right to physical integrity is determined in light of the principle of respect for human dignity and prohibition of treating human beings as objects⁴.

¹ Ibid.

² Rule (13) of the United Nations Standard Minimum Rules for the Treatment of Prisoners, available at: [E RES 2015 20-EN.pdf](#).

³ Ibid, Rule (21)

⁴ (K. Almoussa, 2023, p. 78).

Third: The Right to Communicate with the Outside World:

The right to communicate with the outside world is one of the fundamental elements that preserves the humanity of prisoners' lives and prevents their complete isolation from their communities and families. Articles (70) to (77) of the Third Geneva Convention stipulate that prisoners must be allowed to send and receive letters and parcel, and to inform their families of their place of detention and health conditions. Such communications must be supervised by a neutral party such as the International Committee of the Red Cross, to ensure transparency and prevent abuse of these channels. Also, Rule (58) of Mandela Rules stipulates that "Prisoners shall be allowed, under necessary supervision, to communicate with their family and friends at regular intervals"¹.

Cutting off contact with family or the outside world, or imposing complete isolation as a means of punishment or psychological pressure, are practices that clearly violate the rules of the international humanitarian law. They are even considered a form of cruel or inhuman treatment that is internationally criminalized, especially if restored to for long periods or without judicial oversight.

Fourth: Protection from media and Propaganda Exploitation.

Among the fundamental guarantees recognized by international humanitarian law for prisoners of war and ordinary prisoners is the prohibition of using them for media or propaganda purposes, or subjecting them to any kind of political or psychological exploitation. For prisoners of war, Article (13) of the Third Geneva Convention illustrates that the image or statements of prisoners of war may not be used in contexts aimed at achieving propaganda, media or political gains.

This prohibition includes, for example, forcing prisoners to make confessions in front of cameras, photographing them in humiliating situations, or imposing media interviews on them without their free and prior consent. Using prisoners in political or propaganda campaigns is also considered a flagrant violation of human dignity and leads to international accountability for individuals or authorities involved in such violations.

¹ Ibid, paragraph 1 of Rule (58) of Mandela Rules.

Fifth: The Role of the International Committee of the Red Cross in Protecting Prisoners:

It is impossible to talk about the legal protection system for prisoners without mentioning the pivotal role played by the International Committee of the Red Cross (ICRC). Under Article (126) of the Third Geneva Convention, the Committee is authorized to visit places of detention regularly and without hindrance, with the aim of monitoring conditions and ensuring that prisoners' rights are respected. Also, Article (143) of the Fourth Geneva Convention stipulates that representatives or delegates of the International Committee of the Red Cross shall be permitted access to all of arrest, detention or imprisonment under the authority of the occupying power in order to inspect the conditions of detainees, and shall be granted all necessary facilities to perform their duties.

The ICRC's powers include conducting individual and confidential interviews with prisoners, without the presence of representatives of the detaining state, which guarantees freedom of expression and reporting of any violations or inhumane conditions. The ICRC submits its reports to the detaining state in confidence and makes professional recommendations for improving detention conditions.

In addition, the committee acts as a humanitarian mediator between prisoners and their families by exchanging letters and parcels, providing psychological and social support in conflict environments, and documenting cases of enforced disappearance or serious violations, making it a cornerstone of the international humanitarian protection system.

It is clear from the illustrated above that the system of rights and guarantees enjoyed by prisoners of war and ordinary prisoners under international humanitarian law is based on solid legal foundations that reflect a deep international commitment to the principles of human dignity and justice, even in the most difficult circumstances, such as armed conflicts, these rights are not privileges granted on the basis of political or military considerations, but rather binding legal obligations that must be applied and respected by all parties, and which constitute a standard for judging the legality and conduct of states during war.

The effectiveness of this protection can only be achieved through the existence of independent and effective monitoring and accountability mechanisms, foremost among which is the International Committee of the Red Cross, alongside international organizations and international criminal justice mechanisms, such as the International Criminal Court, which have become a deterrent to any attempts to violate the fundamental rights of detainees. Therefore, respect for these guarantees not only serves prisoners or detainees, but also reflects the extent to which the detaining state respects international law and is an essential benchmark for measuring the international community's commitment to its values and principles in times of war.

1.1.2 Historical Background of Palestinian Prisoners Under Israeli Occupation

1.1.2.1 Historical Overview of the Palestinian Prisoner's Issue

Since Israel occupied the West Bank, Gaza Strip and East Jerusalem, the issue of Palestinian prisoners has been one of the most prominent aspects of the daily suffering imposed by the Israeli occupation on the Palestinian people. Since the early days of the occupation, the Israeli occupation authorities have resorted to a policy of mass arrest as a means of tightening control over the population and suppressing any form of resistance or dissent, without regard for international human rights standards or international humanitarian law.

Israeli occupation authority has signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1991 and agreed to the provisions and mechanisms it included for guaranteeing the rights of victims of torture, especially in prisons. However, Israeli occupation practices the most severe and heinous types of torture on Palestinian prisoners¹, which does not reflect any genuine commitment to the provisions of this convention. Yet, torture has even become an institutionalized part of the Israeli detention system, supported by domestic legislation and false security justifications.

Israeli occupation authority has worked to grant powers to their security services, especially the intelligence services, to use violence and torture under the pretext of forced

¹ Nedjraoui, D. O. (2024). The Israeli Violations of Palestinian Prisoners Rights. *Algerian Journal of Law and Political Science*, 9 (2), P. 7.

protection, claiming that every detainee is a danger and a time bomb, and that all Palestinian people are a danger to its security, and that is why it carries out arbitrary arrests and pins charges on oppression and injustice, including permitting torture for interrogation, accusation, and imprisonment as it pleases.¹

A Palestinian prisoner is defined procedurally as a: Palestinian who has been arrested by the Israeli authorities as a result of resisting the occupation or attempting to do so on political, organizational, security or military grounds.² Since 1967, Palestinian and international human rights organizations estimates that the Israeli occupation has arrested more than 950.000 Palestinians, approximately a quarter of the Palestinian population in the occupied territories, including men, women and children, as well as the sick and elderly. The arrests have indiscriminately targeted various segments of society and have often been carried out arbitrarily, outside the law, without real judicial orders, or based on secret intelligence information that does not allow the detainees to defend themselves.

Over the past decades, the Israeli occupation authorities have shown no respect for the privacy of vulnerable groups within Palestinian society, arresting pregnant women, children under 12, and elderly people over the age of 70. At no stage of their detention did the occupation take into account the health or psychological condition of these individuals, or even international laws that grant them special protection on times of armed conflict.

Conditions of detention inside Israeli prisons are characterized by harshness and neglect. Prisoners are held in cramped cells that lacked adequate ventilation, lighting and heating, and worn-out beds. Also, poor food is often the most prominent features of daily life inside the detention centers. The sanitary conditions inside these prisons are not fit for human habitation; prisoners suffer from poor hygiene, widespread infestation of insects, and poor sanitation, compounded by overcrowding and deprivation of access to outdoor exercise or sports. “Worood Qasim, a freed prisoner from the occupied lands,

¹ Ibid, The Israeli Violations of Palestinian Prisoners Rights, pp. 6-7.

² Musa, M.N, and Muhammad, O.K. (2022). Social and Psychological Problems Resulting from the Torture of Palestinian Prisoners in Israeli Prisons and a Proposed Approach from Social Work Perspective to Address them (a study applied to released prisoners in the West Bank). *Arab Journal for the Humanities*. 6 (21). P. 241.

said that during the Intifada, the prisoners were deprived of their rights, such as watching the news, to prevent them from interacting with the world outside, and from receiving newspaper and books.¹ Moreover, the occupation's measures were in line with its desire to keep the prisoners uneducated and depressed. The occupation prevented the arrested students (high school, university or postgraduate ones) from completing their education.²

In terms of medical care, Israeli prison administrations have consistently neglected sick prisoners, repeatedly refusing to provide appropriate treatment for critical cases or to allow surgical procedures or regular check-ups. This neglect was evident during the Coronavirus pandemic, when Israeli prison authorities refused to provide vaccines to prisoners at the beginning of the outbreak, despite warnings from international organizations about the danger of the pandemic spreading in crowded and closed places. The prison service also failed to provide masks and sanitizers and refused to conduct comprehensive tests, which contributed to an increase in the number of cases among Palestinian detainees.

It is certain that the coronavirus cannot possibly have been brought in by prisoners, because they are detained and held inside prison walls and do not leave except when released, unlike prison guards, who enter and leave until the end of their shift, which is the main reason for the virus entering. Due to the direct contact between prison guards and prisoners through constant prisoner counts, repeated raids, periodic searches of prisoners' rooms and the prison clinic, trips to courts in some cases, hospitals, and the constant transfer of prisoners between prisons, the virus spread rapidly among prisoners³. However, the policy of medical negligence and the prison service's continued failure to fulfil its obligations to provide the necessary healthcare and international medical examinations for prisoners, in addition to the outdated prison environment that does not meet international standards in terms of space and construction, and the prison administration's failure to fulfil its obligations regarding personal and public hygiene and

¹ Alzaeem, I.S. (2022). The Reality of the Palestinian Female Prisoners in the Israeli Occupation Prisons and After their Release. *Journal of Strategic Affairs*. (11). P. 185.

² Ibid, The Reality of the Palestinian Female Prisoners in the Israeli Occupation Prisons and After their Release. P. 189.

³ Al-Qawasmi, A. (2022). The Role of the Zionist Entity in the Spread of Coronavirus Among Palestinian Prisoners. *IUG Journal of Humanitarian Research*, 30 (2), 100-121, available at: <https://doi-org.aaup.idm.oclc.org/10.33976/IUGJHR.30.2/2022/5>.

to take measures to protect the health of prisoners and detainees, have all contributed to the spread of the virus among Palestinian prisoners¹.

Therefore, many of Palestinian prisoners were martyred after their release as a result of the repercussions of diseases that afflicted them. This is confirmed by many prisoners, according to their testimonies, that following their arrest, the Palestinians are placed in one of the basements for interrogation whose area does not exceed a meter or a meter and a half, and is characterized by humidity and cold in winter and extreme heat in summer, with no ventilation except a small opening to insert the spoiled food.²

The violations were not limited to medical negligence, but extended to physical and psychological torture practices used by the occupation authorities from the first days of detention, during interrogations, and in prison cells. The methods of torture varied between severe beatings, prolonged shackling, sleep deprivation, solitary confinement, forced nudity, threats to kill or assault family members, as well as the use of insults and humiliation as means of continuous degradation and humiliation. Israel also sometimes used pressure on prisoners by detaining them in extremely harsh conditions and denying them access to lawyers or family visits. These practices have led to the deaths of hundreds of Palestinian prisoners in Israeli prisons. The number of martyred Palestinian prisoners has reached 307, it should be noted that from 1967 until October 7, 2023, the number of martyrs was 237, an average of four martyrs per year over 56 years. Since the beginning of the war of crime and extermination (October 7, 2023), 70 prisoners have been killed in less than two years (an annual increase of ten times the pre-war rate), they were martyred under torture, starvation, sexual assault, medical crimes, and placing prisoners in poor environmental conditions that promote the spread of disease, in conjunction with medical deprivation, which led to them contracting serious and infectious diseases, most notably Scabies and other infectious and chronic diseases.³

Despite all these violations, Palestinian prisoners have managed over the decades to create their own internal system within prisons, which has helped them try to adapt to the harsh conditions. They worked collectively to organize their daily lives, established

¹ Ibid, The Role of the Zionist Entity in the Spread of Coronavirus Among Palestinian Prisoners.

² Ibid, The Israeli Violations of Palestinian Prisoners Rights, p. 7.

³ Commission of Detainees and Ex-Detainees Affairs, report on the Palestinian martyrs of the captive movement, available at: <https://cda.gov.ps/index.php/ar/ar-news-2/20651-2025-06-01-10-40-55>.

internal solidarity systems, formed committees to represent them in dealings with the prison administration, and succeeded in turning their cells into schools, teaching each other in various fields such as language, history, jurisprudence and even law. The prisoners also carried out dozens of collective hunger strikes, which served as a means of pressuring the occupation authorities to improve their living conditions, end solitary confinement, or enable them to receive medical treatment.

The prisoners also devised ways to communicate with each other away from the Israeli guards' surveillance, they developed a special code language for communicating and exchanging messages, and used secret words that the guards could not understand. The prisoners live under rough circumstances, and they consequently coin new terms to reflect the cruelty of their situation and color their anti-language with interestingness, forcefulness, and emotiveness.¹ This language was part of their silent resistance, aimed at maintain morale, affirming national identity, and strengthening solidarity among prisoners.

Given this long history of oppression and abuse, the issue of Palestinian prisoners remains one of the most sensitive issues from both a legal and humanitarian perspective. It reflects not only the extent of Israel's violations of international law, but also embodies the organized resistance of Palestinians in the face of occupation policies, despite all the torture, neglect and systemic oppression they have been subjected to.

1.1.2.2 International Legal Framework for the Protection of Palestinian Prisoners (Focusing on Geneva Conventions, ICCPR, and CAT as applied to Palestinian Detainees)

Since Israeli occupation started began administering Palestinian territories, the relationship between international law and Israel's detention and treatment of Palestinian prisoners has been a source of constant tension between international legal theory and reality on the ground. In this context, international legislators have attempted to establish legal protections for detained persons, both in the context of armed conflict and in the

¹ Akrama, S. (2022). Palestinian Inmates Jargon in Israeli Jails: A Pragmatic Account. *Arab Journal for the Humanities*. 40 (160), p 290.

context of general human rights. However, the application of these protections to Palestinian detainees has faced many challenges and restrictive interpretations.

First: The Geneva Conventions and their Provisions Relating to Prisoners and Detainees:

General protection under international humanitarian law

The 1949 Geneva Conventions form the cornerstone of international humanitarian law, as they aim to protect persons who do not or no longer participate in hostilities, including prisoners and detainees. International humanitarian law assumes that in situations of conflict, whether international or raging in occupied territories, specific rules apply to protect persons in the custody of one of the parties.

In this context, it is important to note that Article (3) common to the four Geneva Conventions constitutes the minimum common standard of protection in non-international or international conflicts, stipulating that all detained persons must be treated humanely and prohibiting torture, cruel or degrading treatment, executions without a fair trial, threats, physical or mental abuse. This Article, as a “minimum standard”, is likely to be applicable in the case of the Palestinian-Israeli occupation and conflict (since the conflict is an armed conflict under occupation).

Moreover, the Geneva Conventions contain provisions specific to civilians in occupied territories (the Fourth Convention). Article (4) of the Fourth Convention defines persons entitled to protection as “members of the civilian people” who find themselves under the authority of an occupying power, and they cannot be deprived of protection if they are not nationals of the occupying power. Article (32) of the Fourth Geneva Convention also prohibits “any act of a nature to cause physical or mental suffering” such as torture, cruel treatment, corporal punishment, or unnecessary medical experiments. Furthermore, Article (85) of the Fourth Convention obliges the occupying power to take all necessary measures to accommodate detainees in places with adequate sanitary conditions, to provide protection against climate conditions, and to take into account health and hygiene aspects.

Implementing the previous provisions theoretically, these international provisions should apply to Palestinian prisoners as “protected persons” under the Fourth Convention, as long as they do not belong to the nationality of the occupying power, are in occupied

territory, and are not protected by combatant status (i.e., most prisoners from the Gaza Strip “Palestinian fighters”, West bank and Jerusalem are not “prisoners of war” in the strict sense). In other words, Palestinian prisoners should enjoy the protection of the Fourth Convention, particularly with regard to humane treatment, prohibition of torture, provision of medical care, and acceptable conditions of detention.

However, the reality is different. Israel often raised reservations or special interpretations in its practice and legal policy regarding the application of the Fourth Convention in the West Bank and Gaza Strip, claiming that these territories are not “occupied territories” in the legal sense or that the inhabitants are not “fully protected civilians” according to its own interpretation. These interpretations are widely disputed by human rights organizations and the International Committee of the Red Cross, which assert that the Fourth Convention applies to the territories occupied since 1967. Furthermore, certain practices such as collective punishment (e.g., destruction of the homes of relatives of prisoners) are in clear violation of Article (33) of the Fourth Geneva Convention, which prohibits collective punishment or reprisals against individuals who have not themselves committed any action or crime.

Based on the illustrated before, it is clear that the Israeli occupation authority has ignored these international obligations by carrying out mass arrests, overcrowding prison cells, imposing solitary confinement and systemic torture, and failing to provide adequate medical care and sanitary conditions, in flagrant violation of the Geneva Conventions.

The Status of Prisoners: Prisoner of War or Civilians Under Protection?

It is recognized in international humanitarian law that the status of “prisoner of war” applies only under limited circumstances: in an international conflict, if the detainee is a member of the armed forces or an armed group that meets certain requirements, such as having a command structure, wearing a distinctive uniform, complying with the laws of war, etc. These individuals are granted special rights under the Third Geneva Convention, such as protection from mutilation, the right to communicate with their families and a special trial system.

Also, International Humanitarian Law recognizes that civilians detained for security reasons may be treated as interned civilians under the provisions of the Fourth

Geneva Convention, rather than as combatants. For Palestinian prisoners, specifically prisoners from the Gaza Strip, West Bank and Jerusalem, it can be noted that they fall under this category “ordinary detainees/civilian detainees” and that their treatment should be governed by the provisions of the Fourth Convention. This distinction is important because it means that Israel must comply with the conditions imposed by the Fourth Geneva Convention on treatment in any judicial proceeding, rather than applying the standards of “war” simply on the basis of security justifications.

However, the majority of Palestinian prisoners are not classified by Israel as civil prisoners, but rather as “security detainees” or “terrorists”, a classification that is seen as depriving them of some of the additional protections afforded by the Fourth Geneva Convention. This policy suggests that Israel does not grant Palestinian prisoners full prisoners privileges, but treats them as criminal detainees within the framework of internal security.

Second: International Covenant on Civil and Political Rights (ICCPR):

The International Covenant on Civil and Political Rights, which entered into force in 1976, is an important pillar of international human rights law. It obliges states parties to protect fundamental rights of the individuals, including the right to liberty, the right to a fair trial, the right to protection from torture or cruel treatment, the right to equality before the law.

Article (7) of the Covenant states that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”. This provision constitutes an absolute prohibition and cannot be restricted by security or emergency circumstances. Any practice of torture or ill-treatment of prisoners constitutes a direct violation of the Article.

Article (9) protects the right to liberty and security of person: “Everyone has the right to liberty and security of person. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law...”. The Article also obliges the state to ensure that any arrest it carried out legally, that it is not arbitrary, and that the detained person is given the right to have his case reviewed by a court. In the context of Palestinian prisoners, many arrests were carried out without

adequate legal notice and were based on administrative orders without trial, which is a violation of Article (9).

Article (10) requires that prisoners must be treated humanely and with respect for their dignity. This provision relates directly to prison conditions, the provision of health care, hygiene, food, lighting, ventilation, and other requirements for adequate accommodation.

Article (14) on the right to a fair trial: The legal framework for trials, such as the presumption of innocence, the right to defense, access to a lawyer, the right to a transparent trial, and the inadmissibility of evidence obtained through torture, guarantees these rights. When looking at Palestinian prisoners, it is clear that Israeli occupation military courts do not adhere to these guarantees when trying Palestinians, particularly in cases of military trials or security charges.

Article (2) obliges states parties to take effective measures to compensate victims if their rights have been violated, including adequate compensation, recognition and redress. This provision is important concerning the Israeli violations occurred against Palestinian prisoners.

Although Palestine is not a signatory to the Covenant, Israel is a party to the Covenant. The principle of international obligation indicates that even non-party states may be subject to universally accepted human rights principles (Customary International Law). The Covenant can also be used as a normative standard in any case before human rights bodies or the international community to hold Israel accountable for violations against Palestinians as human beings with rights guaranteed by international law.

Third: The Convention Against Torture (CAT):

Israel ratified the Convention against Torture in 1991, making it part of its international legal obligations. This convention is a central tool for deterring torture and providing remedies for victims.

The Convention against Torture obliges States Parties, under Article 2 to take all necessary legislative, administrative, and judicial measures to prevent acts of torture in any territory under their jurisdiction, meaning that Israel must amend or enact domestic

laws consistent with this obligation. Also, Article 4 explicitly criminalizes torture and obliges national legislators to criminalize such acts and impose appropriate penalties on perpetrators.

Article 12 adds an obligation on the state to conduct an immediate and impartial investigation whenever there are reasonable grounds to believe that torture has occurred, emphasizing the need for independent oversight and inspection mechanisms, as well as training for law enforcement officials and prison officers on the prevention of torture. Moreover, Article 13 gives any person who claims to have been subjected to torture or cruel treatment the right to lodge a complaint with the competent authorities, while ensuring effective protection during the examination of the complaint and guaranteeing that it is investigated seriously and promptly.

Finally, Article 16 obliges States Parties to prevent all forms of cruel, inhuman, or degrading treatment or punishment, even in cases that do not amount to torture in the strict sense, thus emphasizing the comprehensive nature of legal protection for human dignity within the framework of the Convention.

In the Palestinian case, these provisions are supposed to apply to Palestinian prisoners, given that they are in the custody of the Israeli occupation state, which has ratified the Convention. They are supposed to have access to legal mechanisms for redress, such as filing formal complaints in Israeli courts. However, many Palestinian prisoners did not have access to these procedures, faced difficulties in accessing an independent court, or found that internal investigations were effectively dead. However, Israeli occupation authority, upon ratification, entered reservations on certain articles such as Article (20) and Article (30) relating to the ability of the Committee against Torture to conduct visits or adjudicate disputes between it and other states. This has effectively limited the powers of relevant international bodies to intervene in Palestinian complaints against Israel.

Overall, the Convention against Torture provides a strong legal framework for protecting prisoners from torture and ill-treatment, and it supports the corresponding Articles in Geneva and the International Covenant.

1.2 The Israeli Position on the Legal Status of Civilian Detainees.

1.2.1 Israeli Policy Toward the Prisoners

1.2.1.1 Non-Recognition of Civilian Detainees / Ordinary Prisoners

From a legal perspective, Palestinians in the Gaza Strip, West Bank and East Jerusalem are subject to a long-term military occupation. This occupation has been recognized by the United Nations and the International Court of Justice, particularly in its 2004 advisory opinion on the Separation Wall, which confirmed that the West Bank, including East Jerusalem, is occupied territory and that Israel, as the occupying power, has legal obligations towards the civilian population under international humanitarian law and human rights law. Based on this characterization, any form of resistance against this occupation cannot simply be classified as “terrorism” as Israeli occupation authority claims, but must be viewed within the broader context of popular and armed resistance to occupation, which is grounded in customary international law and United Nations General Assembly resolutions that have repeatedly affirmed “the right of peoples under occupation to self-determination and to resist occupation by all legitimate means”.

In this context, Israeli occupation systematically denies the legal status of Palestinian combatants in its custody, whether those engaged in armed resistance, as in Gaza, or those participating in forms of civil or popular resistance, as in the West Bank and East Jerusalem. In both cases, Israel refuses to consider them as “civilian prisoners” or even as legitimate combatants, and criminalizes and prosecutes them based on its domestic laws, such as the “Anti-Terrorism Law”, many of whose provisions contravene the fundamental principles of international humanitarian law.

In the Gaza Strip, Palestinian resistance fighters are attempting to counter Israeli weapons with armed clashes against Israeli occupation. The legal status of the conflict must be interpreted as a “non-international armed conflict” according to international legal standards, especially when considering the nature of Israel’s continued control over airspace, sea space, crossings and resources. Therefore, Palestinian combatants who are captured during military operations must be treated at a minimum as “protected persons” in accordance with the provisions of Article (3) Common to the Geneva Conventions, which applies to non-international conflicts. Article (3) stipulates that persons who do not

take direct part in hostilities, or who have ceased to do so, must be treated humanely without any adverse distinction. This includes a prohibition of attacks on life and physical integrity, torture, degrading treatment, and trial without fair judicial guarantees. The general protection of prisoners consists of a set of actions that the detaining state authorities are prohibited from taking against prisoners during their captivity, not because they are prisoners, but because they are human beings. This protection imposes the necessity of preserving the prisoner's person and dignity¹.

Although Israeli occupation is not a party to Additional Protocol II to the Geneva Conventions, which regulates non-international armed conflicts in more details, its provisions are now considered part of customary international law and therefore remain binding on Israel. Moreover, civilians who are protected are not only peaceful civilians, but also civilians who have participated directly in hostilities against the occupying power. No one who finds themselves subject to the authority of a party to an international armed conflict can fall outside the scope of protection under international humanitarian law². Palestinian resistance fighters who are captured cannot be considered “terrorists” simply just because they took up arms against an occupying power. On this basis, Israeli occupation refusal to recognize them as legitimate combatants or civilian detainees, and its insistence on trying them before special military courts, constitutes a clear violation of international law.

When it comes to the West Bank and East Jerusalem, the legal challenge is more complex, as it concerns individuals who did not participate in direct combat operations, but rather engaged in various forms of civil and popular resistance, “the vast majority of detainees were arrested for belonging to resistance factions, but not during resistance operations. Among them are children, women, and elderly people who were arrested while passing through Israeli military checkpoints that divide Palestinian territories, or people who were arrested for writing posts on Facebook supporting armed resistance, which is legal under international law. These individuals are subject to the Fourth Geneva Convention on the protection of civilians”³, which regulates the protection of civilians

¹ (Houbah, 2020, p.273).

² Shtayah, M. (2022). The Role of International Courts in Protecting Palestinian Prisoners and Detainees in Israeli Prisons. *Al Istiqlal University Research Journal*.

³ Ibid, Shtayah, M. (2022). The Role of International Courts in Protecting Palestinian Prisoners and Detainees in Israeli Prisons. *Al Istiqlal University Research Journal*.

under occupation. Nevertheless, Israeli occupation authority insists on prosecuting them in military courts, issuing harsh sentences against them, and restoring to prolonged administrative detention without clear charges, all under the pretext of “threatening public security”.

Criminalizing civil resistance, especially in the context of occupation, is a flagrant violation of the most basic principles of international law. Article (33) of the Fourth Geneva Convention prohibits collective punishment and any form of reprisal against civilians. Freedom of expression, freedom of demonstration, and freedom to engage in peaceful political activity are all rights guaranteed under the International Covenant on Civil and Political Rights, which Israel has ratified and is therefore obliged to apply in the occupied territories. However, Israel systematically suppresses these rights, treats civil activists as “saboteurs” or “inciters”, and uses these labels to justify ongoing violations of their legal rights.

The Israeli treatment of Palestinian prisoners, whether they are combatants or civilians, not only fails to recognize their correct legal status, but also pursues deliberate policies aimed at stripping them of their political status and turning them into “criminal offenders” in an attempt to change the legal and political narrative of the conflict. This is clearly evident in its discourse before the international community, where it refuses to recognize the existence of “political prisoners” or “resistance prisoners” and insists on classifying them all as “terrorists”. This approach constitutes a fundamental violation of internationally recognized principles regarding the state of conflict, particularly the principle of distinguishing between combatants and civilians, and between legitimate acts of hostility and criminal offences.

In addition, there are growing calls from human rights organizations and the international community to recognize the special status of Palestinian prisoners and the need to hold Israel legally accountable for its violations. However, Israeli occupation refuses to allow fact-finding missions or international observers to visit detention centers, which exacerbates the violations and makes it difficult to document them effectively. This concludes the fact that Israeli occupation insistence on refusing to recognize Palestinian prisoners as legitimate combatants or civilians protected under international law, in addition to its continued use of unfair labels such as “terrorists”, not only reflects a legal violation but also perpetuates a policy of impunity.

1.2.1.2 Political and Legal Allegations for Israel's Refusal of Recognition

In its official positions and legislative policy, Israeli occupation adopts a number of claims and justifications aimed at limiting its commitment to international standards relating to prisoners, and to deny or restrict recognition the status of Palestinians as civilian protected detainees, claiming that the Palestinian situation differs from classic models of armed conflicts and that it has “political and security” justifications that prevent the application of those standards. These claims relate to the status of the occupied territories themselves, the nature of the warring parties, the binding or non-binding legal frameworks for resistance movements, and the reliance on Israeli domestic law as the exclusive reference for resolving the issue of prisoners.

The first of these claims is Israel's interpretation of the legal status of the Palestinian territories occupied since 1967, whereby Israeli occupation authority claims that these territories are not “occupied territories”, but rather territories that are “not subject to the sovereignty of a recognized state” or, as some describe them, “disputed territories”¹. As a result of this claim, Israel claims that the traditional legal description of occupation does not apply to it, as it is not considered an occupying power in the full legal sense, but rather exercises security and military control in the context of a dispute that does not recognize any presumed sovereignty over this land. Based on this Israeli allegation, Israel attempts to claim that it is not fully bound by the rules of occupation as in classic cases of occupation between states, thereby attempting to weaken the principle of applying the Geneva Conventions to it as an occupying power with clear obligations towards the occupiers Palestinian civilians.

This allegation is closely linked to the Israeli occupation's refusal to recognize the existence of an armed conflict between Israel and Palestinian fighters, and its persistent claim that it is waging a “war on terror” or a “war of self-defense” against elements it describes as terrorists.² In this context, Israeli occupation attempts to frame the conflict as an internal security-criminal matter or a fight against terrorism, rather than an armed conflict. Therefore, it proceeds from the premise that Palestinian fighters are not a state or a regular force, but rather groups outside the law that are treated as gangs or terrorist

¹ Ibid, Prisoners of War and International Humanitarian Law: The Case of Palestinian Prisoners, p. 271.

² Ibid, p. 271.

organizations, in addition to their claim that they, Palestinian fighters, “do not deserve the legal protection granted to prisoners in international armed conflicts under the provisions of the Geneva Conventions”. This excludes their recognition as civilian detainees and shifts their treatment to the realm of criminal law or counterterrorism within the domestic framework.

Israeli occupation reinforces this legal allegation by criticizing the nature of its legal obligations under international agreements, it claims that the Geneva Conventions and other international conventions are binding only on states that have signed them, and not on non-state actors that do not represent sovereign states.¹ In other words, Israeli occupation refuses to be held directly accountable in its relations, preferring instead to place the burden of applying standards on the states that have signed the Conventions among themselves, rather than applying them directly to a non-state party (specifically referring to Palestinian prisoners from the Gaza Strip). Based on this, Israel separates its international obligations towards states from its dealings with Palestinian resistance fighters, claiming that the Palestinian fighters are not legitimate parties to the international conflict. This means that many of the provisions of the Geneva Conventions will not be applied to them during armed conflicts.

Therefore, “to ensure the broadest possible application of international humanitarian law, the 1949 Geneva Conventions and their 1977 Additional Protocols use the neutral term *parties to the conflict* to refer to both State and non-state actors taking part in hostilities. This term replaces in modern legal vocabulary that of *belligerent*, which remains in common use to designate individuals, groups, or States engaged in an armed conflict. However, armed conflicts are not confined to confrontation between official armed forces of States that have recognized their mutual existence. In the case of non-international armed conflicts, one of the parties is a non-state armed group whose authority and existence may not be officially recognized. The non-state nature of those actors prevents them from signing international conventions on humanitarian law, yet it is crucial that the implementation of humanitarian law not be delayed by debates over the legal status of belligerents.”²

¹ Ibid, p.271.

² Medecins Sans Frontiers, The Practical Guide to Humanitarian Law, available at: [Doctors without borders | The Practical Guide to Humanitarian Law.](#)

Moreover, Israeli occupation authority points out that Palestinian resistance movements do not adhere in their practical conduct to recognized standards of warfare¹, such as the rules of distinction between civilians and combatants, the protection of prisoners, or the treatment of captured combatants in accordance with international humanitarian law. However, the exact opposite of what Israeli occupation claims as stated before, the Palestinian fighters took care of Israeli captured persons during the last Israeli aggression on the Gaza Strip (after October the Seventh, 2023), which was obvious during the prisoners' exchange deals, comparing the health of the Israeli prisoners to the situation and bad health Palestinian prisoners were at after they were released. Therefore, according to Israeli occupation view, since these organizations lack formal military organization, or operate without traditional lines of command or regard for the norms of war, they are excluded from full legal entitlement to "prisoners of war" status. Israel uses this claim to justify that its harsh treatment against Palestinian prisoners, specifically those who participate in resistance acts, does not constitute a violation of the rules of war, as it is dealing with what it classifies as "illegal elements".

Furthermore, Israel insists on rejecting the application of international law (international humanitarian law or international human rights law) to the issue of prisoners as long as Israeli domestic law can resolve it. Israel extends the scope of its domestic law to claim that it encompasses (through its legislation and Israeli court rulings) a necessary rules of international custom and required humanitarian guarantees, such that it sees no need to refer the Palestinian prisoner's treatment issue to international courts or bodies. In other words, Israeli occupation says that Israeli law alone is sufficient to understand and apply the rights and duties relating to prisoners within its control, but in a form that include the necessary legal framework to take humanitarian standards into account, without explicitly recognizing them as prisoners of war in most legislation. This position gives Israel the flexibility in applying or interpreting prisoners' rights within its legal system without being fully subject to direct international accountability or linking its practices to cases before international courts, as long as Israeli legislation is considered the highest authority in this context.

All these mentioned Israeli claims (an unconventional interpretation of the status of the territories, denial of the existence of an armed conflict, allegations that

¹ Ibid, p. 271.

resistance movements violate the rules of war, refusal to submit to international law while relying on domestic law, and questioning the legal legitimacy of Palestinian prisoners) forms a coherent Israeli framing system that aims to insulate itself from international obligations that might burden its security policies, while creating a bespoke legal framework that it controls internally. At the same time, Israeli occupation authority bases its positions on claimed security concerns, arguing that it cannot abandon them in favor of international obligations that may restrict its ability to counter threats as it perceives them. Therefore, Israel oscillates between asserting its absolute sovereignty in applying domestic law and claiming that the measures it takes are part of an imposed concept of national security and counterterrorism, rather than an international conflict and a resistance movement in the face of an occupation that subjects it to a strict regime of obligations that it believes may hinder it.

To conclude, based on the illustrated before, Israel is working to formulate a systemic legal and political narrative aimed at completely disclaiming its obligations towards Palestinian prisoners and denying them their legal status as civilian detainees, by distorting the fundamental principles of international humanitarian law and circumventing its established rules. Israel persists in replacing binding international legal references with an internal legislative system that it considers sufficient to resolve prisoner issues, which is a flagrant violation of the principles of international law, which does not allow an occupying power to subject prisoners and persons protected under its military authority to its national legislation as an alternative to its international obligations, in addition to the fact that “arrest, detention or imprisonment may only be carried out in strict accordance with international law and by competent officials or persons authorized to do so”¹. This approach allows Israel to impose punitive and repressive measures against Palestinian prisoners without adhering to international humanitarian standards. With the escalation of these violations due to the lack of decisive intervention by the international community to address these practices, attacks on prisoners are increasing day by day and Israel is being given the implicit cover to continue its assaults and policies of impunity.

¹ Ibid, *War Crimes and The Crimes of Aggression*, p. 174.

1.2.1.3 The Policy of Administrative Detention and its Impact on the Legal Protection of Palestinian Prisoners

The policy of detention implemented by the Israeli occupation authorities is one of the most horrific methods used by the Israeli occupation since its occupation of the territories of the State of Palestine, which aims at humiliating the Palestinian people and undermining their dignity. The Israeli occupation has arrested hundreds of thousands of Palestinians, including men, women, children and old people. The number of administrative detainees currently stands at around 3,577 (as of 14 October 2025)¹, without regard for the most basic human rights requirements in its treatment of Palestinian prisoners. This recently led to the death of 22-year-old administrative detainee Ahmad Khudairat from Hebron, who was arrested on 23 May 2024².

The most important pillar of the Israeli occupation has been its policy of systematic administrative detention, which is a clear and explicit example of the occupation's violation of the most basic rules of the international humanitarian law relating to the treatment of the prisoners and peoples under occupation. The occupation has granted itself the power to detain individuals without any time limit, without informing the detainee of the reason for their detention, without regard for the most basic principles and guarantees of a fair trial, such as oral and visual proceedings, and without even providing and impartial and independent body to review administrative detention orders³.

In the Palestinian cause under the Israeli occupation, administrative detention has emerged as one of the most prominent tools used by the occupation authorities, not only for security control but also to reduce the legal guarantees granted to the Palestinian prisoners and detainees. The historical origin of administrative detention is the British Emergency Law, which was issued in May 1945 and later repealed by Britain⁴. They included, in part, provisions against illegal immigration, establishing military tribunals to try civilians without granting the right of appeal, allowing sweeping searches and

¹ Commission of Detainees and Ex-Detainees Affairs.

² Ibid, Commission of Detainees and Ex-Detainees Affairs, available at: <https://www.cda.gov.ps/index.php/ar/ar-news-2/21235-2025-10-12-05-33-01>.

³ Khalid, GH. (2017), Administrative Detention Policy Between International Humanitarian Law and Israeli Practices. *Journal of Law*. 41 (2), 353-392.

⁴ Shtayah, M. (2022). The Role of International Courts in Protecting Palestinian Prisoners and Detainees in Israeli Prisons. *Al Istiqlal University Research Journal*. 7 (2), p. 38.

seizures, prohibiting publication of books and newspapers, demolishing houses, detaining individuals administratively for an indefinite period, sealing off particular territories, and imposing curfew¹. However, the Israeli occupation authorities used this law as a legal basis to legitimize administrative detention orders following their occupation of Palestinian territories in 1967. The Israeli occupation authorities applied the British Emergency Law and Issued Military Order 378 of 1970 regarding the system (administrative detention)².

Administrative detention is generally defined as the deprivation of a person's liberty based on an order issued by the executive authority, rather than the judicial authority, without criminal charges being brought against the detainee³. It is also defined as detention without charge or trial based on what is known as a secret file and the claim that the Israeli security services have secret evidence. The secret file is fabricated charge brought by the Israeli occupation authorities against Palestinians, on the basis of which they are detained administratively for an indefinite period without any right to legal proceedings⁴.

Legally, the legitimacy of the administrations issuing administrative detention orders is based on provisions in Israeli domestic law and military legislation in the West Bank, such as Military Order 1651 regarding security provisions, which allows military orders and military administrations to detain individuals for up to three-six months, extendable by a military commander if he deems it necessary for "public security"⁵. Similarly, the Incarceration of Unlawful Combatants Law 5762-2002 is used in certain contexts as a legal tool to detain Palestinians without trial, on the grounds they are "unlawful combatants" or pose a security threat, even if no action of resistance which they define as a "crime" is proven against them under conventional criminal law. According to the Israeli occupation authority, this law is "intended to regulate the incarceration of unlawful combatants not entitled to prisoner-of-war status, in a manner

¹ Defense (Emergency) Regulations, report by The Israeli Information Center for Human Rights in the Occupied Territories (B'TSELEM), available at: [Defense \(Emergency\) Regulations | B'Tselem](#).

² Ibid, The Role of International Courts in Protecting Palestinian Prisoners and Detainees in Israeli Prisons.

³ Ibid, Administrative Detention Policy Between International Humanitarian Law and Israeli Practices, p. 359.

⁴ Ibid, Administrative Detention Policy Between International Humanitarian Law and Israeli Practices, p. 359.

⁵ Francis, S. (2024). Silence: A Legal Emergency in the Shadow of Genocide. *Journal of Palestine Studies*. (137), available at: [صمت: حالة طوارئ قانونية في ظل عمليات الإيذاء | مؤسسة الدراسات الفلسطينية](#).

conforming with the obligations of the State of Israel under the provisions of international humanitarian law”¹.

Furthermore, it defines an unlawful combatant as: “a person who has participated either directly or indirectly in hostile acts against the State of Israel or is a member of a force perpetrating hostile acts against the State of Israel, where the conditions prescribed in Article 4 of the Third Geneva Convention of 12th August 1949 with respect to prisoners-of-war and granting prisoner-of-war status in international humanitarian law, do not apply to him; "prisoner" means a person incarcerated by virtue of an order issued by the Chief of General Staff pursuant to the provisions of this Law.”² This legislation, along with the other emergency laws and military orders, allows for administrative detention without effective trial or known charges. These laws are explicitly considered as violations of international principles and international humanitarian law, yet Israeli occupation views them as a necessary for security reasons.

Under international humanitarian law and human rights conventions, administrative detention is only acceptable in exceptional circumstances and in accordance with strict conditions. To make this point clearer, Article (78)³ of the Fourth Geneva Convention allows the occupying power to take measures such as deportation and administrative detention if it considers that security requires it for urgent reasons. However, this Article stipulates that such measures must be exceptional and used only when no less harmful legal means are available to achieve the security objective. Also, there are other obligations under international human rights treaties such as the International Covenant on Civil and Political Rights, which requires states to guarantee every accused person several rights, as it stipulates that “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his

¹ Incarceration of Unlawful Combatants Law 5762-2002, available at: [IncarcerationLaw.pdf](#).

² Ibid, Article (2) of Incarceration of Unlawful Combatants Law 5762-2002.

³ Article (78) of Fourth Geneva Convention: “If the Occupying Power considers it necessary, for imperative reasons of security, to take safety measures concerning protected persons, it may, at the most, subject them to assigned residence or to internment. Decisions regarding such assigned residence or internment shall be made according to a regular procedure to be prescribed by the Occupying Power in accordance with the provisions of the present Convention. This procedure shall include the right of appeal for the parties concerned. Appeals shall be decided with the least possible delay. In the event of the decision being upheld, it shall be subject to periodical review, if possible every six months, by a competent body set up by the said Power. Protected persons made subject to assigned residence and thus required to leave their homes shall enjoy the full benefit of Article 39 of the present Convention”.

liberty except on such grounds and in accordance with such procedure as are established by law”¹. Moreover, Paragraph (2) of Article (9) of this Covenant insists that “Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him”². Hence, these principles require the right to a fair trial, the right to know the charges against them, the right to be tried by an independent and impartial court, and the right to a defense. Any use of administrative detention must respect these rights and not override them.

Accordingly, “No one shall be held in custody without being given a real opportunity to make a statement as soon as possible before a judicial or other authority. A detained person shall have the right to defend himself or to obtain the assistance of a lawyer in the manner prescribed by law. The detained person and his or her lawyer, if any, shall be given full information about any detention order and the reasons for it, and a judicial or other authority shall have the power to review the continued detention as appropriate”³.

The practical reality of administrative detention against Palestinian people by Israeli occupation reveals a significant gap between the actual practice of domestic legal provisions adopted by the Israeli occupation authority and the international obligations. The number of administrative detainees is steadily increasing, reaching about 3,577⁴ (until date: 17 October 2025). Palestinian administrative detainees are not informed of the charges against them, are not shown the evidence on which their detention is based, are not afforded the right to a full defense, and have their detention orders repeatedly extended, resulting in indefinite detention. Administrative detainees are faced with big charges which, when heard, suggest that they will never be released from prison. This intended horror and exaggeration of charges lead to frustration among detainees who might be accused of being militant activities in military wings and movements⁵, in addition to the fact the “Israeli occupation authorities force Palestinian prisoners and

¹ Paragraph (1) of Article (9) of International Covenant on Civil and Political Rights (ICCPR).

² Paragraph (2) of Article (9) of International Covenant on Civil and Political Rights (ICCPR).

³ (Al-Fatlawi, 2011, p.175).

⁴ -Commission of Detainees and Ex-Detainees Affairs.

⁵ Ramawi, O. (2013). Psychological Effects of Administrative Detention on Palestinians. *Journal of Arab Studies in Education and Psychology*. 34 (1), 1-23, available at: [دراسات عربية في التربية وعلم النفس](#).

detainees to confess to crimes they did not commit so that they can carry on torturing and imprisoning them”¹

This reality is also reflected in the most vulnerable groups: women, children, human rights defenders, activists, and students. Many of them are held in administrative detention, while the “confidentiality” of evidence is used as a justification for refusing to disclose it to their families or lawyers. This detention is even used as a means of psychological pressure, retaliation, or silencing civil or political voices. The military court or competent judiciary often merely conducts a formal review of administrative detention, without ensuring that there is accountable evidence or a minimum level of transparency.

Therefore, administrative detention against Palestinian people not only constitutes a violation of the rights of the detained people, but is also used as a strategic political and practical tool. It allows the Israeli occupation authority to maintain control by holding people for years without trial, which instills fear and pessimism within the Palestinian people, specifically prisoners, and weakens the ability of civil organizations to operate. What is more is that it is used as a deterrent to curb activists, journalists, or even family members of prisoners, while administrative orders are used for political pressure or punishment.

1.2.2 Legal Consequences of Non-Recognition

1.2.2.1 Israeli Occupation Violations of Fourth Geneva Conventions

The Fourth Geneva Convention of 1949 was established to protect civilians in times of war and military occupation. Article (2) of the convention stipulates that it applies in all cases of war or occupation, even if war has not been formally declared. Its applicability to the occupied Palestinian Territory, including the West Bank, Gaza Strip and East Jerusalem, is legally established by United Nations resolutions and the International Committee of the Red Cross, which has repeatedly affirmed that Israel is considered an occupying power to which the full obligations of the Convention apply with regard to the Palestinian people.

¹ Ibid, The Israeli violations of Palestinian Prisoners Rights, p.6.

Article (4) of the Convention defines protected persons as those who are at any time and in any manner whatsoever under the authority of a party of the conflict or an occupying power of which they are not nationals. This definition includes Palestinian civilians, detainees and resistance combatants who are in the hands of the Israeli occupation forces. Therefore, all Palestinian prisoners, whether civilians, administrative detainees or resistance fighters who have participated in resistance movements against the Israeli occupation, are protected persons under this Convention and must be treated in a manner that preserves their dignity and humanity.

Israeli violations begin at since the first moment of arrest, as Israeli occupation forces launch arrest campaigns indiscriminately and on a large scale against Palestinians often between the age of 16-45, especially at night, using excessive force to terrorize Palestinians. This Israeli occupation acts is applied on the West Bank and East Jerusalem nearly every day, in addition to the fact that it applied it on Palestinians in the Gaza Strip as an act to collect as much people as they can, as well under their pretext of searching for Palestinians who have joined the resistance acts, calling them “terrorists”.

During arrests, Israeli occupation forces, whether special units, soldiers or police, use various means of repression, collective intimidation and collective punishment against detainees, their families, neighbors and even entire neighborhoods, including searches, raids and assaults¹. For example, In the case of prisoner Saad Husam al-Faqih, who was arrested on 3 March 2016 in the city of Nablus, during his arrest, soldiers forced him to walk approximately 200 meters with his hands tied behind his back with plastic ties until he reached a military transport vehicle, where he was blindfolded and violently and painfully beaten for 20 minutes. After arriving at the Huwara detention center, a soldier suddenly punched him directly in the stomach, causing him to vomit on the ground from the force of the assault². This behavior is a violation of Common Article (3) of the Geneva Conventions, which prohibits attacks on the life and physical integrity of persons not directly participating in hostilities, and prohibits torture and cruel and degrading treatment.

¹ Prisoner Support and Human Rights Association (2017), *Report on Violations of the Rights of Female and Male Prisoners in Occupation Prisoners 2016*. Palestine. P.18.

² Ibid, p.18.

Additionally, one of the most prominent Israeli violations is the transfer of Palestinian prisoners from the occupied Palestinian territories to prisons inside lands occupied by Israel (officially under the Israeli rule), which deprives them of family visits and contact with their lawyers. This transfer constitutes a violation of Article (76) of the Fourth Geneva Convention, which stipulates that protected persons that are detained shall be detained within the occupied territory itself. It also carries out arbitrary forced transfers between prisons without genuine security justifications, sometimes late at night and in humiliating conditions. This conduct violates Article (49) of the Fourth Geneva Convention, which prohibits individual or collective forced transfers outside the occupied territories for any reason. Furthermore, as illustrated in the first subsection of this section, Israeli occupation employs the policy of administrative detention, whereby Palestinians are held without charge of fair trial for open-ended periods that are automatically renewed. This contravenes Article (78) of the Fourth Geneva Convention, which permits administrative detention measures only when strictly necessary for security reasons and requires periodic judicial review of such measures.

Moreover, the Israeli occupation authority restrict the International Committee of the Red Cross's access to places of detention or prevent it from conducting regular and comprehensive visits, thereby hindering international monitoring of detention conditions. This is contrary to Article (143) of the Fourth Geneva Convention, which guarantees the ICRC the right to visit detainees and inspect their conditions without arbitrary restrictions.

Palestinian prisoners also suffer from deliberate medical neglect, with delays in providing necessary treatment for chronic or emergency conditions, leading to a deterioration in their health. This Israeli practice violates Article (91) of the Fourth Geneva Convention, which stipulates that detainees must be provided with adequate medical care and health facilities. Added to this are the Israeli violations of nutrition, as prisoners complain about poor quality of the food provided to them, the inadequate quantity and the lack of essential nutrients. This constitutes a clear violation of Article (89) of the Fourth Geneva Convention, which obliges the occupying power to provide adequate and balanced food to detainees in order to maintain their health.

Furthermore, the Israeli occupation prison administration resorts to imposing collective punishments within prisons, such as denying entire sections visits or reducing meals due to the actions of individuals or just as form of punishment concerning situations

in the outside. This type of punishment is contrary to Article (33) of the Fourth Geneva Convention, which prohibits collective punishments in absolute terms, as well as all measures of intimidation or terror.

Palestinian prisoners are also denied the right to education in detention centers, and their access to books or participation in educational activities is restricted. In addition, some are prevented from freely practicing their religion. These practices violate Article (38) of the Fourth Geneva Convention, which affirms the right of protected persons to practice their religion and provides for the necessary facilities for education. In many cases, prisoners' personal belongings were confiscated at the time of their arrest and not returned later, including money, documents and small items that might remind them of their families (especially their children). This practice contravenes Article (18) of the Third Geneva Convention, which stipulates that personal belongings remain the property of the prisoner and may only be confiscated for clear and limited security reasons.

Among the recurring violations is the prevention of lawyers from meeting with detainees or accessing their legal files, which undermines the right to defense. This violates Article (71) of the Fourth Geneva Convention, which stipulates that detainees must be informed of the reasons for their arrest and allowed to defend themselves with the assistance of a competent lawyer.

With regard to Palestinian detained children, they are treated as adults and denied any special treatment that takes into account their age or psychological and educational needs. These violations contravene the fundamental principles of Article (77) of Additional Protocol I to the Geneva Conventions, which requires the protection of children and their humane treatment in detention.

Finally, Israeli occupation does not provide any effective redress mechanism for released prisoner, nor does it offer them compensation for the physical or psychological harm they have suffered or the loss of their rights during detention. This constitutes a failure to comply with Article (131) of the Third Geneva Convention, which maintains the responsibility of the detaining state even after the release of prisoners and obliges it to guarantee their rights and dignity thereafter.

It is clear from the above that Israeli violations of the rights of Palestinian prisoners are not merely isolated incidents or exceptional cases, but rather represent a systematic pattern and institutional policy based on the denial of the legal protection afforded by the Geneva Conventions, specifically the Fourth Geneva Convention. Disregard for these Conventions through failure to recognize Protected Civilian Detainees status, constitutes a clear breach of international law and, in many respects, amounts to grave breaches that are considered war crimes under international humanitarian law. The continuation of these practices in the absence of legal accountability perpetuates a climate of impunity and undermines the principles of international justice. Therefore, the international community, including the High Contracting Parties to the Geneva Conventions, has a legal and moral obligation to take action to ensure the implementation of the Conventions and to hold violators accountable, in order to achieve a minimum level of justice for the victims and restore the international system of protection for detained civilians in times of conflict and occupation.

1.2.2.2 Legal Implications for Palestinian Prisoners and the Occupying Power

Israeli occupation practices towards Palestinian prisoners have far-reaching legal consequences that essentially affect their legal status and individual rights, as well as the international responsibility of the occupying power as a party bound by the Geneva Conventions. Violations of international humanitarian law, particularly the provisions governing the conduct of the occupying power towards protected person, undermine the legal protection afforded to them and open the door to legal accountability on more than one level. These consequences begin from the moment Israel chooses to deny the legal status of Palestinian prisoners and refuses to grant them “protected civilian detainees” status, even though many of them meet the conditions set out in the Fourth Geneva Convention. This has a direct impact on their rights and legal status under international law.

Denying the status of “Civilian Detainees” leads to deprivation of Palestinian detainees of the guarantees stipulated in the Geneva Conventions, including protection from arbitrary detention, trials that lack the minimum conditions for a fair trial, the right to humane conditions of detention, communications with representatives of the Red Cross, and protection from reprisals and torture. By denying these prisoners such protections, Israel leaves them in a legal limbo, governed only by the internal standards

of the occupying power, which are often subject to security and political considerations rather than the provisions of international law. This practice constitutes what is known as an “intentional legal vacuum”, whereby the occupying power deliberately disregards the international legal framework in order to tighten its control over prisoners without legal restrictions.

From a legal standpoint, this unlawful situation constitutes a systemic violation of the principles of proportionality, discrimination and humane treatment, which are fundamental principles of international humanitarian law from the cornerstone of the protection of persons during armed conflicts. Furthermore, this denial does not alter the legal reality, as Article (5) of the Third Geneva Convention stipulates that prisoners whose statutes is in doubt must be treated as prisoners of war until a competent court decides otherwise. Israel does not do this, but rather decides the matter administratively and unilaterally, thereby depriving Palestinian detainees of any opportunity to appeal or defend their legal status.

The consequences are not limited to the loss of legal protection, but extend to the treatment of Palestinian prisoners in ways that violate their human dignity and fundamental rights, such as torture, ill-treatment, medical neglect and deprivation of contact with their families. These violations are classified as “grave breaches” under Article (147) of the Fourth Geneva Convention and constitute war crimes for which those responsible are criminally liable. In this context, Palestinian prisoners are not only victims of violations of legal standards, but also find themselves in a legal situation that entitles them to additional protection from the international community, including legal support, claims for compensation, and international accountability.

In addition, Palestinian prisoners, when detained in conditions that violate the international norms, suffer long-term consequences that extend beyond their period of detention to include deprivation of their right to education, medical treatment, work, and a normal social and psychological life after their release. There are also numerous cases of psychological and physical torture that continue to affect detainees even after their release, in the absence of any effective legal framework for redress or compensation. The situation is exacerbated by Israel's failure to acknowledge its responsibility for the harm caused and to implement any mechanism for compensation or redress, contrary to the general principles of international law, in particular Rule (150) of Customary Law

(ICRC), which stipulates that “A State responsible for violations of international humanitarian law is required to make full reparation for the loss or injury caused.”¹

On the other hand, legal responsibility does not lie solely with the individuals who commit the violations, but also with the occupying state itself, which bears direct international responsibility for violating its legal obligations under the international conventions it has signed and ratified. Article 1 common to the four Geneva Conventions affirms the obligation of States Parties to “respect and ensure respect for these Conventions in all circumstances,” which means that the mere failure to prevent violations or to hold perpetrators accountable is in itself a breach of the Convention. This Article established the principle of “dual responsibility”, which means the individual responsibility of the state for its actions, and the collective responsibility of other states to ensure that it does not go unpunished and prevent such acts.

Furthermore, Article (146) of the Fourth Geneva Convention imposes an obligation on States Parties to prosecute those responsible for grave breaches of the Convention, including willful killing, torture, inhuman treatment, and unlawful transfer of prisoners. This obligation has become a legal basis for demanding that Israeli crimes be referred to the International Criminal Court, especially in light of Palestine’s accession to the Rome Statute and the submission of numerous files documenting violations against prisoners since 2015. Israel is thus liable to be held accountable before international criminal courts, especially if it is proven that state agencies have a systematic policy towards prisoners, which constitutes a crime against humanity according to the Rome Statute.

In the context of long-term occupation, these violations constitute what is known as a “continuing violation”, i.e. a violation that does not end with its occurrence, but whose effects continue as long as the detainee is deprived of his rights and as long as the occupying power continues its illegal practices. To the contrary, the Israeli occupation undermines the principle of the rule of law in the international context, weakens the international system for the protection of prisoners, and sets a dangerous precedent for justifying violations under the pretext of security. Therefore, implicit international acceptance of these practices weakens the status and effectiveness of the Geneva Conventions. However, at the local Palestinian level, these violations require the

¹ Rule (150) of Customary Law (ICRC), available at: [Customary IHL - Rule 150. Reparation](#).

Palestinian Authority and human rights organizations to activate legal protection mechanisms and accurately document each violation in order to bring it before international judicial forums. The continuation of these efforts is a prerequisite for holding Israel accountable, enhancing the protection of prisoners, and ensuring that perpetrators do not continue to enjoy impunity.

Therefore, the overall legal implications of Israel's conduct as an occupying power towards Palestinian prisoners are not only reflected on the detainees as individuals, but also cast a shadow over the entire international justice system, revealing the gap between international legal texts on the one hand, and the mechanisms for their enforcement and the accountability of violators on the other. Hence, the real challenge lies in moving from monitoring violations to enforcing compliance with the law and activating accountability mechanisms, whether through international justice or through diplomatic and political pressure to compel Israel to respect its international obligations.

Chapter Two: Analysis of Israeli Violations and International Legal Accountability.

2.1 Description of Israeli Occupation Violations after October the Seventh

2.1.1 Description of Committed Violations

2.1.1.1 Detention Conditions and Treatment According to Human Rights Reports

In this part of the chapter, the researcher used two international human rights reports, first: (Un Report: Palestinian Detainees Held Arbitrary and Secretary, subjected to Torture and Mistreatment)¹, second, (Euro-Med Human Rights Monitor Report: “Graves for the Living”: The Health Condition of Palestinian Detainees Upon Release from Israeli Prisons Reflects Systematic Torture and Starvation)². These two reports documented the main Israeli violations against Palestinian prisoners after October the Seventh, which will be illustrated in this part of the chapter.

1. Un Report: Palestinian Detainees Held Arbitrary and Secretary, subjected to Torture and Mistreatment:

The report of the United Nations High Commissioner for Human Rights, issued on 31 July 2024, paints a very bleak picture of the reality of arrest and detention practiced by the Israeli occupation authorities against Palestinians in both the Gaza Strip and West Bank. The report addresses a series of violations, all of which constitute a fundamental breach of the basic guarantees recognized by international human rights law, particularly the International Covenant on Civil and Political Rights, the 1949 Geneva Conventions and the Convention against Torture. Arbitrary detention, enforced disappearance, physical and psychological torture, and denial of access to lawyers or families are all acts that fall under what international law describes as “grave violations” amounting to international crimes.

¹ Report available at: [تقرير للأمم المتحدة: المعتقلون الفلسطينيون محتجزون بشكل تعسفي وسري ويتعرضون للتعذيب وسوء المعاملة | OHCHR.](#)

² Report available at: [الحالة الصحية التي يخرج بها المعتقلون الفلسطينيون من سجون إسرائيل تعكس تعذيبًا وتجويعًا: "قبور للأحياء" ممنهجا.](#)

The report is based on direct testimonies and their families, revealing a recurring pattern of arbitrary detention that is not subject to any real judicial oversight. The transfer of thousands of Palestinians from the Gaza Strip into Israel (occupied Palestinian lands that are officially under Israeli rule), including doctors, journalists and displaced civilians, raises serious legal issues. International humanitarian law prohibits the transfer of civilian populations from occupied territories to the territory of the occupying power, according to Article (49) of the Fourth Geneva Convention, which considers such transfers a war crime. Furthermore, the detention of civilians without charge or trial, and preventing them from communicating with a lawyer or knowing the reasons for their detention, constitutes a clear violation of Article (9) of the International Covenant on Civil and Political Rights, which prohibits arbitrary deprivation of liberty and obliges the authorities to notify the person of the reasons for their arrest.

Also, the report shows that torture and ill-treatment post October the Seventh went beyond isolated incidents to become a systematic practice reflecting official policy. High Commissioner Volker Türk noted that the methods documented, such as waterboarding, setting dogs on detainees, sexual torture, and deprivation of sleep, food and water, constitute a flagrant violation of Article (1) of the Convention against Torture, which absolutely prohibits any act that causes severe physical or mental pain or suffering for the purpose of punishment, humiliation, or obtaining a confession. Under customary international law, no exceptional circumstances, whether war or emergency, may be invoked to justify torture. The acts reported after October the Seventh by the High Commissioner can therefore only be seen as a systematic policy aimed at breaking the will detainees and weakening any potential resistance.

From another perspective, the report reflects Israel's violations of its obligations towards minimum humanitarian standards in the treatment of Palestinian detainees. Keeping detainees in cages, stripping them of their clothes and forcing them to wear diapers, in addition to detaining children with adults. All of the mentioned before are violations of human dignity, which are at the core of the protection afforded to civilians under international humanitarian law. The High Commissioner's description of these situations as "heartbreaking" in the report is not only humanitarian in nature but also has legal implications for the gravity of the violation, as these practices border on systematic psychological torture, which amounts to a crime against humanity under the Rome Statute

of the International Criminal Court (ICC), when it is proven that they were committed as part of a general policy or on a large scale against a specific population group.

The report is particularly significant because it was issued by a UN body that enjoys legal legitimacy and international credibility, making it a document that can be relied upon in any subsequent international accountability proceedings. The Commission does not merely document violations, but links them to concepts of international responsibility of states for unlawful acts. It can be therefore concluded that Israeli occupation authority, through its arbitrary and prolonged detention and its prevention of contact with humanitarian organizations such as the International Committee of the Red Cross, has violated its international obligations, which makes it collectively legally responsible and allows other states parties to the Geneva Conventions to take action to ensure that the Conventions are respected “in all circumstances” as required by Common Article (1).

Moreover, the UN report clearly shows that the Israeli occupation practices against Palestinian prisoners and detainees after October the Seventh were not isolated incidents, but rather part of a political-security structure based on the systematic exclusion and humiliation of Palestinians. The insistence on keeping the detention secret, denying detainees communication, and refusing to allow humanitarian organizations access to them are all indications of a clear intention to conceal the crime, which reinforces the suspicion of enforced disappearance, a crime in its own right under international law.

To conclude, the UN report highlights that the treatment of Palestinian inside Israeli prisons after October the Seventh did not meet minimum humanitarian standards and constituted a double violation: on the one hand, it breached Israel’s obligations as an occupying power and, on the other, it violated human dignity, which must not be compromised under any circumstances. The testimonies about Palestinian detainees being stripped of their clothes and subjected to sexual and physical abuse reveal the systematic use of the human body as a means of subjugating others, repeating patterns of subjugation familiar from colonial conflicts. In this sense, the UN report not only documents Israeli violations after October the Seventh, but also reveals the nature of the Israeli detention system as a political tool of domination and control.

2. Euro-Med Human Rights Monitor Report: “Graves for the Living”: The Health Condition of Palestinian Detainees Upon Release from Israeli Prisons Reflects Systematic Torture and Starvation.

The report issued by the Euro-Mediterranean Human Rights Observatory on 1 February 2025 is a realistic and documentary extension of the UN report, but adds a more brutal dimension by presenting the situation of Palestinian detainees after their release. It reveals that the Israeli violations did not stop at the moment of arrest or during detention, but continued until the last moment before release, making it a striking example of the ongoing and complex violation of a basic human rights. The report shows that the Israeli occupation authority treated the release process itself as part of a system of punishment, rather than as the fulfilment of a legal or humanitarian obligation.

From a legal standpoint, the report highlights how the physical and psychological condition of the released detainees constitutes material evidence of the systematic torture they were subjected to. Many of the required urgent hospitalization upon their release, reflecting the extent of their suffering and deliberate medical neglect they endured. This neglect constitutes a direct violation of Article (91) of the Fourth Geneva Convention¹, which obliges the occupying power to provide medical care to detainees, and falls within the scope of “cruel and inhuman treatment” prohibited by the international law. Furthermore, the report’s findings that detainees were forced to shave their heads and

¹ Full text of Article (91) of the Fourth Geneva Convention: “Every place of internment shall have an adequate infirmary, under the direction of a qualified doctor, where internees may have the attention they require, as well as an appropriate diet. Isolation wards shall be set aside for cases of contagious or mental diseases.

Maternity cases and internees suffering from serious diseases, or whose condition requires special treatment, a surgical operation or hospital care, must be admitted to any institution where adequate treatment can be given and shall receive care not inferior to that provided for the general population.

Internees shall, for preference, have the attention of medical personnel of their own nationality.

Internees may not be prevented from presenting themselves to the medical authorities for examination. The medical authorities of the Detaining Power shall, upon request, issue to every internee who has undergone treatment an official certificate showing the nature of his illness or injury, and the duration and nature of the treatment given. A duplicate of this certificate shall be forwarded to the Central Agency provided for in Article 140.

Treatment, including the provision of any apparatus necessary for the maintenance of internees in good health, particularly dentures and other artificial appliances and spectacles, shall be free of charge to the internee”.

humiliating them before their release confirms that the aim was not security or procedural but punitive, aimed at degrading human dignity, in clear violation of Article (10) of the International Covenant on Civil and Political Rights¹, which stipulates that all persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

Moreover, the report highlights that the violations extended to the social environment of the detainees, where gatherings of their relatives who were waiting for them were suppressed and attacked with bullets and tear gas. This constitutes an additional violation of the human right to freedom of peaceful assembly, as well as being indicative of the extent of the violation to include society as a whole. From a legal standpoint, such acts reflect a policy of collective punishment that is categorically prohibited by international humanitarian law as a form of reprisal against civilians.

The report's analysis shows that the Israeli occupation authorities have turned prisons into "graves for the living", based on what Palestinian prisoners themselves described, a phase with profound legal and humanitarian implications. It expresses not only harsh physical conditions but also an existential violation of the human right to dignity and survival. The deliberate starvation and deprivation of detainees of water and the most basic necessities of life, along with prolonged solitary confinement, constitute elements of the crime of torture in its broadest sense. The continuation of these practices until the very last moment before release makes them an example of what is known in international humanitarian law as a "continuing violation", i.e. an act whose legal affect does not end with the cessation of the circumstances but continues as long as the victim remains under control or coercion.

¹ Full text of Article (10) of the International Covenant on Civil and Political Rights:

"1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2.

(a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status".

The report also indicates that these acts were not isolated incidents, but rather part of a systematic campaign of “abuse of humiliation” targeting all Palestinian prisoners indiscriminately, reflecting a clear intention to inflict maximum suffering on them as part of a general policy. In this sense, the report places these violations within the border framework of war crimes and crimes against humanity as defined by the Rome Statute of the International Criminal Court. Torture, persecution, imprisonment in inhumane conditions, and sexual violence are all acts covered by this regime when they are part of a widespread or systematic attack against a specific population group.

A new dimension in this report is its focus on the fact that the release process itself has become an extension of the policy of humiliation, as detainees are only released from Israeli prisons after a series of physical and psychological insults, making the violation continuous rather than temporary, lasting until the moment when the deprivation of liberty is supposed to end. This demonstrates the occupation authorities’ lack of any intention to rectify the conditions of detention or comply with international standards. On the contrary, they sought to turn the release itself into a tool to display power and control. These practices constitute a flagrant violation of the principle of humanity, which is the cornerstone of both international humanitarian law and human rights law.

Furthermore, the report links these violations to international criminal responsibility, noting that what is happening to Palestinian prisoners and detainees amount to war crimes, crimes against humanity, and even acts of genocide, as they are being carried out systematically against a specific national group with the aim of destroying it in whole or in part. This characterization has significant legal implications, as it shifts the violations from the level of individual accountability to that of collective responsibility of the state and its military and political leaders. Genocide is not only achieved through direct killing, but also through inflicting serious physical or mental harm that leads to the destruction of the group from within, as evidenced by the testimonies of detainees about deprivation, starvation, sexual violence and continuous torture.

In light of this, the Euro-Mediterranean report does not merely describe the facts, but provides a comprehensive human rights analysis of Israel's policy towards Palestinian prisoners, considering it part of a systematic project of oppression that seeks to destroy Palestinian identity. The report's focus on violations up to the moment of release gives it

particular value, as it reveals that abuse was not a means to achieve a security end but an end in itself, a form of collective punishment based on dehumanizing the victim. In light of international law, these practices confirm that the Israeli occupation acts outside any system of accountability, which calls for genuine international action to activate judicial accountability mechanisms.

From an analytical perspective, a comparison of the two reports shows that both describe systematic violations targeting Palestinian detainees. However, the second report highlights the continuation of these violations over an extended period of time, extending beyond the moment of detention, leading to the concept of "continuous torture." While the UN report focused on the conditions of detention, denial of communication and secret detention, the Observatory's report revealed that the violation does not end when the detainee is released from prison, but continues through deprivation, humiliation and psychological and physical abuse until the very last moment. In this sense, the second report is a complementary piece that strengthens the legal argument about the systematic nature of torture and its institutional policy by the occupation authorities, which could form a strong legal basis for any plea or demand to hold the perpetrators of these crimes accountable before international courts.

2.1.1.2 Methods of Abuse (Torture, Solitary Confinement, Medical Neglect)

In this part of the chapter, the researcher relied on numerous live testimonies from interviews with freed Palestinian prisoners done for the purpose of illustrating the grave and harsh violations they were exposed to during the period they were captured by Israeli occupation. All interviews were done with Palestinian prisoners freed after October the Seventh, as they experienced the switch of violations before and after the date mentioned before. It should be noted that due to Israeli occupation intimidating policy, most of the prisoners asked not to expose their names and other information relates to them, as Israeli occupation jailers threatened them if they expose any of the violations they were exposed to during the period of captivity.

The conditions of Palestinian prisoners in Israeli prisons witnessed an unprecedented escalation in the patterns and methods of violations after October the Seventh 2023, where practices of repression shifted from being systematic violations in the context of occupation, as explained earlier, to collective punitive policies

characterized by clear retaliation, targeting the dignity and physical and psychological safety of prisoners, in a gross violation of international humanitarian law and human rights law. Although the previous chapters dealt with violations against prisoners in general, this phase was marked by the emergence of new methods or the intensification of existing methods of levels amounting to torture and inhuman treatment, which are all absolutely prohibited.

In this context, torture emerged as one of the most prominent means of abuse used against prisoners after October the Seventh, both during arrest and during periods of investigation and detention. Torture methods included excessive physical violence, such as severe beatings, assaults with hands and batons, kicking, and painful restraint for long periods, in addition to forced physical positions designed to cause severe pain. The use of psychological torture was also widespread, through constant threats, humiliation, degradation, starvation, sleep deprivation, and exposure to loud noises and bright lights for extended periods.

Freed Palestinian prisoner K***** A** H*****, who was deported to Egypt directly after being freed, explained the situations inside Israeli prisons as: “The story of humiliation is long. Conditions after 7 October in Israeli occupation prisons were very similar to those in German army camps in terms of humiliation, lack of food, blankets and clothing, and denial of visits from lawyers, the Red Cross and family members. Daily raids were accompanied by stun grenades, beatings with batons, arbitrary transfers, and painful forced kneeling. We were denied almost everything: hot water, use of the bathroom at regular intervals, nail clippers (which are prohibited anyway), and pillows and mattresses, which were only allowed at night and taken away in the morning”¹.

“Freed prisoner I*** M***** H***** from the city of Qalqilya was arrested in good health. After two weeks of interrogation and torture, he suffered paralysis in his hands as a result of the violence and continuous shackling he was subjected to during the

¹ An interview with freed Palestinian prisoner K***** A** H***** online, done by the researcher for the purpose of preparing this research.

interrogation, to the extent that he is unable to write or do anything with his hands. He suffers from severe back pain as a result of sitting for long hours on a shackled chair”¹.

These practices constitute a flagrant violation of Article (3) Common to the Geneva Conventions and Article (32) of the Fourth Geneva Convention, as well as a clear violation of the Convention against Torture, which prohibits torture absolutely without any exceptions, including in situations of emergency or armed conflict.

Also, the period following October the Seventh was marked by the emergence of new methods of torture, including the use of collective violence within prison wards and sudden crackdowns involving special units, in which prisoners were collectively assaulted as a means of intimidation and punishment, without any legitimate security justification. There was also an increase in the use of threats against prisoners’ family members of the deprivation of their most basic rights as part of systematic psychological pressure, which reinforces the organized nature of these violations and takes them beyond the scope of isolated individual acts.

Freed prisoner H**** K. from Tulkarem described the situations inside Israeli prisons as “journey of slow death”, telling that: “After 7 October, Palestinian prisoners in Israeli jails entered a new and unprecedented phase of oppression and abuse, leading to the martyrdom of large numbers of prisoners as a result of brutal attacks, medical negligence, starvation and the spread of disease. The abusive measures escalated over time until the prisoners were stripped of all their living and human rights without the slightest respect for their humanity. There were raids, beatings, gas spraying, confiscation of basic necessities, and seizure of clothes and blankets, leaving the prisoners without even the bare minimum of necessities”².

Also, freed prisoner A**** S. said that: “during investigation period, a male Israeli soldier came into me and threatened me that if I don’t answer all their questions they will

¹ Baroud, N. (2014). *Torture of Palestinian Prisoners in Israeli Occupation Prisons*. [Research presented at the Fourth International Conference of the Faculty of Arts, “Palestinian Prisoners...Towards Freedom”, Islamic University] Gaza, P.15.

² An interview with freed Palestinian prisoner H**** K. from Tulkarem, done by the researcher for the purpose of preparing this research.

bring my father and beat him endlessly before my very eyes, noting that my father is diabetic, they threatened me that they will prevent him from having his medicine”¹.

Moreover, one of the serious aspects that emerged after October the Seventh was the intensified use of solitary confinement as a punitive measure, rather than as a limited exceptional measures. Large numbers of prisoners have been held for long periods in cramped cells that lack minimum humanitarian standards, deprived of contact with the outside world, denied visits, and restricted access to lawyers. When imposed for prolonged periods, this type of isolation constitutes a form of torture or cruel and inhuman treatment, according to the standards established by international bodies, in particular the Special Rapporteur on Torture.

The methods of solitary confinement used vary, ranging from complete isolation without any human interaction, to confinement under strict surveillance and constant lighting, to repeated transfers between isolation cells to cause psychological distress. Solitary confinement has also been used as a means of pressure to extract confessions or to punish prisoners for their political positions, which renders any security claim meaningless and confirms the arbitrary and unlawful nature of this measure. However, based on international law principles, this act is prohibited as political position, participating in liberation movements, etc., is protected in international law, as the First Protocol of 1977 provided them with some protection under Articles (43) and (44). Article (43) provides a general and comprehensive definition of combatants, not limited to members of the armed forces, but extending to any individual carrying a weapon for any reason or in any capacity. This definition applies to everyone, whether in a state of war or in wars of liberation².

Freed prisoner H**** S***** said that: “Solitary confinement involves placing prisoners in individual cells in complete isolation from other prisoners, except that they are able to talk to those in neighboring cells through their cell windows. They are taken out to the exercise yard alone, with their hands and feet shackled. If he is transferred, he is placed in a special bus so that he cannot communicate with the other prisoners. This

¹ An interview with freed Palestinian prisoner A**** S., done by the researcher for the purpose of preparing this research.

² Swadi, A. (2018), *Protection of Prisoners of War in International Law*. (the first edition), Dar Wael for publishing, P.47.

harsh policy aims to break the prisoner's morale, deter him and cause him psychological distress over time. However, it is difficult to break the resolve of a person with a cause and principles, as he realizes that the aim is to break him”¹.

As for medical negligence, after October the Seventh it became a clear tool of collective punishment, with medical services deliberately reduced, sick prisoners denied examinations and treatment, serious cases delayed in being transferred to hospitals, or simply given painkillers without a proper diagnosis. This neglect affected prisoners suffering from chronic illnesses, serious injuries, and physical disabilities, as well as prisoners who had been torture and needed urgent medical care.

Freed prisoner S**** H. explains the medical neglect she faced in Israeli prisons, saying that: “during my period, I asked the Israeli soldier for painkiller, pads, toilet papers and soup, things that every girl basically need. However, the Israeli soldier refused to give me any except for one toilet roll, and told me that it would be great if she gives me one pad for the whole day, at that time, I truly felt a sense of human degradation, I was dying of pain, lack of hygiene, yet for them it was all for fun”.

Also, freed prisoner A*** A***** from Nablus explained concerning the health neglect he faced inside Israeli prison: “I personally suffer from liver enzyme imbalance resulting from a previous hunger strike lasting 103 days, and I suffer from breathing difficulties. I have not received any treatment or examination during my two years of detention, despite having a medical file with the occupation prison administration. With each round of physical abuse, neither I nor my colleagues were examined by a doctor. On one occasion, gas was sprayed in my face from a zero-point spray, and I was between life and death due to the crisis I was suffering from. Despite the prisoners informing the Israeli jailers of my health condition, no one cared”².

In Israel, health and medical services provided to prisoners are not included in the National Health Insurance Law that regulates provision of services for all citizens and legal residents, prisoners’ health-care services fall under the “Public Health Ordinance”,

¹ Ibid, interview with freed prisoner H**** S*****.

² An interview with freed Palestinian prisoner A*** A***** from Nablus city, done by the researcher for the purpose of preparing this research.

1940, regulation dating from the days of the British Mandate¹. Medical negligence was manifested in the prevention of the entry of medicines, the refusal to perform necessary surgeries, the reduction of medical staff inside prisons, and the denial of regular medical follow-up to prisoners. The provision of treatment was also linked to the prisoner's behavior or attitudes, in clear violation of their right to healthcare, which is guaranteed under Article 91 of the Fourth Geneva Convention and Article 12 of the International Covenant on Economic, Social and Cultural Rights.

This part of the chapter has demonstrated, through firsthand testimonies, that the methods of abuse employed against Palestinian prisoners after October the Seventh represent a qualitative and quantitative escalation in violations committed by Israeli occupation authorities. Torture, prolonged solitary confinement, and deliberate medical neglect were not isolated or incidental practices, but rather components of a systematic policy of collective punishment aimed at breaking the physical and psychological resilience of prisoners and stripping them of their inherent human dignity. The consistency of testimonies, the recurrence of identical methods across different detention facilities, and the targeting of prisoners regardless of individual conduct all point to an organized and institutionalized framework of abuse.

2.1.2 Legal Assessment of Israeli Occupation Violations Committed after October the Seventh

2.1.2.1 Breach of the Fourth Geneva Convention and International Standards

The practical reality of the Israeli occupation authority's practices against Palestinian prisoners after October the Seventh (2023) revealed an escalating pattern of violations that clearly contravene the provisions of the Fourth Geneva Convention, particularly with regard to the treatment of protected persons during armed conflicts and military occupation. The convention obliges the occupying power to ensure respect for protected persons and preserve their dignity, as stated in Article (27), which stipulates that: "Protected persons are entitled, in all circumstances, to respect for their persons, their honor, their family rights, their religious convictions and practices, and their

¹ Flic, P. Ziv, H., Nassar, M. & Davidovitch, N. (2014). Palestinian Prisoner's Hunger-Strikes in Israeli Prisons: Beyond the Dual-Loyalty Dilemma in Medical Practice and Patient Care. *Public Health Ethics*, 7 (3), 229-239, p.233.

manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity”¹. Also, it states that: “Women shall be especially protected against any attack on their honor, in particular against rape, enforced prostitution, or any form of indecent assault”² and that “Without prejudice to the provisions relating to their state of health, age and sex, all protected persons shall be treated with the same consideration by the Party to the conflict in whose power they are, without any adverse distinction based, in particular, on race, religion or political opinion”³.

However, practices on the ground indicate a direct violation of these fundamental principles through the imposition of harsh and degrading conditions on prisoners and deprivation of the most basic necessities of human life. After October the Seventh, Israeli prisons witnessed a severe deterioration in living conditions, including reducing food to quantities insufficient to maintain healthy life, depriving Palestinian prisoners of personal hygiene, in addition to preventing them from obtaining adequate winter clothing or blankets. This contravenes the requirements set out in Articles (85) and (89), which require the occupying power to provide health accommodation and food that is sufficient in quantity and quality. These Israeli practices fall under the concept of “inhumane treatment”, which Article (147) of the Convention considers a grave breach amounting to a war crime.

One of the most notable features of the period following October the Seventh (2023) was the widespread use of torture and systematic physical and psychological ill-treatment, even after the official announcement of the ceasefire, where living and health conditions inside prisons and detention centers remain difficult and dangerous, and prison administration continues its escalation and retaliation⁴. Article (31) of the Convention prohibits physical or mental coercion against protected persons, while Article (32) prohibits physical torture, corporal punishment and inhumane treatment, and emphasizes the prohibition of any measures that would inflict suffering or harm on protected persons. Despite this categorical prohibition, many released prisoners and human rights

¹ Article (27) of Fourth Geneva Conventions.

² Ibid, Article (27) of the Fourth Geneva Convention.

³ Ibid, Article (27) of the Fourth Geneva Convention.

⁴ Commission of Detainees and Ex-Detainees Affairs, available at: [الظروف الحياتية والصحية داخل السجون](#)
[والمعتقلات لازالت صعبة وخطيرة، وإدارة السجون الاسرائيلية تواصل تصعيدها وانتقامها](#).

organizations as illustrated in the previous part of the chapter have reported that severe beatings, sleep deprivation, death threats, forced nudity and the use of dogs during interrogation have become routine practices in places of detention. Moreover, Palestinian prisoners have been subjected to long hours of painful shackling and collective assaults by Israeli occupation prison suppression units, in flagrant violation of Article (3) Common to the Geneva Conventions, which prohibits attacks on life and physical integrity, cruel treatment and torture. According to Article (147), these acts are crimes that States Parties are obliged to investigate and prosecute as grave breaches of the Convention.

The Israeli violation is not limited to torture and ill-treatment, but also includes practices amounting to enforced disappearance. Although this term is not explicitly mentioned in the text of the Convention, its essence is present in several articles that require the occupying power to inform the detainees' family of his/her whereabouts and allow them to communicate with the outside world. Article (106) obliges the occupying power to notify the detainee's family of the decision to detain him/her and their whereabouts, while Articles (107-116) guarantee prisoners the right to receive visits, mail and communication with their families. However, after October the Seventh, the Israeli occupation authority deliberately cut off all communication with prisoners, prevented family and lawyer visits for long periods, and concealed the places of detention of hundreds of detainees, especially from the Gaza Strip, about whose condition or fate no information has been released. Hundreds of confirmed cases have been recorded, with strong indications that the number could reach thousands, but these figures represent the minimum available information due to the complete denial of access to detention centers by international humanitarian organizations¹. These practices are also classified as grave breaches of Article (147) as they deprive protected persons of fundamental rights and essential procedural guarantees.

Furthermore, the Israeli occupation authority has taken a series of collective punitive measures against Palestinian prisoners, which are expressly prohibited in Article (33), which states that collective punishments and all measures of intimidation or terrorism are prohibited. These punishments took the form of confiscating electrical appliances, clothing and blankets, reducing food, water and electricity in all sections

¹ [التقرير الحقوقي الشهري حول أوضاع الأسرى الفلسطينيين الفترة: 01 – 31 أكتوبر 2025](#), TADAMON, available at:

regardless of the status of each prisoner, closing the exercise yards, collectively denying prisoners visits, cutting off basic services and imposing collective punishments for mere suspicion of individual behavior. These practices fall within the framework of administrative terror, used to subjugate detainees, which is completely contrary to the basic rules of international humanitarian law, which rejects the punishment of an entire group for the actions of individuals.

Taken together, these violations constitute a systematic breach of Israel's obligations under the Fourth Geneva Convention and international humanitarian law. The integrated nature and widespread scope of these practices clearly indicate a general policy rather than isolated incidents, which reinforces the international legal responsibility of Israel and its political and military officials. Article (147) holds individually responsible anyone who commits, orders or permits the commission of grave breaches, and this applies to the leadership, especially in light of the continuation of these policies and the existence of documented evidence of the. From the perspective of the international law, these violations constitute war crimes and fall within the jurisdiction of the International Criminal Court under Article (8) of the Rome Statue, as they include torture, cruel treatment, unlawful transfer and unlawful deprivation of a fair trial.

2.1.2.2 Israel's Legal Responsibility as an Occupying Power

The responsibility of the occupying state under international law I based on the fundamental principle that it is subject to specific obligations towards the population under its occupation. This responsibility does not drive from political or security considerations, but rather from an established international legal system that grants special protection to civilians and detainees in order to ensure that the situation of occupation is not used as a pretext for violating fundamental human rights.

In the Palestinian case, Israel has been an occupying power under international humanitarian law since 1967, as confirmed by the International Court of Justice in its 2004 advisory opinion and by the United Nations in dozens of resolutions. Therefore, its conduct towards Palestinian prisoners, focusing on the period after October the Seventh (2023), must be assessed in the context of the obligations imposed by the rules of military occupation, in particular those derived from The Hague Convention of 1907, the Fourth

Geneva Convention of 1949, the International Covenant on Civil and Political Rights, and Customary International Law.

The legal responsibility of the occupying power stems from the central principle that occupation does not transfer sovereignty and does not permit the reconstitution of the legal system in the occupied territory in such a way as to eliminate guarantees of protection. Under this principle, the occupying power remains obliged to preserve the legal status of individuals and to ensure the humane treatment of all persons under its authority, whether they are detained for criminal or security reasons or for purposes of political intimidation. Therefore, the treatment of prisoners is not subject to absolute military discretion, but is governed by specific legal standards imposed by peremptory norms of international law, which the occupying state may not invoke necessity or security considerations to override.

Examining Israel's treatment of Palestinian prisoners after October the Seventh, an analysis of its practices from the perspective of the legal responsibility of the occupying power reveals a profound violation of the essence of these obligations, through the adoption of a policy based on transforming the occupation into a permanent state of exception in which humanitarian rules are suspended. Instead of operating within the narrow margin of military necessity permitted by law, Israel has used its authority as an occupying power as a means to expand the circle of repression and punitive measures, which, in legal terms, constitutes a fundamental violation of the principles of proportionality and respect for human dignity.

The principles of international law require that the occupying power act as a "trustee" of the occupied territory, not as an absolute sovereign authority. This means that any arrests or detentions it carries out must be for the purpose of achieving actual and immediate security, not for political or retaliatory purposes, nor as a means of collective pressure. After October the Seventh, it became clear that the motives of Israeli occupation for detention extended to include widespread arrest without proper judicial procedures and reliance on administrative detention orders as a substitute for trial. This leads to the fact that the Israeli occupation authority has exceeded its limited role under international law and become an expansionist security authority lacking the legal controls that govern the conduct of an occupying power.

What is striking about the Israeli occupation practices after October the Seventh is that the measures were not merely a tightening of detention conditions but rather a systematic re-engineering of the nature of the relationship between the Palestinian prisoner and the Israeli detaining authority, whereby the prisoner was transformed from a protected person to a target for pre-emptive punishment, and from a party subject to legal accountability to a party treated as threat to be isolated and subjugated. This was evident in the measures relating to the imposition of prolonged isolation, the reduction of basic services, the tightening of control, and the expansion of administrative penalties without clear or transparent criteria. From an international law perspective, these practices are not merely a matter of substantive violations, but point to a deeper problem, which is that the Israeli occupation's use of its power as a coercive authority outside the law.

Furthermore, the occupying power has a responsibility to protect prisoners from reprisals or any form of punishment based on political affiliation or national identity. International humanitarian law guarantees equal protection for all persons under occupation, without discrimination on the basis of affiliation, opinion or origin. However, Israeli occupation practices after October the Seventh bore the hallmarks of clear discrimination, as the measures were directed against prisoners just because they are "Palestinians", specifically those who belong to Hamas party, reflecting the use of power on the basis of national affiliation. This constitutes a violation of the principle of non-discrimination, which is a fundamental rule of the Geneva Conventions and general international law.

Moreover, the responsibility of the occupying power includes a fundamental duty to prevent torture in all its forms, which is an absolute prohibition that does not allow for any exceptions under customary international law and the Convention against Torture, to which Israel is a party. The occupying power bears direct responsibility for any practice that involves humiliation, harm or treatment that violates the psychological or physical integrity of prisoners, whether carried out by official personnel, security forces or agents acting under the authority of the state. This responsibility reinforces the rule of accountability, which requires immediate and impartial investigation of all cases of abuse and ensures that those responsible do not enjoy impunity. Nonetheless, the Israeli occupation acts after October the Seventh indicates the absence of such a system, as there

are no effective internal oversight mechanisms and no real accountability for violations, shifting responsibility from the individual level to the state as a whole.

This general responsibility gives rise to another obligation, namely to ensure minimum humane conditions in prisons, including the provision of medical care. International humanitarian law requires that “the wounded and sick shall be treated humanely in all circumstances and shall receive the medical care required by their condition, without discrimination”¹. Delays or refusals to provide treatment or restrictions on access to medical services constitute a direct breach of the responsibility to protect. After October the Seventh, this aspect constituted one of the most obvious violations, as medical services were reduced, patient transfers were postponed, and medicines were restricted, leading to the fact that the Israeli occupation authority as an occupying state is responsible for the harm caused to Palestinian prisoners due to deliberate medical negligence or punitive austerity policies.

Given Israel's practices after October the Seventh, it is clear that these measures were not temporary security justifications, but part of a general approach to tightening its grip on prisoners and transforming their legal status into a permanent state of emergency. This creates a double international responsibility for Israel, because it is not merely violating specific rules, but is working to reshape the detention system itself in a manner that contravenes the legal framework governing the occupation. From a legal analysis perspective, the transformation of detention into a tool of collective punishment and political discipline is an indication of the occupation's deviation from the legal framework to an authoritarian framework that puts the occupying state in direct confrontation with the rules of international humanitarian law and subjects it to international accountability.

In light of the illustrated above, it is clear that Israel's responsibility as an occupying power towards Palestinian prisoners after October the Seventh is not merely a formal violation of legal provisions, but a fundamental breach of the obligations imposed on the occupying power by international humanitarian law. The policies and practices reveal a clear intention to undermine the basic legal protection that prisoners are supposed to enjoy and to transform the occupation into a sustainable state of punishment and deprivation of rights. These violations, given their systematic and widespread nature, constitute

¹ (Al-Fatlawi, and Rabee, 2024, p.193).

sufficient grounds for holding Israel internationally responsible, both from the perspective of state responsibility and from the perspective of the individual criminal responsibility of leaders and decision-makers, and reinforce the need to activate international monitoring mechanisms to ensure the protection of prisoners and put an end to violations against them.

2.2 Comparison and International Accountability

1.2.1 A Comparative Study of Palestinian and Iraqi Prisoners

1.2.1.1 Similarities and Differences in Violations Committed against them

During the American occupation of Iraq, Abu Ghraib prison witnessed one of the most serious violations in the history of contemporary detention, after American military reports and leaked photos revealed systematic violence and humiliation against Iraqi detainee, most of whom were civilians or arrested without clear charges. This is not merely a case of individual misconduct, but was linked to an institutional environment that allowed the use of excessive force and exceeded the minimum standards for the treatment of detainees set out in international humanitarian law. Despite the multiple entities involved the prison's administration, the common denominator remained a lack of transparency and accountability, turning Abu Ghraib into a stark example of the occupying power's failure to respect its legal obligations.

Several US soldiers have committed egregious acts and grave breaches of international law at Abu Ghraib / BCCF and Camp-Bucca, Iraq. Furthermore, key senior leaders in both the 800th MP Bridge and the 205th MI bridge failed to comply with established regulations, policies, and command directives in preventing detainee abuses at Abu Ghraib (BCCF) and at Camp Bucca during the period August 2003 to February 2004¹. It is worth noting "the COBAK document issued by the Central Intelligence Agency in 1963 concerning the use of torture to deal with spies, i.e. torture aimed at obtaining information, which is the logic used by the Pentagon and the CIA to justify the torture of Muslim detainees in order to prevent "another September". The COPAK document states that the goal of pressure techniques is to change the detainee's mindset

¹ Taguba Report: Memorandum for Record, Department of the Army Headquarters, 4. June.2004, p. 50, available at: [ImageBASIC Display Print Job](#).

so that they say what they refuse to say, returning the person's mind to a pre-civilized state where they do not know the difference between saying something and not saying it. The document states that pressure includes pain, sleep deprivation and anxiety, and that one of its goals is to create a sense of disconnection and separation from reality and entry into a strange world, and to create a deep sense of fear and inability to act rationally and control the environment, eating, drinking and rest to achieve this”¹.

On the other hand, following the Israeli occupation aggression against the Gaza Strip since October the Seventh, 2023, the Palestinian territories witnessed an unprecedented expansion of arrest campaigns that as illustrated before affected tens of thousands of Palestinians, including civilians, workers, patients, and people who had not been formally charged. Moreover, the local and international human rights organizations have documented the pattern of harsh and degrading treatment inside the Israeli centers, characterized by the absence of basic procedural safeguards and the use of high levels of physical and psychological violence against the Palestinian detainees. This reality, as revealed by the testimonies of those released and field documentation, indicates that the detention system after October the Seventh is not administrated according to the logic of normal legal procedures, but rather according to an exceptional logic closer to a permanent state of emergency, which grants the security services broad powers that are not subject to effective oversight.

If Abu Ghraib exemplified violations committed by a foreign occupying power, the Palestinian situation exemplifies violations committed by an authority exercising effective control over the population subject to it in the context of an unequal armed conflict. What the two cases have in common is the absence of distinction between persons participating in resistance actions and civilians, leading to the arrest of individuals without clear criteria or specific suspicion. The fundamental difference, however, is that Abu Ghraib violations were quickly exposed through official investigations, while the Palestinian situation remains shrouded in greater institutional secrecy. Attempts at independent monitoring face severe restrictions, making the process

¹ Editorial Board. (2006). America's War in Iraq: Abu Ghraib Prison. *King Faisal Center for Research and Islamic Studies*. 1 (3), 41-41.

of documenting violations more complicated and increasing the likelihood that they will continue without accountability.

The comparison shows that humiliation (not just physical violence) plays a central role in both cases, but to varying degrees. At Abu Ghraib, humiliation was part of the interrogation mechanism, aimed at breaking the detainee's will and weakening their psychological resistance. However, in the Palestinian case, practices of humiliation appear to be rooted in the nature of the detention system itself and are used regularly in the daily life of the detainee, regardless of whether he/she is under investigation or not. Humiliation is not a temporary means of obtaining information, but a structural element in the treatment of detainees, evident in numerous details such as deprivation of personal hygiene, forcing detainees to stand for long periods, preventing them from using the bathroom at appropriate times, or keeping them in dirty clothes, all of which create a continuous punitive environment.

These harsh conditions are reflected in the health of detainees, with numerous testimonies confirming that medical care is virtually non-existent and that the injured or sick receive treatment only in critical cases or after delays that in most times lead to permanent complications. Furthermore, many of those released (Palestinian or Iraqi detainees) reported widespread skin diseases due to overcrowding and poor ventilation, for example, Sheikh Ali al-Qaisi, a former prisoner at Abu Ghraib prison, describes the poor conditions there, saying that "prisoners were held in a single tent with 45 to 50 people, each with about 30 to 35 centimeters of space to sleep inside the tent"¹. He adds that "there were three sanitary facilities for approximately 300 prisoners"², this comes in addition to significant weight loss due to food restrictions, which amounts to torture through medical negligence, which in turn is a serious violation of Article (16) of the Convention against torture.

On a psychological level, the effects of prolonged isolation, sensory deprivation and constant threats are evident, leading to post- traumatic stress disorder, panic attacks, impaired concentration and sleep disorders. These symptoms are very similar to those documented among Abu Ghraib victims and indicate that a coercive, punitive

¹ Editorial Board. (2008). An Example of American Terrorism in Abu Ghraib Prison: Sheikh Ali al-Qaisi's Experience in Abu Ghraib Prison. *Algerian Scientific Journal Platform*. 2 (4). 149-170. P. 154.

² Ibid, p. 154.

environment has lasting effects that extend beyond the period of detention, may continue for years after release, and affect the detainee's reintegration into social life, as freed Iraqi prisoner, Hameed Al-Mukhtar, explains after years of being freed from Abu Ghraib prison: “another year has passed, and I am still weighed down by the burden of restrictions and the darkness of silent cells”¹, in which he means that even after being freed for many years, he is still captured inside the harsh memories of the year he has spent inside Abu Ghraib prison.

Despite differences in perpetrators and political contexts, both experiences show that the absence of independent oversight and adherence to legal standards almost inevitably leads to a pattern of systematic violence in places of detention. The repetition of similar accounts from different victims proves that the problem is not one of “personal behavior” but rather a “detention structure” that tolerates or encourages ill-treatment. This is what makes the comparison here analytically valuable, as it highlights that the violations in the Palestinian case after 7 October are not temporary or incidental, but part of an integrated system that requires dismantling and careful legal study.

Ultimately, the comparison between the two cases reveals important intersections: arbitrary detention, lack of fair trial, physical and psychological torture, humiliation, medical neglect, and lack of effective oversight. But it also reveals fundamental differences regarding the nature of the detaining authority, the degree of transparency, and the response of the international community. This comparison confirms that the protection of detainees is not merely a matter of technical procedures, but rather a matter of principled commitment to the foundations of international law, and that the failure of states or controlling powers to respect these foundations inevitably leads to the repetition of cycles of violation across time and space.

¹ Odeh, A. (2023). Away from the Jailer's Eye: Abu Ghraib Prison Diaries. *House of General Cultural Affairs*. 58 (2). 159-172, p.170.

1.2.1.2 Differences in Political and Media Contexts and International Reactions

The comparison between the case of Iraqi prisoners in Abu Ghraib prison during the US occupation and the Palestinian prisoners in Israeli prisons reveals profound differences in the political and media contexts and frameworks of international reaction. These differences affected not only how the international community addressed each issue, but also the form of legal accountability available and the extent to which international rules on the protection of detainees in armed conflicts and occupation were enforced. While the Abu Ghraib scandal erupted in the context of a war waged under the banner of the “war on terror” and accompanied by US rhetoric seeking to justify its military practices, the issue of Palestinian prisoners emerged within a long-standing political context of chronic occupation and unequal conflict, where the media and diplomatic factors play a completely different role in terms of their ability to produce counter-narratives or impose effective accountability.

In the case of Abu Ghraib Iraqi prisoners, the revelation of abuses was linked to a highly sensitive global political context, with the United States engaged in a war with global implications and claiming to be leading a “democratic” project to reshape the Middle East. Therefore, the torture photos leaked in 2004 constituted a significant shock that affected the international standing of the United States; it was impossible to ignore the spread of photos documenting humiliation and torture, which quickly spread through traditional media and the visual press. This forced dissemination compelled official US institutions to address the issue, albeit with varying degrees of seriousness. Politically, the US administration was forced to acknowledge that “abuses” had occurred and to announce internal investigations, although these steps were taken mainly to contain international outrage rather than to reveal the whole truth. On the legal front, although no high-ranking officials were prosecuted, the US military justice system was forced to take some symbolic measures, such as prosecuting a limited number of soldiers, in order to demonstrate that there was some accountability, albeit limited.

This forced openness to international and domestic scrutiny reflects the existence of a media and legal structure in the United States that cannot be completely closed off to public opinion. Despite its restrictions, the American media has the ability to exert pressure from within, and American and international human rights organizations have the tools to access documents and communicate with the press, which enabled the Abu

Ghraib scandal to become a global human rights issue. Thus, the relatively open media environment contributed to political pressure on the US occupation authorities. While this pressure did not reach the point of serious accountability, it was sufficient to elicit a specific official acknowledgment of the violations, which has symbolic legal value under international law.

In contrast, the Palestinian context is fundamentally different. Israel, as an ongoing occupying power, operates within a highly sensitive political and media environment, where its international political discourse enjoys widespread influence and its diplomatic apparatus has a high capacity to control the narrative at the global level. Furthermore, the Western media often tends to adopt an Israeli security narrative that consistently positions Palestinians as “suspects” or “threats”, making it more difficult to expose violations related to prisoners. Despite repeated international human rights reports documenting torture, administrative detention, medical neglect, humiliation, and denial of fair trial, the international political impact of these reports remains minimal compared to what happened in the case of Abu Ghraib Prisoners.

The difference is not limited to the nature of political discourse, but extends to the structure of the relationship between the media and the military in both cases. In the case of Abu Ghraib, the leaking of photos from inside the prison created visual evidence that the US authorities could not deny. On the other hand, in the Palestinian case, similar documentation is rarely available due to Israeli policies that tightly control prisons and prevent photography or communication with detainees. As a result, despite being repeatedly documented, the violations remain confined to written accounts or oral testimonies, which makes them less impactful in terms of global awareness, even though they are more serious in terms of scope and duration.

The international diplomatic context also contributes decisively to the difference between the two cases. During the Abu Ghraib phase, the United States faced widespread pressure from allies, United Nations organizations, and the European Union because of the scandal’s impact in its global image. In the Palestinian case, however, the political support networks surrounding Israel, particularly from the United States and influential European countries, create a diplomatic protective umbrella that prevents clear condemnation or serious political action, even in the face of mounting evidence of violations. Despite repeated UN reports, these are often met with Western political

rejection or dismissed as “biased”, preventing them from being referred to effective accountability mechanisms.

The impact of this difference in diplomatic structure is even clearer when we look at how international law is applied. In the case of Iraqi prisoners, despite limited accountability, the global debate over US responsibility opened up academic and legal space to analyze its violations of the Geneva Conventions. However, in the case of Palestinian prisoners, the absence of international political will prevents the implementation of international law mechanisms, especially since Israel is not a party to some legal instruments, in addition to its use of veto power in the Security Council to prevent any binding measures from being taken.

The political context of the conflict itself also affects the level of international support for each cause. The US invasion of Iraq was a relatively new event that sparked global controversy, and the occupation sparked a wave of global political activism against the war. In contrast, the Israeli occupation of Palestine is one of the longest occupations in modern times, and its duration has led to a “normalization” of the situation in some countries, such that violations are no longer treated as exceptional events that warrant renewed political mobilization, but rather as part of an ongoing situation to which international public opinion has become accustomed. This normalization over time reduces the international community’s sensitivity to violations, no matter how serious they may be.

In addition, the nature of the violations themselves is used differently in political discourse. In the case of Abu Ghraib, the event was used to direct internal and external criticism of US policies, while in the Palestinian case, violations are often justified within Western frameworks as necessary security measures, a discourse used to diminish the legal nature of the crimes committed and deny them the status of torture or inhuman treatment as defined by international law. This discursive distinction has a direct impact on legal accountability, as it creates a political environment that is not conducive to the recognition of systematic violations.

From an international law perspective, the difference in contexts affects the concept of “intent” in violations. At Abu Ghraib prison, violations were portrayed as “individual acts” or “excesses”, despite evidence of their systematic nature. In the Palestinian, the

intensity of the violations and their decades-long nature make them legally actionable as state policy, but the lack of international recognition of this prevents them from moving to the stage of investigation or accountability.

Ultimately, analysis of the political and media context and international reaction in both cases reveals that the extent to which international law is enforced is linked not only to the scale of the violations, but also to the surrounding political structure, existing diplomatic alliances, and the ability of the victim or their representative to convey their narrative to the global media. While the Abu Ghraib case managed to impose itself on the international agenda, albeit temporarily, the case of Palestinian prisoners faces a political and media wall that prevents it from reaching the same level of interaction, even though the scale of the violations against them is more extensive and continuous. This highlights the organic relationship between the political context and the effectiveness of international law: where there is international political will, the voice of the law prevails, and where that will is absent, the law remains ineffective, no matter how clear and explicit its provisions may be.

1.2.1.3 Legal Consequences and Mechanisms of Accountability in Both Cases

The situation of Palestinian prisoners after October the Seventh and that of Iraqi prisoners in Abu Ghraib prison reveal a common thread in terms of the complex legal responsibilities they raise at the international and criminal levels. This calls for defining the legal framework on which the consequences are based and the mechanisms through which the responsible parties can be held accountable. Given that the facts of both cases have already been addressed, this part of the chapter will focus on analyzing the legal conclusions drawn and prospects for accountability.

First, with regard to legal consequences, the violations committed in both cases constitute "based on international standards" grave breaches of international humanitarian law. Therefore, they have direct legal implications amounting to war crimes against humanity as the violations are systematic and widespread in nature. Acts including torture, inhumane treatment, unlawful detention, forcible transfer, denial or deliberate humiliation of human dignity are all classified in the Geneva Conventions and the Rome Statute as acts that entail individual criminal responsibility. This legal characterization

opens the door to holding perpetrators accountable before international or national courts and gives victims and their families a legal standing to seek redress.

Second, individual criminal responsibility is a key element of legal consequences. In both cases, individuals who directly committed violations "whether soldiers, interrogators, or members of the detention system" can be held accountable for their actions as war crimes. This includes responsibility for personal acts and responsibility for contributing, whether through command, incitement, acquiescence, or omission. This responsibility becomes even more profound when it concerns perpetrators in positions of command, where the principle of command responsibility applies, holding the commanding officer responsible if he knew or should have known about the violations and failed to take effective measures to prevent them or hold those responsible to account. The importance of this principle is highlighted in the cases of Palestine and Iraq, given the role of the military and organizational structure in the management of detention centers.

Third, the occupying powers bear responsibility in both cases, given that the facts are linked to situations of military occupation. The occupying power has the specific obligations mentioned before under the Fourth Geneva Convention and customary international humanitarian law, including protecting civilians and ensuring that they are not subjected to arbitrary treatment. Violation of these obligations creates international responsibility that may lead to claims for compensation or international action by other states or UN bodies. Although historical experience shows that such action has limited effectiveness, legal responsibility remains and can be enforced through various mechanisms depending on the political and legal context.

As for the consequences for victims, they have legal right to redress. This right consists of several elements, including financial compensation, rehabilitation, official recognition of the violation, and guarantees of non-repetition. Although international practice shows that it is very difficult to realize these rights in practice—as in the case of the Abu Ghraib prisoners, who did not receive full redress for their violations, and the Palestinian prisoners, many of whom still lack effective protection—the existence of a recognized legal framework provides a basis on which to build future legal proceedings, whether before national or international courts. A living proof, in an interview with the freed Palestinian prisoner N***** A***** from the Gaza Strip, who has spent 27 years

in Israeli prisons, he said that: "In Israel, all laws are suspended under the pretext of security prisoners, which is the password for all Israeli courts to legitimize government laws relating to Israeli settlements, and also under the pretext that this unjust decision against you is political and that we have nothing to do with politics."¹

In terms of available accountability mechanisms, there are multiple avenues. The first mechanism is the International Criminal Court, which has jurisdiction over war crimes against humanity when jurisdiction is available. In the Palestinian case, the opening of an investigation by the court's prosecutor is an important step toward accountability, even if it faces political obstacles. As for Iraq, the limited temporal jurisdiction of the court "in addition to the fact that neither Iraq nor the United States are members of the Rome Statue" has clearly limited recourse to this particular mechanism. Nevertheless, the universal jurisdiction of some states remains an alternative avenue for prosecuting perpetrators, especially with the increasing number of cases brought before European courts against perpetrators of international crimes outside those states' borders.

The second mechanism consists of non-judicial UN mechanisms, such as fact-finding commissions, special procedures of the Human Rights Council, and treaty bodies such as the Committee against Torture. Although these mechanisms do not issue binding rulings, their reports play a pivotal role in documenting violations and forming a body of evidence that can be built upon later in trials, in addition to exerting political and diplomatic pressure on the responsible parties. These mechanisms played an important role in the Abu Ghraib case and are expected to play a similar role in the case of Palestinian prisoners.

These mechanisms complement diplomatic and political means, including Security Council and General Assembly resolutions, which may not impose direct accountability but provide a framework for international pressure and the recategorization of violations within the international legal record.

¹ An interview with Palestinian freed prisoner N**** A*****, done by the researcher for the purpose of preparing this research.

Ultimately, both cases reveal a gap between applicable international legal norms and practical reality, a gap that deepens the phenomenon of impunity. However, the legal framework itself—with its clear rules on war crimes and accountability mechanisms—remains the primary tool through which accountability cases can be pursued, the legal basis for future prosecutions can be established, and victims' rights can be protected, even if the mechanisms for implementation suffer from political and structural constraints.

2.2.2 Supreme Court of Israel and International Criminal Court Accountability Mechanisms towards Palestinian Prisoners

2.2.2.1 Supreme Court of Israel

There has been widespread debate in legal literature about the role of the Israel Supreme Court in monitoring the performance of the security authorities, particularly with regard to the treatment of Palestinian prisoners. This debate escalated significantly after October the Seventh and the subsequent widespread arrests and tightening of detention conditions. The Supreme Court is regarded as the highest supervisory body in Israel and enjoys broad powers to review government and military actions from the perspective of respect for human rights. However, its actual ability to enforce accountability and stop violations has been the subject of lengthy debate in humanitarian law and comparative constitutional law. This debate concerns not only the extent to which the judiciary adheres to international standards, but also the nature of its organic relationship with the structure of government in a state that defines itself as “state of permanent armed conflict”, which means that its legal conduct is governed more by security considerations than by human rights considerations.

The Israeli Supreme Court is the highest judicial body in the Israeli legal system and has broad jurisdiction to hear appeals against decisions made by executive and military authorities, including decisions made by security agencies and the army. The court exercises this role in the absence of a written constitution, relying on basic laws and accumulated judicial precedent, which has given it a central place in the Israeli constitutional system. The court presents itself in official and judicial discourse as the primary guarantor of the rule of the law and the protection of human rights, including in contexts related to armed conflict and occupation. However, this claim warrants critical

examination, particularly when compared to the court's actual handling of cases involving Palestinians.

In this context, Shoshana Netanyahu's writings are a clear example of the apologetic view that comes from within the judicial institution itself. As a former Supreme Court judge, Netanyahu portrays the Supreme Court as the "guardian of the rule of law" and an effective safeguard against the arbitrariness of the executive and military authorities. In her study, she asserts that the court has expanded the concepts of standing and judicial legitimacy to allow, in theory, any aggrieved person, including Palestinians, to challenge the decisions of the state and its security agencies¹. According to this argument, the court's intervention in security and military matters is presented as evidence of the judiciary's independence and its ability to subject the authorities to the law even in the most difficult security circumstances. However, this view remains, in essence, a normative one that assumes that simply opening the doors of the judiciary and recognizing its jurisdiction constitutes sufficient protection of rights, without considering the consequences of this intervention or its actual impact on the groups most affected by the policies of the occupation.

Contrary to this apologetic discourse, Joshua Segev offers a more cautious but highly significant internal critique of the role of the Supreme Court and its evolution. Segev does not deny the centrality of the Court or its growing influence in constitutional and political life, but he questions the democratic legitimacy of this expansion. He argues that the expansion of the court's powers was not the result of an explicit constitutional mandate or a clear social contract, but rather came largely through subjective judicial interpretations in the absence of a written constitution². Segev points out that the portrayal of the court as having moved from formalism to value-based adjudication is partly misleading, because the court has relied on value-based reasoning since its early years, making the so-called "judicial revolution" more of an extension of an existing pattern than a real break with the past³.

¹ Netanyahu, Sh. (1993). *The Supreme Court of Israel: A Safeguard of the Rule of the Law*, 5 Pace Int'l L. Rev. 1, pp. 1-2.

² Segev, J. (2006). The Changing Role of the Israeli Supreme Court and the Question of Legitimacy. *Temp. Int'l & Comp. LJ* 20 (2006): 1, pp. 2-3.

³ Ibid, The Changing Role of the Israeli Supreme Court and the Question of Legitimacy, pp. 6-7.

In his theoretical analysis, Segev proposes two models for understanding the role of the judiciary: the “moral guardian” model, in which the court sees itself as the moral guide of society and protector of values, and the “limited arbiter” model, in which the court’s role is limited to adjudicating disputes without engaging in policy-making or imposing a comprehensive value system. Segev warns that the court’s adoption of the role of the moral guardian could undermine democratic legitimacy and weaken the principle of separation of powers, while the limited arbiter model, despite its theoretical legitimacy, carries real risks of leaving fundamental rights inadequately protected in times of political or security crises¹. This analysis is particularly relevant when applied to the context occupation, where the court’s self-imposed restrictions on its intervention become a tool for perpetuating the status quo rather than challenging it.

This criticism intersects with the argument put forward in *Judicial Independence: The View from Israel*, which clearly distinguishes between “judicial power” and “judicial independence.” The institutional power of the court, represented by its broad powers and ability to hear a wide range of cases, does not necessarily imply actual judicial independence. The author concludes that, despite its formal power, the Israeli Supreme Court often avoids confronting the substance of government policies, particularly those related to security and occupation, preferring to deal only with procedural details or impose limited formal restrictions that do not address the root of the problem². In this sense, judicial independence becomes a formal independence that does not translate into real accountability, but is sometimes used to confer legal legitimacy on existing policies rather than dismantling them.

This conclusion is reinforced by Rouba Al-Salem's analysis of the distinction between long-term occupation and annexation. Al-Salem explains that international law imposes radically different obligations in the case of temporary occupation compared to annexation, with annexation entailing full obligations and equal rights for the population under sovereignty. However, according to this analysis, Israel has deliberately remained in a legal gray area, neither ending the occupation nor proceeding with formal annexation, thereby allowing it to evade the legal obligations incumbent upon either scenario. Al-

¹ Ibid, *The Changing Role of the Israeli Supreme Court and the Question of Legitimacy*, pp. 10-11, 14-15.

² Paz-Fuchs, A. (2021). *Judicial Independence: The View from Israel* (version 1). University of Sussex, pp. 6-8.

Salem shows that the Israeli Supreme Court has played a pivotal role in perpetuating this situation through its implicit and explicit acceptance of this gray area and its refusal to challenge its legal legitimacy¹. As a result, the judiciary has become part of the mechanism for managing the long-term occupation rather than a tool for challenging it.

When comparing these theoretical arguments with practical reality, a deep gap becomes apparent between judicial discourse and actual practice. The Israeli Supreme Court claims neutrality and protection of rights, but in practice it acts with clear discrimination, not only between Israelis and Palestinians, but also among Palestinians themselves. This discrimination is starkly evident in Amendment No. 8 to the Civil Damages Law, which granted the state near-absolute immunity from liability for damages inflicted on Palestinians in the Gaza Strip simply because they are residents of the Strip. This amendment was passed into law and then upheld by the Supreme Court, effectively denying an entire category of Palestinians any legal protection or civil remedies².

Moreover, in practice, the Israeli Supreme Court has not explicitly legalized torture, but its landmark rulings have created a gray area that allows security agencies to use harsh interrogation techniques under the guise of “moderate physical pressure” or “defensive necessity” in most times. Although the court has prohibited torture since the late 1990s in a well-known ruling that restricted the internal security apparatus, it has left the door open for “necessity defense”, an exception that allows the authorities to justify certain practices after they have occurred. This exception has created a legislative and judicial environment that lacks decisiveness, failing to provide full protection to Palestinian detainees who claim to have been subjected to ill-treatment, especially in contexts that the security system classifies as “time bombs” or immediate security threats. After October the Seventh, with increasing reports from human rights organizations about harsh conditions in Israeli detention, the Supreme Court did not show a radical shift in this approach, as it did not expand the imposition of stricter restrictions or conduct an in-depth review of exceptional policies. This is interpreted as a continuation of the broad leeway

¹ Al-Salem, R. (2013). *Judicial Activism in the “Eye of the Beholder”: The Israeli High Court of Justice and the Human Rights of the Palestinians in the Occupied Territories*. Lex Electronica, vol. 18.1, pp. 10-13.

² Al-Mezan & Adalah, *Analysis of Israeli Supreme Court Decision: Israel’s Self-Granted Immunity from Civil Liability for the Killing and Injuring of Palestinians in Gaza: The Case of Attiya Fathi al-Nabaheen*, legal analysis paper issued by the two human rights organizations, (2023), pp. 2-7.

the court grants to security authorities in conflict situations, which leads us to the fact that “the Israeli Supreme Court played a direct role in the crimes of enforced disappearance of Palestinians, crimes that escalated after 7 October 2023, to the extent that thousands of Palestinians from the Gaza Strip went missing after their arrest, and their fate remains unknown”¹.

As for holding perpetrators of violations against Palestinian prisoners accountable, the Israeli judicial system in general, specifically the Supreme Court, has not provided a clear model for rigorous follow-up or institutional accountability. Most complaints regarding the mistreatment of prisoners are referred to internal mechanisms within the security or military services, which are often criticized for their lack of transparency, slow procedures and rare outcomes leading to criminal trials. In cases brought before the Supreme Court, it is noted that the court often deals with them on the basis of “trust the executive authority”, contenting itself with requesting clarifications or assurances from the security agencies, without opening an actual judicial investigation or commissioning an independent body to review the facts.

This pattern of legal oversight suggests to us that court adopts a procedural rather than a substantive approach, which leads to the fact that it is content to ensure that formal procedures are in place without scrutinizing their effectiveness or results. As a result, there are no notable examples in the court record of strict decisions that led the punishment of officials responsible for violations against Palestinian detainees, specifically harsh and inhumane violations committed after October the Seventh, as freed Palestinian prisoner A**** K. explained, “The Israeli Supreme Court is nothing more than a tool used by Israeli jailers to lure Palestinian prisoners into the trap of hope for freedom. It serves only to protect the jailers from punishment for the terrible crimes they commit against us”².

Also, Palestinian freed prisoner H***** S***** explained that: “Israeli military courts are sham courts that practice what is known as emergency law. They perform their role by creating legal justifications before the international community for the trial of

¹ Baker, A. (2025). The Role of the Supreme Court of Israel in Exacerbating the Crime of Enforced Disappearance. *Institute for Palestine Studies*. (141), 106-116, p. 106.

² An interview with freed Palestinian prisoners A**** K. from Tulkarem, done by the researcher for the purpose of preparing this research.

Palestinian prisoners. Their aim has nothing to do with the rights of prisoners, but rather with protecting the image of the occupation. This is evidenced by the fact that if the same charges were brought against a Jew, he would be released immediately. However, if the accused is Palestinian, he will be sentenced to decades in prison. I can say that the legal principle governing the behavior of judges is that a Palestinian defendant is guilty until proven innocent, while a Jewish defendant is innocent until proven guilty”¹. This proves that Israeli occupation authority practices discrimination based on race, which is incompatible with what Article 2 (paragraph 1) of International Covenant on Civil and Political Rights (ICCPR), which illustrates that each State Party to the present Covenant (noting that Israel is a party to this Covenant) undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

In summary, a comparative analysis of Netanyahu and Segev's positions, alongside studies of judicial independence and analysis of the long-term occupation, reveals that the Israeli Supreme Court cannot be understood as a neutral institution operating outside the political context of the occupation. Despite its claim to protect rights, it operates within a legal structure that produces systematic discrimination and legitimizes grave violations against Palestinians. Thus, the declared independence of the judiciary does not translate into effective protection of rights, but is often used as a legal cover for the continuation of occupation policies and the perpetuation of a gray area that allows Israel to evade its international legal obligations.

2.2.2.2 The International Criminal Court

Accountability mechanisms before the International Criminal Court represent one of the central international legal tools for addressing the grave violations suffered by the Palestinian prisoners in Israeli prisons after October the Seventh, as patterns of inhuman and degrading treatment escalated in many cases amounting to international crimes falling within the jurisdiction of the Court. This role is based on the legal framework established by the Rome Statute, which grants the Court jurisdiction over war crimes and

¹ An interview with freed Palestinian prisoner H***** S***** from Jerusalem, done by the researcher for the purpose of preparing this research.

crimes against humanity whenever the conditions of material, personal and temporal jurisdiction are met, regardless of the official status of the perpetrators of those crimes.

Here, it is worth mentioning the subject of preventive mechanisms. which refers to “the set of measures that states use in advance to ensure the proper application of international humanitarian law provisions in favor of victims when necessary. Preventive mechanisms begin with states' respect for international humanitarian law, the incorporation of the Geneva Convention into domestic law, the dissemination of the provisions of the Convention, and the adoption of legislative measures”¹.

The physical and psychological torture, denial of medical care, prolonged solitary confinement, and cruel and degrading treatment to which Palestinian prisoners are subjected constitute grave breaches of the Third and Fourth Geneva Conventions, which form part of customary international humanitarian law. These acts, when committed in the context of an armed conflict and in a systematic or widespread manner, as war crimes under Article 8 of the Rome Statute, in particular acts of torture, inhuman treatment, and causing severe pain or serious harm to the physical or mental health of protected persons. Certain practices, if proven to be systematic, may also constitute crimes against humanity under Article 7 of the same Statute.

In this context, accountability mechanisms at the International Criminal Court rely on the role of the Office of the prosecutor in opening investigations and gathering evidence related to violations committed against Palestinian prisoners, whether through complaints submitted by the State of Palestine in its capacity as a State Party to the Rome Statute, or based on information provided by international and human rights organizations. Documenting violations is of paramount importance, as it forms the legal basis for proving the material and moral elements of the crime and linking it to the military or political chain of command, thereby paving the way for the application of the principle of individual criminal responsibility and ending impunity.

Criminal accountability goes beyond the mere conviction of the direct perpetrators to include the accountability of military and political leaders in accordance with the principle of command responsibility, whenever it is proven that they knew or even could

¹ Al-Rashayda, M. (2023). *The Extent to which the Rules of International Humanitarian Law Apply to Iraqi Prisoners of War in Abu Ghraib Prison*. [Master thesis, Middle East University]. Jordan, p. 34.

have known about the violations and failed to take the necessary measures to prevent them or punish the perpetrators. This principle is an effective legal tool in confronting systematic policies targeting Palestinian prisoners, as it precludes the use of military orders or security imperatives as justification for violating the peremptory norms of international law.

A great example to be given here is enforced disappearance, “the legal classification for concealing details and the fate of detainees with whom contact has been lost is enforced disappearance, which is prohibited by the 2006 International Convention for the Protection of All Persons from Enforced Disappearance, under which states are prohibited from refusing to disclose the fate of a missing person, including in times of war and emergency. Article 5 of the Convention defines systematic and widespread enforced disappearance as a crime against humanity. Article 7(1) of the Rome Statute of the International Criminal Court also defines enforced disappearance as a crime against humanity that can be prosecuted before the International Criminal Court”¹.

The complementary mechanism on which the International Criminal Court is based also stands out as a key element in preventing the Israeli occupation from continuing its violations, as the court intervenes when it is proven that the national judicial system is unwilling or unable to conduct genuine investigations and prosecutions. In the absence of serious internal accountability for violations committed against Palestinian prisoners, the Court’s jurisdiction becomes relevant, reinforcing international legal pressure and undermining policies of impunity.

In light of forgoing, the International Criminal Court constitutes a pivotal legal avenue for addressing the grave and systematic violations committed against Palestinian prisoners, particularly where such acts rise to the level of war crimes and crimes against humanity under the Rome Statute. Through its jurisdictional framework, investigative mechanisms, and the application of individual and command responsibility, the Court provides a means to confront entrenched patterns of abuse and challenge the persistence of impunity. Furthermore, the principle of complementarity reinforces the Court’s role when domestic accountability proves ineffective or absent, thereby enhancing

¹ Ibid, Baker, A. (2025). The Role of the Supreme Court of Israel in Exacerbating the Crime of Enforced Disappearance. *Institute for Palestine Studies*. (141), 106-116, p. 108.

international legal pressure to ensure respect for peremptory norms of international humanitarian and criminal law. Accordingly, recourse to the International Criminal Court remains an essential component of the broader international accountability framework aimed at protecting Palestinian prisoners and upholding the rule of law at the international level.

Research Findings

Through legal analysis of international texts and actual practices, this study reached a number of conclusions, most notably:

1. Applicability of international humanitarian law to the situation of Palestinian prisoners:

It appears that Palestinians detained by Israeli occupation fall, depending on their circumstances, either within the category of persons protected under the Fourth Geneva Convention or within the scope of the minimum protection provided for in Common Article 3, regardless of the political or security classifications adopted by the occupying authorities.

2. Illegality of the policy of denying the legal status of prisoners:

The study concluded that Israel's refusal to recognize Palestinian prisoners as protected civilian detainees constitutes a clear violation of the principle of objectivity in determining the legal status of persons and contravenes the interpretation adopted by the International Committee of the Red Cross and relevant international jurisprudence.

3. Systematic escalation of violations after October the Seventh, 2023:

The study showed that after October the Seventh, there was a systematic escalation of serious violations, including torture and ill-treatment, deprivation of food and healthcare, and excessive use of solitary confinement, amounting to war crimes under the Rome Statute of the International Criminal Court (ICC).

4. The illegal nature of administrative detention:

The findings confirmed that the policy of administrative detention, as applied by the occupying authorities, has been stripped of its exceptional nature and turned into a tool of collective punishment, in violation of the principle of legality, the right to liberty, and the internationally recognized guarantees of a fair trial.

5. The shortcomings of international community and accountability mechanisms:

The study revealed the ineffectiveness of international protection mechanisms, particularly with regard to the intervention of UN institutions and the International Criminal Court, which contributed to entrenching impunity and provided implicit cover for the continuation of violations.

Conclusion

This study showed that the issue of Palestinian prisoners and detainees is one of the most complex and sensitive legal issues in the Palestinian-Israeli conflict, due to the overlap between international humanitarian law and international human rights law, and the clear gap between the theoretical legal framework and its practical application on the ground. The research showed that the international legal system, particularly the 1949 Geneva Conventions and their Additional Protocols, has established precise and binding rules to ensure the protection of persons deprived of their liberty during armed conflicts and situations of occupation, it also emphasized the principle of humanity as mandatory rule that cannot be compromised or circumvented under any pretext.

However, the practices adopted by the Israeli occupation authorities, which have become more severe since October the Seventh (2023), reveal a systematic pattern of grave violations that undermine the essence of these rules, whether by denying the legal status of Palestinian prisoners, or by subjecting them to arbitrary detention, torture, ill-treatment, and medical neglect, in clear violation of the provisions of the Fourth Geneva Convention and Common Article 3, as well as Israel's obligations under the International Covenant on Civil and Political Rights and the Convention against Torture. The research concluded that these violations cannot be described as isolated or exceptional practices, but rather constitute a general policy aimed at stripping prisoners of legal protection and turning them into mere tools in a security and political equation.

Furthermore, the study highlighted that administrative detention, which is supposed to be an exceptional and temporary measures used only in the most limited circumstances, has become a permanent punitive tool in the Palestinian context. It is used without any effective judicial oversight and undermines the fundamental guarantees of a fair trial. This undermines the rule of law and is a direct violation of non-derogable rights, chief

among them the right to personal liberty, the right to human dignity, and the prohibition of torture and cruel, inhumane, or degrading treatment.

On the other hand, the research findings revealed a notable shortcoming in the role of the international community and its institutions, both in terms of prevention and accountability mechanisms, as political condemnations and human rights statements have not been translated into deterrent legal measures that would put an end to the ongoing violations. Also, the limited activation of international accountability tools, foremost among them the International Criminal Court, has contributed to reinforcing impunity and undermined confidence in the international legal system's ability to enforce its rules in a fair and non-selective manner, especially in the context of conflicts characterized by an imbalance of power.

Accordingly, this study affirms that addressing the situation of Palestinian prisoners cannot be achieved through partial humanitarian approaches or circumstantial political solutions, but rather requires a strict international legal commitment based on the full and non-selective application of international humanitarian law and human rights law. Also, it highlights the importance of reconsidering international law as a tool for achieving justice and protecting human dignity, rather than as a theoretical framework that is invoked when needed and neglected when it conflicts with political interests. Therefore, the issue of Palestinian prisoners remains a living testimony to the need to reform the international protection system and strengthen accountability mechanisms, thereby contributing to reducing violations and establishing a more equitable legal basis for protecting the rights of peoples under occupation.

Recommendations

In light of the study's findings, the researcher recommends the following:

1. The need for explicit international recognition of the legal status of Palestinian prisoners, to ensure that they enjoy full protection under the Geneva Conventions and to end the policy of arbitrary classifications adopted by the occupying authorities.
2. Activate international accountability mechanisms by expediting investigations before the ICC and considering violations committed against Palestinian prisoners as war crimes that warrant individual criminal prosecution instead of always looking at their cases as "humanitarian cases".
3. Strengthen the role of the International Committee of the Red Cross by ensuring its unrestricted access to all places of Israeli detention, publishing its reports on serious violations, and not limiting itself to confidential channels in cases that amount to international crimes.
4. International pressure to end the policy of administrative detention and limit it to the narrowest exceptional circumstances, subject to independent and transparent judicial oversight that guarantees the right to defense and periodic review.
5. The researcher recommends upcoming researchers to focus on the issue of executing Palestinian prisoners, where during a Knesset National Security Committee debate on a bill to execute Palestinian detainees, members of the far-right Otzma Yehudit party wore noose shaped pins. The group's leader, Israel's extremist National Security Minister Itamar Ben Gvir, explained the symbolism, stating: "we all agreed to wear the pin, it represents one of the options for carrying out the death penalty, such as hanging, the electric chair, or lethal injection". Upcoming studies must shed lights on this issue, and based on international law provisions, it must be studied as unilateral declarations that can be taken as evidence against Israeli extremist authority.

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أوضاع المعتقلين الفلسطينيين بعد السابع من أكتوبر: تقييم انتهاكات إسرائيل

لمبادئ القانون الدولي الإنساني

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الملخص باللغة العربية

تتناول هذه الأطروحة أوضاع المعتقلين الفلسطينيين في السجون الإسرائيلية بعد السابع من أكتوبر (2023)، مع التركيز على مدى انتهاك سلطة الاحتلال الإسرائيلي للقانون الإنساني الدولي ومعايير حقوق الإنسان. تتناول الدراسة الوضع القانوني للسجناء، ولا سيما المدنيين، بموجب اتفاقيتي جنيف الثالثة والرابعة، فضلاً عن الأحكام ذات الصلة من العهد الدولي الخاص بالحقوق المدنية والسياسية (ICCPR) واتفاقية مناهضة التعذيب (CAT). باستخدام منهجية وصفية وتحليلية، تقيم الدراسة الانتهاكات الموثقة مثل التعذيب والتجويد والإهمال الطبي والحبس الانفرادي والاعتقال الإداري. كما تقارن معاملة المعتقلين الفلسطينيين بمعاملة السجناء العراقيين، وتسلط الضوء على أوجه التشابه والاختلاف الرئيسية بين الحالتين. تشير النتائج إلى انتهاكات منهجية من قبل الاحتلال الإسرائيلي، وإنكار مستمر للاعتراف القانوني بالمعتقلين الفلسطينيين، وفعالية محدودة للآليات الدولية للمساءلة. وتخلص الأطروحة إلى أن حماية المعتقلين الفلسطينيين هي التزام قانوني وليس خياراً سياسياً، وتؤكد على ضرورة تفعيل تدابير المساءلة الدولية، وتعزيز دور اللجنة الدولية للصليب الأحمر، وضمان تطبيق القانون الإنساني الدولي بشكل متسق ودون انتقائية. الكلمات المفتاحية: السابع من أكتوبر، المقاومة، المعتقلون المدنيون، السجناء العاديون، أسرى الحرب.